

GUIDELINES

on Process Design & Implementation

Anti-Corruption
Risk Control
Management
System





AmCham Romania warmly thanks the following members of the Corporate Governance Committee for their contribution to the elaboration of the Guidelines on the Anti-Corruption Risk Control Management System:

OMV Petrom
MPR Partners | Maravela, Popescu și Asociații
Roche Romania

Risk Control Management System Design

What?

An **Anti-Corruption Risk Control Management System (Anti-Corruption RCM)** is a structure used by organizations to ensure proper internal controls to effectively manage compliance risks. This system must be capable of protecting the interests of different stakeholders by ensuring suitable risk-based controls are in place so as to mitigate any breaches of Compliance related regulations.

By identifying the risks and the ways forward in preventing, mitigating and treating of those risks, a company can certify it has done all due diligence to protect itself from threats related to compliance breaches. An operational risk control management system needs to be tailored to consider the specific environment of the organization (both internal & external) and the company's appetite for risk.

How?

A proper **Anti-Corruption RCM** should start by defining a detailed Action Plan. This plan should be prepared annually by the Compliance Department or any other relevant function within the organization, to address all risks that are identified and their mitigation control method.

The Action Plan should include, at least, the following:

- a. The findings of the most recent risk assessment (which sets mitigation actions that address identified risks – if such report exists);
- b. Actions required to meet the anti-corruption program requirements (e.g. training and monitoring activities);
- c. Open mitigation actions from past reviews (e.g. audits);



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- d. How controls are implemented;
- e. Clearly defined, detailed, tangible actions;
- f. An owner for each action;
- g. A timeline for delivery;
- h. Regular updates to show systematic progress against all actions.

Following the Action Plan, a deep dive on each element should lead to a more detailed overview of the RCM system, starting from an accurate identification of corruption risk areas to enable appropriate risk mitigation. Based on the results, each risk will be addressed with a tailored action to ensure mitigation, by performing a **risk assessment**.

For all risks to be mitigated, a **commitment from the Top Management** is mandatory. Without it, the whole RCM could fail. For this, best practice dictates the following examples:

- a) Send regular reports to senior management updating them on the status of the Anti-Corruption program and especially including specific reference to findings from monitoring activities, in line with the frequency of monitoring activities (e.g. number of non-compliances with the Gifts and Invitations policy, number of breaches from internal Compliance regulations, updated on mitigation actions, risk assessment actions, etc.);
- b) Have a public statement issued from a member of the Top Management team on the company's commitment to prevent bribery and corruption.

Further on, to win a “buy-in” from all employees, a proper **Communication and Awareness campaign** should be developed so as to make involved parties aware of the risks and to increase the understanding of the Anti-Corruption policy of the organization. This campaign ought to include specific actions, tailored to the type of organization, its workforce and other specific elements. Examples of actions can include emails, intranet articles, newsletters, videos, posters, quizzes, competitions, etc.

Other considerations are:

- a) An Anti-Corruption communication campaign must be carried out every 12 months by the Compliance Officer, must be relevant for the company and must address the specific risks;

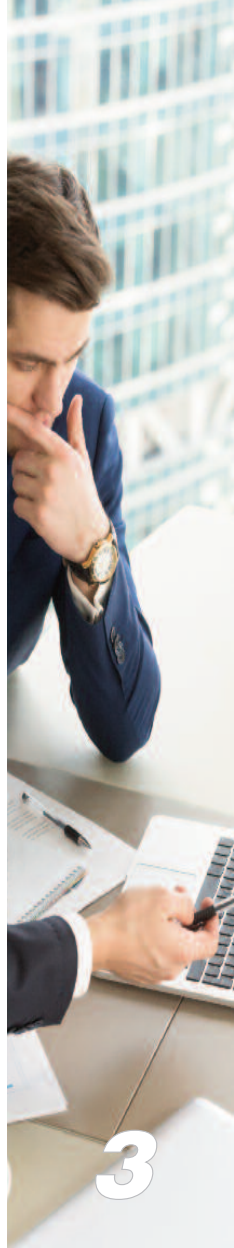
- b) The campaign must be company-wide, but it must also include tailored messages addressing risks and scenarios in individual high risk teams;
- c) The campaign must also have a mechanism in place to measure the effectiveness of communications in raising awareness of the Anti-Corruption risks.

Another area to consider for a proper Anti-Corruption RCM, should be the focus on how to manage bribery risks related to **Gifts and Invitations**. To ensure risks are mitigated, a disclosing tool should be implemented, such as a *Gifts and Invitations Register*, where all employees can report any gifts or invitations given or received. This tool can help the Compliance Department identify bribery related risks. For such an instrument to be successful, it should check the following criteria:

1. Gifts and Invitations Register accessibility and awareness;
2. Register in use and monitoring activities (ideally every quarter).

It is also important to set clear rules related to sending and/or accepting gifts and invitations and disseminate such rules within the company. In this way, the employees will better understand when to accept/refuse a gift or an invitation and when to refrain from sending such gifts or invitations. In specific cases, the Compliance Officer should be the one vetting/approving the gifts and invitation to be sent or accepted.

Moreover, another significant part of an RCM is the relationship with **Third Parties** (e.g. suppliers, contractors, joint venture and consortium partners, sales intermediaries, etc.). The organization can manage its third party bribery risk, by making them aware of the company's zero tolerance to bribery via direct communication during supplier on-boarding process and by conducting supplier reviews to ensure high risk suppliers have an effective Anti-Corruption compliance program in place. In practice, communication of Anti-Corruption rules is usually implemented by Anti-Corruption and Compliance clauses inserted in the company's General Terms and Conditions (**GTC**) or in a separate appendix dedicated to compliance and anti-corruption. However, the applicability of GTC may be subject to disputes, for instance, because sometimes parties forget to sign it or fail to make a proper reference to it. Also, if the contractor has its own GTC, conflict situations may arise. To mitigate these risks, it is preferable to insert the relevant Anti-Corruption and Compliance clauses directly in the contract negotiated with the partner, instead of the GTC. This way, it would be more difficult to challenge the applicability of such clauses, assuming that the negotiated contracts are duly concluded and executed.



It is not sufficient to look at external factors when trying to mitigate bribery risks, but also internal factors should be considered – the employees. A good means of mitigating bribery risks is via **trainings** (either face-to-face or online). In this way, the organization ensures that their Anti-Corruption policy is understood and followed by their staff. Specific target areas must be established with the recommended recurrence of 2 years. Tailored materials for each segment of the company could be designed to increase the awareness and ensure the compliance culture is embedded in the company. However, to ensure the effectiveness of such trainings, it is prudent to obtain the employees' written confirmation per the proper performance of the trainings.

In addition to the above mentioned areas of the RCM, another topic must be considered: **Sponsorships & Donations**. These activities can fall into breaches of the Anti-Corruption policy of the organization if they are wrongly performed. Appropriate processes must be in place to ensure that sponsorship of events and initiatives for the purpose of the company's exposure are consistently managed with the Anti-Corruption policy. A special attention in this process must be directed towards sponsorships to public officials or public entities since these actions can be interpreted as bribery. Nonetheless, from a legal perspective, it is widely considered that a company is not supposed to make donations other than sponsorships, scholarships and other forms with a clear tax and legal regime (**Permitted Donations**), considering that it is important for a company to obtain certain benefits through such initiatives. Thus, such donations may be presumed as inappropriate also from Anti-Corruption and Compliance perspective. In this context, it is advisable to implement Permitted Donations, which are expressly allowed by law. Such Permitted Donations may entice fiscal benefits, if certain conditions are observed.

Under practical terms, the following are recommended for the mitigation of Anti-Corruption and Compliance risks with respect to the Permitted Donations:

- (i) Thorough checks of all recipients of Permitted Donations and of the senior management thereof to ensure that there are no risks of political involvement, money laundering or terrorism financing;
- (ii) Execution of written contracts, containing all the necessary mandatory provisions; proper approval of such contracts by the relevant bodies of the company (e.g. Board of Directors, General Meeting of Shareholders, etc);
- (iii) Observance of all fiscal regulations applicable to the Permitted Donations.

implementation

RCM Implementation

B

After the implementation of the above mentioned processes, a testing phase should follow, during which each step of the Anti-Corruption RCM ought to be verified and confirmed by using different methods and deep dives testing. This phase of the RCM just describes how the control is to be tested and does not describe what it is required for it to be efficient. In order to ensure design effectiveness and operating effectiveness, the organization should always test to the greatest depth that its resources, tools and skillsets allow. This means that during RCM desktop testing and RCM deep dives, organizations should design testing steps that review both the design effectiveness and operating effectiveness of the control. This means that the following questions should be considered when creating testing steps:

Design effectiveness:

- What are the local/organizational processes that have been put in place to implement this control?
- Do these processes mitigate the local and organizational level risk?
- Does the local/organizational process meet all of the requirements of the control description and are there any other mitigating items that the market has put in place?

Operating effectiveness:

- Does the evidence convince me that the local/organizational process is working as it was designed?
- Do I have a full population list from which to select samples, rather than just a list of compliant samples?
- Can I perform any sampling that can confirm that the local/organizational process is working as designed?
- If yes, how do I ensure that the number of samples that I am asking to see is statistically significant?
- Can I use any methods and tools that will enable me to either extend the amount of sampling or find non compliant samples?

- Can I carry out any interviews or surveys that can help me test if this control is really operating effectively?
- Has the control consistently operated as designed throughout the year? Do I need to select a sample from across this time period?

Risk Assessment	<ul style="list-style-type: none"> ○ Identify bribery risk areas to enable appropriate risk mitigation. ○ Some corruption related risks are: bribe from a company employee to a customer to win or retain business; bribe from a sales intermediary to a customer to win or retain business; bribe to a public official to influence a business advantage (e.g. policy or regulatory decision); bribe to a journalist to influence favourable media coverage; facilitation payment to a public official; bribe from a supplier to win business from the company.
Top Level Commitment	<ul style="list-style-type: none"> ○ Ensure top level management is leading by example, sets the tone on zero tolerance and is updated on bribery risks. ○ Send regular reports to senior management updating them on status of the Anti-bribery program. ○ Have a public statement issued from a member of the Top Management team on the Company's commitment to prevent bribery and corruption.
Communication	<ul style="list-style-type: none"> ○ Ensure employees are aware of the Anti-bribery policy. ○ Use e-mails, intranet articles, newsletters, videos, posters, quizzes, competitions.
Gifts & Hospitality	<ul style="list-style-type: none"> ○ Implement a Gifts & Invitations Policy and Register to be used within the organization, to ensure criteria and rules for accepting and sending gifts and invitation and a monitoring tool for identifying bribery risks.
Third Parties	<ul style="list-style-type: none"> ○ Communicate the company's zero tolerance to bribery. ○ Conduct supplier reviews to ensure high risk suppliers have an effective anti-bribery compliance program in place.
Trainings	<ul style="list-style-type: none"> ○ Organize online and face-to-face meetings with target groups once every 2 years.
Sponsorships & Donations	<ul style="list-style-type: none"> ○ Have a process in place to comply with the company's Anti-bribery policy. ○ Pay special attention when dealing with public officials.

For all the aspects mentioned in the RCM, the following testing elements must be considered:

Control details	Testing
Action Plan	<ol style="list-style-type: none"> 1. The Compliance Officer requests the Action Plan for the current financial year from the organization Anti-Corruption responsible. 2. Review the Action plan to ensure it has been appropriately completed and that the following aspects are covered: <ul style="list-style-type: none"> ○ The findings of the most recent risk assessment (which sets mitigation actions that address identified risks); ○ Necessary actions to meet the Anti-Corruption policy requirements (e.g. training and monitoring activities); ○ Open mitigation actions from past reviews; ○ Clearly defined, detailed, tangible actions have been identified; ○ An action owner and a timeline has been assigned to every action; ○ The action plan has been updated regularly to show progress against all actions.
Risk Assessment	<ol style="list-style-type: none"> 1. A detailed bribery risk assessment is conducted by the Compliance Officer on a regular basis (yearly or every two years). Tailored controls and appropriate processes designed to address specific market bribery risks must be documented and included in the risk assessment and action plan as necessary. 2. In order to complete the Risk Assessment and to create a risk map, perform interviews with key persons from high risks departments (e.g. CHARISMA tool is a special tool for risk management based on inputs received from the persons who develop a certain activity and have a stronger capacity to evaluate a high risk): <ul style="list-style-type: none"> ○ Define the key departments of the company in terms of risks (usually, these are Sales/ Marketing/ Finance/ Procurement/ HR/ Compliance/ Public and Regulatory Affairs); ○ Nominate 1-2 persons from each department to conduct an internal meeting in their department and ask them to come with the three main big risks (in terms of financial impact and reputation); ○ Interview all persons, ask them to explain the reason for nominating the risks;

Control details	Testing
Risk Assessment	<ul style="list-style-type: none"> ○ Ask them also to present mitigation measures, necessary resources and potential barriers, and set up the deadlines; ○ Ask them to present (if possible) a spot check system for every process, which may generate high risks in order to have them mitigated as much as possible. <ol style="list-style-type: none"> 3. Review the Risk Assessment to ensure it has been completed in line with the points listed in the guidance. 4. Request and review evidence that the Risk Assessment results have been reported to the relevant senior management.
Top Level Commitment	<ol style="list-style-type: none"> 1. Senior management briefing <ul style="list-style-type: none"> ○ Request and review evidence from the past 12 months, demonstrating that the local/organizational Compliance responsible and CEO have been briefed on the Anti-Corruption topic. The agenda must cover the Anti-Corruption risks in the company and the progress of the implementation of the compliance programme by the Anti-Corruption policy responsible. ○ It is mandatory that the briefing agenda includes an overview of the results of the monitoring activities conducted by the Anti-Corruption policy responsible. Evidence maintained must include: the meeting invitation, the presentation delivered, a summary of any discussion points and any actions agreed at the meeting and the meeting minutes (where this practice is followed). 2. Tone from the top messaging <ul style="list-style-type: none"> ○ Request and review the evidence that the CEO or other executive member has sent a communication to all employees in the past 12 months. Communications can take any form (e.g. speech, video message, e-mail to all staff) and can be company-wide or targeted, but all employees must receive at least one leadership communication. ○ The communication cannot be a copy of what has been previously sent (i.e. the content must be refreshed). ○ Ensure that the communication went to all employees.

Control details	Testing
Communication	<p>The following evidence must be reviewed to ensure good awareness exists:</p> <ol style="list-style-type: none"> 1. Material and evidence of the Anti-Corruption campaign completed in the past 12 months showcasing that it was a multichannel campaign that reached all employees. 2. Evidence of communications to (at least some) high risk teams, tailored to their roles/ bribery risks they are facing. 3. Evidence must also exist regarding the effectiveness of the campaign [i.e. participation in live events (numbers for attendance), quizzes how many people completed the quiz, feedback from employees (evidence of emails/ employee names)], number of clicks on e-mails, etc.
Gifts and Invitations	<ol style="list-style-type: none"> 1. Accessibility and awareness <ul style="list-style-type: none"> ○ Obtain evidence that the existing gifts and invitations policy and register are known and the Gifts and Invitations Register is used and is easily located by employees (e.g. screenshots); ○ Obtain evidence that, where requested by the Gifts and Invitations policy, the approval of the Compliance Officer was granted; ○ Obtain e-mails or other communications to employees raising awareness on the rules around Gifts and Invitations and where these rules can be accessed. 2. Register in use & monitoring activities <ul style="list-style-type: none"> ○ Obtain a recent copy of the Gifts and Invitations Policy and Register for the past 12 months; ○ Obtain the Anti-Corruption policy responsible's assessment of the level of usage and accuracy of the register and also assess whether the usage level is reasonable and in line with your understanding of the local market; ○ Request and review evidence from at least two consecutive quarters in the past 12 months that the monitoring activities have been completed in line with the guidance provided, with copies of e-mail chains, including employee responses and any follow-up points; ○ Request and review evidence that a sample of expense reports have been cross-checked with the register and followed up with the relevant employees to ensure the policy has been followed (with copies of e-mail chains, including employee responses and any follow-up points);

Control details	Testing
<p align="center">Gifts and Invitations</p>	<ul style="list-style-type: none"> ○ Request and review evidence of actions performed to ensure the accuracy and completeness of the register and determine whether there is under-reporting on the Gifts and Invitations Register. Examples of such evidence could include interviews with the line manager; copies of reports to the local senior management detailing the usage for individual teams; communications with suppliers or customers to request a list of gifts and invitations offered to or received from company employees, for cross-checking with the Gifts and Invitations Register; cross-check against items received by the mail room, etc.; ○ Request and review evidence that any significant instances of non-compliance have been reported to the Senior Management.
<p align="center">Third Party Due Diligence</p>	<ol style="list-style-type: none"> 1. Inquire on the process in place to conduct appropriate due diligence of all new third parties, including suppliers, intermediaries, joint venture/consortium parties, etc., including an explanation of how bribery risks are considered; 2. Obtain a list of all supplier expenses for the past 12 months for all related activities; 3. Select an appropriate sample and request evidence of due diligence performed, including copies of qualification reviews conducted, full communication chains with details of any risks identified, the response from the Anti-Corruption policy responsible and any mitigation actions taken. The justification for approving or rejecting a supplier must be clearly documented; 4. Request the contracts for the selected sample and review them to ensure the standard Anti-Corruption clause is included. Any deviations from the standard supplier clause must be clearly documented with details of why changes were made; 5. Inquire about any joint venture/consortia/other third parties not going through the supplier onboarding channel. If such third parties exist, request a list and select a sample. Review evidence of sufficient due diligence.
<p align="center">Third Party Communications</p>	<ol style="list-style-type: none"> 1. Request a list of suppliers contracted in the past 12 months. Select a sample of suppliers and for that sample request evidence of the communication regarding the company's zero tolerance to corruption and the Anti-Corruption policy.

Control details	Testing
<p>Third Party Communications</p>	<ol style="list-style-type: none"> 2. Check whether there are any joint venture/consortia/other third parties not going through the supplier onboarding channel. If such third parties exist, request a list and select a sample, and request evidence of the communication regarding the company's zero tolerance to corruption and the Anti-Corruption policy. 3. Request and review the documentation of the methodology for selecting high risk third parties. 4. Obtain the list of the selected high risk third parties and ensure it is in line with the developed methodology. 5. Request evidence of the communication sent to the high risk third parties in the past 12 months and validate it has been sent to all the suppliers included in the list. 6. Request evidence of tailored communications regarding Anti-Corruption sent to high risk third parties raising the risks and expectations associated with the specific business relationship.
<p>Third Party Monitoring</p>	<ol style="list-style-type: none"> 1. Request the list of the suppliers selected for review in the past 12 months and the documented methodology followed to select the sample. Ensure the methodology and the selected sample are appropriate. 2. Request copies of the sample of supplier reviews, including the report produced and evidence shared by the supplier. 3. Discuss with the Anti-Corruption policy responsible about how he/she conducted the review (e.g. site visit, discussions) and who were the supplier stakeholders he/she liaised with, to gain an understanding of the review process. 4. Review the report produced to assess whether the review of the supplier Anti-Corruption program was adequate, and mitigation actions or recommendations were raised where gaps have been identified.
<p>Online Training</p>	<ol style="list-style-type: none"> 1. Request evidence of the online training completion rate, within the past 24 months. A minimum of 90% is recommended for the control to be deemed fully effective. 2. Request evidence that the Anti-Corruption online training is assigned to new joiners in the induction programme.

Control details	Testing
Online Training	<ol style="list-style-type: none"> 3. Request a copy of communications sent to employees who have not completed or passed the online training, detailing the requirement to complete the training, with evidence that the training has subsequently been completed or that the matter has been escalated to the line manager.
Face-to-face Training	<ol style="list-style-type: none"> 1. Request and obtain the training tracker, that contains the high risk teams and individuals identified and validate the list for completeness. 2. Conduct a review to assess that the appropriate teams have been identified for training, based on a considered process according to the risk profile and in line with the guidance, and that the relevant individuals have been identified. The criteria for selecting the teams must be documented. The objective is to ensure that the correct teams have been selected and also that the correct individuals in those teams have been indicated as high risk individuals. 3. Review the training tracker. This must already contain a completion rate that must be straight forward to validate. The training tracker must include the dates the training was delivered for every high risk employee over a 24-month period. A minimum of 90% completion rate is recommended for the control to be deemed fully effective. 4. For the sample of teams selected, review the training materials to ensure they have been tailored to the specific audience, according to their role or the risks that they face. 5. For the selected sample of teams, request the evidence of attendance and cross-check this with the training tracker to ensure all employees that have been indicated as having completed the training appear on the attendance evidence.
Sponsorships & Donations	<ol style="list-style-type: none"> 1. Process Request and obtain the process for managing sponsorships for the purpose of brand exposure, including branding rights and advertising costs, business development or local community support. 2. Communication Request and review evidence that communication has been sent to the relevant senior

Control details	Testing
Sponsorships & Donations	<p>business stakeholders to reiterate the Anti-Corruption requirements in the past 12 months.</p> <p>3. Monitoring Request the evidence that the Compliance responsible has conducted the monitoring activities for 2 consecutive quarters in the past 12 months. Review the evidence of monitoring to ensure the sample has been tested against the section of the Anti-Corruption policy, the findings from the monitoring activity have been clearly documented and that any issues raised have been followed up.</p> <p>4. Sample selection Select a proportionate sample and test against the Anti-Corruption policy requirements.</p>



The American Chamber of Commerce in Romania (**AmCham Romania**) has been for 25 years a leading representative of the business community in Romania, and is acknowledged as a promoter of the private-public dialogue on matters related to the business climate, public policies that impact Romania's economy and competitiveness or the economic ties between Romania and the U.S.

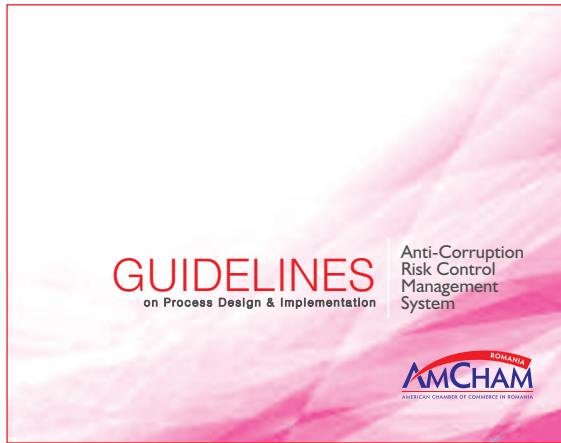
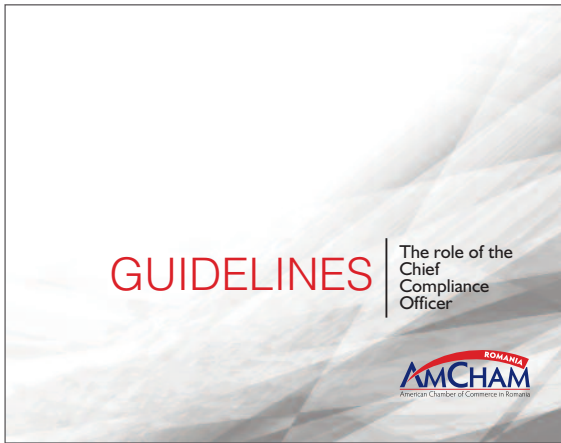
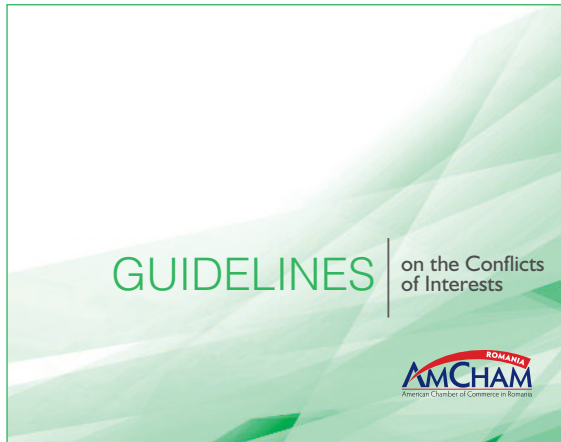
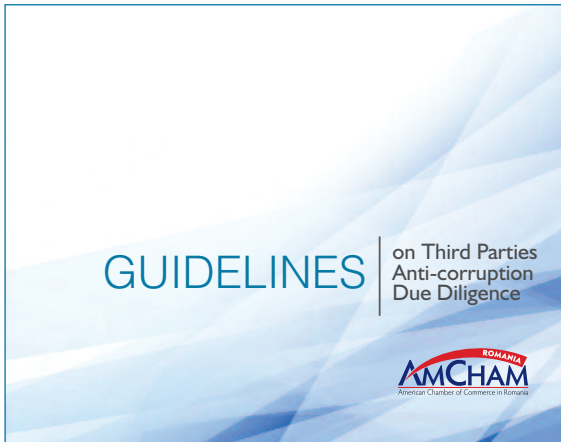
AmCham Romania's mission is to offer its members a professional platform for interaction, collaboration, exchange of best practices and promotion aimed at business development and trade relations, as well as to represent its members' business priorities on matters of joint interest, in relation with the Romanian authorities.

Currently, **AmCham Romania's** over 430 members – U.S., international and Romanian companies allow **AmCham** to engage in promoting the business priorities for many industries, through dedicated working groups, such as: Capital Markets & Financial Services, Corporate Governance, Competition and State-Aid, Energy, Environment, Health, Digital Economy, Structural Funds, Public Procurement and PPP, Real Estate, Taxation and Tourism.

For companies, affiliation with **AmCham** is an expression of their commitment and responsibility towards the quality of the investment climate in which they operate and towards their contribution to Romania's overall social and economic development.

AmCham Romania's connection with the international business is granted by its accreditation by the **U.S. Chamber of Commerce** and its affiliation to **AmChams in Europe**. In Romania, **AmCham** enjoys a great institutional collaboration with the U.S. Embassy in Bucharest and is a member and contributor to *Coaliția pentru Dezvoltarea României*, the informal consultation platform supported by business associations that share the same objectives.

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