ICC Rules on Combatting Corruption

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Introduction

ICC Rules on Combatting Corruption are designed as a method of self-regulation by business against the background of applicable national law and international legal instruments. Their voluntary adoption and implementation by Enterprises promotes high standards of integrity in business transactions, whether between Enterprises and public bodies, or between Enterprises themselves.

These Rules play an important role in assisting Enterprises to comply with their legal obligations and with the numerous anti-corruption initiatives at the international level. They also provide an appropriate basis for resisting attempts at Extortion or Solicitation of bribes.

All Enterprises should conform to the applicable laws and regulations of the countries in which they are established and where they operate. The ICC Rules on Combatting Corruption are not designed to replace or modify existing laws and regulations. Rather, the Rules are a self-regulatory set of rules, and ultimately a business toolkit, aimed to be used by Enterprises in addition to, and in careful coordination with, applicable instruments and regulations. Therefore, the Rules require voluntary adoption and implementation by Enterprises, and in case of conflict between applicable laws and regulations and these Rules, the former shall prevail.

ICC Model Contracts, like the ICC model Anti-Corruption Clause, contain references to Part I of the present Rules. Enterprises are urged to incorporate, in full or by reference, Part I of the present Rules in their commercial contracts, in order to help prevent their contractual relationships from being affected by any form of Corruption.

Although these Rules do not change according to the size of an Enterprise or the nature of its activities, their implementation will have to be adapted according to a risk assessment and notably to the nature of the business activity. The success of these ICC Rules will depend on the tone at the top and through all managerial lines: there should be a clear message from the Chair of the Board of Directors and/or the Chief Executive Officer of the Enterprise that corruption is prohibited and that an effective corporate compliance programme will be implemented. A culture of integrity and compliance among all employees of the Enterprise is also essential.

General structure of the Rules

The Rules consist of four parts: Part I states the Rules; Part II provides guidance to support implementation and compliance with the Rules, Part III lists the suggested elements of an effective corporate compliance programme, and Part IV comprises definitions of terms used.

Part I
Anti-Corruption Rules

Article 1 | Prohibition of corruption

Corrupt practices are prohibited at all times and in all forms. This includes Commercial or Public Bribery, Extortion or Solicitation, Trading in Influence and Laundering the proceeds of these practices. The prohibition applies whether these acts of Corruption are engaged in directly or indirectly (e.g., using Third Parties).

Article 2 | Reporting

Enterprises, their Third Parties and employees, shall:

A. be able to report any actual or potential act of Corruption, circumvention of these rules or other concerns, through internal formal or informal reporting mechanisms.

B. make available information about external available reporting mechanisms and channels for safely reporting suspected acts that may constitute breach of law or for reporting in the public interest.

C. safeguard that the above reporting is free from retaliation or other adverse consequences.

Part II
Guidance to support implementation and compliance with the Anti-Corruption Rules

Article 3 | Risk-based approach

Any Enterprise, regardless of its size, nature, business activities, geographical presence or industry can adopt and implement these Rules following an effective risk-based approach. This involves identifying, assessing, and understanding the specific risks to which the Enterprise is exposed, and taking the appropriate mitigation measures.

Article 4 | Developing a compliance programme

Enterprises shall:

A. develop a compliance programme proportionate to the risk they face.

B. provide guidance to employees on how to interact with Public Officials legitimately and safely when conducting their business activities.

C. extend the prohibition to Facilitation Payments, which are forbidden in most jurisdictions. Payments may be exceptionally allowed when employees are confronted with exigent and extraordinary circumstances in which the making of a Facilitation Payment can hardly be avoided, such as when the health, security or safety of the Enterprise's employees are at risk. When a Facilitation Payment is made under such circumstances, it must be

accurately accounted for in the Enterprise's books and accounting records in accordance with article 9 of these Rules. Enterprises are encouraged to discuss measures to prevent the same situation from happening in the future.

Article 5 | Engaging third parties

Enterprises should not use Third Parties to facilitate or perform acts of Corruption.

Enterprises should:

A. Hire or retain Third Parties only to the extent appropriate for the regular conduct of the Enterprise's business and ensure that remunerations are commensurate and appropriate for their legitimate service.

B. Ensure that their central management has adequate control over the relationship with the Enterprise's Third Parties and maintains record of all relevant information, in accordance with article 9 of these Rules.

C. Take reasonable and proportionate measures and, as far as legally possible, ensure that Third Parties comply with these Rules in their dealings on behalf of, or with the Enterprise.

D. Avoid dealing with Third Parties where possibilities of Corruption or Conflicts of Interest have not been appropriately reviewed and mitigated.

E. Conduct periodic and appropriate risk-based due diligence on the qualifications and track record of the third party and on the anti-corruption compliance of their Third Parties. This due diligence can be part of a broader assessment that looks comprehensively at other risks in conjunction with the risk of Corruption.

F. Conduct their procurement of goods and services and their transactions with Third Parties in accordance with accepted business standards and applicable Anticorruption Laws and Regulations and, to the extent possible, through open and transparent procurement processes.

G. Enter into a written agreement with Third Parties using one of the options of the ICC Anti-Corruption Clause, or including the following provisions depending on the risk posed by the Third Party:

   - Informing the Third Party of the Enterprise's policies and/or expected standards in connection with the prevention, detection, and response to Corruption.
   - Requesting the Third Party to declare, represent and warrant that it complies with these Rules and with all the applicable policies and anti-corruption Laws and Regulations. Based on the Enterprise's risk assessment, the Enterprise may allow additional time to the Third Party to implement enhancements to the compliance standards expected by the Enterprise.
   - Committing the Third Party not to engage in or tolerate any act of Corruption and to notify the Enterprise if there are any breaches in relation with the applicable anti-corruption clause.
   - Permitting the Enterprise to ascertain – whether by requesting an audit on the Third Party's books and accounting records, directly or through an independent auditor, or

otherwise - compliance with both these Rules and the written agreement entered into between the Enterprise and the Third Party. Alternatively, based on the risk posed by the Third Party, the Enterprise may simply require periodic certifications of compliance.

- Providing that the Third Party's remuneration and/or other payments to the Third Party, as well as payments made by the Third Party shall only be paid in the country of incorporation of the Third Party or the country where the obligations of the parties to the written agreement are performed. Payments should be made to the account of the contractual party and not via any other person or enterprise. Any other payment arrangement, or use of cash or crypto-currencies or to secrecy and tax havens, should require additional levels of due diligence and approvals to ensure they are not a circumvention to anti-corruption controls or used for money laundering.
- Allowing the Enterprise to unilaterally suspend or terminate the relationship, following notification, and offer the possibility of remedial action to the extent possible, if it has a good faith concern that a Third Party has acted in violation of Enterprise's policies, or these Rules, and or in violation of any applicable Anticorruption Laws and Regulations.

Article 6 | Political and charitable contributions and sponsorships

Enterprises should take measures to ensure that political and charitable contributions and sponsorships are not used as a subterfuge for corrupt practices and to mitigate any risk of Conflict of Interest connected to these activities. These measures include:

A. Making these contributions in a transparent manner, in accordance with applicable law and public disclosure requirements.

B. Conducting an appropriate risk-based due diligence regarding the recipients and beneficiaries of these contributions. Special care should be exercised in reviewing contributions in which prominent political figures, or their close relatives, friends and Third Parties are involved.

C. Obtaining senior approval (e.g., executive or board level approval) as required by the risk posed by the recipient and appropriately recording contributions in the Enterprise books and records.

Article 7 | Gifts and hospitality

Enterprises should establish procedures for the disclosure, approval and recording of Gifts and Hospitality in order to ensure that such arrangements:

A. Comply with national law, applicable international instruments, these Rules and anti-corruption laws and regulations.

B. Are limited to reasonable, proportionate and *bona fide* expenditures and are delivered in good faith.

C. Are made transparently, do not improperly affect, and would not reasonably be perceived as improperly influencing the recipient's performance of his or her duties.

D. Do not consist of a payment in cash or equivalent.

E. Are not contrary to the known provisions of the recipient's internal controls, ethics, codes of conduct and compliance programmes.

F. Are neither offered or received too frequently nor at an inappropriate time that may appear as unduly influencing a decision-making process, such as during contract negotiations or during a public bidding process.

G. Are directly related to the Enterprise's business and have a clear, reasonable, proportionate, and legitimate business purpose.

Article 8 | Conflicts of interest

Actual, potential, or perceived Conflicts of interest shall be disclosed and mitigated because they can affect an individual's judgment in the performance of his/ her duties and responsibilities.

Enterprises should closely monitor and manage actual, potential, or perceived conflicts of interests, or the appearance thereof, of their Third Parties and employees, or other individuals to assure that their actions, judgment, or decision-making are unbiased. Enterprises should not take advantage of Conflicts of Interests of others.

Former public officials shall not be hired or engaged before a reasonable period has elapsed after their leaving their office if their contemplated activity or employment relates directly to the functions held or supervised during their tenure.

Where applicable, restrictions imposed by national legislation shall be observed.

Enterprises should refer to ICC's Guidelines on Conflicts of Interest in Enterprises for further guidance.

Article 9 | Financial reporting and accounting

Enterprises should ensure that:

A. All financial transactions are adequately identified and properly and fairly recorded, in reasonable detail, in appropriate books and accounting records.

B. There are no "off the books" or secret books and accounting records, and no documents may be issued which do not fairly and accurately record the transactions to which they relate.

C. There is no recording of non-existent expenditures or liabilities or with incorrect identification of their objects or of unusual transactions which do not have a genuine, legitimate purpose.

D. Cash payments or payments in kind are discouraged and monitored in order to avoid that they are used as substitutes for bribes.

E. Bookkeeping and other relevant documents are recorded and filed according to local law and are not intentionally destroyed earlier than required by law.

F. Books and accounting records are available for inspection by Enterprise's Board of Directors, by internal and external auditors, and by duly authorised governmental authorities under conditions of confidentiality.

G. Independent monitoring and auditing controls, whether through internal or external auditors, designed to bring to light any transactions which contravene these Rules or applicable accounting rules and which provide for appropriate corrective action if the case arises.

H. All provisions of national tax laws and regulations are complied with, including those prohibiting the deduction of any form of Bribery payment from taxable income.

Article 10 | Internal and external collaboration

Those within Enterprises who have the responsibility to lead the Rules' adoption and implementation efforts, are encouraged to work in close coordination with those responsible for other key areas such as sustainability, finance, audit, data protection, policy, risk or legal.

Enterprises are advised to collaborate with each other as well as with relevant international, regional, and sectoral initiatives and other relevant stakeholders, including anti-corruption initiatives with the public sector, in the spirit of Collective Action, to promote and develop the practices reflected in these Rules.

To the extent permitted by applicable national laws, Enterprises are further encouraged to cooperate with national and foreign law enforcement authorities conducting corruption related investigations of relevance to the Enterprise.

Part III
Elements of an effective corporate compliance programme

Article 11 | Elements of an effective corporate compliance programme

Each Enterprise should implement an effective Corporate Compliance Programme (i) reflecting these Rules and applicable law (ii) based on the results of a periodically conducted assessment of the risks faced in the Enterprise's business environment, (iii) adapted to the Enterprise's particular circumstances and (iv) with the aim of preventing, responding and detecting acts of Corruption and of promoting a culture of integrity and Responsible Business Conduct in the Enterprise.

Each Enterprise should consider including all or part of the following good practices in its Corporate Compliance Programme. Specifically, it may choose, among the items listed hereunder, or in compliance with the obligations or requirements applicable by local law, those measures which it considers most adequate to ensure, based on its own proportional risk assessment:

A. **Commitment by Board of Directors, Top Management, Executive Management and Employees with management responsibility**: expressing a strong, explicit, and visible support and commitment to the Corporate Compliance Programme by members of the Board of Directors, Top Management, Executive Management and employees with management responsibilities within the Enterprise ("tone at the top").

B. **Autonomy and resources:** appointing one or more senior (full or part time) Compliance Officer to oversee and coordinate the Corporate Compliance Programme with an adequate level of resources, authority, and independence, reporting periodically to the Board of Directors or to the relevant committee thereof and the top management.

C. **Risk assessment:** mandating the Board of Directors, the relevant committee thereof, or the Individuals Responsible for Implementation of the Corporate Compliance Programme to conduct periodical risk assessments and independent reviews of compliance with these Rules and recommending corrective measures or policies, as necessary. This can be done as part of a broader system of corporate compliance reviews and/or risk assessments.

D. **Due diligence**: exercising appropriate due diligence, based on a structured risk management approach, in the selection of its employees, as well as of its Third Parties. Appropriate due diligence may vary based on the size and nature of the Enterprise, the transaction, or the Third Party and it should be able to detect and prevent the types of misconduct most likely to occur in a particular Enterprise´s line of business. Due diligence shall be updated at a defined frequency.

E. **Policies:** establishing a clearly articulated and visible set of written standards (policies and guidelines) reflecting these Rules and binding to all employees and Third Parties, as appropriate, across the Enterprise.

F. **Training and communications:** providing to employees and Third Parties, as appropriate, periodic guidance, and documented training in identifying actual or potential acts of Corruption in the daily business dealings of the Enterprise. Enterprises should take into account the importance in terms of effectiveness of (i) providing a periodical risk-based training; (ii) designing an appropriate training curriculum and (iii) ensuring periodic internal and external communication regarding the Enterprise's anti-corruption policies.

G. **Whistleblowing programmes**: offering efficient, trusted, and secure channels to raise, anonymously and confidentially, concerns, seek advice or report in good faith established or soundly suspected, actual or potential acts of Corruption without fear of retaliation or of disciplinary action. All good faith reports should be promptly investigated and addressed. Establishment of a non-retaliation policy is key for a Whistleblowing Programme. See ICC's 2022 Guidelines on Whistleblowing for further guidance.

   When investigating Corruption concerns, the Enterprise should understand the expectations of relevant authorities in relation to self-disclosure and cooperation during investigations.

H. **Monitoring and auditing**: establishing and maintaining proper systems of control, monitoring, and reporting procedures, including independent auditing.

I. **Corrective action and disciplinary measures**: acting on reported or detected violations of the Enterprise's anti-corruption policies by taking appropriate root cause analysis, corrective action and disciplinary measures and considering making appropriate public disclosure of the enforcement of the Enterprise's anti-corruption policy, subject to confidentiality restrictions.

J. **Human resources processes:** including the review of business ethics competences in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met, and specifically against the compliance with the Enterprise's anti-corruption policies.

   To incentivise compliance, enterprises should consider introducing clawback provisions where employees engage in or are responsible for violations of anti-corruption policies and applicable laws and regulations.

Key personnel in areas subject to high corruption risk should be trained and evaluated regularly (including confirming at reasonable intervals their compliance with the anti-corruption standards); and the rotation of such personnel should be considered.

K. **Communication channels:** Enterprises should consider establishing clear and strict guidelines on the use of devices and electronic communication channels to conduct business. Enterprises should seek to ensure mechanisms to manage and preserve information contained in the approved electronic communication channels.

L. **Continuous improvement, periodic testing and review:** engaging in meaningful efforts to periodically review its Corporate Compliance Programme to ensure that lessons learned considered do not become stale. To prevent circumvention of the Enterprise's internal controls, Enterprises should consider the improvement of their Corporate Compliance Programme by seeking external certification, verification or assurance.

   For effective measurement and evaluation, impact metrics need to be developed, that demonstrate the level of effectiveness of the Corporate Compliance Programme.

M. **Financial reporting and accounting:** designing financial and accounting procedures for the maintenance of fair and accurate books and accounting records, to ensure that they cannot be used for the purpose of engaging in, or hiding, acts of Corruption.

N. **External reporting:** reporting publicly in an accessible form about the different elements of the Corporate Compliance Programme, including training and incident management metrics. Ensuring external reporting responds to a modern expectation of Enterprises' Corporate Compliance Programmes. A compliance report can show shareholders and other stakeholders how an Enterprise is trustworthy, secure and meets ethical standards.

Part IV
Definitions

Advantage means anything of value, whether financial, monetary, pecuniary or otherwise, including, but not limited to: (i) Cash; (ii) Any kind of goods or assets, including chattel, movable property, personal property, real estate, immovable property, civil or commercial, tangible and intangible and securities; (iii) Services; (iv) Invitations, entertainment or Hospitality, including meals, tickets to events and shows, etc.; (v) Travel or vacation expenses; (vi) Benefits or discounts; (vii) Gifts, charity and donations; (viii) Employment or any other type of position for the bribed person or a person close to him/her; (ix) Remission of debt or obligation; (x) Inflating or increasing debt or obligation; (xi) Discount, a waived fee, (xii) Medical treatment; and (xiii) Any other benefit or anything of value.

Bribery is the offering, promising, giving, authorising or accepting of any undue pecuniary or other Advantage to, by or for a Public Official and a director, officer or employee of an Enterprise, or for anyone else with intent to improperly obtain or retain a business or Advantage, e.g. in connection with public or private procurement contract awards, regulatory permits, taxation, customs, judicial and legislative proceedings.

Bribery often includes (i) kicking back a portion of a contract payment to Public Officials or to employees of the other contracting party, their close relatives, friends or Third Parties or (ii) using intermediaries such as agents, subcontractors, consultants or other Third Parties, to channel payments to Public Officials, or to employees of the other contracting party, their relatives, friends or Third Parties.

Bribery has a narrower meaning than Corruption, which is sometimes used to include practically any perversion of integrity.

Board of Directors refers to the body with ultimate responsibility for an Enterprise.

Commercial Bribery means any form of Bribery where the purpose of the Bribe is to entice a private person, such as an Associate of a private sector Enterprise to breach his/her duties towards that Enterprise.

Conflicts of interest refer to a particular form of Corruption where an individual grants himself/herself an improper advantage by exercising his/her decision-making power to his/her advantage (or to that of a person close to him/her). Conflicts of Interest may arise when the private interests of an individual or of his/her close relatives, friends or business contacts diverge from those of the organisation to which the individual belongs. Typical Conflicts of Interest include hiring relatives or favouring relatives as suppliers of goods or services.

Corruption refers either restrictively to Bribery or more widely to connote any perversion of integrity. Corruption includes Bribery, Extortion or Solicitation, Trading in Influence, Negligent financing of bribery, and Laundering the proceeds of these practices. These forms of Corruption are also referred to as acts or practices of Corruption through the Rules.

Enterprise means any Person engaged in business and other economic activities, whether or not organised for profit, including any entity controlled by a State or a territorial subdivision thereof; it includes a parent and its controlled domestic or foreign subsidiaries.

Extortion or Solicitation is the demanding of a bribe, whether or not coupled with a threat if the demand is refused.

Facilitation Payments are unofficial, improper payments made to a Public Official to facilitate, secure or expedite the performance of a routine or necessary action that involves non-discretionary acts, to which the payer of the facilitation payment is legally entitled.

Gift means any payment, gratuity, gratification, present or other Advantage, pecuniary or not, offered, promised, given or received, without any direct or indirect material or immaterial compensation.

Hospitality means all forms of social amenity, entertainment, travel or lodging, or an invitation to a sporting or cultural event.

Joint Venture or Consortium Partners are partners of an Enterprise for a specific project or activity. Joint venture or consortium arrangements can take the form of a partnership or of a joint subsidiary Enterprise. However, they may be used as a subterfuge for corruption, especially when they involve a local partner in a country with high corruption risk.

Laundering the proceeds of Bribery, Extortion or Solicitation or Trading in influence is the concealing or disguising the illicit origin, source, location, disposition, movement or ownership of property, knowing that such property is the proceeds of crime.

Public Official is any person holding a legislative, administrative, or judicial office at any level of government, national, local or foreign, or any person exercising a public function, including for a public agency or public enterprise, or any official or agent of a public domestic or international organisation, or any member of a political party or a candidate for a foreign political or other public office. International civil servants are also public officials. Employees of public enterprises (enterprises over which a government exercises a dominant influence) are public officials unless the enterprise operates on a commercial basis on its market like a private enterprise. Employees of a private enterprise performing an activity in the public interest such as customs inspections or tasks delegated in connection with public procurement are also considered as public officials in that respect.

Public Bribery is any form of Corruption where the purpose of the Bribe is to obtain an undue advantage from an act or omission of a Public Official in relation with his/her public duties. Note: this is a defined term

Responsible Business Conduct entails making a positive contribution to economic, environmental and social progress with a view to achieving sustainable development, and avoiding and addressing adverse impacts related to an enterprise's direct and indirect operations, products or services.

Rules means the ICC Rules on Combatting Corruption (2023 Edition).

Third Parties as referred to in these Rules, are determined in the context of the Anti-corruption program, and according to the risk assessment of the Enterprise. Third Parties refers to independent individuals or organisations who do not have the status of subordinates to an Enterprise but that have a contractual or legal relationship of any nature with it. Without being limited, third parties may include:

- Agents
- Business Partners
- Consultants
- Contractors
- Joint Venture or Consortium Partners
- Distributors/resellers
- Logistics, supply chain management, storage, maintenance etc.
- Marketing and sales agents
- Customs brokers or visa agents
- Suppliers
- Other intermediaries

Trading in influence is the offering or solicitation of an undue advantage in order to exert an improper, real, or supposed influence with a view to obtaining from a public official an undue advantage for the original instigator of the act or for any other person.

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33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 E icc@iccwbo.org
www.iccwbo.org @iccwbo