



AeroSpace and Defence Industries  
Association of Europe

Common Industry Standards

An Introductory Booklet

ASD Ethics and Anti-Corruption Forum  
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## **Section 1 - Introduction**

The purpose of this booklet is to introduce the reader to the ASD Common Industry Standards (the ‘Standards’) which are set out in detail in Section 2, and to offer suggestions as to how the various principles and requirements of the Standards can be met by companies and organisations seeking to adopt them.

It is a resource to assist those companies and organisations which do not currently have a formal process and supporting materials for an anti-corruption programme and which want to draw upon the experience of others in developing such an initiative. It is recognised that this booklet will be of less relevance to companies which have existing codes of conduct and other similar materials which already meet or surpass the requirements of the Standards.

It is important that the fundamental principles contained in the Standards are set out and explained clearly to employees and other stakeholders affected by them. They should be in no doubt that the company or entity, its board and executives takes the issue of corruption occurring in the course of its business seriously and that all employees, from the most senior down, will be expected to abide by the requirements of the company or entity’s code of conduct or other statement of principles drawn from the Standards. Thus compliance should become an expected part of the normal daily process of the company.

It is important to stress that there is no single ‘right’ way to implement the Standards. Each company will have its own operational and cultural requirements and practices, which will colour the way in which the Standards can be implemented most effectively in the environment in which it operates. Whilst the Standards are designed to be of universal application, companies may in addition, wish to take legal advice as to the particular provisions of law applicable to their circumstances, and may wish to extend the Standards accordingly.

Accordingly, the examples given in this booklet are given in order to raise awareness as to the types of issue which must be considered and for guidance in dealing with such issues. They should be adapted to suit the specific circumstances of the company or organisation using them. Whereas a large company may have policies and codes of conduct in an established format, with an associated training programme aimed at achieving awareness and compliance with all its policies by its employees, into which adoption of the Standards will fit easily, a smaller company may have no need of such formality and choose to deal with these issues by simpler means, such as a letter to all staff from its Chairman, CEO or Managing Director setting out the company’s policy and requirements of its staff in terms of their compliance with it.

Whether set out in the form of a code of conduct, an employee handbook, a guidance note from management or a simple statement from the CEO, the Standards form the starting point for a company’s policy regarding the prevention of corruption. The style and format in which the necessary messages are expressed will depend entirely upon the approach with which the company is most comfortable.

The provision of appropriate training in respect of the company’s requirements is also key to raising and maintaining awareness of the issues on the part of employees. Companies which do not have their own resource to undertake this may find external providers who can assist – in this regard advice may be sought from national associations as to the availability of suitable course providers within the company’s own country.

This booklet is divided into 9 further sections:

Section 2	sets out the text of the Common Industry Standards, clause by clause, and provides an explanatory commentary, giving an example of wording which might be included by a company in its internal code of conduct, employee guide or other company regulations.
Section 3	Provides an example step plan, outlining the types of measures which can be taken and a process for implementing the Standards.
Section 4	Provides an example of 'Frequently asked questions' which can be published in a company's explanatory material or used as the basis for discussion or training.
Section 5	Examples of a message from CEO, primarily for internal communication, but which could be tailored for use elsewhere.
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## **Section 2 – The Common Industry Standards**

This section sets out the text of the Standards (in bold italics) with accompanying commentary for clarification and with examples to demonstrate how the principles might be incorporated into a company's policy and processes.

### ***1.- Compliance with laws and regulations.-***

***The Companies, their subsidiary companies and controlled entities, their directors, officers, employees and others acting on their behalf, are required, as a minimum standard, to comply with all applicable laws and regulations of the countries or territories in which they operate, in particular in relation with integrity matters.***

Self-evidently this sets the minimum standard of operation for any individual or company. Many companies will have a statement to this effect in their existing internal rules and regulations, and this principle should also be reflected, for example, in documentation used in the appointment of agents and intermediaries.

Example (for a single company):

*'It is the policy of [company name] that [company name], its directors, officers and employees and others acting on its behalf shall comply with all applicable laws and regulations of the countries in which it or they operate.'*

Example (where a company has subsidiaries and other entities over which it exerts management control):

*'It is the policy of [company name] that [company name], its subsidiary and controlled entities, its and their directors, officers and employees and others acting on its or their behalf shall comply with all applicable laws and regulations of the countries in which it or they operate.'*

## ***2.- Extent of application of the Common Industry Standards.-***

***The Companies give the largest possible scope of application to the present Common Industry Standards. In particular, they disseminate these Standards internally and within their subsidiary companies and controlled entities as well as with their agents and consultants. They encourage their agents, consultants and business partners to adopt and comply with integrity standards consistent with the Common Industry Standards. Furthermore, in undertakings, in which the Companies do not have controlling power, they exercise their influence in order to have the Common Industry Standards adopted or complied with by these undertakings to the largest extent possible.***

The widespread adoption of the Common Industry Standards as the starting point for a company's policy regarding the prevention of corruption will promote and strengthen the sectoral stance against unethical business practices.

This requirement can be implemented by companies adopting documented working practices which include some or all of the following elements, as appropriate to the company:

- to make copies of, and information about, the Standards available to all employees and to require compliance with the company's policy based upon the Standards;
- to make copies of, and information about, the Standards available to subsidiary and controlled entities and to mandate or to encourage their adoption, depending upon the level of control exercised;
- to communicate the Standards to third parties with whom the company does business and to require, or to promote, as appropriate, their adoption, or the adoption of equivalent integrity principles by the third party in its business dealings;
- to require that intermediaries and agents adopt and comply with the Standards or equivalent integrity principles;
- to take all reasonable steps to ensure that the Standards are properly understood;
- to apply sanctions to employees who are found to be in breach of the company's policy and to third parties which do not adopt the Standards or equivalent integrity principles or which, when they have adopted the Standards or equivalent integrity principles, are found to have breached their requirements.

The adoption of this principle can be demonstrated by its inclusion within the 'corporate message' of the company, in its external communication aspects of its integrity programme and in its documentation regulating its relationships with intermediaries and agents.

### **3.- Prohibition of corruptive practices.-**

***Corruption, under the form of offering, promising or giving a bribe or any undue pecuniary or other advantage (active corruption), as well as under the guise of soliciting, demanding or extorting the same (passive corruption), distorts competition in the markets, is a criminal offence and must therefore be unequivocally condemned.***

***Public corruption (bribing of national, foreign or international public officials), as well as private-to-private corruption (corruption between private commercial or non-commercial entities), in order to obtain or retain business or other improper advantage (e.g. in connection with regulatory permits, taxation, customs, or judicial and legislative proceedings) must be banned from economic life.***

***The Companies, their directors, officers, employees and others acting on their behalf therefore abstain in all circumstances from all forms of direct and indirect corruption, through subsidiary companies, controlled entities, joint-venturers and subcontractors.***

***The Companies take, in particular, all reasonable measures within their power to avoid that money or other advantages are illicitly channelled by direct or indirect means to a public official.***

A clear statement with regard to these issues can be made quite simply and unequivocally and such a statement should be embedded by a company throughout its general business practices and procedures as well as in its documentation regulating relationships with intermediaries and agents.

Example:

***'It is the policy of [company name] that [company name], its subsidiary and controlled entities, its and their directors, officers and employees and others acting on its or their behalf shall neither offer promise nor give, nor seek, corruptly any benefit of any sort whatever, whether directly or indirectly, in connection with the performance of the business of [company name].'***

Measures recommended for adoption by a company to implement this principle include:

- a policy or other similar guidance concerning the conduct and behaviour expected of employees in business, based upon the Standards but specific to the company and overtly supported by the company's board of directors;
- the designation of a senior officer or officers responsible for overseeing the company's compliance with its policy and having the authority and independence to investigate breaches, potential breaches and failures to apply the company's policy
- a formal procedure for the selection, due diligence, appointment and management of intermediaries and agents;

- a regime of disciplinary and contractual sanctions.

In addition, encouragement should be given to employees to make concerns known to supervisors or to the designated senior officer responsible for overseeing the company's compliance with its policy. Some companies have found setting up a telephone or email 'helpline' to be an effective tool to provide guidance and advice to their staff.

It is also important to set up a means by which ongoing compliance with a company's policy can be verified and the level of awareness and understanding within its staff periodically monitored. Some companies undertake regular opinion surveys amongst their staff and questions can be included to confirm staff awareness of the policy.

A further valuable element of governance in this regard is a requirement for directors, officers and employees to sign from time to time a statement that they are aware of and understand company's policy and have complied and will comply with it.

Example:

*'I declare that I am aware of and understand the Code of Conduct of [company name] which sets out the values and the principles for the conduct of business affairs to which all who interact with the company are required to conform. I duly confirm that:*

- *I have complied with and will at all times comply with the Code of Conduct of [company name];*
- *I am not aware of any breach of the Code of Conduct of [company name];*
- *I will inform [name of senior officer designated] of any breach of the Code of Conduct of which I may become aware.*

#### **4.- Gifts and Hospitality.-**

***The provision of a gift or hospitality to a governmental customer or to a public official by way of a business courtesy may not be done if:***

- a. contrary to the laws and regulations of the country of the recipient;***
- b. done with a view to obtaining any improper advantage;***
- c. not duly accounted for in the books and records of the giver and in a manner which permits reasonable traceability.***

The risk of abuse of what may in many cases be acceptable behaviour makes it important that proper safeguards be adopted and explained fully in the company's policy, both for the benefit of employees and for others who may offer or receive gifts or hospitality in the name of, or on behalf of, the company.

Where there is an intention to seek improper advantage by means of gifts or hospitality, it is immaterial whether the benefit offered, promised, given or sought is of high or low value.

This is a subject where local law may establish specifically what is or is not acceptable by way of gifts or entertainment for officials and others, and particular care must be taken to avoid corrupt behaviour, or the appearance of corrupt behaviour, where differences in local culture may be apparent.

The maintenance of a separate gifts and hospitality register, permitting oversight of the process, is an increasingly common practice.

Example:

*'Whilst [company name] recognises that the courtesy of giving and receiving gifts and hospitality of modest value in the course of business, where permitted by law, is acceptable in principle, nevertheless, the rules established by [company name] in this connection are:*

- that giving or receiving the relevant gift or hospitality must be lawful under applicable law;*
- that under no circumstances must the giving or receiving be done with a view to anyone obtaining any form of improper advantage;*
- that the giving of gifts and hospitality must be duly recorded in the company's books and accounts;*
- that the receipt of gifts and hospitality by directors, officers and employees of [company name] shall also be recorded appropriately*
- that all records must be made in a timely and verifiable form and manner.'*

**5.- Political donations and contributions.-**

***The Companies may make donations or contributions to political parties, party officials, party representatives or candidates only if allowed by the laws and regulations of the country concerned and in accordance with the applicable provisions thereof, including requirements of public disclosure of such donations or contributions. Any such donations and contributions shall be properly recorded in the Company's books and accounts.***

The making of donations of a political nature is often the subject of legal regulation and, if so, the relevant rules must be followed. Many companies refuse to make such donations and a clear statement of a company's stance is recommended as a part of its 'corporate message' and reflected in its policy.

Examples:

*'[company name] does not make donations or contributions to political parties or for party political purposes.'*

Or:

*' [company name] permits the making of donations and contributions to political parties [or for party political purposes] but only to the extent permitted by and in accordance with applicable law. [company name] will ensure that all such donations and contributions are duly and properly recorded in its books and accounts.'*

## **6.- Agents, consultants or intermediaries.-**

### **6.1.- General.-**

*Agents, consultants or intermediaries are an effective means of developing, expanding and maintaining the Companies' business. However, if not carefully selected or if inappropriately managed, agents, consultants or intermediaries may create considerable harm to a Company's reputation or may even trigger judicial proceedings, even if the Company is totally unaware of any impropriety.*

### **6.2.- Due diligence.-**

*Each Company shall pay therefore particular attention to the integrity profile of a potential agent, consultant or intermediary, before concluding any agreement or dealing in any way with a candidate. Companies shall conduct a thorough due diligence examination, using various information sources and records to assess a candidate's business and available personal standing; this may include a candidate's history, education, ethical behaviour, technical and financial background and his or her knowledge of the Company's environment and products.*

*Such assessment shall be periodically renewed.*

### **6.3.- The legal provisions.-**

*The candidate agent, consultant or intermediary shall be made aware of (i) the integrity policies of the Company, (ii) the legal provisions containing the incrimination of bribery of foreign public officials pursuant to the 1997 OECD Convention and UNCAC and (iii) the present Common Industry Standards, a copy of which shall be provided to him or her.*

### **6.4.- The agreement.-**

*The agreement concluded in a written form between the Company and the agent, consultant or intermediary shall contain a provision whereby the latter commits to comply at all times with the provisions mentioned in previous paragraph and more specifically that no part of any payment originating from the Company will be passed on as a bribe. Breach of this commitment shall entitle the Company to terminate forthwith the agreement.*

*The agent, consultant or intermediary shall report to the Company regularly and on a continuous basis on the accomplishment of his or her tasks and duties.*

### **6.5.- The fees.-**

*Fees payable to an agent, consultant or intermediary shall correspond to an appropriate remuneration for legitimate services effectively rendered. No payments shall be made in cash. Payments are made, save exceptional circumstances, in the country where the agent, consultant or intermediary is active or registered. These payments are properly recorded in the Company's books and records.*

*Fees can take many forms (marketing fee, support fee, retainer fee or success fee), they can be a fixed amount calculated on a hourly, monthly or yearly basis, or a fixed*

*or variable percentage on the sales to a specified customer or the refunding of expenditure based on vouchers.*

*Whichever form or method used for the fee payable to an agent, consultant or intermediary, it shall be based on the most objective elements possible.*

**6.6.- Auditing/verification programmes.-**

*The Companies shall reserve the right to implement auditing/verification programmes in order to satisfy themselves that the agents, consultants or intermediaries are in compliance with their obligations.*

The appointment of agents, consultants and intermediaries is an issue upon which all companies should seek legal advice and assistance. A company's reputation and indeed its position in relation to breaches of the law will depend upon the integrity of the person or entity appointed and it is of great importance that the risks inherent in such relationships are properly understood and addressed, particularly where the appointee is active in a country in which the law is unclear or not clearly and openly enforced.

The amounts paid by way of fees, and the means by which they are paid, are often the starting point, where official investigations are undertaken, so it is important that these issues are clearly documented with a means of objective justification, such as by reference to the level of work demonstrably undertaken.

The factors listed in the Common Industry Standards are some, but not all, of the issues which need to be considered. External sources, such as governmental blacklists, national embassies or consulates in the country in question or sources listed in Section 10, may also be helpful in assessing risk in any particular case.

Full account should be taken of these principles in the company's documentation for regulating relationships with intermediaries and agents.

## **7.- Integrity programmes.-**

***The Companies put into place integrity programmes with a view to implementing the Common Industry Standards.***

***They shall regularly inform and train their directors, officers and employees about the changes to and the general implementation of the Common Industry Standards and the evolution in the field of business ethics, specifically as concerns anti-corruption.***

***They shall designate high level personnel responsible for overseeing the compliance by the Company with the provisions of the Common Industry Standards.***

***They shall encourage their officers and employees to report all specific concerns they may have in relation with the implementation of the Common Industry Standards and provide advice and guidance in this respect.***

The content and complexity of an integrity programme will depend upon many factors including the size of the company, its risk profile in relation to corruption issues, its existing practices and its available resources.

A large or medium sized company may already have a programme of training for its employees to which a module concerning anti-corruption measures and the Common Industry Standards can be added. In a small company, an explanation of the issues being given by a senior executive at a staff meeting, with regular updates might be more appropriate.

Trade associations may be helpful in providing a forum for learning on these issues for the benefit of their members. Commercial resources, including law firms and not-for-profit organisations, may also be helpful to smaller companies.

Nevertheless companies of any size can and should make clear that a named individual is responsible for these issues within the company and that all employees are expected to contribute to the well-being of the company as a community by raising queries and issues of concern (see also section 3 on page 8 above). A clear route for this communication should be given, and may include internal or external elements.

Example:

*'[company name] attaches great importance to due and proper compliance with its integrity standards and is committed to ensuring that mechanisms are in place to assist all employees in such compliance. Accordingly, [name of director] has been designated as the board member with ultimate responsibility for the company's anti-corruption programme and [Mr / Mrs XX] has been appointed to take day to day responsibility for managing these issues. This will include:*

- arranging appropriate training for employees and where necessary third parties involved in our business dealings;*
- establishing a process by which employees can seek advice and guidance concerning these issues and if necessary report issues of concern.*

*It must be stressed that no-one who reports a genuinely-held concern will be subject to any detriment or disadvantage, indeed such disclosures and those making them may be protected*

*by law. [The company has made arrangements with XXX, an independent organisation with expertise in the field, to receive reports of concerns which employees may have and which they are unwilling or unable to share directly with the company's management.]*

*Please contact [Mr/Mrs XX] for further information about these subjects and about the company's integrity programme generally.'*

## 8.- Sanctions.-

*Appropriate, proportionate and dissuasive sanctions shall be determined and applied by each Company for evidenced cases of non-compliance with the Common Industry Standards.*

Any rule implemented by a company must be backed up in some manner by an indication of what will be the consequences for failing to comply with the rule and these consequences should be stated clearly in the company's policy. Such a clear statement will also give strength to a company's 'corporate message' generally. It should also be borne in mind that, because corruption is a criminal offence, in some cases a company may be obliged to involve external agencies, such as the police or judicial authorities.

Example:

*'[company name] regards any failure to comply with the company's integrity standards as a serious issue which may cause substantial damage to its business interests and reputation. Accordingly, breaches of the company's published standards will be dealt with as a serious disciplinary matter which may lead to reprimand or dismissal of the individual in question.'*

It is also essential that a company's contractual arrangements with any intermediaries and agents incorporate provisions which:

- require an intermediary or agent to comply fully with the Standards and with relevant law; and
- permit the company to terminate the contract if the contracting party is found to have breached the law or the Standards.

It is recommended that legal advice be taken to ensure that contractual provisions are drafted in a way which will be fully enforceable in the jurisdiction or jurisdictions in question.

### **Section 3 – Example step plan for first-time implementation of the Standards**

Where a company does not have an existing framework into which implementation of the Common Industry Standards can be fitted, a possible step plan for a company of any size wishing to adopt the Common Industry Standards as the starting point for its programme could be as follows:

1. Identify and review relevant material for consideration, which may include undertaking a desktop review or a more formal risk assessment carried out at a senior level, to identify aspects of the company's business as to which bribery and corruption constitute a particular risk
2. Lay out "company policy" in line with the provisions of the Common Industry Standards in the form considered best suited to the company
3. Formally designate senior level personnel responsible for overseeing compliance with the policy.
4. Develop a "corporate message" (see Section 5) and disseminate to the existing employee base, including those working on a temporary basis at the company
5. Provide appropriate briefing to company senior management and focused awareness training to managers and employees operating in those environments considered most "at risk"
6. Disseminate "company policy" to current business partners including agents, advisors, consultants, subcontractors and joint-venturers with an encouragement to adopt and comply with such integrity standards
7. Make the "company policy" (or a policy statement) available in the public domain to external stakeholders including
  - shareholders
  - customers
  - suppliers
  - associated companies and consortium members.

Once the programme is in place, a company will need to take steps:

- to inform new employees of the company policy, to which they must adhere, and of relevant sources of advice and guidance; provide appropriate awareness training
- to provide a copy of the "company policy" to new business partners
- periodically to confirm the level of awareness and understanding.
- to provide regular updates on internal developments and the evolution in the field of business ethics, specifically as concerns anti-corruption. Important developments can be communicated, as relevant to staff, through further team briefs and other similar information channels, and should be incorporated into policy materials in a timely manner.

## **Section 4 – Frequently asked Questions**

### **Why do we need to adopt the Standards?**

We have chosen to adopt the Standards as a clear statement of our determination in common with other companies in our sector to prevent corruption in our business.

### **Who has written the Standards?**

The Standards have been drafted by a group of experts drawn from a variety of European aerospace and defence companies with assistance from independent subject matter experts.

### **The law prohibits corruption - isn't that enough?**

The law sets the minimum acceptable behaviour. The Standards will go further in helping companies to adopt best practice in implementing the law.

### **So is there one law against corruption for the whole of Europe?**

No, but there are treaties signed by European governments which set out the requirements which individual countries must implement in their laws. The Standards are compatible with individual national laws.

### **Won't the Standards become out of date as time passes?**

No - they will be reviewed annually to make sure they stay up to date and in line with best practice.

### **I have never bribed anyone - this is insulting!**

We are certainly not suggesting that anyone has behaved improperly - quite the reverse. We want to ensure that the high standards which most people regard as normal are reflected fully and visibly in the way we do business.

### **What should I do if I am concerned that a colleague may not be meeting the high standards we have set?**

If you are confident to do so, you might have a word with him or her to clarify the situation. Alternatively, you should make your concern known to your supervisor or to [insert details of senior officer responsible for overseeing the company's compliance with its policy]. Whatever the situation, please do not ignore it and do nothing. Resolving these issues appropriately is in everyone's best interest and if concerns are not brought to light, we cannot take the necessary steps to do this. [If the company has a telephone or email helpline, this could also be mentioned here].

### **Won't we lose out to competitors if they don't adopt the same standards that we have?**

The more companies that join in this initiative, the greater will be the pressure on others to do likewise. There is an increasing desire, not only on the part of our sector worldwide, but also in our customer community and in government to see strong standards established for ethical behaviour by all.

### **Where can I find out more?**

Within the company, please contact [insert details] if you would like more information or have concerns.

For further information about the Common Industry Standards, visit the ASD website [address]

## Section 5 – Examples of ‘CEO’s message’

The purpose of a “corporate message” from the CEO is to emphasise to all personnel, including anyone who may be working on a temporary basis at the company, the commitment of the company, right from the top, to adopt and comply with the best standards in the way it does business.

This message should be tailored to the style normally adopted by the company but should contain:

- the principles of business conduct
- the existence of “company policy” as appropriate
- every individual’s responsibility to behave ethically and to avoid all forms of direct and indirect corruption
- encouragement of every employee to read and fully understand such policy indicating where the individual has access to information as necessary.

This message could be used as the introductory page to a company’s code of conduct, or otherwise to introduce the company’s position to employees and other stakeholders. If rendered through the provision of a professionally presented “corporate booklet”, this message also may be complemented by “company policy”, responding to Frequently Asked Questions and identifying internal reporting channels and where further advice and guidance is available.

Example:

*Dear colleagues,*

*In today's business environment, the way we conduct our business is open to greater scrutiny than ever before. It is essential for the well-being of our company that we are seen to adopt the best standards to guide our actions. I want to introduce you to some important principles which we have decided to adopt in our business dealings throughout the company.*

*Corrupt behaviour, whether by the seller of goods and services or the buyer, is damaging to proper commercial relationships and fair competition. It can lead to criminal prosecution of individuals involved and may result not only in loss of the business affected by corruption but also in our company being barred from taking part in future opportunities.*

*These principles have been established by a working group set up to address the issue on a pan-European basis and are set out in the Common Industry Standards and are being promoted through ASD, the European umbrella organisation for the national aerospace and defence trade associations. In the UK, adoption of these Standards is recommended by our two major sector trade associations, the SBAC and the DMA, and increasing numbers of their member companies, like us, are making the commitment to abide by the Standards.*

*I want to stress that I and the senior management of the company are committed fully to the*

*lawful and proper conduct of our business. In complying with the Common Industry Standards, we can each play our part in ensuring that our dealings and our reputation remain free of the taint of corruption.*

*Please take a few minutes to read through the guidance which follows.*

*[Signature of CEO]*

Depending upon the format chosen, it may be helpful to incorporate brief details of the Common Industry Standards below, or attached to, the CEO's message.

*Briefly stated, the principles set out in the Common Industry Standards require adhering companies to:*

- 1. comply with laws and regulations*
- 2. apply the Standards as widely as possible in their business dealings*
- 3. prohibit corruptive practices*
- 4. regulate and record the provision of gifts and hospitality*
- 5. regulate and record the making of political donations and contributions*
- 6. appoint and conduct relationships with third parties acting as consultants or intermediaries in accordance with defined good practices*
- 7. implement the Standards by putting in place appropriate integrity programmes*
- 8. apply sanctions in the event of non-compliance with the Standards.*

Below is a further example of a CEO's message, adopting a slightly different style:

*Diffusion générale*

*L'évolution de l'environnement commercial s'est accompagnée de nouvelles réglementations en matière d'éthique, tant au travers des législations que des standards professionnels.*

*Le développement et les activités de notre entreprise s'inscrivent pleinement dans ce cadre réglementaire et nos affaires sont conduites dans le strict respect des lois et des normes qui s'imposent à nous.*

*Cependant, une attention particulière doit être portée à la prévention de la corruption. En effet, toute infraction en la matière aurait des conséquences critiques, pénales et civiles, pour notre entreprise comme pour ses collaborateurs. L'image et la réputation de notre entreprise en seraient profondément et durablement affectées.*

*En conséquence, notre entreprise s'interdit absolument d'accorder directement ou indirectement, à quelque agent public que ce soit ou collaborateur de ses clients, tout*

*avantage indu afin que, dans l'exercice de ses fonctions, il favorise notre société par ses actions ou ses comportements.*

*De même les donations ou contributions à des partis politiques, à des officiels des partis ou de leurs représentants se feront en stricte conformité avec la législation en vigueur des pays, les obligations de publicité et d'enregistrement*

*Les cadeaux reçus ou offerts doivent également être considérés avec la plus grande vigilance, et rester conformes aux pratiques usuelles de la profession, sans jamais faire douter de l'honnêteté, de l'indépendance et de l'objectivité du donateur comme du bénéficiaire.*

*Aussi, j'ai nommé Monsieur, Madame ... , en charge de ces questions. Il/elle a pour mission de définir et mettre en œuvre au sein de notre entreprise, les procédures adaptées en matière de prévention de la corruption autour de trois axes majeurs :*

- *La gestion de nos consultants et intermédiaires commerciaux,*
- *Les cadeaux et plus généralement ce qui relève des gifts and gratuities,*
- *L'information et la formation des collaborateurs de l'entreprise.*

*Je vous invite, par votre support et votre participation active, à contribuer au succès de cette mission.*

*J'y accorde une importance personnelle comme dimension stratégique pour notre entreprise. Les éventuels dysfonctionnements seront sanctionnés avec la plus grande sévérité.*

*Je suis convaincu que notre comportement irréprochable constitue un élément important de notre compétitivité et de notre pérennité.*

*Le Président-Directeur Général]*

## **Section 6 – Examples of presentation material for awareness training purposes**

Material similar to the following examples could be used to form the basis of a company-wide anti-corruption awareness training programme, when tailored to the requirements of the law in the company's own jurisdiction and to the needs of the intended audience. Account must also be taken of the processes within the company by which important issues, such as the provision and acceptance of gifts and hospitality, are managed.

Example 1 gives a general overview of the requirements of French law and good practice;

Example 2 is derived from materials used to raise awareness in commercial and marketing staff of English law and internal company policy requirements, and refers to other documents used within a UK company as part of its overall ethics and anti-corruption initiatives.

## Example 1

## Example 2

## **Section 7 – Example of an application form which might be used in the due diligence and appointment of an intermediary or agent**

It is undoubtedly the case that companies should take all reasonable efforts to investigate the background of a potential intermediary or adviser in order to ensure that the candidate is of evident good character and is not in some manner excluded from being, or inappropriate for appointment as, an intermediary or agent. It may be advisable in some jurisdictions to make deeper enquiries than those outlined in this section, and companies should take their own legal advice on the specific case.

Nevertheless, the questions set out in the example application form set out below, represent the minimum level of enquiry that should be made by any company. As a further check, it may be advisable to seek third party references in relation to the candidate.

In addition to seeking answers to the questions, it is often helpful to obtain confirmation from the intermediary or agent specifically upon the issue of the integrity of its business practices – an ‘integrity statement’.

In a similar way to that suggested in Section 2 for a company’s own employees, the intermediary or agent should confirm that the intermediary or agent (and its employees engaged in the support of the company’s business) all understand the Standards adopted by the company and that they will comply with those Standards (or the equivalent standards adopted by the intermediary). Care must be taken to check the standards which the intermediary has adopted and that its practices and those of its employees do indeed meet the requirements of the Standards. This can be achieved by including a suitable provision in the application form, and / or in the contract appointing the intermediary or agent.

Example:

*On behalf of [intermediary] I declare and confirm that [intermediary], I and all relevant employees of [intermediary]:*

- *are aware of the Code of Conduct with which [company name] applies and requires to be applied in the course of business conducted by it or on its behalf;*
- *will observe the requirements of [company name]’s Code of Conduct, including compliance with all relevant laws;*
- *will inform the CEO of [company name] (or other nominated person) if any of us becomes aware of any breach of the Code of Conduct;*
- *understand that the contract between [intermediary] and [company name] may be terminated immediately and without compensation if any breach of the Code of Conduct should occur with our involvement.*

Application Form

[To be filled in by the contracting party: consultant – provider of services – intermediary]

1. **Applicant's organization :**

(Corporate) Name: .....  
(Corporate) Address: .....  
Telephone: .....  
Mail: .....  
Facsimile: .....  
Date of creation: .....  
Contact Name: .....

Please attach evidence of legal status  
For example: corporate statutes, Chamber of Commerce registration

2. **Commercial organization :**

Legal form:.....  
Country/State:.....  
Registration number-Registered address: .....  
Share Capital: .....  
Shareholders: .....

Please give the relevant figures for the applicant's turnover and results during last three years.

Question: Are government employees or agents, elected representatives or judiciary officials among the shareholders or related closely or otherwise connected to them?

3. **Applicant's directors and employees :**

1) Directors: .....

Name: .....

Qualification: .....

Experience: .....

2) Number of employees:

.....

Question: *Is any director or employee a member of a governmental organization or of a political party or seeking election to a public office?*

Question: *Have the applicant or its associated organizations or its employees, been accused, prosecuted and/or convicted in the present time or in the past of any criminal offence? (if so, please give details as to the offence and sentence).*

**4. Applicant's operations :**

*What is the (corporate) object of the applicant?*

Please list the major commercial transactions in which the applicant has been involved during the last five years.

**5. Details of applicant's bank account(s) :**

Bank name: .....

Account number: .....

Bank address: .....

Date :

Signature :

Printed name:

Title:

## Section 8 - Example of check list for an appointment on an intermediary or agent

### Check List

*Exemples de questions à se poser pour vérifier la conformité des contrats passés avec des consultants, des prestataires de services, des apporteurs d'affaires*

#### 0. l'Application Form a-il été dûment rempli ?

##### I. Qualification de la pertinence du consultant dans le contexte de l'Affaire

- Historique de la relation avec notre société disponible ?
- Profil du consultant disponible ? (*domaine d'activité, références passées...*)
- Compétences techniques et financières du consultant connues et reconnues ?
- Bonne connaissance de notre société et de l'Affaire ? (*couple marché / produit*)
- Pas de conflits d'intérêts avec notre société ?
- Bonne position / renommée dans le pays cible ?

##### II. Conformité Administrative

- Consultant enregistré dans son pays de résidence / pays d'activité ?
- Consultant respectant les règles locales en matière de Commerce ? (*y compris les réglementations en matière d'intermédiation le cas échéant...*)

##### III. Intégrité

- Pas de poursuites judiciaires passées ou en cours ?
- Le consultant et/ou sa société ne figure pas sur une liste de parties avec lesquelles le commerce peut-être interdit ou limité ?
- Le consultant n'est pas en interdit bancaire ?
- Honorabilité reconnue dans le pays ?
- Transparence des activités ?
- Pas d'intérêts directs ou indirects avec le Client

##### IV. Les termes du contrat font-ils référence à ...

- Une exclusivité / non exclusivité ?
- Aux textes et lois applicables en matière de non-corrupcion ?
- Une durée de 1 à 2 ans, maximum 5 ans ? (*le renouvellement annuel tacite est à proscrire*)
- Mention du compte bancaire sur lequel seront effectués les virements / déposés les chèques (*jamaïs de cash*) ?
- Au contrôle du remboursement des frais ? (*auquel cas, exclusivement sur production d'originaux de factures*) ?
- L'arbitrage ?
- L'obligation pour le consultant d'émettre des rapports d'activités périodiques ?
- L'obligation faite au consultant de donner accès à ses livres à tout tiers diligenté par la société ?

##### V. Rémunération

- La commission, le fee ou toute autre forme de rémunération est bien en relation avec des services effectivement rendus par le Consultant ?
- Ils correspondent au standard admis dans le secteur / pays ?
- La devise est-elle la même que celle du contrat attendu ?
- Les modalités de paiement imposent-elles l'émission de factures émises par la société et dûment enregistrées ? (*présentant toutes les mentions légales : Siren / Siret, n°TVA ou équivalents ...*)
- Le lieu de paiement (*chèque ou virement*) est-il le même que celui de résidence de la société ?

## **Section 9 - Examples of confirmatory clause for incorporation into an agreement with an intermediary or agent**

The agreement with an intermediary or agent will be subject to the laws of a stated jurisdiction, usually the place of registration or corporate seat of the appointing company. The company should ensure that the terms of its agreement, and in particular the terms relating to the issue of corruption are in accordance with the laws of all relevant jurisdictions.

The following examples of clauses indicate the type of provision which should be included, but must not be regarded as being effective or sufficient 'as written' for use in all jurisdictions. Some jurisdictions may prohibit types of behaviour which would not be unlawful in others; and some jurisdictions may seek to apply their laws to foreign companies operating elsewhere in the world if they have a sufficient connection to that jurisdiction. It is essential that companies take appropriate legal advice to ensure that the contractual provisions they use meet the needs of their own and any other relevant jurisdiction.

### **Example 1**

*The Applicant hereby certifies that no portion of the remuneration provided for herein has been or will be paid by or on behalf of either our Company or his Company to any official of any government, any political party or candidate, any officer, director, employee or representative of the Customer or of our Company, if such payment would violate the laws of [nation] or [nation]. It is agreed that no payment shall be made for the purpose or with the effect of public or commercial bribery or kickback.*

### **Example 2**

*1. The Adviser understands that the Company will not tolerate unethical behaviour, and in particular bribery, in the conduct of its business. Accordingly, the Adviser represents and warrants:*

- that everyone involved in the performance of the Services on behalf of the Adviser has read and understands the Briefing Note attached to and forming part of the application form; and*
- that the Adviser has taken all steps which it considers necessary to inform itself about the provisions of the OECD Convention, the US Foreign Corrupt Practices Act, the Laws of England and any other legislation of the Territory or elsewhere concerning corrupt practices and which may be relevant to the performance of this Agreement.*

*2. The Adviser represents and warrants that:*

- neither it nor any of its directors, agents or employees have, whether acting alone or in conjunction with any other person, given, offered, promised or authorised, and will not give, promise, offer or authorise any bribe to any person directly or indirectly; and*
- neither it nor any of its directors, agents or employees have, whether acting alone or in conjunction with any other person, solicited or accepted, and will not solicit or accept directly or indirectly any bribe from any person.*

*3. For the purposes of this Clause, a “bribe” shall include any payment, gift, fee, loan, consideration, benefit or advantage of any nature whatsoever conferred on a person, whether for the benefit of that person or another person, as a reward for, or for the purposes of, or which might in the reasonable opinion of the Company give the appearance of being for the purposes of:*

- (a) influencing improperly any action, inaction or decision;*
- (b) inducing any person to act or omit to act in violation of his lawful duty;*
- (c) inducing any person to influence improperly an act or decision of any other person;*  
*or*
- (d) securing an improper advantage.*

## **Section 10 - Other sources of information**

Key reference materials:

1997 OECD Convention

[http://www.oecd.org/document/21/0,3343,en\\_2649\\_34855\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/21/0,3343,en_2649_34855_2017813_1_1_1_1,00.html)

<http://www.oecd.org/dataoecd/4/18/38028044.pdf>

UN Convention against Corruption

<http://www.unodc.org/unodc/en/treaties/CAC/index.html>

US Foreign Corrupt Practices Act

<http://www.usdoj.gov/criminal/fraud/fcpa/>

Other useful websites:

<http://www.iccwbo.org/policy/anticorruption/>

<http://www.ibe.org.uk/>

<http://www.transparency.org/>

<http://www.traceinternational.org/>

[http://www.ethic-intelligence.com/?l=2&id\\_titre=](http://www.ethic-intelligence.com/?l=2&id_titre=)

<http://www.interchange-solutions.co.uk/>

Other useful sources:

World Bank / Transparency International Corruption Perceptions Index

and many others .....