



Guidebook on Anti-Corruption Program for Business in Cambodia



Anti-Corruption Unit

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Guidebook on Anti-Corruption Program for Business in Cambodia



Anti-Corruption Unit

Message
of Samdech Akka Moha Sena Padei Techo Hun Sen,
Prime Minister of the Kingdom of Cambodia

Beloved businessmen and investors in Cambodia!

The satisfactory level of Cambodian economic growth in the past decade cannot be separated from the very important role played by the private sector in Cambodia. The Royal Government of Cambodia, led by myself as the Prime Minister, has always worked hard to make business environment in Cambodia attractive and conducive to long-term sustainability and growth.

I believe that the policy and development agenda related to the private sector launched by the Royal Government not only need to be implemented with care and high responsibility from concerned government ministries and related independent bodies but also need to be fully participated from the private sector. Such participation is nothing but conducting business with fundamental business values and ethics, including transparency, accountability, respect for level playing field, social responsibility and law and regulation compliance.

To achieve this goal, I am sure that indeed the common will and commitment of businessmen and investors to work toward the common goal, especially to have business framework that is in compliance with clean culture and free from corruption is the key factor and a good starting point; at the same time, the private sector needs to have adequate knowledge and know-how as well as effective implementation.

Therefore, I highly commend the Anti-Corruption Unit and many private sector players for their joint efforts in preparing, compiling and eventually publishing the “**Guidebook on Anti-Corruption Program for Business in Cambodia**” to be used as a supporting document and as a guidebook for the general private sector in Cambodia to start, to continue and strengthen efforts in translating the will and commitment to clean and good business into practical work, in particular into formulating, developing, and strengthening anti-corruption program for use within their own companies and enterprises, to an appropriate extent, in accordance with their respective context and circumstances.

I hope that the Guidebook, developed in compliance with national and international standards and provisions and based on best practices in ethical business conduct and in compliance with the applicable laws by companies and enterprises in both Cambodia and other

countries, will contribute to making the roots of clean and good business grow deeper into business environment in Cambodia.

I wish all businessmen and investors more growth, prosperity and successes in all business operations you have in both Cambodia and abroad.

Phnom Penh, 16 February, 2015

Prime Minister

[Signature]

Hun Sen

PREFACE

One view reads that “a strong and long-lasting private sector is the one who conducts business with integrity, transparency, fair level of playing field and with corporate social responsibility.” In the name of Anti-Corruption Unit (ACU), an independent agency, I think this is an up-to-date view reflecting the reality of business world in this era. The view is also in conformity with the programs and policies of the Royal Government of Cambodia led by **Samdech Akka Moha Sena Padei Techo Hun Sen**, the Prime Minister of Cambodia. I believe that to follow the aforementioned view, the private sector itself needs to adhere to culture of clean business, respect for practical laws and regulations and at the same time needs to develop and implement programs and policies supportive to necessary requirements for being good corporate citizen.

ACU has always considered the private sector as a strategic partner in fighting corruption. We are committed to extend our support and exchange of views which can help the private sector to do business in an environment that is more conducive to resilience and sustainable growth. It is for this reason that we have collaborated with many actors from the private sector to compile and publish the “**Guidebook on Anti-Corruption Program for Business in Cambodia**” so that the private sector in general can use in accordance with their respective situation and circumstances.

The Guidebook highlights key fundamental elements for the private sector to take into consideration in developing, implementing and strengthening their own internal policies and programs for conducting business operations in ethical manner, in compliance with practical laws and regulations and with corporate social responsibility.

ACU strongly encourages all business leaders and concerned stakeholders to make the most from the Guidebook so as to strengthen our joint efforts in building a clean society, fair market competition and a resilient and sustainable private sector in Cambodia.

Phnom Penh, 16 February, 2015

Senior Minister

[Signature]

President of Anti-Corruption Unit

ACKNOWLEDGMENT

The “**Guidebook on Anti-Corruption Program for Business in Cambodia**” represents the collaborative commitment and efforts of Anti-Corruption Unit and the private sectors in the fight against corruption, especially in business sector in Cambodia, in conformity with the relevant policies and programs set out by the Royal Government of Cambodia under the leadership of **Samdech Akka Moha Sena Padei Techo HUN SEN**, the Prime Minister.

The Guidebook would have not been published without the support from the Royal Government of Cambodia and the active contribution of many concerned actors and stakeholders to whom Anti-Corruption Unit would like to take the opportunity to express its sincere and heartfelt thanks as follows:

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- Private sector working groups in Government-Private Sector Forum, including (1) Working Group on Agriculture, Agro-Industry, (2) Working Group on Tourism, (3) Working Group on Manufacturing and Small and Medium Enterprises and Services, (4) Working Group on Legislation, Taxation and Governance, (5) Working Group on Banking and Financial Services, (6) Working Group on Transportation and Infrastructure, (7) Export Processing and Trade Facilitation Working Group, (8) Working Group on Vocational

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I INTRODUCTION

Private Sector's Participation in the fight against corruption

- To fight against corruption effectively, both the public and private sectors must work together at all time and ensure that anti-corruption mechanism is regularly implemented.
- Below are some of the reasons that make the private sector join the fight against corruption:
 - A responsibility to act as good corporate citizens.
 - There is increasing evidence and understanding that fighting corruption makes good business sense and that a well-developed anti-corruption ethics and good compliance of anti-corruption program and a good compliance with the anti-corruption program produce long-term benefits; and
 - The rapid development of the international legal framework and rules of corporate governance around the world are now prompting companies to focus on anti-corruption measures as essential component of their mechanisms to protect their reputation and the interest of their investors and shareholders.
- Corruption comes with negative consequences on businesses, including:
 - Increase cost due to corrupt payment;
 - Unfavorable reliance between the supply and demand side of a corrupt act (resulting in continuous extortion requests);
 - Missed business opportunities in distorted markets; and
 - Illegal act will be faced with serious consequences;
 - High risks.
- There are many forms and means that Private Sector can do in the fight against corruption. An important measure would be the commitment to develop, implement and strengthen internal anti-corruption mechanisms of respective private institutions. This will function as a key foundation for effective and efficient anti-corruption work.
- To implement such measures, Private Sector is required to set up an anti-corruption program and plan of action. They need to make sure that such program and plan of action are well implemented, regularly monitored and evaluated to ensure effectiveness, efficiency and to be kept up to date. Such measures are also considered a fundamentally essential part of corporate social responsibility (CSR) of the Private Sector.
- In addition, fighting corruption within the private sector by the private sector itself is also considered as an essential component of its Corporate Social Responsibility.

NB. CSR is the responsibility of a corporate or any organization for the effects of its decision and activities on the society and environment in a transparent and ethical manner. UN Global Compact requires businesses and organizations to focus on 4 major parts for CSR: 1) human rights; 2) standard of workforce; 3) environment and 4) anti-corruption.

Why is the Guidebook on Anti-Corruption Program for Business in Cambodia published?

- Indeed, both in the Cambodian and globalization context, increasing private sector players understand clearly their roles and responsibilities and they have even actively involved in initiatives to ensure that their businesses are conducted with integrity, transparency and accountability. A number of other players are developing themselves toward clean business practice while the others are preparing themselves to follow suit.
- Anti-Corruption Unit (ACU), an independent law enforcement body, is intended to give support to all private sector players to be able to conduct business in a clean way and to respect all legal provisions in force so as to create an investment environment conducive to free and fair competition in Cambodia within the private sector. This is one of the main reasons why the Guidebook is published.
- The Guidebook is prepared:
 - 1) in conformity with the goal of the Royal Government of Cambodia and ACU who always regard Private Sector as a key and essential partner in achieving the anti-corruption program and policy laid out by the Royal Government;
 - 2) through conducting research, drawing lessons learnt from practices in various countries and in particular by consulting with a number of companies, business associations and federations operating in Cambodia; and
 - 3) for the Private Sector in general to use as a source of information and a guide for improving anti-corruption contribution within business sector in Cambodia

Preparation of the Guidebook

- The Guidebook is divided into 3 main parts:
 - Part 1- Risk Assessment.
 - Part 2- Developing and Implementing Anti-Corruption Program.
 - Part 3- From Organizational Change to Collective Action.
- Each part, generally, consists of:
 - 1) Introduction to substance: explains the essence, feature, rationale and set-up as well as implementing methods of each part in a proper and effective way for the fight against corruption.

- 2) References to national and/or international legal instruments: provides brief summary of existing national and international legal instruments that are used as the basis for the preparation of the Guidebook. International legal instruments that are used as references are many, among them are the United Nations Convention Against Corruption (UNCAC) and the UN Global Compact while those of national legal instruments are the Anti-Corruption Law and other relevant legislations.
 - 3) Case studies: offers practical examples of anti-corruption measures taken by various private companies in Cambodia and beyond.
- Each part can be summarized as follows:

Part 1: Risk Assessment

Risk assessment is needed prior to the preparation of Anti-Corruption Program that can respond to the practical needs and circumstances. The assessment will determine where, what level, when and with whom the corruption risks exist.

Part 2: Developing and Implementing Anti-Corruption Program

This part consists of 12 key elements:

- (1) **Support and commitment from senior management for the prevention of corruption.** This is required in order for a company to establish a clean culture of anti-corruption. Tone from the top is effective for lower level management to follow while top management will have to walk the talk.
- (2) **Developing an anti-corruption program.** The element focuses on characteristics that are needed for this program.
- (3) **Oversight of the anti-corruption program.** The element focuses on responsibility and the essence of the program oversight which lies with the Board of Directors or independent equivalent body of the company.
- (4) **Clear, visible and accessible policy prohibiting corruption.** The element focuses on explicit policy prohibiting corruption and permitted by and complying with the law in force.
- (5) **Detailed policies for particular risk areas.** The element focuses on specific issues, especially those related to facilitation payments, gifts, entertainment expenses, etc. and other measures related to this.
- (6) **Application of the anti-corruption program for business partners.** The element focuses on types of business relationship and other measures that are required to deter and prevent corruption committed by third parties.

- (7)**Internal controls and record keeping.** The element focuses on internal control mechanism and the establishment of business data record keeping.
- (8)**Communication and training.** The element focuses on internal communication procedures and internal training on anti-corruption policy and procedures for business partners and employees.
- (9)**Promoting and incentivizing ethics and compliance.** The element focuses on different forms of incentives for those who comply with the company's ethics, rules and regulations as well as with the law in force.
- (10)**Seeking guidance - detecting and reporting violations.** The element focuses on practical mechanism that can be used for detecting and reporting on the violations of policies and procedures.
- (11)**Addressing Violations.** The element focuses on establishing disciplinary policy and the response to the violation incident.
- (12)**Periodic reviews and evaluations of the anti-corruption program.** The element focuses on continuous improvement of the existing anti-corruption program.

Part 3: From Organizational Change to Collective Action

This part focuses on encouragement for companies, in particular those within the same sectors, to cooperate and join force in putting out and implementing anti-corruption measures for the common benefits.

II RISK ASSESSMENT

- To deter, prevent and fight corruption effectively and proportionately, companies need to get a good grasp on the potential risks. Therefore, the foundation for implementing and maintaining an anti-corruption program is corruption risk assessment in order to identify and prioritize the potential risks.
- Corruption risks differ from companies to companies, depending on their distinctive characteristics, i.e. size, structure, geographical operation or business model, internal operation, such as procurement, sales and marketing.
- There is “no-one-size-fits-all” anti-corruption program for all businesses. Hence, the anti-corruption program must adapt to the specific need of each company in order to mitigate corruption risks effectively and efficiently.

1. Before risk assessment

- Risk is often perceived as negative and some companies prefer to abstain from a formal risk assessment in order to prevent negative perception or speculations.
- It should be recognized that no company is immune to the risks of corruption and that risks are only negative if they remain neglected and cause unexpected consequences.
- Before conducting a risk assessment, companies are advised to define:

(1) Operational roles and responsibility

- Companies need to ensure that ample qualified personnel are appointed to manage and execute risk assessment.
- For large and decentralized companies, employees from headquarters as well as the local entities may be assigned to conduct this exercise by engaging employees who are potentially exposed to the risks of corruption (for example, local sales representatives, procurement officers, etc.)

(2) Operational processes

Operational activities and parameters need to be clearly defined. This includes:

- Timing of risk assessment
- Frequency of risk assessment (monthly or annually)
- Source of risk identification
- Collection of data
- Procedures for risk assessment
- Persons included in the risk assessment, such as employees, business partners and external stakeholders
- Identification, compilation and analysis of information, and

- Internal and external reporting of outcomes.

NB. The risk assessment will be most effective and efficient if it is conducted in reference to the existing process.

(3) Oversight

This is required to ensure that the risk assessment is carried out as defined in the operational processes.

2. Process

Process of risk assessment includes the following:

(1) Identifying risks

Internal and external sources are the keys to identifying corruption risks. These sources include:

- Companies may consult with internal employees and where appropriate with external stakeholders, such as trade unions and business partners.
- Information on previous corruption cases provides valuable information on the occurrence of corruption, circumstances and opportunities for prevention within the company and beyond.
- Companies may choose to hire external consultants or learn from the experience of different companies.
- Companies may also review best risk assessment practice from different sources.
- Studies on legal requirements and rules can indicate which types of transactions and operations may involve risks of corruption; for example, bureaucracy (facilitation fee) in applying for licenses. Such studies can assist the company to take a proactive stance to avoid ambiguous practice.

(2) Prioritizing corruption risks

Prioritizing corruption risks can be done by looking at the following:

- Quantitative and/or qualitative terms: combination of the value and quantity of the impact of occurrence and the probability of occurrence (prioritizing the risk that is most likely to happen and the one that is most harmful);
- Impact of occurrence: estimation of all negative legal and reputational consequences for the companies (legal fine, debarment from the market and/or negative press, indirect cost such as legal support fees or management time spent on the case);
- Probability of occurrence: within 12-24 months, if the risk is high, then there is a likelihood that corruption will occur.

(3) Mitigating corruption risks

To mitigate the probability of occurrence and/or the impact of corruption risk, companies should:

- Increase managerial oversight (e.g. four-eye principle for approval – at least two people participate in oversight) for hiring of external agents or third parties.
- Tailor training for employees facing extortion requests from concerned public officials.
- Intensify engagement of middle management (e.g. speaking about anti-corruption at company events).
- Implement automated internal controls to analyze payment streams for long-term, complex contracts.
- Increase due diligence on key suppliers or major investment; and
- Engage in collective action initiatives (e.g. industry peer groups).
- Implement additional measures so as to avoid risks, high-risk market, etc.
- Keep risk assessment documents so as they can be used for improving future risk assessment and references. Documents related to rationale and practical circumstances related to minor risks should also be kept.
- Promote the use of banking system in order to reduce the contact between individuals or individual and cash.

3. Type of corruption risks

- There are three types of risks:
 - (1) **Legal risk:** relating to legal sanctions for corruption (e.g. criminal fines, compensatory damages, imprisonment);
 - (2) **Commercial and operational risk:** relating to negative impacts on day-to-day activities, such as buying, producing, selling, hiring, investing (e.g. debarment from public tenders, unfavorable financing conditions);
 - (3) **Reputation risk:** relating to the standing of a company and its employees among peers, family, friends and the general public. A negative reputation often triggers additional consequences, typically commercial sanctions (e.g. decrease in sales or lower attractiveness for investments).

NB. The extent to which companies face the above consequences may differ based on a company's location - its modus operandi - its interaction with business partners and its structure.

- When tailoring an anti-corruption program, companies should consider the industries and geographical locations in which they operate as some industries and geographical areas are generally exposed to higher levels of corruption and may influence the market

dynamics that companies face. This in turn may affect the degree of competitiveness, norms and customs as well as expectation from stakeholders such as suppliers, customers, and public officials.

- Types of businesses that are exposed to high risks: sales agents, subcontractors, high volatility of personnel, dependency on critical licenses, and complex contracts or short term financial focus.
- Organizational cultures play an important role:
 - Culture based on strong competition – low level of trust and low integrity are likely to be more corruption prone.
 - Honesty culture with participation and ethical value strongly encourage less corruption.
- The company's incentive system is important and should be included in the risk assessment.

4. Recording of risk assessment outcome

There are many types of recording the outcome. Below is an example:

Location / Region:								
Business Unit:								
Corruption risk factor	Corruption risk	Corruption Scheme	Probability of occurrence	Potential impact	Inherent Risk	Anti-Corruption Controls	Control Risk Rating	Residual Risk Rating
Local business climate	Bribery of a government officials	Potential improper payment to government officials in order to obtain permits	Medium	High	High	-Global anti-corruption policy and procedures, incl. specific content on payments to government officials -Anti-corruption training for employees that is tailored for selected regions and key functions -Annual anti-corruption audits on payments to government officials	Effective	Medium

NB.

+ Challenges and opportunities for Small and medium enterprises (SMEs)

- SMEs should identify relevant risk and ensure that their anti-corruption program addresses these risks.

- Because of lower number of employees and lower level of complexity, SMEs will be able to identify risks through direct inquiries.
- SMEs are advised to collaborate with other SMEs or with chambers of commerce, business associations and trade unions in their geographical location or industry to accumulate information on related corruption risks and identify mitigation options.

+ Reporting

- Companies of all sizes should report their anti-corruption efforts by:
 - Describe risk assessment procedures. (e.g. how often it is carried out, who is in charge, which parts of the company are covered, how results are dealt with);
 - Describe the business units and subsidiaries for which a risk assessment has been undertaken.
- The company can provide qualitative and quantitative information, highlight practical actions undertaken or outcome achieved.

III. DEVELOPING AND IMPLEMENTING ANTI-CORRUPTION PROGRAM

- To be effective, such a program should be interconnected with the company's overall ethics and compliance framework.
- Companies of all sizes should report on their anti-corruption efforts. Reporting is an important way of demonstrating the sincerity and seriousness of the company's dedication to prevent and counter corruption and their commitment to the fundamental values of integrity, transparency and accountability.
- Communicating the status and performance of the anti-corruption compliance and ethics program to employees, business partners, and other stakeholders strengthens the internal anti-corruption program through increased transparency and enhances the company's reputation and credibility.
- Reporting also provides a common basis for measuring progress, benchmarking, and learning from peers. It may also deter wrongdoers and facilitate open discussion and the improvement of the practice of the anti-corruption standards.
- Anti-corruption program should comprise of a number of elements which will be illustrated in detail as the following:

A. SUPPORT AND COMMITMENT FROM SENIOR MANAGEMENT FOR THE PREVENTION OF CORRUPTION

- An effective anti-corruption program must be based on strong, explicit, and visible support and commitment from the senior or top management of the company.
- Senior management should clearly articulate zero-tolerance of corruption supported by policies and procedures. Such commitment plays a critical role in establishing a culture of integrity, transparency and accountability.

+ Tone from the top

- This will have influence on the company's norm and value to which all employees and relevant business partners are expected to adhere. The top management includes company owners, CEO, Board of Directors, or equivalent body.
- The senior management must be the owner of the anti-corruption program and must consider preventing corruption as their responsibility.
- The commitment should reflect the irrevocable support and appraisal of the company's fundamental values of the company such as integrity, transparency, accountability and zero tolerance of corruption.
- The commitment should comprise of 2 major elements:
 - 1) Public policy on zero-tolerance of corruption, and
 - 2) Development and implementation of the anti-corruption program.
- Senior management needs to make it clear that:
 - Corruption is prohibited at all times – in any form, small/large, direct or indirect, active or passive.
 - The prohibition should be publicly documented by a formal statement on zero-tolerance of corruption.
 - The emphasis on such prohibition is continuously made during internal and external events (e.g. employee trainings, shareholder meetings, conferences).
 - The statement needs to be supported by an effective anti-corruption program with detailed policy and procedures.
 - Support and commitment from senior management should be seen as an on-going demonstration and not a one-off activity.

+ Role of senior management

- Ensure that there is commitment throughout the company:
 - Each employee must be aware of this commitment.
 - The middle management must demonstrate tangible ownership of the anti-corruption program.

- Establish responsibility:
 - Assigned responsibility to key personnel within the company (e.g. compliance managers are responsible for the implementation and on-going maintenance of the anti-corruption program and oversight).
- Provide sufficient resources:
 - Make available of relevant skill levels and sufficient financial resources.
 - May hire and/or consult with experts to support high quality of the program.
- Define scope and the extent of the program:
 - Level of public reporting.
 - Whether the program will undergo some form of independent evaluation or assessment, or
 - Whether the company will engage in voluntarily initiatives or participate in any collective action initiatives which are in place or in the process of developing.
- Put support and commitment into action:
 - Senior management should be actively engaged in the implementation of the program and improvement process. The importance of the anti-corruption program may trigger questions, concerns or even resistance among employees or business partners.
 - This can be accomplished by joining a voluntarily initiative such as United Nations Global Compact (UNGC) - speaking during employee meetings about the rationales and importance of the program – praising publically those employees who applied the company's value in practice, although it may result in company losing some business opportunities (e.g. turn down a contract that could be obtained only through corruption); point out the commitment to the fight against corruption in printed documents of the company; participate in training and communication activities; act as a role model (it is very important as the employees will always see the example of the senior management) .

NB.

+ Challenges and Opportunities for SMEs

- Commitment from senior management of SMEs is very important for the control and assessment system.
- Due to its small scale, SMEs' senior management can demonstrate its commitment in a more direct and comprehensive way.
- Senior management must act as role model.

+ Reporting

- Companies should provide the company's statement of zero-tolerance of corruption.
- Describe where the statement can be found publicly.
- Describe the procedures and efforts with regard to that statement.
- List voluntary initiatives or collaborative actions in which company participates.

A.1. International Legal Reference

Senior management such as board of directors and chief executive officer (CEO) should play a role in the launching of the program and demonstrate ownership and commitment to the implementation of the program based on the fundamental values of integrity, transparency and accountability. Board of Directors should demonstrate visible and active commitment to the implementation of the program launched by the company.

A. 2. Case Study

Company A, a medium-sized multinational company, engages senior management in the development of its compliance program

- Company A which has its head office in a European country, was recently involved in a foreign bribery investigation by Italian authorities. There was an allegation that the company A's intermediaries conspired with executives of the company to commit bribery in the process of obtaining tenders in foreign countries. Company A immediately suspended the top managers involved. It was a decision adopted by the board, and for the first time in the history of the company, ownership was separated from management.
- Company A did not have an organizational model for preventing bribery before the investigation; hence, there were no internal policies addressing foreign bribery. The new board had begun to develop an appropriate program to prevent foreign bribery. A new organizational model was drafted that included policies and procedures to guard against potential corruption risks.
- As part of the new organizational model, Company A adopted a code of ethics, put into place policies and procedures, and set up an independent supervisory body with the mandate to ensure that policies and procedures are respected. The training courses were held for all relevant employees on the policies and procedures, especially on each risk area. Senior management and the consulting firm clearly explained the employees about the new "zero tolerance" approach towards foreign bribery.

B. DEVELOPING ANTI-CORRUPTION PROGRAM

The program consists of detailed policy and procedures as follows:

+ Characteristics of anti-corruption program

- Consistency with all applicable laws:
 - The Companies may conduct a comprehensive study and research.
 - May assign legal experts to review the design of the program with respect to its consistency with national and international laws.
- Adaptation to specific requirements:
 - Should be adapted to the individual nature of the company.
 - Risk assessment determines the extent of the risks and the specific areas the anti-corruption measures should target and may include organizational culture, preferences or customs that assist the preparation of effective training.
- Participation of stakeholders:
 - Create sense of ownership and support for the recognition and acceptance of the anti-corruption program.
 - Give the opportunities for the key relevant stakeholders such as shareholders, top managers, business partners and/or employees in general to give their opinion on the compliance program.
 - Establish trust and understanding and helps reduce objections or resistance to the program implementation.
- Shared responsibility:
 - Compliance with the anti-corruption program is mandatory and must apply to all levels, functions and areas of the company.
 - It is crucial to avoid the impression of double standards and flexibility in the interpretation of the policies and procedures of the program – Rules and principles must be the same for directors, top managers and all employees.
 - Consistency in the application of the program should especially be reflected in the company's human resource policies.
- Accessibility:
 - Post on website, publication and other communication vehicles, etc.
 - Access to information enables the promotion of the anti-corruption program.
 - Detailed measures, such as support and advice helpdesk, are also important.
- Readability:

- Using simple and understandable language and translating to any language as necessary; avoiding acronyms or technical terms or abbreviations, if possible.
- Promoting a trust-based internal culture:
 - This culture enables the translation of the anti-corruption policies into the values, norms and principles of the companies.
 - Create a favorable environment for honest and ethical employees who seek advice in difficult situations and who cannot make proper decisions in order to avoid infringement on the company's anti-corruption policies.
- Applicability:
 - Applicable for all employees and relevant business partners.
 - Involvement of external parties in communicating strategies, trainings and other measures can help achieve a high level of understanding and reduce the risk of corruption (e.g. corrupt requests from suppliers).
- Continuity:
 - Continuously adapt to a changing business environment, the progress and the new existing updated knowledge.
- Efficiency:
 - Adequate financial & human resources for anti-corruption program; shortage of these might incur unnecessary costs and burdens for the companies.

NB.

+ Challenges and opportunities for SMEs

- SMEs find it easier than large companies in trying to comply with the above characteristics due to fewer hierarchical levels and close interactions between senior management, employees, and business partners.

+ Reporting

- Companies should provide a public written statement, stating their commitment to be in compliance with all relevant laws and where such statement is published.
- Describe the procedure and efforts with regards to that statement.
- Report on existence and the elements of the anti-corruption program.
- Describe how the company implements effective personnel policies and processes that support the anti-corruption commitment.

B.1. International Legal Reference

Enterprises should develop a program on the prevention of bribery in compliance with the existing laws and regulations in all jurisdictions in which they operate. Enterprises should ensure that all the relevant documents are informed to all the relevant, internal and external stakeholders in order to apply this program effectively. In consultation with key relevant internal individuals, Enterprises should develop the program based on the size, nature of business, potential risks and locations of operation and should clearly articulate values, policies and procedures to be used to prevent bribery. Enterprises have to prohibit all forms of direct and indirect bribery.

B. 2. Case Study

Medium-sized company B encourages compliance with its policy of prohibition of bribery by using local business input to update and strengthen its Code of Conduct.

- Company B, a European-based medium-sized enterprise, sells medical products and renders services with 7,500 employees. With 70 percent of its sales is in Europe, the Company foresees largely increasing sales in the market. In 2010, the Company decided to update and strengthen its Code of Conduct and compliance system for 3 reasons: first, it needed to comply with the new UK Bribery Act, which set new standards for facilitation payments, gifts, and hospitality and which required of the Company's immediate address; second, all along its employees did not fully recognize the need to have sufficient knowledge on the company's current policies for ethical behavior; and third, some challenges, such as managing conflicts of interest, needed to be addressed differently in the Company's new Code of Conduct.
- The Company's primary objective was to create a global code of ethics applicable for all, regardless of the locations of its offices and different cultures of their employees. To address these challenges, the corporate responsibility and compliance (CRC) team was set up and began interviewing country managers and marketing managers in almost every country where the Company operates.
- The Company's updated code of conduct consists of 3 main points:
 - Prohibit bribery as well as illegal payments, especially facilitation fees;
 - Prevent fraud and conflicts of interest;
 - Prohibit dinners, entertainment, gifts, hospitality etc. that are unreasonable and not appropriate.

C. OVERSIGHT OF THE ANTI-CORRUPTION PROGRAM

+ Responsibility for anti-corruption program

- Board of directors or equivalent body – may appoint a compliance, audit or ethic committee in order to support board members in fulfilling this responsibility.
- Implementation and execution of the program lies with the senior management of the company who have to keep the board of directors or equivalent body informed on the program status.
- Larger companies may appoint an independent internal control unit who has knowledge and skill to evaluate the daily activities related to the implementation of the policy and procedure of anti-corruption program.
- The format of this unit, such as human resources, role, and responsibility, etc., depends on the complexity, the structure and the size of the company.
- The unit collects documents on the activities related to the anti-corruption program and reports it to the high-level management directly.

+ Oversight responsibilities

- The board of directors or equivalent body needs to ensure that the anti-corruption program is carried out by:
 - Embracing the anti-corruption program as a priority of the company (as an agenda or a guarantee by the board of directors).
 - Monitoring senior management regarding the implementation and execution of the anti-corruption policies and the procedures throughout the company (board of directors should obtain regular status report on the program and be informed on cases of major incidents and corrective actions).
 - Assessing the overall adequacy of the program through review of senior management's program status information and independent assessments. Where necessary, the board of directors needs to determine or prescribe corrective actions.
 - Reacting immediate irregularities or serious challenges throughout the entire company.
- A formal policy that outlines the responsibilities of the board members related to the oversight of the program may be adopted by the board of directors. Such policy may state the company's expectations towards each board member's own behavior and their active support for and commitment to the anti-corruption program.

NB.

+ Challenges and Opportunities for SMEs

- SMEs may face difficulty in installing separate unit for the oversight, however, it should as a minimum ensure that one person is in charge of this task.
- Easy to do oversight as SMEs has lower internal complexity and easy to collect information (may do it during an internal meeting but must clearly define the responsibility for operations and the result of the meeting must be recorded).
- If there are insufficient resource to separate the operational responsibility from the oversight of the program, SMEs may engage external advisors to support an independent assessment.

+ Reporting

- Companies should describe how responsibilities are assigned in the company structure;
- Describe the assignment of responsibility to oversee and implement the anti-corruption program;
- Provide, if possible, specific reporting indicators used to support responsibility and accountability for the implementation of the anti-corruption commitment or policy.

C. 1. International Legal Reference

The Board of Directors or equivalent body should ensure that the compliance program that has been developed and implemented is reviewed for effectiveness and when shortcomings are identified. The Chief Executive Officer or equivalent is responsible for seeing that the program is implemented effectively, with clear lines of authority. Depending on the size of the enterprise, consideration should be given to making the day to day operation and breaches of the code the role of a senior officer of a company.

C. 2. Case Study

Case Study C.2.1: A European engineering company develops a Supervisory Board to oversee compliance.

- The Italian engineering service company has been in operation for more than 50 years and has its branches operating in a number of developing countries all over the world.
- Since there are a lot of branches, the company adopts an Organizational Management Control Model for implementation in the company in general. Through this model, the company appointed a Supervisory Board to ensure its implementation. The characteristics of the Supervisory Board are as follows:
 - Composed of three members (had the required qualities and experiences in supervising)

- Work independently
 - Can hire external consultants and advisors to support
 - Use a budget that is specifically allocated by the company
 - May permit the company's senior engineers to attend the meeting and provide the document/information as needed.
- The company has started to train its personnel and to raise awareness of the model from top management to each employee of the company as well as among business partners and consultants.

Case Study C.2.2: A multinational telecommunications company creates a Business Principles Office to ensure compliance.

- The company is based in many European countries. During a period of rapid expansion into international markets, the company decided to develop new Business Principles, which combined the company's existing Business Principles and Code of Ethics.
- The principles were adopted by the board of directors and are based on the principles of integrity, law compliance and human rights respect. In order to guarantee compliance with the new Business Principles, the company created a Global Business Principles Office, which consists of departments, ranging from human resources, internal audit, secretary general and legal affairs, and the chairman Secretary's Office. The Global Business Principles Office is located in the country where the company is based and the office is in charge of the strategy, principles, norms, and assurance mechanisms for adequate ethics management among the company's operations. Each local operation must establish a corresponding "Principles Office". The functions of such offices are as follows:
 - Meet quarterly to monitor the implementation of the strategy and plan of action
 - Assess corruption risks
 - Receive and respond to complaints made by all relevant stakeholders
 - Investigate complaints and report to Human Resources Managers and the legal department for addressing.
- The company also imposes penalties on wrongdoers and this could be administrative, disciplinary and/or criminal (sue to court). The office has also created an online tool, so that all employees can receive adequate training on the Principles. The main goal of the training is to keep employees duly informed about the company's Code of Ethics in carrying out daily activities.

D. CLEAR, VISIBLE AND ACCESSIBLE POLICY PROHIBITING CORRUPTION

This policy is the key to the functioning of the other elements of the anti-corruption program. The policy prescribes principles and rules and formally determines the prevention of corruption. In order to get a good grasp of what the policy is all about, companies are advised to understand the following:

+ Definition of corruption

- Corruption comes in many forms; hence, a formal definition of corruption is not included in the United Nations Convention Against Corruption (UNCAC) and many domestic anti-corruption laws, including the Cambodian anti-corruption law.
- UNCAC leaves individual state parties the freedom to come up with their own definition of corruption should they desire to and each state party indeed can define corruption beyond the UNCAC's minimum standards.

+ Manifestations of corruption

- Corruptions include bribery, embezzlement, obstruction of justice, trading in influence, concealment or laundering of the proceeds of corruption, corruption in the private and public sectors, abuse of power, illicit enrichment, etc.
- A policy which provides information on manifestations of corruption and the scope of application of policy helps translate the overarching commitment of zero-tolerance of corruption into concrete and understandable actions.
- Defining corruptions clearly will reduce space for misinterpretations; for example, definition of “public officials” and “facilitation payments” must be clearly defined.
- The anti-corruption policy must be comprehensive and responsive to potential challenges; for example, bribe can occur in a variety of forms (kickbacks, extortions or facilitation payments) – legitimate expenses, such as gifts, hospitality, travel, entertainment, donation, sponsorship, charitable contributions and/or political contributions, can also be misused as a subterfuge to a corrupt act if it is not permitted by the law.

+ Anti-Corruption Prevention Policy

The policy needs to:

- Be formally written and documented, for example, as part of a code of conduct, code of ethics or any other similar documents.
- Be clear and easy to understand (translated into readable language, if necessary).

- Be visible to all parties within and outside the company.
- Contain examples of cases or situations potentially happened or occurred before so as to make it easy to follow for daily operations.

+ Multiple-legal jurisdictions

- In formulating the anti-corruption policy, companies must take concerned legal jurisdictions into due consideration and this is important, especially when the companies have business with partners or concerned stakeholders in many countries. For example, the issue of facilitation payments can be complex because some countries prohibit it while some others permit it in a certain extent.
- Companies may establish a global anti-corruption policy standard throughout the jurisdictions in which they are operating. A global standard offers a variety of benefits; there are:
 - Strengthening the commitment and reputation of a zero-tolerance policy of corruption.
 - Setting clear expectations for all employees and business partners.
 - Avoiding the impression of an opportunistic motivation to apply the anti-corruption policy.
- Companies must also closely monitor updates and changes in legal jurisdictions and evaluate to see if the company's global anti-corruption policy needs to be modified.

NB.

+ Challenges and Opportunities for SMEs

- SMEs face the same issues as large companies, but challenges are less complicated than those of large companies. If there are not many international operations, it is even easier in determining a universal policy against corruption.
- Need to formally document and publish their anti-corruption policy.
- May use existing anti-corruption policy templates (e.g. provided by non-governmental organizations) and tailor to meet their specific requirements.
- May also find support and guidance from local chambers of commerce, business associations, other entities, when developing such a policy.

+ Reporting

- Companies should report on the existence and the elements of their anti-corruption program.

- List the areas of potential risks which are covered by a detailed anti-corruption policy.
- Describe procedures and efforts with regard to that policy; and
- Describe where this policy can be found and how it is made available to all employees and business partners concerned.

D.1. International Legal Reference

Bribery should be prohibited in any form on all business operations, including those of subsidiaries, intermediaries, advisors, brokers, sub-contractors, suppliers or employees, with a public official, family members and close associates of a public official or a political candidate or party official, any private sector employee or third party. The board of directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise's program.

D.2. Case Study

A company that supplies products and renders transport services sets a corporate policy barring bribery.

- The Company is an international supplier of goods and services in the transportation industry with branches and operations throughout the world. In 2011, the company was in negotiations with a third-party company to participate and obtain a public contract from a Mexican governmental agency in order to install equipment on federal roads. The company later found that the third party was intending to use its influence with government officials in order to win the contract. Company understands that there is a high risk and immediately terminated the negotiation with the third party.
- The company then began implementing a strict procedure for identifying and researching their contracting parties, potential business partners, employees and officers in order to learn of and avoid any possible acts of corruption or bribery which can harm the company. The company established a policy banning bribery by immediately terminating business relationship once its partner is found to be involved in or committed a corruption act.
- The company sets out an internal anti-corruption manual that provides guidance on mandatory procedures that apply before negotiating or executing any agreement with a third party, including researching and information collecting on third party, sanctions and penalties of third party and acknowledging and agreeing to comply with the policy set forth in the company's code of conduct for every employee.

E. DETAILED POLICIES FOR PARTICULAR RISK AREAS

- Efforts to address corruption through policies and procedures are essential, yet challenging, in particular when there is no clear-cut between law enforcement and bribery; e.g. gift giving is in general normal but it will be prohibited by law if it influences a decision.
- There may exist many gray areas some time, hence companies should address these gray areas by drawing a clear line between legitimate and non-legitimate practices. Challenges in doing so are as follows:
 - Business practices are illegal but perceived as normal or even required (e.g. facilitation payments).
 - Business practices are legal but bear the risk of being misused to disguise corruption (e.g. misuse of political contributions, gifts or hospitality, etc.)
 - Business practices are based on biased decisions (conflicts of interest).

E. 1. Facilitation Payments

- Facilitation payments are:
 - Unofficial payments, improperly given in small amount to low-level officials to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment is legally entitled (e.g. in order to get a license or other public services).
 - Bribes, as defined in UNCAC, and are prohibited in Cambodia's anti-corruption law.
 - If tolerated, it could damage the company's culture of zero-tolerance anti-corruption.

+ Mitigating the risk of facilitation payments

- In business practices of some countries, facilitation payments may be considered as normal practice or even necessary; in such environments, companies that abstain from facilitation payments may face initial competitive disadvantage especially if their competitors continue to pay. Nevertheless, companies must be aware that such payment can be a crime in the law of the countries they are operating (in Cambodia, it is a crime), so it must address the risk of facilitation payments in their anti-corruption program.
- Companies should have a clear definition of facilitation payments, combined with a detailed policy prohibiting such payments (if possible), even if they operate in countries where facilitation payments are not illegal or where such payments are illegal but

enforcement is very low. Companies should also identify risks and comprehensively make an attempt to mitigate them.

- In order to generate information on the different regional vulnerabilities, companies should conduct detailed risk assessment (in order to determine where the facilitation fees are most likely to occur; for example, when a new facility is being set up).
- A profound understanding of the risks of facilitation payments allows companies to provide tailored trainings and guidance materials to deal with concrete challenges (e.g. how to identify a foreign public official, or how to handle a public custom official's demand for a facilitation payment for on time clearance of perishable goods).
- Companies should consider establishing specialized measures and role-based training in addressing demand for money and threat to the security and safety (in such case, companies may include an exemption clause in the policy on facilitation payments).
- Companies that hold considerable market power are strongly advised to use their influence by supporting the prohibition of facilitation payments in countries where no relevant law has been enacted or enforcement is lacking.

NB.

+ Challenges and Opportunities for SMEs

- Dealing with facilitation payments is particularly challenging for SMEs; some may even perceive that it is not possible to sustain business operations without these payments because of the difficulty in absorbing any negative consequences resulting from a refusal to a solicitation or extortion, such as delays in operations. SMEs also lack market power needed to exert a political leverage for change.
- However, SMEs are advised to establish similar policies and procedures to prepare their own employees in resisting facilitation payments like large companies as well. For example, SMEs should establish clear processes on how to proceed when facing solicitation or extortion requests by seeking advice from the company's owners, etc.
- Guidance and training material is often available. SMEs should seek joint actions with business partners and should find support from local business associations, etc.

+ Reporting

- Companies should list areas of potential risks of corruption which are covered by detailed anti-corruption policies.

- Describe procedures and efforts with regard to these policies; and
- Describe where these policies can be found and how they are made available to all employees and business partners concerned.

E. 2. Special types of expenditures

- These refer to potentially misused expenditures, i.e. those made to disguise bribe or as trading in influence, including gifts, hospitality and entertainment, political contributions, charitable contributions and sponsorships.
- Due to the general legitimacy of such expenditures, companies may have to invest considerable effort to communicate the related risks and the necessity of complying with the policy and supporting procedures aimed at preventing misused expenses.
- It is important that such procedures should help employees to differentiate between legitimate and appropriate use and a misuse to generate undue advantages.

+ Mitigating the risk of gifts, hospitality, travel, and entertainment expenses

- The reasons why there are such expenditures are building relations, express appreciation, demonstrate company's capabilities, etc.
- The risk of such expenditure does not stem from the expenditure itself but from situational factors and disproportionality, e.g. inviting a public official with whom a public tender is currently being negotiated to an all-inclusive expensive weekend trip clearly raises suspicion.
- Companies are advised to address these expenses as special types of expenditures in their anti-corruption program.
- Companies must have clear definition for such expenditures and have detailed policies for the entire company prohibiting expenditures made to obtain undue advantages or subterfuge for illegal transactions.
- Companies should provide detailed guidance material (can include a checklist) that takes into account different local customs and economic circumstances. They should also have detailed policies for identifying and mitigating risks.
- Such guidelines may set out clear and transparent boundaries regarding gifts, hospitality, travel mode or entertainment types – limits of monetary value (based on region) – and nature of business relationship and occasion.

- Risk mitigation activities, preventing employees from misinterpreting, intentionally or unintentionally, the policies and guidance material, include approval procedures (e.g. multiple approvals for benefits involving public officials) – defined responsibilities (e.g. who needs to be informed) - and documentation requirements (e.g. what needs to be recorded).

+ Mitigating the risk of misusing political contributions

- Risks may be illegal – influence the process of the politics and decision making for undue advantage – and subterfuge for a corrupt act.
- The same as the above expenditure, companies must have a clear policy and determine types of permitted contribution; for example, contribution for political or social target that the company wants to support or for the promotional activities to support a political party, if not prohibited by law.
- Activities for risk mitigations are:
 - Ensure appropriate timing of political contribution (e.g. not during a major political decision-making process);
 - Set thresholds for political contributions;
 - Maintain accurate books and records;
 - Assess employees and business partners to identify conflicts of interests;
 - Establish approval procedures (e.g. four-eyes principle to approve contributions);
 - Conduct regular reviews of political contributions; and
 - Disclose political contributions, if deemed necessary (unless secrecy or confidentiality is legally required).
- Companies can also legitimately promote their view and expertise on public policy issues through political advocacy or lobbying for which they can engage an intermediary lobbyist. Companies are advised to ensure that advocacy is not abused through payments, gifts, or hospitality to obtain an undue advantage.

+ Mitigating the risk of misusing charitable contributions and sponsorships

- May occur during sports event, culture, education, printing – it can be in cash or in kinds, including goods or services, membership etc.
- Risk of charitable contributions and sponsorship can be used to generate an undue advantage or as a subterfuge for a corrupt act.
- Detailed policy and as-above activities are also needed.

NB.

+ Challenges and Opportunities for SMEs

- SMEs face similar risks to those of larger companies.
- Need to pay special attention to the effective implementation of these policies and procedures related to undue advantages and special types of advantages.

+ Reporting

- Companies should list the areas of potential risks of corruption which are covered by detailed anti-corruption policies.
- Describe procedures and efforts with regard to these policies; and
- Describe where these policies can be found and how they are made available to all employees and business partners concerned.

E.3. Conflicts of interest

- Companies may face risks when business decisions are based on conflict of interests.
- A conflict of interest exists if an individual in a company has professional, personal, or private interests that diverge from the interests that the individual is expected to have when representing the company; e.g. a marketing manager of a company provides sponsorships to a sport event in which he is a member of the event organizing committee.
- Conflicts of interest occur in every organization, but they are not per se negative. Therefore, the term should not be used to imply illegitimate behavior or even a corrupt act.
- Employees that have conflict of interest may:
 - Make decision in the best interest of the companies too;
 - Engage in outside activities which are legal and beneficial for the company and his or her own interest;
 - Be in such situations that can be easily misinterpreted and cast doubt on the objectivity of a particular decision.
- Companies should be aware of the various types of conflicts of interest and address them appropriately with policies and procedures (e.g. need to have a clear communication and documentation strategy in case of conflicts of interest).

+ Sources of conflicts of interest

Sources of conflicts of interest include:

- Gifts, benefits and hospitality: may lead to conflicts of interest if employees feel the obligation to reciprocate gifts, benefits and hospitality by giving an undue advantage;
- Outside appointments: if a company representative is engaged in more than one organization and has to make decision which result in a trade-off between advantages for the two (or more) organizations;
- Parallel internal positions: when employees have competing professional duties within their company (conflicting role);
- Financial investment: when employees favor business relationships with a certain company; e.g. bidding for a supplier;
- Employment of relatives: may lead to nepotism, favoritism and negative consequences for the company (especially the issue of incompetency);
- Engagement of public officials although companies may benefit legitimately from the experience and knowledge of former and current public officials, their engagement should be closely monitored.

+ Mitigating the risks of conflicts of interest

- There must be a clear definition of conflict of interest and detailed policy and employees, partners and outside stakeholders should be informed since conflicts of interest may also involve them all (gifts, benefits or outside appointment).
- Even conflicts of interest is not a violation of the law, companies should have a policy that include examples of situational risks.
- Companies may require employees and all relevant business partners, including consultants, intermediaries, auditors and selected representatives, such as those in finance, sales, marketing, procurement and human resources, disclose possible conflicts of interest.
- Such disclosure can reveal potential conflicts of interest and can help avoid situations which may lead to an inadvertently or intentionally biased decision.
- Companies should also consider conducting due diligence in major operational processes and implement procedures to identify conflicts of interest. (e.g. due diligence of suppliers can reveal former or present personal relationship with the company's officers).

+ Addressing potential conflicts of interest

- To best address a potential conflict of interest is to avoid the situations that may cause it; e.g. refuse to appoint a senior manager that may put his or her personal and organizational interests in conflict (however in some cases it is inevitable).
- Remove employee facing conflict of interest from a particular situation. However, in some case, it is difficult to do so, especially when he is the single point-of-contact for a particular client or if a company does not have sufficient resources).
- Use external third party to assess the contract being negotiated.

NB.

+ Challenges and Opportunities for SMEs

- SMEs may face conflicts of interest even more often than large companies due to factors such as close relationships within the community or ownership structure.
- Need to establish a clear conflicts of interest policy and related procedures, in particular on evaluating and disclosing conflicts of interest that cannot be avoided or where the removal of employees from a decision is not possible.
- May find support and guidance from local chambers of commerce, business associations, etc.

+ Reporting

- Companies should list the areas of potential risks of corruption which are covered by detailed anti-corruption policies.
- Describe procedures and efforts with regard to these policies; and
- Describe where these policies can be found and how they are made available to all employees and business partners concerned.

E.4. International Legal Reference

Facilitation Payments and payments on gifts as well as on hospitality should be prohibited when they are in violation of the domestic laws. Likewise, contributions in the forms of charity and politics must not be made to disguise bribe; they should be transparent and in compliance with the domestic laws. In general, companies should have detailed policy, proper procedures and strict control on such payments.

E.5. Case Study

Case Study E.5.1: A US-based multinational company uses electronic approval form for gifts and payments to public officials.

- Company engaged in activities in 30 countries plus around the globe. Even though gifts without corrupt intent are probably not illegal in some countries, it is still considered as illegal in other countries and that may give rise to questions from the US authorities. Because of the attitude on gifts, hospitality and facilitation payments, the Company may face unnecessary risks of such payments.
- The company has established policy that requires a senior management to approve such payments (the company does not allow middle management to approve it so as not to put them in a difficult position with their subordinates) via electronic form for gifts, hospitality and facilitation payments to ensure that senior management are aware of those payments; this also provides an audit trails, e.g. the timing of requests is determined by computer system.
- Only auditor and inspector can view the data on this system, and the system is more effective than email. There are also exceptions to the approval of such payments, such as payments on government officials require visit to the company branch in a certain country.

Case Study E.5.2: A German multinational company issues a policy on delegation trips.

- The company recognized the importance of providing delegation trips to inspect the products and its factory as this is an important part of legitimate marketing tool. In response to allegations against the company on improper payments related to travel and entertainment provided to customers, the company decided to strengthen and review its compliance program in 2008 in order to further strengthen the effectiveness of the prevention on improper payments.
- The company determined that payments must be made in accordance with legitimate business purpose and the degree of hosting an entertainment must be proportionate with the time and professional value. The company also prohibits payments on travelling and accommodation, unless there is an explicitly written request from customers or in exceptional cases. Cash reimbursement of costs is strictly prohibited.
- To ensure effectiveness, the company laid out requisite conditions for trip payments, including (a) approval from operational management or in certain cases a review by legal department or compliance officer; (b) comprehensive documentations, such as invitation letter, agenda of the trip, hosting and entertainment (including scope and value provided) and (c) compliance with domestic laws and company's internal rules.

F. IMPLEMENTATION OF ANTI-CORRUPTION PROGRAM FOR BUSINESS PARTNERS

- Business partners include:
 - Supplier, subcontractor, agent, subsidiary and joint venture;
 - Some are fully independent while others may have financial relations. Some others may be the representatives of the company.
 - The relationship may be unofficial, contract-based or closely integrated;
- If a business partner has a low standard of anti-corruption, then companies may:
 - Have the risk of corruption and their reputation can be affected;
 - Hold them responsible by laws for any act of their improper conducts;
 - Laws in many countries demand companies to be responsible for the acts committed by their partner.

+ Types of business relation

- The categorization of different types of relationships enables companies to adequately assess the related risks and establish mitigation practices for each one.
- In general, companies are advised to establish policies that require similar standards from business partners over which they have control and influence.
- All business partners should be aware of the company's policies and procedures and the consequences of non-compliance with them.
- Business partnerships include:

1) Subsidiaries

- Constitute the strongest form of a business relationship.
- Companies that have effective control over them if the companies have considerable decision-making and/or managerial power over the conduct of the subsidiary. Effective control is granted if the companies can determine the composition of the board of directors or influence major business decisions.
- Companies should require their subsidiaries follow the same anti-corruption policies and procedures; the anti-corruption program may be tailored to the specific risk profiles of the subsidiaries.

2) Affiliates

- Companies own a minor share of stocks (typically less than 50%) and hence have limited control over its business conduct too.
- Companies should encourage the affiliates to enhance and support for effectiveness of the anti-corruption program. If an affiliate resists anti-corruption efforts, the companies should consider withdrawing from the relationship.

3) Joint Ventures

- Major principles of the anti-corruption program of the joint ventures should be defined prior to launch.
- If the joint venture has already been established and the business partners cannot be persuaded to apply similar anti-corruption standards, the company should consider exiting the joint venture.

4) Agents and intermediaries

- Can be separate organizations or individuals that act on behalf of a company and where the companies have a determining influence for the execution of day-to-day business activities, such as obtaining licenses, permits or other authorizations as well as for business development. They may include business development consultants, sales representatives, customs agents, lawyers and accountants.
- Reliance on agents and intermediaries creates major risk for companies as they may act on their own and engage in corrupt acts without the knowledge of the companies. Thus, the companies need to have a detailed policy and supporting procedures, including by:
 - Conducting due diligence in the selection of agents and intermediaries;
 - Communicating the company's policies and procedures to agents and intermediaries;
 - Obtaining a formal, written commitment from the agent or intermediary to the company's anti-corruption program; e.g. as part of the overall contract;
 - Establishing detailed processes regarding the remuneration, documentation of expenditures, and record keeping of agents and intermediaries;
 - Supporting agents and intermediaries in adhering to the company's policies and procedures; e.g. training;
 - Monitoring the agent's and intermediary's behavior on an ongoing basis; and
 - Applying sanctions and incentives to agents and intermediaries in case of non-compliance and compliance.
- The scope of these practices should depend on a risk assessment for agents and intermediaries; for example, agents with high governmental interactions or work in high risk industries.

5) Contractors and suppliers

- Contractors and suppliers are important business partners and are necessary for conducting a successful and sustainable business but companies do not necessarily have determining influence over these partners.

- Companies face negative reputational consequences by being associated with a corrupt contractor or supplier and in case where a partner is convicted of a corrupt act and becomes unable to fulfill its contractual duties.
- To minimize these risks, companies must clearly express their expectations to all contractors and suppliers in detailed policies, for example as part of a code of conduct for suppliers and effective and efficient mitigation practices.
- Companies may seek to identify synergies with other partners in managing contractor and supplier relationships by, for example, conducting joint anti-corruption trainings.

+ Managing the risk of business relationships

- Companies should carry out due diligence when selecting a business partner; they need to monitor the relationships with their partners as well.
- In selecting business partners, companies need to:
 - Conduct due diligence on strategic, commercial, operational, reputational aspects and corruption risks and these should be carried out before engaging with a business partner in order to identify potential risks and risk-mitigating activities.
 - Have a clear process, complemented with stringent documentation requirements for preventing problems (e.g. Conflicts of interest)
- Conducting due diligence may include typical checks on corruption-related risk areas but may also include checks on more detailed relationship-specific risk areas such as:
 - Checks on legal status and type of organization of the business partners, including jurisdiction of incorporation;
 - Assessment of the financial or organizational dependencies and ownership structures of the business partners;
 - Determination of any conflict of interests of key personnel from the business partner;
 - Assessment of anti-corruption commitment from senior management of the business partner (e.g. active participation in voluntary anti-corruption initiatives).
 - Accumulation of reputational information on the business partners (e.g. through consultations with other partners, local business associations, embassies);
 - Review of corruption-related track record (e.g. past incidents).
 - Evaluation of the quality of the existing anti-corruption program of the business partner.
- Based on the initial due diligence and the level of risk exposure, companies must establish relevant mitigation activities to minimize the risks such as a formal, written commitment of the business partner to the company's code of conduct – the

participation in trainings or the provision of information on the business partner's anti-corruption program.

- If companies are not able to obtain sufficient information or cannot encourage the potential business partner to engage in risk mitigating activities, they should not engage with this partner.

+ Monitoring of business partners

- The extent of monitoring may vary significantly, depending on the overall risk exposure of the partner, e.g. simple checks on the existence of a formal, written statement may be sufficient.
- In high risk areas, companies may even opt for conducting an intensive analysis of the partner's anti-corruption program, including stakeholder interviews and expert assessments.
- Monitoring of business partner may consist of:
 - Self-assessment: companies may require business partners provide information on the status of their anti-corruption program through a self-assessment form;
 - Own investigations: companies may conduct their own analysis to assess the extent and level of the quality and scope of a partner's anti-corruption program, either based on research and background information or through direct engagement with the partner; and
 - Independent evaluation/assessment: carried out by a third party.
- Monitoring should be conducted on a regular basis, as risks identified by the initial assessment may change. Additionally, companies may conduct ad hoc monitoring of high risk business partners.
- The primary responsibility for the selection and monitoring lies within the operational business functions supported by a dedicated team of legal, financial and other experts (depending on the size of the company). The team which may consist of a representative of the audit committee and external consultant need to document and report the result of their work to the board of directors, audit committee or an alternative oversight body of the company.

+ Motivating business partners to adhere to the company's standard

- Where companies do not have a significant influence over business partners, they need to consider on measures of incentives and sanctions as follows:
 - Termination of relationship (cancellation of contract), exclusion from business opportunities or the assignment of unfavorable conditions or the assignment of

favorable conditions (e.g. reduced monitoring frequency of the business partner).

This is for commercial sanctions or incentives.

- Sanction, compensatory damages or even reduction of sanction due to certain behavior (many states apply this measure). This is for legal sanctions or incentives.
- Publication of a corruption-related event, including reputational sanctions or incentives (may be prepared by a business association).
- Mitigation incentives should be considered to rehabilitate businesses that demonstrate improved anti-corruption behavior.

NB.

+ Challenges and Opportunities for SMEs

- SMEs may have difficulties in enforcing their anti-corruption standards through termination of the business relationships; however, SMEs are advised to conduct similar due diligence due to legal liability or loss of reputation that can affect them in the same way as large companies do.
- SMEs may engage external consultants to conduct the initial risk assessment.

+ Reporting

- Companies should outline the definition and scope of business partners (e.g. suppliers, agents, joint ventures).
- Describe how the company's anti-corruption commitment extends to business partners and vice versa.
- Describe the coverage of the supply chain related to the extension of the anti-corruption policy (sizes or types of suppliers);
- Specify detailed policies for business partners;
- Describe specific communication measures and actions, such as training taken to encourage business partners to implement anti-corruption program; and
- Describe the process of monitoring the effectiveness of such communication measures and actions.
- Provide information and highlight practical actions undertaken or outcomes achieved.

F.1. International Legal Reference

Enterprise should prohibit bribery in all business transactions that are carried out directly or through third parties, and other intermediary under its effective control. Enterprise with effective control should use its influence to encourage the implementation of the anti-corruption program in business entities in which it has a significant investment or with which it has significant business relationships. Enterprise should undertake due diligence on

companies which it plans to engage with such as merger, acquisition, and investment. Enterprise should also terminate business relationship in case where companies in which it has business relationship with involve in bribery activity.

F.2. Case Study

Case Study F.2.1: Multinational Company C operating in Cambodia implements anti-bribery clause in the business agreement they have with their suppliers.

- The company is a multinational beverage company that has the world leading brand with high sales for more than 100 years. In order to maintain its reputation as a champion in clean business in the Kingdom of Cambodia, the company sets the obligation for all of its suppliers to sign an agreement on the anti-bribery clause in the business agreement.
- All agents and suppliers must agree and ensure that in having business relations with other entities that concern the company, they must not promise or give anything of value, directly or indirectly, to any government official, employee of a government controlled company or political party in return for undue advantages. The company will not compensate business partners who pay bribe or kickback in violation of applicable laws of the Kingdom of Cambodia or of the country where the company originated from. A written accounting must be kept of all payments made by suppliers or its agents and employees representing the company; copy of the accounting document must be provided to the company upon request.
- The company reserves the right to terminate its agreement with business partners who 1) materially breach terms & conditions of the agreements, 2) commit fraud or misrepresentation with respect to the agreement, 3) change the information contained in the agreement, and 4) cause the company to believe that they have engaged in illegal conduct or unethical business practices.

Case Study F.2.2: Company K conducts due diligence on its third parties

- Company K is a leading global infrastructure and engineering business with over 50,000 employees and operations in over 80 countries. Company K operates in a sector that is known to be a high corruption risk sector that often involves tendering for large public and private projects.
- Company K recognizes legal consequences and is also aware that their reputation can be harmed if any third party behaves in an illegal, unsafe or unethical way. Company K

conducts due diligence by emphasizing on the level of risk of third parties through researching on the reputation and track record of third party in order to avoid entering into a contract with corrupt third party.

- Company K also uses risk-assessment checklist in relation to the specific project being considered and procurement risks and other controls during the procurement process in order to ensure that the procurement meets the requirements and quality. The checklist consists of:
 - **Red Flag and business justification:** Company uses red flag and business justification to identify and mitigate risks associated with relevant third parties.
 - **Agents and Commissions:** Company avoids using many agents because it is difficult to monitor them all.
 - **Contractual Protections:** the third party must comply with applicable laws and not engage in corruption and with company K's code of conduct. Company K may also audit the third party deemed as high risk.

Case Study F.2.3: An Australia-based construction and engineering firm L educates its contractors about its expectations

- Company L is an Australian-based construction and engineering firm and is a subsidiary of a US engineering corporation. This company was awarded a principal engineering contract valued at USD 13 million for the extension and upgrade of a power facility 300km outside a big city in South East Asia.
- Company L engaged subcontractors in 5 countries to assist with the project; these subcontractors are family-owned and do not have codes of conduct or detailed policy. Company L took a number of steps to ensure that each subcontractor understood its obligations not to offer, promise or provide bribes or undue advantages to public officials. Company L organized a series of seminars for subcontractors where they present the Company's overall ethical philosophy and culture, cooperation methods, zero tolerance policy for any illegal or improper conduct, and the need to disclose improper or illegal conduct to the company.
- During the project implementation, Company L randomly audited the books and records of the subcontractors on completion of the project, the contractual relationship also ended.

G. INTERNAL CONTROLS AND RECORD KEEPING

- Business conduct should be based on mutual trust. Trust between a company's management and its employees, as well as business partners, is essential for a motivating work environment.
- Thus, management, employees and business partners should conduct their activities in accordance with the company's ethical values, even in situations that are not clearly defined by policies and procedures.
- However, relying completely on trust may expose the company to risk of significant negative consequence (such as severe legal fines) due to the commission of corrupt acts by a single rogue employee or carelessness or lack of awareness or simple human error.
- Thus, in addition to the emphasis on ethical compliance working environment companies should establish internal control system.
- The main objective of a system of internal controls is to provide reasonable assurances to the effectiveness and efficiency of:
 - Company's operations
 - Reliability of its financial reporting
 - Its compliance with applicable laws, regulations, and internal policies
 - Anti-corruption program (as intended by the senior management)
 - Reduction of corruption risk.

+ Elements of an internal control system

- Right balance between a system of internal control and trust in its employees and business partners is essential for company's senior management and oversight bodies.
- A balanced system needs to be risk-based and should avoid either excessive or insufficient controls.
- Excessive controls can have negative effect on the organizational culture by delaying business processes and insufficient controls leave a company vulnerable to corruption.
- The underlying objective is prevention and early detection of corruption if there is. Elements of such system include:
 - Organizational Measures:
 - Can be integrated into the underlying business processes to prevent corruption through policies and procedures related to the execution of day-to-day activities.

- Clear role descriptions, approval limits, separation of responsibilities (e.g. the approval of invoices is separated from the release of payments) and restricted access to sensitive business activities (e.g. approval of new suppliers).
- Controls:
 - Can either apply to an overall entity (on training, policies and procedures of subsidiaries) or be integrated into the underlying business processes.
 - Support and monitor the adherence to organizational measures; e.g. fulfilling the requirement before releasing a financial contribution to a political party (prevention) or control over double or split payment to the same vendor in order to identify overpayments or circumventions of approval limits (detection controls).

NB. Controls can be executed manually (counting physical inventory) or automatically (computer based access control).

- Information on operations obtained from control system need to be adequately documented as it will enable future learning and improvement.

+ Responsibilities of the internal control system

- Designing, implementing and maintaining the internal control system:
 - Senior management of the company is responsible for these; however, they may delegate tasks to designated departments, such as risk management, finance or procurement, particularly in relation to process-integrated measures.
 - Companies should assign “internal control owners”, e.g. where the compliance department may be responsible for executing manual and prevention controls, the finance department may execute financial and organizational checks and balances over the company’s accounting and record keeping practices.
- Evaluating the internal control system:
 - The internal audit department (and/or external auditors), which is independent within the company and whose main objective is to review the effectiveness, efficiency, and balance of the established organizational measures and controls, evaluates the reliability of internal controls on a periodic basis.
 - The independence of the internal audit is fundamental to enable an objective and reasonable evaluation of the internal control system.
 - Findings of the department should be reported to the board of directors (or to the audit committee).
- Oversight of the internal control system:

- Responsibility for the assurance of the effectiveness of the system lies with the board of directors or similar governing body.

+ Accurate books and records

- An internal control system requires the maintenance of accurate books and records that are the basis on which checks and balances are performed under detection controls.
- These documents are also important to provide evidence in case weaknesses or irregularities are identified.
- Companies should have clear policy and supporting procedures for maintaining accurate books and records. They should include the following elements:
 - All transactions, assets and liabilities should be accurately and fairly reflected in the company's books and records and supported by original documentation.
 - All transactions should be recorded only in the official books of the company. Off-the-book accounts should be prohibited.
 - Transactions, assets and liabilities should be recorded on time and in chronological order.
 - Books and records must be safeguarded to prevent intentional or unintentional destruction, improper or unauthorized alterations, or disclosure.
 - Books and records should not be destroyed prior to the expiry of any time limit imposed by legal regulations.
 - Every transaction should be consistently recorded from origin to completion.
 - Transactions should have a genuine, legitimate purpose.
 - Electronic records should be kept in a form that is non-erasable and non-rewriteable, be organized and be able to be immediately produced.
- Books and records should be available for inspection by the board of directors or corresponding body as well as by internal and external auditors.
- Internal and external auditors may also scrutinize the company's bank accounts and the relations between company representatives and bank representatives (in order to assess potential conflicts of interest).

NB.

+ Challenges and Opportunities for SMEs

- SMEs should have policies and procedures in place for maintaining books and records to reduce the risk of corruption.
- Challenges for SMEs include:
 - Internal control may lead to an understanding that there is a signal of distrust.

- Limited human and financial resources.
- Centralization of responsibility.
- The effectiveness of the internal controls relies to a great extent on willingness and support from the top of the company.
- A stringent risk-based approach should be used; e.g. company may assign a dedicated manager to approve and review critical transactions and business activities (based on identified risk thresholds) or utilization of automated control systems to execute routine checks and balances (they can be costly but allow for cost savings overtime).
- One advantage that SMEs have is it is easier to detect wrongdoers, due to their reduced complexity and the proximity of close interaction.

+ Reporting

- Companies should describe specific internal checks and balance such as approval policies and processes, audit plans, expense and invoicing guidelines, etc.
- Describe how often these internal checks and balances are reviewed.
- Describe the internal control policies and processes (e.g. frequency, scope of organizational coverage, degree of control automation, international frameworks used).
- Report whether internal and external audits have taken place, and
- Report on the specific mandates given to the audit function, internal and external where applicable.
- Can provide information and highlight practical actions undertaken or outcome achieved.

G. 1. International Legal Reference

Enterprise should establish an effective internal control system to counter bribery, comprising of financial and organizational checks and balances over the enterprise's accounting and record keeping practices and other business processes related to the program. Enterprise should regularly review and audit the internal control system, in particular the accounting and record-keeping practices to provide assurance on their design, implementation and effectiveness. Enterprise should not allow the recording of non-existence expenditures or incomes, or create a secret account where there is no related document, or use an account to conduct corrupt transactions and destroy the related documents. Enterprise must comply with law on taxation and other related laws and with the provision that bribe payments are not deductible from taxable incomes.

G. 2. National Legal Reference

Law on Accounting Enterprises (2002) requires all enterprises to establish financial reporting in accordance with Cambodian Accounting Standards and International Accounting Standards. Every accounting transaction must be based on legal document. Financial reporting that are related to accounting and other related legal documents such as journals entries, general ledgers, large book and inventories book must be kept for at least 10 (ten) years. All enterprises whose revenues and the number of employees exceed the limit that was determined by the Prakas of the Minister of Economy and Finance must prepare to be audited by independent external auditor. In compliance with the **Law on Taxation (1997)**, enterprises must be penalized in case where accounting documents, accounting recording, reporting documents or other documents related to the concerned business were not kept or were hidden or destroyed intentionally.

G. 3. Case Study

Case Study G.3.1: Multinational Infrastructure Company M introduces internal control to monitor and check activities and payments of agents.

- Company M is headquartered in Europe with major operating centers in Eastern and Western Europe and the Middle East and plans to expand to Asia-Pacific and sub-Saharan Africa. Company M has established a permanent compliance department with a chief compliance officer who has direct and indirect reporting lines to senior management and the board of directors.
- The company knows that it could be found liable under its country's anti-bribery and corruption laws for corrupt payments offered, promised, or given by its Agents to public officials on behalf of the company. Company established a robust due diligence process to screen all agents before engaging them.
- For less familiar or higher risk markets, the company has instituted a number of internal processes and financial controls to ensure the activities of its agents are checked and monitored. The processes and the controls include (1) requirements to provide monthly report (2) written commitment once or twice a year not to make any improper payments on behalf of the company (3) regular audits on books and records and (4) checks and controls over payments made to agents with three to four signatures from different levels of the company and with different thresholds depending on the category of claimed cost involved.

Case Study G.3.2: Luxury hotelier N enhances anti-corruption commitment through internal financial controls and recordkeeping for petty cash payments.

- Company N is among the most exclusive European hotelier with iconic properties and unparalleled guest services. The company acquired many hotels in Europe.
- Company N also acquired other exclusive hotel operators and flagship properties in major world capitals and as part of the acquisition process, Company N's chief compliance officer conducted a thorough corruption risk assessment. It was found that several acquired entities were not in compliance with Company N's corporate anti-bribery and corruption (ABC) policies and that among the high-risk business processes identified for improvements were financial controls for the disbursement or petty-cash payments. Company N also introduced specific financial controls for the disbursement of petty-cash payments at Company N's new acquisitions and its global network of hotel operators.
- Company N established new automated petty cash process to replace the paper-based manual systems, which is difficult to control, across its global operations in order to adequately deter and detect bribes and other corrupt payments.

H. COMMUNICATION AND TRAINING

- Communication and training on a regular basis play a key role in increasing awareness and understanding and obtaining commitment to anti-corruption programs.
- Companies must ensure that:
 - Their employees and relevant business partners are aware of their policies and procedure on anti-corruption.
 - They have the necessary information and skills to identify and counter corruption-related challenges.

+ Major considerations of communication and training

- Communication and training should be done for:
 - Business partners and employees that companies have effective control or a determining influence.
 - Suppliers and especially high risk business partners, such as those in procurement and logistics, or high risk industries.
- It should be done on a regular basis and based on its individual risk profile. Companies should decide whether to target all employees or only those that are likely to be exposed to corruption risks. Internal personnel may receive communications and participate in a mandatory standardized training at least once a year. Middle managers, having the highest and most frequent visibility for their employees, play an important role in delivering the key messages of the company's training and communication.
- Communication and training should also cover the internal recruitment and external hiring process. An awareness of the company's anti-corruption program should be a criterion for recruitment or the initiation of a business relationship.
- Communication and training can also be linked to special occasions or major events, such as:
 - Updates on internal policies or external legal regulations;
 - Organizational changes (e.g. a new chief compliance officer);
 - New internal guidelines or supporting tools;
 - Annual meetings of shareholders;
 - Seasonal events; e.g. special newsletter or training on gifts during the winter season;
 - National or international anti-corruption events (9th December).
- Communication and training activities should be documented to enable the assessment of their effectiveness, efficiency and sustainability. Records of the attendance of employees at training events should be kept as it could allow the company to better defend itself one day.

+ Types of communication and training

- Communication and training program should describe about:
 - Company's anti-corruption policies and procedures.
 - Rationale of policies and procedures.
 - Messages from the company's senior management and oversight bodies.
 - Practical examples on company's norms and values of the company.
 - Information on laws and suppliers, etc.
- Common media of trainings include:
 - Role play training (reaction on anyone demanding money from someone);
 - Interaction between colleagues and peers;
 - Program can be prepared for self-studies such as website, email and newsletters
 - Discussing challenging situations and competitive environment - additional courses – seminars, etc.

NB.

+ Challenges and Opportunities for SMEs

- Communication and training is of paramount importance for SMEs and company's management participation is important for company's commitment to the anti-corruption program. SMEs should make communication and training more direct in order to increase the understanding and acceptability of their policies and procedures.
- SMEs with resource constraints may:
 - Participate in supply chain trainings with larger company
 - Use communication and training material that is available free-of-charge through publications, websites, etc.
 - Apply a train-the-trainer (TOT) approach
 - Establish interest groups (through collaboration with a local chamber of commerce or trade union).

+ Reporting

- Companies should describe internal communication of the programs, such as anti-corruption campaigns, management communications, departmental meetings, publications, business conduct guidelines, and internet or intranet resources;
- Provide monitoring measures such as results of surveys of employee attitudes, publications in local languages;
- Describe the frequency of such communications (e.g. quarterly, annually);
- Describe anti-corruption training initiatives; and

- Explain whether the communications and/or the training resources have been translated into multiple languages and if so, describe the principal languages.
- Can provide information and highlight practical actions undertaken or outcomes achieved.

H. 1. International Legal Reference

Communication: Enterprises should establish effective internal and external communication of the program. They should publicly disclose its program for countering bribery and be open to receiving communications from relevant interested parties with respect to the program.

Training: Enterprises should aim to create and maintain a trust-based and inclusive internal culture in which bribery is not tolerated. Managers, employees and agents should receive specific training on the program, tailored to relevant needs and circumstances. Where appropriate, contractors and suppliers should also receive training on the program. Training activities should be assessed periodically for effectiveness.

H. 2. Case Study

A multinational electronics company undertakes in-person training

- Company O, which was founded in 1969, has become one of the world's leading electronics manufacturing service providers with a network of facilities in 30 countries, over 200,000 employees, of whom over 60 percent reside outside of the country where Company O is headquartered.
- The company conducted several in-depth in-person training sessions which were designed to reinforce Company O's commitment to operate legally and ethically everywhere it does business. Training was given to senior site management, controllers, and other employees. In preparing the training, the company took the following into consideration: (1) how to comply with anti-corruption policy in a way that would resonate with the company's diverse employee population, (2) how to effectively communicate the seriousness of the consequences of corruption and (3) how to stimulate an interactive dialogue with varied audiences. The training, conducted by chief compliance officer, covered the following topics:
 - the commitment to act ethically and legally starts from the top
 - ways that employees can promote ethical culture
 - relevant anti-corruption laws
 - the company's policies prohibiting all forms of commercial and government corruption
 - company guidelines on gifts and entertainment offered, provided, or received from public officials

- the importance of proper record keeping, and
 - the importance of safeguarding and protecting non-public information.
- With presentation materials, the training also included the discussion on practical challenges faced by employees and “train-the-trainer” sessions for further internal trainings.

I. PROMOTING AND INCENTIVIZING ETHICS AND COMPLIANCE

Incentive scheme is an option that can be employed to support the acceptance of the overall anti-corruption program and sustain its major objective, i.e. to reduce corruption. The following should be taken into consideration.

+ Rationales for incentivizing ethics and compliance

- Incentivizing will increase desired behavior and improve performance. It will send strong signals about what company regards as important.
- Incentives can be given to employees as well as business partners over which the company has no effective control so as to motivate compliance; e.g. the company can provide a preferential status to a supplier)

+ Types of incentives

- Financial rewards: pay increases, bonuses, promotions, gifts or preferential commercial conditions.
- Non-financial rewards: recognitions awards, celebration of activities in company journals, etc.

+ Assessing ethics and compliance

- Human resource policies often link financial and non-financial rewards to some form of productivity performance targets, such as financial goals, error reduction rates or the number of new customers.
- Incentives should be integrated into these human resources policies and performance evaluation processes; thus company should establish performance targets for ethical behavior and compliance. Evaluation criteria and different levels and types of incentives should be transparent and clearly documented in human resources policies.
- Incentive scheme should exclusively apply to evaluation and performance measurement in the following forms:
 - Participation and performance in compliance trainings;
 - Level of active support and development of the company's anti-corruption program;
 - Compliance-related approvals;
 - Knowledge of the company's values and norms (e.g. code of conduct);
 - Willingness to question or reject dubious conduct or proposals.
- Evaluations that seek to measure criteria such as personal values, impressions or perceptions should be avoided since these relate to personal character and mindset (it can be subjective and susceptible to unfairness and arbitrariness).
- Incentives can be offered to:

- Managers or supervisors whose many of their subordinates have attended trainings on anti-corruption program.
- Groups or teams in order to increase extra effort among team members and section.
- Amendment could be made to existing incentive schemes if adherence to anti-corruption program results in “unbalanced” between productivity and ethics compliance; e.g. due diligence is crucial; speed and quantity of the job is vital as well.

+ Challenges when incentivizing ethics and compliance

- Implementing incentives can sometimes cause controversy or even counter-productive; therefore, company should consider and address the following challenges:
 - Balancing performance targets and incentives; e.g. incentives should be proportionate to the desired performance.
 - Rewarding expected behavior: for outstanding performance activities and voluntary activities to promote the anti-corruption program further and thus can similarly be rewarded.
 - Reducing intrinsic motivation: some studies suggest that an incentive might be perceived as a bribe itself; hence, an incentive scheme should exist in conjunction with an appropriate sanction scheme.
 - Subjectivity in evaluating performance: it needs to have transparent and objective evaluation criteria in order to prevent situations where a reward is mistakenly expected for certain behavior or performance as this may result in disappointment and discouragement.
 - Unequal opportunities: equal opportunities should be given to engage in the anti-corruption program in order to receive fair recognition – it should not be limited to high profile positions as it can lead to counter-productive effects.
 - Rewarding whistle-blowers: encouraging whistle-blowers to report on misconduct of others can lead to employees to turn against each other and malice each other by making false claim. Thus, companies that choose to reward whistle-blowers should carefully analyze possible side effects and define appropriate incentives for whistle-blowers.

NB.

+ Challenges and Opportunities for SMES

- It is important for SMEs to promote and incentivize ethic and compliance as large companies do; however, financial incentive can be a burden; non-financial incentives can be more effective.
- There should be a balance between financial and non-financial incentives.

- All companies need to ensure that their communication strategy clearly address the above-mentioned challenges, when establishing an incentives scheme for ethic compliance.

+Reporting

- Companies should describe how they implement effective personnel policies and processes that support the anti-corruption commitment, including references to how these were developed (e.g. appraisal, remuneration and recognition procedures).

I. 1. International Legal Reference

Enterprise should show commitment to the program by reflecting it in the human resource policy, such as recruitment, promotion, training, performance evaluation, remuneration and recognition. Enterprise should make clear that compliance with the programs is mandatory and no employee will suffer adverse consequences, such as demotion, penalty, discrimination, or other retaliation for (a) refusing to engage in corruption, even if such refusal may result in the enterprise losing business and (b) reporting in good faith violations of the enterprise's anti-corruption policy.

I. 2. Case Study

Company P in healthcare sector combines compliance and human resources policies to create structured financial incentives for ethics and compliance.

- Company P is a USD 1 billion company in healthcare sector and is listed in the stock-exchanges with operations and sales around the globe.
- The company launched "No Opportunity Lost Principle" for the compliance effort by placing compliance on every agenda, objective, and team structure. Company P had a compensation system refined every 3 year and based on three pillars, namely base salary, short term compensation and long-term incentives, such as stock grants. The latest refined mechanism focused on performance management and compliance, using company risk-management system. The mechanism is used to measure an individual's performance in ethics and compliance, and defines incentives for:
 - Key management: assessed performance at the end of year
 - Employees: assessed performance every 2 years by line managers and compliance officers
 - Top management: assessed by board of directors, remuneration committee and internal audit committee based on interviews with advisors and chief compliance officer.

J. SEEKING GUIDANCE – DETECTING AND REPORTING VIOLATIONS

- Even companies with effective anti-corruption program may face violations. In recent years, there has been an increase in legal and reputational risks for compliance, arising from business partners. Therefore, companies must establish effective and efficient ways for detecting violations while balancing risk and controls.
- Be aware that an effective anti-corruption program must have detecting, investigating and sanctioning mechanism; hence, detecting of violation should be seen as positive indication.
- Companies need to provide positive response to employees and business partners who request for guidance when they face or detect problems or who report on violations.

+ Providing guidance

- Companies can designate a dedicated person or department within the company or through designated hotline.
- Supporting employees and business partners in the practical interpretation of the company's policies and procedures facilitates communication and trust between compliance management and individual employees/business partners as well as helps to identify major areas of concern where additional support and training may be needed.

+ Detecting Violations

- Companies can use a number of internal and external sources to detect violations.
- Using internal source to detect violation will:
 - Avoid possible negative consequences, such as the damage of reputation from public reports on corruption.
 - Be perceived as being invasive for both employees and business partners and they are often viewed with suspicion and fears.
 - Need to ensure as much transparency as possible surrounding the topic of investigations, i.e. there must be a clear investigating process/steps and an outlining of who is responsible for each step.
- Violation-detecting steps may include:
 - Obtaining a mandate to conduct an internal investigation,
 - Researching and planning the investigation,
 - Conducting actual investigation and can cooperate with responsible authority if necessary, and
 - Reporting and evaluating legal aspects.

- Internal and external sources may include:

Internal sources for detecting possible violations or irregular practices	External sources for detecting possible violations or irregular practices
<ul style="list-style-type: none"> ▪ Internal controls ▪ Internal investigations ▪ Internal audit ▪ Internal hotline for guidance and reporting 	<ul style="list-style-type: none"> ▪ External auditors ▪ Complaints and concerns from other external parties ▪ Media reports

- Principles of the investigation process are:
 - Respect rule of law and presumption of innocence.
 - Be honest and preserve integrity of an investigation through the “need to know”.
 - Protect confidentiality of data privacy.
 - Ensure that detecting through internal sources does not impede the development of a trust-based environment.
 - Ensure that senior management receives periodic reports of detected misconduct or irregular practices.

+ Reporting violations

- Reporting persons have been recognized as an important source for the detection of misconduct because corruption can involve a high degree of complexity and a sophisticated system to obscure evidence. The reporting persons are usually insiders who can provide information which would not be detected or be available through the company’s internal control.
- Information from the reporting persons may not constitute evidence but it may provide an indication of a wrongdoing and lead organizational authorities to launch an investigation.
- Companies can develop a set of support mechanisms in order to facilitate the reporting of violations by designating a highly trusted person or other section and by keeping it confidential and without risk of retaliation (such as job loss, discrimination) through explicitly stated policy that reporting on violation must be done by anyone if incident arises. The mechanisms must protect and provide feedback to the reporting persons; for if not, they will not report again or may go outside the company to report.

NB.

+ Challenges and Opportunities for SMEs

- SMEs should seek to promote the detection and reporting of violations as vigorously as large, multinational enterprises do, but they may not have sufficient resources.
- SMEs can commission external service providers to provide hotlines.

+ Reporting

- Companies should describe individual solutions already implemented or envisaged;
- Provide statistics of the use of the whistle-blowing, advice or hotlines; and
- Specify a break-down of the types of inquiries but must make sure that this does lead to a breach of confidentiality or security for the reporting persons.

J. 1. References to International Business Principles

Enterprise should encourage employees and others to raise concerns, seek advice and give suggestion on the application of the program, report corruption or other suspicious circumstances to responsible enterprise officials as early as possible by providing secure, confident, risk-free reporting channels. Enterprise should respond and undertake appropriate action and especially show that appropriate sanction will be applied for violations of the programs.

J. 2. Case Study

Company Q develops a whistleblowing hotline

- The company set up a toll-free, global hotline number (available 24/7) that could maintain anonymity for reporting corruption by employees and other relevant parties. The establishment procedure includes (1) selection of hotline handlers (2) feasibility of offering toll-free phone services from all the countries where the company's branches are situated (3) research and study on countries' laws and regulations and data-protection (4) hotline awareness promotion.
- The company has worked to ensure that investigation of the allegations is conducted by a team of internal investigators to ensure consistency, coordination of expertise, and simplifying the collection of data. The results of investigation are shared as this can contribute to preventing the occurrence/recurrence of wrongful behavior and to preparing training programs and remedial actions.
- The hotline has helped improve processes and procedures, mitigate risks and reduce wrongful behavior.

K. ADDRESSING VIOLATIONS

- When violations of the company's anti-corruption policies and procedures are reported or detected, it is crucial to address violations in order to demonstrate the company's commitment to zero-tolerance of corruption and to avoid negative consequences by law enforcement and any reputational damage of the company.
- Addressing violations is both a learning opportunity and an improvement chance for companies' anti-corruption program. When violations are discovered, companies also need to decide whether to cooperate with law enforcement authorities within and/or outside local jurisdictions that are related.

+ Preparation for effective responses to violations

Companies need to establish a clear and transparent disciplinary policy to ensure that violations are addressed in a fair and accountable way. This policy should contain:

(a). Catalogue of sanctions

- Sanctions of different forms of the companies' anti-corruption policies and procedures need to be defined.
- Sanctions may include the forfeiture of compensation, transfer to another position, dismissal, or the termination of a contract.
- Sanctions should not only penalize the corrupt act itself, but also the lack of adherence to the companies' practices (e.g. circumvention of critical internal controls).
- Sanctions may include both financial and non-financial sanctions. Several factors should be considered when establishing sanctions:
 - 1) *Sanctions should be consistent with applicable laws:* Sanctions should be in compliance with applicable laws and good practice standards and designed to be dissuasive in nature and scope.
 - 2) *Sanctions should be relevant and proportionate:* Sanctions should not be too minor or too severe as employees will refrain from reporting irregularities. Ideally companies should establish a sanction catalogue which lists possible sanctions for the different levels of severity of the infringements and request feedback on the catalogue by employees and business partners in order to establish relevant and proportionate sanctions.
 - 3) *Sanctions should be applied in practice:* If sanctions are not applied rigorously at all levels of the companies, the overall anti-corruption program will lose its credibility.

- 4) Sanctions depend on effective controls: companies should ensure that internal controls are effective and reliable in order to support credibility of sanctions and can have a prevention and deterrent effect.
- 5) Sanctions *should exist next to incentives*: Reward good behavior with “carrots” and punish wrong behavior with “sticks”.

(b). Guidelines on procedures and responsibilities

- This guidelines support a fair and transparent response to incidents, avoiding the subjectivity and arbitrariness of situational reactions. The guidelines should address:
 - 1) Criteria for the determination of the level of severity of a violation (scale, scope, whether it was an attempt or a complete act);
 - 2) Link between the level of severity and the disciplinary sanctions (violator's disciplinary history, including past misconduct in similar cases or a disregard for other policies or procedures);
 - 3) Mitigation of Sanction for self-reporters (e.g. reduction of sentence or amnesty program);
 - 4) Assignment of the responsibility to investigate alleged or discovered violations;
 - 5) Processes and regulations that are to be observed during the investigation (e.g. data protection rights, labor laws);
 - 6) Internal communication of the incident (e.g. by the human resources department);
 - 7) External cooperation with authorities; and
 - 8) Monitoring of progress and documentation.
- The guideline should be publicly available and communicated to all employees and relevant business partners.

(c). Opportunity to appeal

- It is important that the opportunity to appeal ensures fairness of sanctions and disciplinary procedures.
- Companies may also consider setting out criteria to provide for opportunities to mitigate sanction and policies and procedures of the opportunity to appeal (duration, authority, documents, etc.).
- The opportunity to appeal disciplinary decisions is an important right which should be provided to employees and business partners.

(d). Notification of violations

- Severe violations by employees should be communicated across the company, ensuring that all relevant departments are aware of the violation. A violation by an

employee, detected by the company's compliance department, should be known to the human resources department or training department which may initiate disciplinary or remedial actions.

- Severe violations by business partners should be reported to the relevant functional departments.
- Standardized internal reporting may facilitate the exchange of information across departments and regions. Proactive notification of violations may result in favorable treatment, such as the mitigation of sanctions.
- Companies should take the national legal regulatory framework into account when notifying external authorities of violations.

(e). Deciding on remedial actions

- The detection of an attempted or actual violation should also be regarded as an opportunity to strengthen anti-corruption program or the underlying business processes; for example, a procurement violation may indicate process deficiencies in procurement. Incidents should be analyzed to determine remedial actions for the anti-corruption program or adjusting the overall disciplinary policy as follows:
 - *Strengthening the internal control environment*: should be more frequent, more in depth or replaced with a set of new controls.
 - *Additional training and communication*: if a violation arises without awareness (e.g. in the case of facilitation payments) or wrongdoers were not able to act against ethical dilemma (e.g. extortion request) companies should increase trainings and repetitive communication activities and review the communication strategies of the anti-corruption program (e.g. by using legal law as a basis to negotiate, the use of public service fees, the talk on anti-corruption law, reporting to Anti-Corruption Unit, etc.)
 - *The company's disciplinary policy should be reviewed* (e.g. the policy may be perceived as being weak – sanctions may be too minor).
- All events should be documented in order to facilitate future monitoring and to enhance communication and training. Documentations enable comparisons and may include the information source, the information receiver and addressing method.
- Companies may also consider setting out criteria to mitigate sanctions (e.g. for the provision of additional undetected information, cooperation with responsible persons, wrongdoers knowing they are wrong and mend their ways, etc.).
- Such mitigation incentives may be perceived as a signal of trust which can motivate violators to adhere to policies and procedures in the future and to allow anti-corruption program to achieve successful outcome.

(f). Response to violations

- Misconduct that is commonly perceived as small or inconsequential should be appropriately penalized to express that the company will not tolerate any wrongdoings and not penalize too severe on the wrongdoing being committed as well. Thus, this may be the case where violation did not result in any financial or other loss, but where established practices have been neglected or circumvented.
- Companies need to respond unequivocally in accordance to their disciplinary policies by:
 - Applying sanctions to employees and (if relevant) to business partners;
 - Notifying internal and external authorities ; and
 - Deciding on remedial actions.

(g). Applying sanctions

- Sanctions for employees: may include monetary fines, decreases in remuneration, non-promotion, the transfer to a lower position, or the termination of the employment contracts.
- Companies should avoid:
 - Delaying the termination of employment for high performance staff or senior management.
 - The option of asking an employee to resign instead of terminating the employment (as this might send a weak signal as to the rigor of the disciplinary actions).
- Sanctions for business partners:
 - May include termination of relationship: exclusion from business opportunities (e.g. debarment) or the assignment of an unfavorable commercial and operational condition (e.g. higher due diligence requirements).
 - In practice, companies may announce sanctions in public based on company's disciplinary policy, following objective and transparent processes.

+ Essence of cooperation with authorities

- UNCAC state parties should encourage companies to report corruption-related crime to authorities (although there is no legal obligation).
- Companies has an important role to play in the prevention, detection and prosecution of actors involved in corruption as companies can cooperate and assist anti-corruption authorities to understand how the corrupt act occurred, how it was uncovered and how proceeds of crime could be recovered.
- Companies can cooperate with authorities by self-reporting on possible violations and to provide actual evidence in relation to internal information and business partners before

there is an allegation by authority. Companies may also cooperate with national authorities after the authorities are aware of the corrupt act. (e.g. company can offer internal audit staff to support the investigation or take other remedial measures).

Remedial measures include:

- Voluntary restoration of damages or loss caused by the offence;
- Recovery of ill-gotten gains;
- Other voluntary restraints (e.g. abstention from bidding for public contracts);
- Acceptance of an external compliance monitor;
- Corrective organizational actions (e.g. removal or other disciplinary measures against responsible employees).
- Strengthening anti-corruption programs to eliminate the weaknesses.
- Violations of anti-corruption standards may face a variety of legal, commercial or reputational sanctions.
- In some jurisdictions, companies may benefit from cooperation with authorities by reporting of misconduct relating to companies. Such benefits include:
 - Obtaining a reduced monetary fine (if voluntarily reported the misconduct was based on a single rogue employee instead of systematic failure of its anti-corruption program).
 - Obtaining a reduction of an already applied debarment sanction.
- Other motivational factors for companies to cooperate with authorities include:
 - Reduction of penalty.
 - Preserving confidentiality of discovered irregularities;
 - Avoiding criminal prosecution and opting for civil proceedings instead;
 - Allowing for out-of-court settlements;
 - Rehabilitating convicted companies by publicly announcing improved behavior.
- The mitigation incentives for cooperating before authorities are aware of a corrupt allegation are often stronger than for cooperation afterwards; e.g. self-reporting can allow companies to compete for the contracts, but such incentives may reduce the initial deterrence effect of a sanction. Thus, implementation should be carefully considered.

+ Challenges for cooperating with authorities

- In this case, challenges are as the following:
 - Cross-jurisdictional prosecution: companies operating in many jurisdictions need to consider the impacts and consequences of the cooperation with other countries relevant to the company.
 - Protection of reporting persons from unjustified treatment.

- Protection of witnesses, experts and victims from potential retaliation and intimidation.
- Potential *data privacy violations*, (e.g. bank secrecy).
- The responses to the above challenges should be done with sufficient legal instruments, but in case such do not exist, the attention should be placed on protection and incentives.

NB.

+ Challenges and Opportunities for SMEs

- SMEs should deal with violations that are detected in the same way as large companies.
- Dismissal of an employee or a business partners results in costs to SMEs and the costs may appear considerable for short term, so SMEs should consider these costs as a long-term investment.
- SMEs should consider cooperation with authorities, like large companies, in order to obtain benefits and reduce sanctions for legal infringement.
- SMEs may need to consult with experts (e.g. on legal aspects) in order to obtain advices on the cooperation with authorities; however, SMEs may not have sufficient resources to employ legal experts.
- SMEs can consult with various sources, such as local business associations.

+Reporting

- Companies should describe the process of remedial steps;
- State the nature and number of incidents dealt with and number of disciplinary actions; and
- List in a corporate publication (such as the annual report or sustainability report or on the company's website) any current public investigations, prosecutions or closed cases.

K. 1. International Legal Reference

Enterprise should make clear that compliance with the program is mandatory and no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes even if it may result in the enterprise losing business. The enterprise should cooperate appropriately with relevant authorities in connection with bribery and corruption investigations and prosecutions.

K. 2. National Legal Reference

Cambodian Anti-Corruption Law 2010 allows credit and financial institutions to be free from all responsibilities and no criminal action can be taken against the management or institution mandate or entity if the operation is implemented in accordance with the law, except it is found out that there is a pre-agreement to forge with the owners and operators. Penal Code 2009 provides penalties imposed on natural person or legal person who corrupts. In addition, Law on Public Procurement 2012 also lays out penalties on tenders, sub-contractors or suppliers found to have involved in bribery, fraud or extortion or to have given falsified evidence in the complaint on procurement process.

K. 3. Case Study

A telecoms company addresses foreign bribery committed by a third party

- A US-listed multinational company has been active in the telecoms sector based in Eastern Europe. There was an allegation at a branch of the company that a local executive was bribing local government officials in order to obtain telecoms cabling and construction contracts. The bribes were allegedly paid through a third party and there was a report saying that an executive of the company, the third party and a government official had common interest and shareholdings.
- The company conducted an internal investigation on the allegation by looking at related documents, conducting a forensic IT investigation and asset-tracing on targeted subjects and interviewing employees. After the conclusion of the investigation, there was evidence that the chief executive officer and the consultant of the third party had established business relationship, but there was no proof linking them to the politician. It appeared that this was a case of commercial bribery which is not punished by the US anti-corruption law, FCPA.
- As a result, the lawyer of the company assessed that there was no need for self-reporting to the US authorities because the investigation results showed that there was only a violation on the company's anti-corruption program. The parent company dismissed the executive and re-wrote its anti-bribery policies, making them stricter and in compliance with US and foreign laws.

L. PERIODIC REVIEWS AND EVALUATIONS OF THE ANTI-CORRUPTION PROGRAM

- The work will keep the companies' policies and procedures up-to-date and identify shortcomings, weaknesses or opportunities to optimize and simplify the overall anti-corruption program.
- Implementation of anti-corruption program should be regarded as a continuous learning and improving process.

+ Rationales for conducting periodic reviews and evaluations

- A review includes:
 - Compilation of information and the analysis of single elements of the anti-corruption program.
 - Assessment of process, such as participatory development of a code of conduct on sponsorships.
 - A review of an in-depth study conducted during the life cycle of a program.
- Evaluation includes:
 - An analysis of the result of the review.
 - In contrast to reviews, evaluations have clear criteria against which the results are evaluated in order to identify a potential need for modifications and improvements. For example, an evaluation may lead to the conclusion that the system of internal controls in a subsidiary of the company needs to be improved in terms of its effectiveness.
 - Allow for possible opportunities to improve efficiency.
- The rationale is whether anti-corruption policies or procedures require modification, e.g. a new policy on prohibiting facilitation payments, additional training course or adaptation of strategies (such as producing anti-corruption news communicated by senior management as podcasts instead of emails).

+ Sources of information for reviews

- A modification may be required due to changes in the business environment or lessons learned from internal operation. Changes to the business environment can include internal and external events, such as:
 - New markets and business operations (e.g. requiring the utilization of third party agents);
 - New business relationships (e.g. new suppliers);
 - New organizational structure (e.g. new subsidiary) and adopted processes (e.g. procurement outsourcing);
 - New performance targets;

- New or updated legal requirements or industry standards;
- New or updated requirements from social environment and stakeholders (e.g. consumer);
- Corruption cases from peers within the same industry or region.
- Learning from internal operations can identify weaknesses or improvement opportunities for the anti-corruption program. To learn this requires variety of sources of information:
 - Results of internal monitoring: offer insights into weaknesses or irregularities detected of internal control.
 - Results of internal and external audits: help review the management's assessment of the anti-corruption program.
 - Feedbacks: provide useful information for the review of the various policies and procedures of programs (sample-based surveys from employees and business partners).
 - Assessments: provide a comprehensive picture of the various elements of the anti-corruption program when doing that on employee skills, business partners, policies and risks; e.g. an assessment of the skills of employees who operate in high risk areas can reveal whether training has been extensive enough.
 - Benchmarks or comparisons: provide reports or published documents that are prepared by other companies.
- The company's senior management and oversight bodies are advised to use all available sources of information as input to a comprehensive review and should be conducted on a regular basis.

+ Evaluation Criteria

- Once a comprehensive review of the anti-corruption program has been conducted, companies can evaluate the program's performance to identify potential needs for modification. Evaluation criteria for comprehensive review are:
 - Effectiveness: of the policies and procedures of anti-corruption, e.g. the risks of facilitation payments are minimized.
 - Efficiency: minimizing the costs of the anti-corruption program while ensuring the same benefits.
 - Sustainability: the extent to which anti-corruption policies and procedures help to minimize the risk of corruption in the long run.

An example:

Program elements	Criteria		
	Effectiveness	Efficiency	Sustainability
Policies			
Training and communication			
Internal controls			
Incentive schemes			
Dealing with incidents			
....			

- In cases where the evaluation shows that some program elements do not meet the expected results, senior management and oversight bodies can decide on possible improvements on certain section.

+ Uses of result

- Results can be used as the opportunities for improvement.
- It can be shared, publicized and communicated to and discussed with employees and shareholders in order to further demonstrate the on-going commitment. The results may include the identification of sources of information, evaluation outcomes, improvement activities and other operational factors, such as timeline for implementation.

+ Responsibilities

- *Senior management:* should conduct regular reviews of the anti-corruption program and evaluate the best course of action to address modifications, such as the reduction of inefficiencies. Aggregated results and recommendations need to be provided to the board of directors.
- The board of directors or other equivalent body: needs to evaluate and approve the chosen course of action by senior management and they may also initiate additional ad hoc reviews and evaluations in cases where violations or allegations arise.

NB.

+ Challenges and Opportunities for SMEs

- The implementation of the anti-corruption program is an on-going process and commitment for SMEs.
- Due to financial and time constraints, evaluation may rely predominantly on feedback and documentation or in the form of a general risk assessment.

+ Reporting

- Companies should describe about the process in place, its frequency, continuous improvement, and the uses of result.
- Describe the procedures for internal and external communication of the monitoring and improvement process and the results.
- Describe the oversight of the review process.
- Describe the actions taken, including improvement results.
- Specify the nature and the scope of an external independent evaluation or assessment.
- Specify the scope of the engagement.
- Describe if the results of an external independent evaluation or assessment are publicly available.

L. 1. References to International Business Principles

Senior management of the enterprise should monitor the anti-corruption program and periodically review its suitability, adequacy and effectiveness of the program implementation, as appropriate. They should periodically report to the audit committee or the board of directors the results of the program review. The audit committee or the board of directors should make an independent assessment of the adequacy of the program and disclose its findings in the annual report to shareholders.

L. 2. Case Study

UK-based international company S monitors the implementation of the company's compliance program

- The company is operated in over 80 countries. It came to the company's attention that there was a risk of bribery, so the company conducted its own internal investigation. Because the company did not have a compliance program, the first step was to appoint a Group Compliance Officer to conduct a risk assessment and establish appropriate policies and procedures for internal compliance.
- The company has engaged in a monitoring program to ensure that such policies and procedures are well-understood and adhered to. The monitoring program comprises of 3 components: audit, review and self-assessment. The components are designed to trace the weaknesses and share good practices. The audit and review assess on 7 topics: (1) governance (2) risk assessment (3) due diligence/management of business partners (4) education and training (5) anti-bribery and corruption controls and procedures (6) channels for questions, concerns and advice (7) monitoring and review process.

- The mechanisms have assisted the company management to understand the awareness of the staff on the program, to mitigate corruption risk, and to gain new knowledge from the staff's feedback, and to timely revise the program for betterment.

IV. FROM ORGANIZATIONAL CHANGE TO COLLECTIVE ACTION

- Implementing and continuously improving an anti-corruption program is a major achievement for companies and also provide strong basis to counter corruption in the business environment.
- However, companies may still face the risk of being bypassed by other competitors that do not adhere to the same anti-corruption standards and may also face corruption-related solicitations and extortions from the public sector, especially SMEs (also for very large companies in a globalized and highly competitive environment).
- One way for companies to address these risks, is to engage in “collective action” activities with other partners that may face the same challenges. Collective action increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors. Collective action can complement and strengthen weak local laws and anti-corruption practices.
- Collective action is a proven method of fighting corruption, applied in various industries and countries and it can take on various forms, ranging from short-term based agreements to long-term initiatives with external enforcement. Companies that participate in this initiative can pursue their common objectives much more effectively in a joint and concentrated effort than they can individually.
- Collective action initiatives can be formed either within the private sector alone (e.g. SMEs requesting harmonized supplier standards from larger companies) or involve public-private-partnerships (e.g. collectively addressing single challenges, such as facilitation payments, or advocating for an improved regulatory and business environment). National and international institutions, including law-enforcing institutions and business associations, can play an important role in facilitating such initiatives.
- With collective action, companies of all sizes can become meaningful agents of change in relation to anti-corruption policies and procedures, stimulating efforts in the private and public sector to decrease corruption and engage in effective reform.

V. CONCLUSION

- The Guidebook on Anti-Corruption Program for Business in Cambodia is published not in order to create new standards and norms or to lay out mandatory obligations for the Private Sector. The main purpose of the Guidebook is nothing but to serve and act as information source and guide for the Private Sector in general to study, adopt and adapt good and feasible concepts for consideration, usage and putting into practical implementation.
- However, the ACU encourages and urges all private institutions, both those who already have anti-corruption programs in place for their internal organization and those who have not or are taking the creation of such program into serious consideration, to take full advantages from the Guidebook so as to help build and strengthen institutional culture of doing business with integrity in Cambodia. The ACU believes that clean business culture will significantly contribute to business climate in Cambodia that is more conducive to proper and fair competition, a pre-requisite for sustainable growth.
- The remarkable economic growth of Cambodia, mainly spurred by the increase of investments both local and international, in particular from various big multi-national corporations insistent championing anti-corruption policy, and the past and future signings of Memorandum of Understanding (MOU) on cooperation between the ACU and companies, such as Coca-Cola, Prudential (Cambodia) Life Assurance and a host of other companies and business associations, clearly signal current positive developments that clean business is being conducted, taking roots and prospering from day to day within the Cambodian society. The ACU believes that the Guidebook will further make the roots of being clean go deeper into the business environment in Cambodia.
- Anti-Corruption, together with its key partners, continues to contribute, support and extend cooperation on building clean business environment, especially on common anti-corruption work, as needed, anytime, with the Private Sector in general, in Cambodia.

Reference:

1. An Anti-Corruption Ethics and Compliance Program for Business: A Practical Guide; UNODC (2013)
2. Anti-Corruption Ethics and Compliance Handbook for Business; UNODC (2013)
3. UN Global Compact 10 principles
4. Consultation meetings with selected private sector institutions.

ANNEX

Annex1: Excerpt of some articles from national legislations concerning private sector

1). Law on Anti-Corruption (2010)

Article 4: Definition

The technical terms in this law are as follow:

- **Public official** shall mean:
 - a. Any person holding office in legislative, executive institutions, or judicial institution, who is appointed by legal letter, whether permanent or temporary, whether paid or unpaid, regardless of his or her status or age.
 - b. Other persons holding a public office, including public agency or public enterprise as well as other public institutions as stated in the law of the Kingdom of Cambodia.
- **Foreign Public Official** shall mean any person holding a legislative, executive, or judicial office of a foreign country, whether appointed or elected; and any foreigner exercising a public function for a foreign country, including for a public agency or public enterprise.
- **Official of a Public International Organization** shall mean an international servant or any person who is authorized by such an organization to act on behalf of that organization.
- **Benefits** shall mean:
 - a. any gift, loan, fee, reward or commission, which is not legally permitted, in cash or any valuable objects or other property of any description.
 - b. Any job, position, function or any agreement or any contract;
 - c. Any payment, exemption, discharge, or liquidation of any loan, obligation or liability, whether in whole or in part;
 - d. Any other service or favor, including protection against any penalty of any action or proceedings of a civil or criminal punishment though the punishment is already defined or not.
 - e. The exercise or forbearance from the exercise of any rights, any power or duty; and,

- f. Any offer or promise of any advantage, whether conditional or unconditional, as defined within the spirit of the preceding paragraphs a, b, c, d and e.
- **Gift** shall mean any property or service given to or for the benefit of a person that is not regarded as an agreement and given as a gift in accordance with custom or tradition.
 - **Property** shall mean assets of every kind, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.

Article 34: Bribes offered to Foreign Public Officials or Officials of Public International Organization

Any person shall be sentenced from five (5) to ten (10) years if he/she unrightfully, directly or indirectly, offers gift or donation or promise or any benefit to foreign public officials or officials of public international organization, in order that the officials:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

Article 47: The Release of Bank Records

Credit entities or financial institutions shall be relieved of responsibility and no criminal complaint will be filed against the leader or trustee of the entity or institution should such operation has been carried out in accordance with the provisions of law, unless otherwise it is found that there is a pre-agreement with the fund owner or transactional operator to forge it.

2). Criminal code (2009)

Article 278: Requesting or accepting bribes by employees

An employee who requests or accepts, unknown to his or her employer or without his or her authorization, any donation, gift, promise, or reward for performing or refraining from performing an act pertaining to his or her duties, shall be punishable by imprisonment from six months to two years and a fine from one million to four million Riels.

Article 279: Giving bribes to employees

Any person who offers any donation, gift, promise, or reward to an employee, unknown to his or her authorization, to perform or refrain from performing an act

pertaining to his or her duties, shall be punishable by imprisonment from six months to two years and a fine from one million to four million Riels.

Article 280: Bribery by administrators

- (1) If any person referred to in paragraphs 393(1) and (2) (Breach of trust specifically by administrators or other persons) of this Code or an inspector accepting an unlawful request receives a material benefit or demands or promises to receive benefits from illegal request shall be punishable by imprisonment from five to ten years.
- (2) The same penalty is applicable to anyone who furnishes offers or promises a benefit within the meaning of paragraph (1).
- (3) Any material benefit within the meaning of paragraph (1) shall be confiscated. If the benefit cannot be confiscated in whole or in part, the shortfall shall be paid by the recipient.

Article 387: Improper bidding

In a public auction, the rejection of a bid or tampering with bids by gifts, promises, understandings or any other fraudulent means, shall be punishable by imprisonment from six months to two years and a fine from one million to four million Riels.

Article 404: Definition of money laundering

Money laundering is the act of facilitating by any means the false justification of the origin of the direct or indirect proceeds of a felony or misdemeanor.

Money laundering shall also include providing assistance in investing, concealing or converting the direct or indirect proceeds of a felony or misdemeanor.

Article 405: Applicable penalty

Money laundering shall be punishable by imprisonment from two to five years and a fine of four million Riels. The maximum fine may be raised to amount to the value of the funds or property which was the subject of the money laundering.

Where the offence which produced the property or funds which was the subject of the money laundering is punishable by imprisonment sentence higher than that imposed in Paragraph 1 above, the offence of money laundering shall be punishable by the penalties applicable to the offence known to the perpetrator, and if the offence was accompanied by aggravating circumstances, by such penalties known to him or her.

Article 406: Aggravating circumstances

Money laundering shall be punishable by imprisonment from five to ten years if it is committed:

1. habitually;
2. by using the facilities conferred by the exercise of a profession;
3. by an organized criminal enterprise.

Article 605: Proffering bribes

Unlawfully proffering, directly or indirectly, any gift, offer, promise or interest, in order to induce a public official or a holder of public elected office:

1. to perform an act pertaining to or facilitated by his or her function;
2. to refrain from performing an act pertaining to or facilitated by his or her function;

Shall be punishable by imprisonment from five to ten years.

3). Law on Corporate Accounts, Their Audit and the Accounting Profession (2002)

Article 4: Enterprises shall prepare financial statements on a yearly basis that are in compliance with both the conceptual framework and Cambodian Accounting Standards, the principles of which are set out by PRAKAS proclaimed by the Minister of the Ministry of Economy and Finance and in line with the International Accounting Standards.

Article 5: Enterprises shall keep their accounts in accounting books as defined by PRAKAS announced by the Minister of Economy and Finance, and in line with the International Accounting Standards. All accounting transactions shall be supported by documentary evidence.

Article 12: The financial statements and the corresponding ledgers and documentary evidence shall be kept for at least ten years. Such ledgers include a general journal, accounting ledger and inventory book.

Article 16: All enterprises, whether natural or legal entities, shall submit their accounts to be audited by an independent auditor in the event that their turnover, and/or balance sheet total, and/or number of employees are above the limits set by PRAKAS of the Ministry of Economy and Finance. The audit shall be carried out by a natural person or legal entity enrolled on the list of registered auditors referred to in article 14 of this Law.

4). Law on Taxation (1997)

Article 128: Obstructing the implementation of Tax Law

Obstructing the implementation of tax provisions includes:

1. In the case where the person:

- a. fails to maintain proper records of account and other documentation or fails to issue invoices on transactions;
- b. fails to allow the tax administration access to records of account and other documents;
- c. fails to register with the tax administration;
- d. fails to notify the tax administration of any change in the registration as stated in this law;
- e. makes or furnishes fraudulent records, documents, reports, or other information;
- f. conceals or deliberately destroys accounting papers, records, documents, reports or other information;
- g. attempts to obstruct the assessment or the collection of taxes;
- h. fails to submit a nil tax declaration within 30 days of the date required by law;
- i. willfully supports any of the above acts.

2. In the case where an official of the government:

- a. discloses confidential information without authorization;
- b. attempts to obstruct the assessment and the collection of taxes;
- c. willfully supports any of the above acts.

Article 129: Criminal Violation of Tax Law

Without prejudice to other administrative penalties a person who has engaged in tax evasion activities as provided in article 127 of this law, or obstructed the administration of the tax system as provided in article 128 of this law shall have committed a criminal violation of tax provisions.

5). Law on Public Procurement (2012)

Article 66:

The bidder, contractor, or supplier found having any association to the corruption, fraud, embezzlement, or any coercion in the process of public procurement or found providing any false evidence at the time of filing a complaint within the procurement process, he or she shall be immediately terminated from the procurement in progress or dismiss the contract being implemented and his or her company shall be blacklisted.

This penalty shall not be the barrier for any accusation or criminalization in accordance with the existing laws and regulations of the Kingdom of Cambodia.

Article 68:

Any act committed during public procurement process through the tender to exclude any tenderer(s), or to mislead the procurement by donation, promise, agreement, or any other dishonest means shall be convicted with 6 (six) months to 2 (two) years imprisonment and fined from 1,000,000 (one million) Riels to 4,000,000 (four millions) Riels.

Article 69:

Any act committed during public procurement process through tender to obstruct freedom of tendering in violent, forcing or threatening manner shall be convicted with 1 (one) year to 3 (three) years imprisonment and fined from 2,000,000 (two millions) Riels to 6,000,000 (six millions) Riels.

Article 72:

Legal person can be declared to hold liable criminal accountability in accordance with article 42 (criminal responsibility of legal person) of Criminal Code for the demeanor as stipulated in Article 68 and 69 of this Law.

The legal person shall be fined from 20,000,000 (twenty millions) Riels to 100,000,000 (one hundred million) Riels in addition to additional sentence one or more as stipulated in Article 168 (additional penalties applicable to legal person) of Criminal Code.

Article 73:

Corruption offense stipulated in this law and in other existing laws of the Kingdom of Cambodia shall be under the scope of authority of the Anti-Corruption Unit which is

the only competent Unit to conduct the investigation and refer the corruption case to the court.

Other Units and individuals that are aware of corruption offenses as stipulated in this law and other applicable laws and regulations of the Kingdom of Cambodia shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces.

Annex2: Websites of various anti-corruption programs for business

1. Business Anti-Corruption Portal/Global Advice Network
(www.business-anti-corruption.com)
2. UN Global Compact Anti-Corruption tools Inventory
(www.business-anti-corruption.com/resources/anti-corruption-tools-inventory)
3. Coca-Cola Business Code of Conduct
(www.coca-colacompany.com/investors/code-of-business-conduct/CBCC.pdf)
4. Siemens Business Conduct Guidelines
(www.siemens.com/en/BCG.pdf)
5. IBM Business Code of Conduct
(www.ibm.com/investors/governance/business-conduct-guidelines.pdf)