Business Brief

- Integrity Pact
- Political Contribution
- Integrity Pledge
- Charitable Donations and Sponsorship

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Transparency International Cambodia is the fully-accredited local chapter of Transparency International and was officially founded on 5 July 2010 by a number of anti-corruption activists and professionals committed to the creation of transparent and accountable Cambodia. It has since built a strong institution arduously fighting corruption and promoting integrity, transparency and accountability in the country.

We work together with individuals and institutions at all levels including government, civil society, business, media and the wider public to achieve sustainable economic development, promote integrity, and fight against corruption.

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Part One:
Integrity Pact
I. Definition  IV. Dispute Resolution
II. Policies and Procedure  V. Benefits
III. Sanctions for Non-Compliance.

Part Two:
Political Contribution
I. Definition  III. Benefits
II. Policies and Procedure

Part Three:
Integrity Pledge
I. Definition
II. Principles and Prohibitions on Integrity Pledge
III. Sanctions for Non-Compliance
IV. Benefits of Having and Implementing Integrity Pledge

Part Four:
Charitable Donations and Sponsorship
I. Definition  III. Benefits
II. Policies and Procedure
Part 1: INTEGRITY PACT

Do you ever wonder why companies or business associations spend a lot of money to suppliers or contractors when they need to buy goods or services? Some payments exceed market price but with the same quality for products/goods or services. Is there collusion amongst competitors or bidders to obtain the contract or is each procurement activity not transparent?

An effective mechanism to help governments, businesses and civil society fight corruption in contracting between companies and bidders is the Integrity Pact. This Business Brief will provide companies, the government institutions and civil society organisation with guidance on integrity pact by defining what is an integrity pact, policy and procedure of an integrity pact, potential sanctions for non-compliance, and benefits of the integrity pact.

What is an Integrity Pact?

An Integrity Pact is an agreement aimed to detect and prevent corruption in public contracting. It is an agreement between the procuring institution, one party represents the authority and the other party can be a private company interested awarding the contract, and its vendor that both will abstain from bribery, collusion and other corrupt practices when fulfilling contract terms. It is a tool to prevent corruption risks in contracting.
Integrity Pacts are subject to the laws of the Kingdom of Cambodia and the pacts are made in good faith by all parties involved and are legally binding.

Procurement and contracting are highly susceptible to corruption risks. Leakages can occur at all stages of procurement and contracting, including the pre-contract design, tender exercise, and enforcement of contract terms and conditions.

The Integrity Pact sets out rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, and that bidders will not collude with competitors to obtain the contract, or bribe representatives of the authority while carrying it out. In addition, other obligations can be included, such as the requirement that bidders disclose all commissions and similar expenses paid by them to anybody in connection with the contract, or that government officials involved in the process subscribe to ethical commitments consistent with the Integrity Pact.
**Integrity Pact Policies and Procedure**

Integrity Pacts are to be signed at the earliest point of the relationship between the company and its vendors, and annually thereafter for contracts exceeding one year. For tenders, an Integrity Pact is to be signed and included in the submission of proposal by every bidder.

The policy is applicable to company contracting activities that are more than three months or any single procurement exceeding US$5,000.

For other forms of procurement, the Integrity Pact is to be signed on submission of quote, on agreement of contract terms, on agreement of Purchase Order or any other point deemed appropriate by the procurer. If uncertain as to the best point to introduce the Integrity Pact, the procurer is to discuss this with the Integrity Manager.

The procurer is responsible for explaining the terms and conditions to the contractors, vendors and suppliers before the pacts are signed.

The Procurer is responsible for ensuring that an Integrity Pact is included in the procurement and contracting agreements, and that the pact is signed by the contractors, vendors and suppliers, and signed again annually thereafter for contracts exceeding 1 year.
Sanctions for Non-Compliance

If the vendor is found to violate terms and conditions of the Integrity Pact, the company may apply, in its absolute discretion, to the extent permitted by law, any or all of the following sanctions:

- Denial or cancellation of the contract;
- Non-payment of fees/expenses;
- Liability for damages to company, up to a maximum of 100% of the value of the contract;
- Forfeiture of any deposit, bid and/or performance bond.
- Debarment of company and its Directors from being considered for further contracts, for such period as company may deem appropriate; and
- Reporting of incident to Anti-Corruption Unit (ACU) and/or other relevant authorities.

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**Dispute Resolution**

Where a dispute arises in the enforcement of terms in the Integrity Pact, all parties involved agree to an arbitration.

- In the event of arbitration, a tribunal will be formed to settle the dispute. The tribunal shall consist of three arbitrators. Each of the two parties may select one arbitrator, with the third being an independent arbitrator mutually agreed by both arbitrators so appointed.
- The place of the arbitration shall be at a site selected by the arbitration tribunal.
- The language of the arbitration shall be English.
- Any disputes relating to these arrangements shall be settled in accordance with the laws of Royal Kingdom of Cambodia under the rules of the Cambodian Law on Commercial Arbitration 2006
- The ruling of the tribunal will be final and binding on all parties.
- The costs of arbitration will be borne equally by both parties in dispute, with charges by the tribunal quoted and agreed upon prior to commencement.
The Benefits of Having and Implementing Integrity Pact Policy

While Integrity Pacts help ensure clean operations between contractors and company during the execution of a project, they also yield other benefits.

• Integrity Pacts provide enhanced access to information, increasing the level of transparency in contracts. This, in turn, leads to greater confidence and trust in decision-making, less litigation over procurement processes and more bidders competing for contracts.

• To prevent staff from corruption in procurement including the pre-contract design, tender exercise, and enforcement of contract terms and conditions;

• To promote clean operations on the part of the procuring companies and their vendors/suppliers during the execution of a project; and

• To ensure greater transparency and efficiency in contracting and procurement.

• Integrity pacts can also encourage institutional changes, such as increased commitment to making data available in a truly open format, simplified administrative procedures and improved regulatory action.

For more information and to get support on drafting an Integrity Pact policy for your company, contact piseypech@ticambodia.org
Part 2:

POLITICAL CONTRIBUTIONS

In a democratic society, it is important that its citizens engage in politics and decision making processes. You consider yourself an active and engaged citizen. Perhaps you want to support certain political causes and show your business is a supporter as well. While it is good to support causes you are passionate about, sometimes political contributions can get you into trouble if they are viewed as bribery.

Political contributions can be a very important part of supporting the democratic process, with businesses and individuals providing financial contributions to candidates or causes they support. However, political contributions can, like many issues, fall vulnerable to abuses. Specifically, when political contributions are seen as a way to gain undue influence, businesses can run into potential problems. Therefore, cash, gifts, hospitality or other forms of contribution to political parties or candidates might create an element of undue influence that businesses should seek to avoid. This business brief discusses the policies and procedures companies should implement to limit their exposure to risk associated with political contributions.
What is a political contribution?
Political contributions are defined as contributions, financial or in kind, given for the purpose of supporting a political cause. Political contributions can include loans, gifts of property, services, sponsorship of events, advertising or promotional activities, providing a supporting letter for a political party.

For example, your business contributes 500 USD to a local politician who you admire and would like to support. Allowing paid leave for employees to campaign for a certain political candidate or party, can also be considered a political contribution.

Political contributions made for legitimate reasons, such as genuinely admiring a politician and wanting to support his or her campaign, are allowed. However, political contributions that are made to secure a business deal or to gain undue influence to win contracts or shape legislation in favor of their business, should not be allowed.

Policies and Procedures
Sometimes political contributions are governed by law, therefore it is a good idea for businesses to consult the relevant laws before offering political contributions. In the absence of a law, proper policies and procedures on political contributions can help to protect a company from wrong doing.

The proper policy regarding political contributions is not to allow any political contributions that would lead to unfair influence. All employees, staff, agents, intermediaries, lobbyists or the business itself should not make direct or indirect contributions to individuals or organizations involved in politics, as a way of gaining unfair advantage in business transactions.
For this reason, one safe policy is one that prohibits political contributions. If that is not preferred by your business, a clear policy and procedure is recommended. Decisions regarding political contributions should be made through a resolution of a Board of Directors if it is a large company, or properly recorded in management meeting minutes for small companies. All employees should be informed of the agreement to make a political contribution. Companies should be mindful of timing, if the government is reviewing a contract or license, it might not be a good time to make a political contribution. All political contributions should be publicly disclosed. Companies can disclose political contributions in their Annual Reports or simply in the business accounting records.

**Points to Consider**

If making a political contribution, consider the timing. Is your business up for a government contract or license?

Make sure to get a resolution from the Board of Directors or an agreement in management meeting minutes (if you are a small company).

Make sure all employees in the business are aware of the political contribution.

Record the contribution in your accounting records or include it in your Annual Report.

A question your business should ask: Am I making this contribution to receive a favor in return, or do I simply want to support political policies I believe in?
What are the benefits of a political contribution policy?

Having clear policies and procedures is always a good idea when trying to protect your business from corruption related risks. Other benefits include, clear knowledge and understanding from staff, improved accounting methods, mechanisms to respond for requests for political contributions, and overall cleaner business practices. These policies will help to ensure that companies do not obtain undue influence through their contributions to politicians or political parties.

For further information, please contact piseypech@ticambodia.org.
Part 3: INTEGRITY PLEDGE

The Integrity Pledge helps to convey the company’s core values of integrity and define the ethical standards of the business, which all employees are asked to endorse, embrace and embody in all business practices. The Pledge also affirms the company’s commitment to the highest standard of professional code of conduct and offers guidance in acting or making decisions on behalf of the company without compromising integrity.

What is an Integrity Pledge?

An integrity pledge is a voluntary action that every company should undertake to make a unilateral declaration against corrupt practices and express its resolve to work towards a highly principled business environment.

The Pledge promotes a culture of transparency and creates a clear direction for staff to benchmark the law and regulations while they work with partners, suppliers, government agencies and contractors. It also highlights the commitment of the company and its staff to promote accountability, transparency and integrity in their day-to-day operations, to set up an internal management system, monitor procurement closely and adhere to all prevailing laws.

Company’s staff at all levels should be asked to sign an Integrity Pledge to commit to the highest standard of ethical and moral practices. In addition, the Chief Executive Officer (CEO) or equivalent position holders should also pledge to commit to these standards. This article will share with companies the principles and prohibitions that all staff and management should uphold in their business operations.
Principles & Prohibitions on Integrity Pledge

It is important that Integrity Pledges are required from the top down, this shows that the CEOs of the company are determined to lead by example through demonstrating strong moral and ethical values during their leadership. This top down approach informs all staff to be aware of the company’s ethical values.

Management level should uphold the values of accountability, honesty and integrity, and strive to instil them in the company’s culture and in relationships with staff, business partners, customers and other stakeholders. Meanwhile, company employees should be aware that corruption is a criminal act, and understand the obligation of the company to comply with relevant anti-bribery laws in Cambodia. Employees should recognise and adhere to the company’s commitment to a zero-tolerance policy towards corruption, and act, at all times, fairly and honestly.

Some commitments included in the integrity pledge require the company’s CEO or upper management to do the following:

- Conduct all business dealings in a fair, honest and transparent manner;
- Commit themselves to setting an example through ethical conduct for the furtherance of integrity and good governance, and do all that they can to ensure that those working under them, around them and above them act in good faith, with honesty, integrity and good governance;
- Comply with the company’s code of conduct and Integrity Programme;
- Declare any arising conflict of interest during the course of their duties.
Both of the CEO and employees should never offer or accept bribes, or participate in any other form of corrupt practices as defined under the Criminal Code and under Chapter 6 in the Royal Kingdom of Cambodia’s Anti-Corruption Law 2010. In the situation where the CEO is offered, induced to or forced to take or give bribes, or the staff are aware of any corrupt and other unethical practices, they should report to the relevant authorities. In addition, they should provide full and consistent support and assistance to the appropriate authorities in the fight against corruption.

These policies apply universally to the Board, management and employees of the company and its affiliated companies, in line with the nation’s anti-corruption laws. The general principles and prohibitions also apply to consultants and other third parties working on behalf of the company, as well as suppliers and other partners or stakeholders working with the business.
Sanctions for Non-Compliance

Should any employees violate any of the above commitments and/or declarations, the company may enforce the following sanctions against them:

**Benefits of Having and Implementing Integrity Pledge**

Three major benefits for private companies or organizations who have and properly implement the Integrity Pledge are:

- Convey a message to relevant stakeholders that the company does not tolerate any form of bribery/corruption;
- Attracts foreign investment;
- Create a culture of integrity in business operations, which leads the company to have a good business reputation and saves cost.
In addition to implementing the Integrity Pledge inside the company, the company itself can consider to sign on the Pledge that is created by international associations or another network given that this will spread to wider public especially foreign investors who place their values on clean business practices and integrity. Recently, the ASEAN CSR Network launched its Regional Integrity Pledge, which is open for various groups including private sector, public sectors civil society and international organizations to sign up, for more information, please visit:  http://integrityhasnoborders.com/integrity-pledge/what-is-integrity-pledge.
For more detail and to get support in drafting an Integrity Pledge, please contact piseypech@ticambodia.org.

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Part 4:
Charitable Donations and Sponsorship

Charitable donation and sponsorships are both a social responsibility and marketing strategy for each corporate to contribute to society while publicly building their reputation and in the business sector. Some companies annually reserve some budget to be allocated for social activities in different forms of cash, in-kind sponsorships, or services as a token of respect for government, business counterparts, charitable organizations or citizens.

Enterprises who make a social contribution without a clear policy or in an effort to increase their influence, can be implicated in either being consciously or unconsciously involved in corruption. Problems arise when overwhelmingly donations and sponsorships are offered following a public official’s request or those of a third party with an expectation of something in return.

This business brief will provide guidance to companies on the appropriate policy and procedures to follow when a request for charitable contributions or sponsorships is made.
What is a Charitable Donation and Sponsorship and What is the risks?

Charitable donations can be made in the forms of financial or in kind, given for the purpose of supporting a worthy and needy cause, through a registered charity. These include loans, gifts of property, services, sponsorship of tables at events, advertising or promotional activities endorsing a charitable organisation. The release of employees during office hours by the employer to the charity also constitutes a donation.

Charitable donations can present a bribery risk as they involve payments made to a third party without tangible returns and may be used as cover for bribery. Donations can be requested or given for corrupt purposes to ‘front’ charitable, sporting or philanthropic organisations or used to create undue influence by donating to a favoured cause of a decision maker or customer. Donations made through an intermediary present further risks as they can be subject to less control and follow-up.

Sponsorships, unlike charitable donations, are usually made for business objectives such as brand or reputation management purposes. Sponsorship can be financing part of a project or event, carried out by another person or organisation. They can present a bribery risk as it involves payments made for benefits which are often difficult to measure and track. Sponsorships can be subject to kickbacks; funds can be steered for corrupt purposes to ‘front’ charitable, sporting or philanthropic organisations. They can also be used to create undue influence by sponsoring a favoured cause of a decision maker or customer.
Charitable Donations and Sponsorship Policy and Procedure

Charitable donations and sponsorships for legitimate reasons are restricted in cases where they are made to secure a business deal or the contributions related to political parties, no matter what form they take and whether they are made directly or indirectly. Some companies may allow for political contributions, however to discourage and prevent any kind of exploitation, all payments must be accompanied by receipts from the recipients. The procedure depends on the amount requested for donations or sponsorships, and the company’s existing policy or context. The policy for donations and sponsorships can be set accordingly:

All individuals or organisations requesting a contribution must fill out the Charitable Donations and Sponsorships Application Form and deliver it to the Integrity Manager (IM) either via e-mail or in person. The IM, upon receiving form, must conduct background checks within five working days of receiving the form, covering the three specific aspects in terms of the recipient organisation: 1) authenticity of the organisation, 2) the contribution must not be made to secure a business deal, and 3) the recipient organisation must not be a political party.
The IM after completion of the background checks will present the application to the respective authority who will make a decision. To approve the amount of budgets to be transacted, Chief Executive Officer, IM, Board of Director, or Financial Department should be involved in the decision.

An agriculture company based in Cambodia implemented a policy on charitable donations and sponsorships based on company’s context. In this case, Chief Executive Officer is a decision maker for donations or sponsorships up to US$1,500, whereas the Board of Directors have authority to approve if the amount is greater than US$1,500 and less than US$5,000. If exceeding US$5,000, the approval must be verified by the IM, and the
Chief Executive Officer to the Board of Directors. For a single transaction with an amount greater than US$1,000, the beneficiary has to follow the procedure to request that amount and send a brief report, receipt or audited annual report after the donation has been made. See figure 1.

**Figure 1.**

<table>
<thead>
<tr>
<th>Amount of Money</th>
<th>Decision Maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ US$1,500</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>Greater than &gt; US$1,500 &lt; US$5,000</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>≥ US$5,000</td>
<td>Ranged from IM to BoD</td>
</tr>
</tbody>
</table>

If the application is rejected, the IM must send a refusal letter to the requestor within five working days of the date the decision was made. However, if the application is approved, the IM must forward the decision to the Finance Department for appropriate payment arrangements to be made and to be delivered within ten days of the approval from the Chairman. On delivery of payment, a receipt must be obtained, recorded and archived.
The Benefits of Having Charitable Donations and Sponsorship Policy

Companies who set a clear policy and limits for charitable donations and sponsorships derive mutual benefits and refrain from committing bribes or corruption. An internal policy minimises undue influence from business partners or authorities because a requestor can know and understand the company’s policies before making a request for a donation or sponsorship. Without this policy, companies face external pressure as they continue to grow and prosper.

Not only does the policy prevent risk in the future, it also limits the possibility of indiscretion and ensures transparency and accuracy in financial management and budget plan – allocating packages to social activities more efficiently allows for bona fide expenses. Management awareness of charitable donations and sponsorship, thus, are clarified in advance with the third party in order to avoid misconduct or influence decision maker. Having a strong charitable donations and sponsorship policy constructs a shield to protect companies from being exploited and take a lead in the integrity culture!

For more information and to get support on drafting a Charitable Donations and Sponsorships policy for your company, contact piseypech@ticambodia.org.