



American Chamber of Commerce
in Romania

AMCHAM ROMANIA

ANTI-CORRUPTION GUIDELINES

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I. Introduction

The American Chamber of Commerce in Romania (“AmCham Romania”) is hereby proposing a set of anti-corruption guidelines, which, if followed by companies in correlation with their overall framework of internal rules and policies, may prevent bribery and corruption and increase the effectiveness of their internal controls and compliance programs related to anti-corruption.

Corruption hinders the predictability and profitability of an economy and damages the reputation of a particular player as well as the general perception of the public and of other players in a particular industry sector.

AmCham Romania acknowledges that, even though in Romania the public sector is mainly affected by these practices, the private sector is also part of the problem. Hence, private actors should share responsibility with the public sector in finding ways to fight corruption effectively.

Companies and business associations such as AmCham Romania are increasingly engaging in sector-specific or multi-industry initiatives, locally, regionally, and/or globally to share their experiences, learn from peers, and - in partnership with other stakeholders - contribute to leveling the playing field.

The AmCham Romania Anti-Corruption Guidelines (the “Guide”) contain key principles and recommendations as well as guidance and implementation tools, adapted to the Romanian legal framework and business environment. It was developed based on international documents and best practices of some of the largest and most well-known companies in the world.

The Guide is structured in two chapters: (i) Guidelines including, *inter alia*, Hiring/Recruitment, Sponsorships, Partners and Contractors; and (ii) Implementation including, *inter alia*, Procedures, Monitoring, Risk Assessment and Due Diligence.

AmCham Romania calls its members to demonstrate their leadership by adopting, implementing and sharing effective anti-corruption programs, including this Guide, within their companies.

II. Guidelines

1. Hiring/Recruitment

Particular care needs to be taken in the process of hiring which arises from a client or business relationship.

- 1.1. Each company should establish clear and efficient rules on employment, including recruitment, terms and conditions, disciplinary action and remuneration.

- *Employment agreements should include anti-bribery and anti-corruption provisions. Special emphasis should be put on employment agreements for positions facing a high risk of bribery and/or corruption, and these should include specific clauses against bribery/corruption.*
 - *The express obligation to report actual and potential acts of bribery and corruption should be provided for all employees.*
- 1.2. In case of new hirings, an internal analysis on bribery and corruption risks should be performed; regular oversight, to mitigate the risk of bribery and/or corruption, being undertaken by such employees, should also be carried out.
 - 1.3. Employment positions should be created to address the company's objective needs and not specifically for relatives, friends, or at the request of a public official.
 - 1.4. No applicant recommended by a public official should be employed, except objectively through the normal hiring process and based on the same criteria as any other applicant for the same job.
 - 1.5. Special consideration should be paid to actions whereby a public official may attempt to influence the hiring process by asking a company's employee to help find a job for a relative or friend or may seek employment for him/herself in anticipation of leaving his/her (public) function.
 - *Such actions should be disclosed immediately to the appropriate person within the company (e.g., director, HR manager).*
 - 1.6. Discussions regarding business or employment opportunities, which could personally benefit any public official or during an active or anticipated public procurement, should not be undertaken.
 - 1.7. Whenever hiring an agent or consultant to assist in a public procurement procedure, it should be ensured that such has agreed with the anti-bribery and anti-corruption guidelines, referred to herein.

2. Sponsorships

Sponsorship should be carried out in a transparent manner, avoiding conflict of interests and making sure that the funds and assets are being used for their intended purposes.

- 2.1. Management and employees should be aware of the provisions of Law no. 32/1994 on sponsorship and of any other related regulations.
- 2.2. Sponsorships should be focused on the fields and beneficiaries, as specifically indicated in the law.
 - *Priority sponsorship domains: culture, art, education, science, sports, protection of human rights, medical, social services, environment protection, restoration of historic monuments.*

- *Main beneficiaries of sponsorships: not-for-profit organizations which are acting in Romania in the domains provided above, public authorities and public institutions, for the activities mentioned above, TV and radio broadcasts, books and publications from the domains provided above.*
 - *Personal sponsorship options of the company's directors, officers, and employees should not prevail in granting sponsorship.*
 - *In establishing its sponsorship policy, the company should: (a) preserve an independent position on public issues subject to sponsorship; (b) avoid bias generated through sponsorship, (c) monitor the funds provided for sponsorship purposes, (d) request from the beneficiary a project management plan regarding the sponsorship; (e) avoid providing product or service endorsements in sponsorship campaigns; (f) avoid conflicts of interest in promoting sponsorships.*
- 2.3. No sponsorship should be given in anticipation, in recognition, or with expectations of return for any business benefit.
- 2.4. Sponsorships should be preceded by a thorough and properly documented risk-based due diligence, pertaining to the public activity and background of potential beneficiaries.
- *The risk-based due diligence should cover elements such as: legal establishment, legal purpose, public image, other sponsorship projects, whether the recipient has spent prior sponsorships prudently, whether any suspicion exists that the funds could promote policies that would encourage risky company behavior or practices.*
- 2.5. Companies shall monitor compliance with the applicable provisions of the law.
- *Romanian companies are precluded from making sponsorship contributions out of sources obtained from the State budget.*
 - *The company is entitled to make its sponsorships public, by promoting the company's name, trademark and image. However, such public acknowledgement must not affect, directly or indirectly, the sponsored activity and public policy.*
 - *The company is not allowed to make commercial advertisement related to the sponsorship.*
- 2.6. Companies should make proper public disclosure in respect of any sponsorship projects.
- *Expenditures from corporate funds related to sponsorships should be posted on the company's website.*

3. Partners and Contractors (suppliers, consultants)

Specific provisions related to anti-bribery and anti-corruption should be included in the contracts concluded with business partners in order to prevent bribery and corruption and to further mitigate and limit involvement.

- 3.1. Such contractual provisions may refer to bribery, extortion, fraud, cartels, abuse of power, embezzlement, trading in influence, money laundering, and any similar criminal activity.

- 3.2. Companies should make known to the other contracting party any relevant anti-corruption obligations and should provide expressly for enforcement, disciplinary actions and sanctions for breaches of the company's anti-bribery and anti-corruption rules.
- 3.3. Companies should assess their exposure to bribery and corruption risks, arising from their relations with associated persons and should apply proper due diligence procedures, in order to mitigate associated bribery and corruption risks.
- 3.4. Fees or other compensation with respect to a contractual service should be expressly stated in the contract and should be proportionate to the services provided. Payments should be monitored carefully to avoid utilisation for bribery and/or corruption activities.

4. Travel, Gifts and Related Expenses

While engaging with public officials, companies should observe principles such as integrity, accuracy of transactions/expenses, responsibility, disclosure, and compliance with existing regulation, and should avoid conflicts of interest.

- 4.1. Companies shall refrain from giving anything of value to public officials in order to obtain or gain preferential treatments; a gift should not in any way be aimed at influencing the impartiality or fairness of the public official.
- 4.2. Gifts should be of symbolic or limited value and not risk the appearance of impropriety.
- 4.3. Companies should ensure transparency of collaborations with public institutions, by providing them with a statutory framework. Any kind of collaboration with public institutions and public officials (e.g. conferences, joint-projects), should be confined to clear rules, and, where possible, documents. The transparent procedure is meant to protect both parties, while ensuring an effective collaboration.
- 4.4. Companies should manifest accuracy in handling their spending and openness in disclosing relevant information.
 - *Companies should not pay honoraria to public officials; travel expenses may be reimbursed if there is a legitimate business purpose but will be made directly to the hotel/airline or other service providers; meals should be reasonable in cost. Cash or cash equivalents, such as gift cards, should not be offered or received by companies.*

5. Political Contribution

Whenever engaging in political contributions, companies should observe the provisions of the relevant legal framework, which sets forth a set of rules meant to ensure transparency, prevent conflicts of interest, and warrant that the constitutional purposes of the political process are attained.

- 5.1. Management and employees should be aware of the provisions of Law no. 334/2006 regarding political contributions and campaign financing and any other related regulation.
- *Companies should implement internal policies with respect to political contributions, which may contain provisions such as: annual limits for donations made to political parties, prohibition of donations in case of companies having overdue debts to the national public budget, transparency of donations, and prohibition of donations from foreign legal entities.*
- 5.2. Political contributions, in general, should reflect the company's interests and not the political opinions of its directors, officers, and employees.
- 5.3. No political contribution shall be granted in anticipation, in recognition, or in expectation of any return of business benefit.
- *Political contributions should be made in consideration of improving the business environment for the benefit of the entire business community and not to generate gains for a particular company or person.*
- 5.4. Political contributions should be preceded by a thorough and properly documented risk-based due diligence pertaining to the public activity and background of political parties and candidates.
- *The focus should be on, inter alia: policies, political values, purposes and actions; elected officials' prior voting records; demonstrated leadership or potential for leadership; involvement with and position on issues affecting business, social security, health care, education, and the environment.*
 - *Additionally, the following aspects may be considered: whether the recipient is known by the company; or whether there is reason to believe that the funds could promote policies that would encourage risky company behavior or practices.*
- 5.5. Companies should make proper public disclosure in respect of any political contribution projects.
- *Expenditures from corporate funds on political contributions should be posted on the company's website.*

6. Facilitation Payments

Facilitation payments are not permitted under Romanian law.

- 6.1. Facilitation payments are those payments made in order to secure or expedite the performance of a routine or necessary action (e.g., payments for processing visas, customs procedures, permits, licenses, mail service, inspections, phone services, power and water supply, loading and unloading cargo or medical services).
- *Companies should prohibit the use of facilitation payments and communicate such ban through ethics and compliance programs.*

- *Companies should ensure enhanced control over all payments and outgoings and greater visibility over advances or special payments and any other unusual transactions.*

7. Tender process management (public procurement)

Specific anti-bribery and anti-corruption policies should refer to the public procurement field, given that it is particularly exposed to corruption risks, due to the high value and number of contracts and the broad discretion that is inherent to such a process.

- 7.1. Companies should make clear that it is generally prohibited to offer, to promise or grant intentionally any undue pecuniary or other advantage, directly or indirectly, to a public official, in order for such person to act or refrain from acting, in relation to the performance of his or her official duties, in order to obtain benefits or other improper advantage.
- 7.2. Companies should have clearly-stated sanctioning procedures, disciplinary procedures, and sanctions for breaches of companies' anti-bribery and anti-corruption rules.
- 7.3. Companies should promote transparency for all activities related to disclosure of relevant information in connection with public procurement procedures.

8. Failure to prevent bribery by an associated person

Companies may incur liability for failure to prevent bribery committed by any of their associated persons. Companies may be held liable even if they have not directly participated in or have had no knowledge of the act of bribery, nor is it necessary for the associated person to be convicted of bribery.

- 8.1. Pursuant to the UK Bribery Act ("the Act"), a Romanian subsidiary of a United Kingdom company or any company incorporated in Romania, which carries out business or part of a business (including a trade or profession) in any part of the United Kingdom, may be held liable for the offence of failing to prevent bribery by a person associated with the respective Romanian entity.
 - *Within the meaning of the Act, an associated person may refer to the company's employees, agents or subsidiaries, as well as to its distributors, intermediaries, partners and, generally, to any entity, performing a service for or on behalf of the respective company.*
- 8.2. Romanian companies may be held liable under the Act to the extent that they have a demonstrable business presence in the United Kingdom, something that could presumably be satisfied by a regional or national office, sales activities or various other types of business activities.

- 8.3. Companies may be sanctioned regardless of where bribery has occurred (including on Romanian territory), and the proceedings for the offence would be conducted in the United Kingdom.
- 8.4. Companies found guilty of this offence may face unlimited fines, as well as potential confiscation of the proceeds of any benefit obtained through bribery and debarment of such companies from public contracts across the European Union.
- 8.5. The only defence available for this offence is that the company proves it has put in place “adequate procedures” designed for preventing its associated persons from committing bribery.
 - *When identifying and implementing anti-bribery procedures, companies should take into account the following six principles provided by the United Kingdom Government as guidelines: (i) proportionality, (ii) top (board) level commitment, (iii) risk assessment, (iv) due diligence, (v) communication and training, (vi) monitoring and review.*

III. Implementation

1. Procedures

It is good practice to set out formal written policies regarding anti-bribery and anti-corruption, so that management and employees understand what is expected of them and what they can expect in return. Policies also help to create an environment where issues are dealt with fairly.

- 1.1. Risks should be monitored continually. The relevant procedures, which should be of general application, should be assessed and adapted to ensure the effectiveness of the company’s internal controls, ethics, and compliance program or measures.
- 1.2. Such procedures should be proportionate to the bribery or corruption risks the company faces and also the nature, scale and complexity of its activity.
 - *Procedures for small- and medium-sized companies are likely to differ from procedures of large multinational organizations.*
- 1.3. Financial and accounting procedures (including internal controls) should be put in place, in order to ensure the maintenance of fair and accurate books, records and accounts, which may prevent bribery and corruption actions.
- 1.4. Disciplinary procedures, as well as speak-up procedures (“whistle-blowing”), addressing *inter alia* violations of laws against bribery and corruption, and the company’s guidelines or measures regarding bribery and corruption, should be considered.

2. Monitoring

The implementation of anti-bribery and anti-corruption rules should be monitored in order to

ensure that they are operating effectively over time and to identify new and emerging risks to which companies may be exposed.

- 2.1. Effective monitoring measures may include conducting anti-bribery and anti-corruption compliance program reviews, on a periodic or regular basis, depending on the associated perceived risk of the operations within a certain area.
- *The persons responsible for monitoring need to have a thorough understanding of the domestic and international legislation and have the knowledge and experience to identify high-risk transactions, and to recognize red flags for potential violations.*
 - *Anti-bribery and anti-corruption compliance program reviews have a powerful deterrent effect, and they send a message that senior management is committed to compliance and checking to ensure it is achieved. Appropriate follow-up and disciplinary actions are crucial to creating an anti-bribery and anti-corruption culture.*
 - *Senior management should periodically report the results of the anti-bribery and anti-corruption compliance program reviews to the relevant bodies (e.g., Audit Committee, Board of Directors).*

3. Risk assessment and due diligence

Effective internal controls, ethics and compliance programs or measures for preventing and detecting bribery and corruption should be developed and implemented. Such programs shall be tailored to address the individual circumstances of companies, in particular the bribery and corruption risks faced by such companies.

- 3.1. Companies must undertake effective due diligence to avoid the potential negative exposure related to all parties to a business relationship, including supply chains, agents, intermediaries and joint venture partners.
- *Generally, the more comprehensive the risk assessment is, the more confident a company can be in adequately identifying and analyzing bribery and corruption risks.*
 - *A thorough and complete risk assessment process also puts a company in a position, should unforeseen issues arise, to demonstrate that it used due care in assessing its risks. In short, a thorough risk assessment adds both efficiency and credibility to anti-bribery and anti-corruption compliance efforts.*
 - *The actual procedures to be conducted and the depth of the risk assessment vary depending on the company. The procedures involve information, collection and analysis, generally through document collection, interviews and financial analysis. More robust risk assessments also involve transaction testing, which can be performed at the corporate level and in high-risk locations.*

- *The output of the risk assessment is often a detailed report on the company's corruption risks and gaps in its current anti-bribery and anti-corruption compliance regime. Most importantly, the output should consist of detailed recommendations for the design and implementation of the compliance program elements.*
- *The due diligence is the research, investigation, assessment and monitoring, which the company should carry out on business relationships to ensure that it is associated with companies and personnel that will behave in a manner consistent with its policies and values.*
- *Due diligence procedures should be carried out on contractors, suppliers, and agents. Furthermore, companies should develop a policy and specific procedures for due diligence in any contemplated merger, acquisition or joint venture.*

4. Top-level commitment and communication

The “tone at the top” represents the starting point for an effective communication of anti-bribery and anti-corruption mechanism and should express zero tolerance towards corrupt activities.

- 4.1. The commitment of the top-level management to bribery and corruption prevention may include the communication of a company's anti-bribery and anti-corruption culture and an appropriate degree of top-level involvement, in developing prevention procedures.
 - *The internal policies should inform about the sanctions and also explain the benefits for employees and the company of rejecting bribery (e.g. reputation of the company, business partners' confidence and the incentives for employees to do business in such a compliant manner).*
- 4.2. Top management should communicate the commitment to carry out business fairly, honestly, openly and transparently.
 - *Top-management should clearly make reference to the company's involvement in any collective action against bribery and corruption in its business sector while expressing, in all possible manners (media, speeches, blogs, emails or face to face meetings) the company's intention of not being associated to any acts of corruption, either directly or through third parties and the intention to carry out business in a transparent manner.*
 - *Business partners should be informed of the consequences of not complying with the contractual provisions relating to anti-bribery and anti-corruption.*
 - *Confidential reporting of misconduct procedures should be communicated throughout the company, in a manner customized to each employee's job function.*

- *The various forms of communication, which can be adjusted to different audiences, within the company, should be kept generally available on the internet or on a company's intranet site.*

5. Conduct Training

Training should be provided to management and employees in order to develop the knowledge and skills needed to employ the organization's procedures and deal with any bribery and corruption related problems.

- 5.1. Ongoing training in anti-bribery and anti-corruption is imperative in order to ensure that business is conducted in an ethical manner. All relevant personnel should be trained on a regular basis, beginning with induction and carrying on throughout the period of employment.
 - *Training should highlight the company's policy that it does not tolerate corruption, explain its anti-bribery and anti-corruption policies, discuss potential "red flags" or problem situations, and provide guidance to employees to get help.*
 - *Companies should have processes in place to ensure the training material is continually kept up-to-date.*
 - *Adequate training tools may be both live classroom training and web-based training.*
- 5.2. Where appropriate, contractors and suppliers should receive training on the companies' internal policies, in order to ensure ethical business practices.

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About the American Chamber of Commerce in Romania

The American Chamber of Commerce in Romania (AmCham Romania) is a non-profit and non-political organization that promotes the commercial and economic interests of U.S., international and local business community in Romania. Established in 1993 by American investors in the country, it is now one of the 105 international AmChams in 91 countries affiliated to the U.S. Chamber of Commerce, based in Washington D.C., and a member of the European Council of the American Chambers of Commerce (ECACC).

AmCham Romania has over 300 member companies, representing a total investment of more than 10 billion USD which generated over 200.000 jobs. The organization is firmly committed to assist its members to collectively communicate their important business concerns to the highest levels of the Government of Romania in a manner that facilitates understanding, identification of common interests, practical and transparent solutions, which largely benefit the long-term interests of both the international business community and the Government of Romania. All members are invited to share their views and ideas on important issues for all AmCham affiliates by taking a pro-active participation in the various Committees and Task Forces, created to better serve members' interests: Tax, Competition and State Aid, Corporate Governance, Energy and Environment, Infrastructure and PPP, Healthcare, ICT, Labor Market and Education, Public Procurement and Structural Funds, Tourism.

AmCham Romania will continue to advocate for improving Romania's attractiveness and competitiveness through coherent and synergic policies which should be a permanent preoccupation for the political leaders requiring decisiveness to implement, versatility to adapt to ever changing national and international conditions, and vision to find the best mix of measures, policies and implementation mechanisms which will position Romania in a leading position.

AMERICAN CHAMBER OF COMMERCE IN ROMANIA

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