



# ICC Anti-corruption Clause

2025 edition



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## Introductory note on the application and the general purpose and structure of the Clause

The Clause is intended to apply to any contract that incorporates it either by reference or in full. While parties to a contract are encouraged to incorporate the Clause into their contract by its full name, it is anticipated that any reference in the contract to the Clause or related variations shall, in the absence of evidence to the contrary, be deemed to be a reference to the ICC Anti-Corruption Clause.

The general aim of the Clause is to provide parties with a contractual provision that will reassure them about the integrity of their counterparts during the pre-contractual period as well as during the term of the contract and even thereafter.

Three options are possible: either a short text with the technique of incorporation by reference to the ICC Rules on Combatting Corruption 2023 (**Option I**) or the incorporation of the full text of the ICC Rules on Combatting Corruption 2023 in their contract (**Option II**), or a reference to a corporate compliance programme, as described in Article 11 of the ICC Rules on Combatting Corruption (**Option III**).

Where Options I and II have been chosen, if a party fails materially or on several repeated occasions to comply with the anti-corruption provisions incorporated in the contract, the non-complying party will be given the opportunity to remedy the non-compliance. Such party will also have the opportunity to invoke as a defence that it has put into place adequate anti-corruption preventive measures. In the absence of the non-complying party taking remedial action, or if remedial action is not possible and no defence is effectively invoked, the other party may suspend or terminate the contract, at its discretion.

Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with the Clause.

Considering the relevance of other compliance areas, Parties may opt to use this ICC Anti-corruption Clause, or the spirit of this ICC Clause, as part of a broader compliance or business integrity clause, in which other risks such as human rights, ESG (environmental, social and governance principles), money laundering, anti-fraud and/or economic sanctions are integrated.



# ICC Anti-corruption Clause

## Option I | Incorporation by reference of the ICC Rules on Combating Corruption 2023

**Paragraph 1:** Each Party hereby undertakes that, at the date of the entering into force of the Contract, it and its directors, officers or employees have not offered, promised, given, authorised, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other Third Parties, subject to its control or determining influence, from doing so.

**Paragraph 2:** The Parties agree that, at all times in connection with and throughout the course of the Contract and thereafter, they will comply with and that they will take reasonable measures to ensure that their subcontractors, agents or other Third Parties, subject to their control or determining influence, will comply with the ICC Rules on Combating Corruption 2023, which is hereby incorporated by reference into the Contract, as if written out in the Contract in full.

**Paragraph 3:** Each Party declares that it has no conflict of interest with respect to the execution of this Contract and agrees to promptly inform the other Party in the event that such a situation should arise during execution thereof.

**Paragraph 4:** If a Party, as a result of the exercise of a contractually-provided audit right, if any, of the other Party's accounting books and financial records, or otherwise, brings evidence that the latter Party has been engaging in material or several repeated breaches of the provisions of the ICC Rules on Combating Corruption 2023, it will notify the latter Party accordingly and require such Party to take the necessary remedial action within a reasonable time and to inform it about such action. If the latter Party fails to take the necessary remedial action, or if such remedial action is not possible, it may invoke a defence by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti- corruption preventive measures, as described in or comparable to Article 11 of the ICC Rules on Combating Corruption 2023, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organisation. If no remedial action is taken or, as the case may be, said defence is not effectively invoked, the first Party may, at its discretion, either suspend the Contract or terminate it, it being understood that all amounts contractually due at the time of the suspension or termination of the Contract will remain payable, as far as permitted by applicable law. If the contract is suspended, the suspension is for such time the Party deems fit to allow the remedial action to be taken, and should the same not be affected, the Party may then terminate the Contract.

**Paragraph 5:** Any entity, whether an arbitral tribunal or other dispute resolution body rendering a decision in accordance with the dispute resolution provisions of the Contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with this ICC Anti-Corruption Clause.

## Option II | Incorporation in full of the ICC Rules on Combating Corruption 2023

**Paragraph 1:** Each Party hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorised, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other Third Parties, subject to its control or determining influence, from doing so.

**Paragraph 2:** The Parties agree that, at all times in connection with and throughout the course of the Contract and thereafter, they will comply with and that they will take reasonable measures to

ensure that their subcontractors, agents or other Third Parties, subject to their control or determining influence, will comply with the following provisions:

**Paragraph 2.1:** Parties will prohibit the following practices at all times and in any form, in relation to a public official at the international, national or local level, a political party, party official or candidate to political office, and a director, officer or employee of a Party, whether these practices are engaged in directly or indirectly, including through Third Parties:

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

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.

- C. 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.
- D. Laundering the Proceeds of the corrupt practices mentioned above 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.
- E. Conflict of Interest—Conflict of Interest with respect to the execution of this Contract is prohibited.

**Paragraph 2.2:** With respect to Third Parties, subject to the control or determining influence of a Party, including but not limited to agents, business development consultants; sales representatives; customs agents; general consultants; resellers; subcontractors; franchisees; lawyers; and accountants or similar intermediaries, acting on the Party's behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of licenses, permits or other authorisations, or any actions that benefit the Party or as subcontractors in the supply chain, Parties should instruct them neither to engage nor to tolerate that they engage in any act of corruption; not use them as a conduit for any corrupt practice; hire them only to the extent appropriate for the regular conduct of the Party's business; and not pay them more than an appropriate remuneration for their legitimate services.

**Paragraph 3:** If a Party, as a result of the exercise of a contractually-provided audit right, if any, of the other Party's accounting books and financial records, or otherwise, brings evidence that the latter Party has been engaging in material or several repeated breaches of Paragraphs 2.1 and 2.2 above, it will notify the latter Party accordingly and require such Party to take the necessary remedial action in a reasonable time and to inform it about such action. If the latter Party fails to

take the necessary remedial action or if such remedial action is not possible, it may invoke a defence by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti-corruption preventive measures, as described in or comparable to Article 11 of the ICC Rules on Combating Corruption 2023, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organisation.

If no remedial action is taken or, as the case may be, the said defence is not effectively invoked, the first Party may, at its discretion, either suspend or terminate the Contract, without prejudice to the right of this Party to compensation for damages suffered as a consequence of the breach(es) above mentioned, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law. If the contract is suspended, the suspension is for such time the Party deems fit to allow the remedial action to be taken, and should the same not be affected, the Party may then terminate the Contract.

**Paragraph 4:** Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the Contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with this ICC Anti-corruption Clause.

### **Option III | Reference to a corporate anti-corruption compliance programme, as described in Article 11 in the 2023 Rules**

**Paragraph 1:** Each Party has put into place, at the date of the entering into force of the Contract, or undertakes to put into place soon thereafter, a corporate anti-corruption compliance programme, as described in or comparable to Article 11 of the 2023 ICC Rules on Combating Corruption, adapted to its particular circumstances and capable of detecting Corruption and of promoting a culture of integrity in its organisation.

Each Party will maintain and implement such programme at least throughout the lifetime of the Contract, and undertakes to inform through its qualified corporate representative the other Party regarding situations that caused or could cause the impossibility to comply with the above principles, as well as the plans implemented to remedy any such non-compliance

**Paragraph 2:** If a Party brings evidence that the other Party's qualified corporate representative statement contains material deficiencies, or that it reveals the deficiency of the other Party's compliance program, it will notify the other Party accordingly and require such Party to take the necessary remedial action in a reasonable time and to inform it about such action. If the latter Party fails to take the necessary remedial action, or if such remedial action is not possible, the first Party may, at its discretion, either suspend the Contract or terminate it, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law. If the Contract is suspended, the suspension is for such time the Party deems fit to allow the remedial action to be taken and should the same not be affected, the Party may then terminate the Contract.

**Paragraph 3:** Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the Contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with this ICC Anti-corruption Clause.

# Commentary on the ICC Anti-corruption Clause

This Commentary aims to provide guidance, with non-binding value, on implementation of the ICC Anti-corruption Clause.

## Options I and II

**Paragraph 1:** Non-corruption undertaking covering the pre-contractual period

**The ICC Anti-corruption Clause aims at creating trust between Parties.**

Integrity is a key factor in bringing about a business environment that gives best value for money and rewards skill and competitiveness. Best results are achieved in business transactions when predictability and trust prevail between Parties. Combating bribery and other corrupt practices is also vital for protecting shareholders, taxpayers and other entities indirectly affected by business transactions.

While there is a need to ensure that corrupt practices do not bear fruit, there is also a need to maintain trust in the binding nature of the contractual undertakings, as it is a core component of successful business life. There must, therefore, be a balance between the efforts to fight corruption and the treatment of corruption as a breach of a Contract justifying its termination.

One should also recognise that some enterprises may use this ICC Anti-corruption Clause or the spirit of this ICC Clause as part of a broader compliance or business integrity clause, in which other risks such as human rights and economic sanctions are integrated.

Integrity must prevail throughout the life cycle of a business transaction, from its negotiation to its performance and resulting remuneration. Very often a contractual transaction involves a multitude of Parties with a substantial number of personnel. Corrupt practices may not exist throughout an entire organisation, and they may not be instigated by, or otherwise be attributable to, the management holding the principal responsibility for the negotiation or performance of the Contract.

When preparing their Contract, Parties want to make sure that during the negotiations leading to the Contract and during the drafting of the Contract (the pre-contractual period), no bribe, gift or other undue advantage has been granted or promised (or that no indication in this sense has been given for the future) in relation to the Contract by a Party to a public official at the international, national or local level, a political party, party official or candidate to political office or to a director, officer or employee of the other Party, either directly or indirectly through one of the Party's subcontractors, agents or other Third Party, subject to its control or determining influence.

Each Party also wants to ascertain that the other Party has put in place reasonable preventive measures to avoid that one of the other Party's subcontractors, agents, or other Third Parties engages in corrupt practices.

In sum, the Clause is written with the aim of achieving a balance between the interest of Parties to avoid corruption and their need to ensure the attainment of the objectives of the Contract. The Clause builds on the doctrine of good faith, the presumption of innocence, good cooperation between Parties and the idea that many illicit practices can be remedied without bringing the contractual relationship to an end.

## Which are the corrupt practices covered by Paragraph 1?

The wording of Paragraph 1 mirrors that used in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) and the United Nations Convention against Corruption (2003) as well as several other regional and domestic anti-corruption legislation and guidance.

The corrupt practices covered by Paragraph 1 include: (i) “active” as well as “passive” corruption (also referred to at times as “Extortion” or “Solicitation”); (ii) Bribery as well as trading in influence; (iii) Corruption of public officials, as well as private-to-private corruption; (iv) Corruption in the national and local as well as in the international sphere; (v) Corruption with or without the use of intermediaries; (vi) Bribery with money or through any other form of undue advantage; and (vii) Bribery with or without laundered money.

**Is Paragraph 1 referring to even the smallest undue advantages?**

ICC recommends enterprises not to make “facilitation payments” (i.e. unofficial, improper, small payments made to a low-level official to secure or expedite the performance of a routine or necessary action to which the payer is legally entitled), unless their employees are confronted with exigent circumstances, such as duress or when the health, security or safety of their employees are at risk.

On the issue of gifts and hospitality offered to e.g., actual or potential commercial partners, ICC recommends that enterprises establish procedures to ensure that they (i) comply with the law; (ii) are reasonable and bona fide; (iii) do not affect (or appear to affect) the recipient’s independence of judgment towards the giver; (iv) are not contrary to the known provisions of the recipient’s code of conduct and (v) are offered or received neither too frequently nor at an inappropriate time.

Which “reasonable preventive measures” have to be taken by the Parties with respect to their intermediaries?

A Party is not required to prevent by all means any of its subcontractors, agents or other Third Parties, subject to its control or determining influence, to commit any form of corrupt practice.

Each Party shall, however, based on a periodical assessment of the risks it faces, put into place an effective corporate compliance programme, adapted to its particular circumstances, exercise, on the basis of a structured risk management approach, appropriate due diligence in the selection of subcontractors, agents or other Third Parties, subject to its control or determining influence; and train its directors, officers and employees accordingly.

**To which circumstances is the undertaking of Paragraph 1 applicable?**

Having regard to the fast evolution of the law and practice in the field of business integrity, the undertaking of Paragraph 1 should be concerned with only the very Contract itself and not other contracts concluded between the same Parties, or any other contracts.

**Paragraph 2:** Non-corruption undertaking covering the period after execution of the Contract (contractual and post-contractual periods)

**The term of the Parties’ non-corruption undertaking**

Parties agree, during the period following the entering into force of the Contract and after the term of the Contract, not to commit corrupt practices in connection with the Contract.

They will have to ensure that no phase of the performance of the Contract, such as obtaining the relevant licenses or official authorisations, the passing of operational tests, or inspections of goods or sites will be obtained through illicit means. They also undertake to take reasonable measures to prevent their subcontractors, agents and other Third Parties to do the same during such period. The Parties’ non-corruption undertaking survives the term of the Contract.

**Paragraph 2 contains a provision for incorporation either by reference or in full.**

In order to document their mutual non-corruption undertaking, Parties decide to incorporate the text of ICC Rules on Combating Corruption 2023 in their Contract. They can choose either to make

this incorporation by reference or in full. In the former case, they will opt for the text under Option I, in the latter for the text under Option II.

### **The nature of the Parties' undertaking**

The Parties' undertaking is absolute, while their undertaking in relation to their subcontractors, agents or other Third Parties, subject to their control or determining influence, is limited to the taking of reasonable measures in order to prevent the latter from engaging in corrupt practices.

This will include as a minimum: instructing subcontractors, agents and other Third Parties neither to engage nor to tolerate that they engage in any corrupt practice; not using them as a conduit for any corrupt practice; hiring them only to the extent appropriate for the regular conduct of the Party's business and not paying them more than an appropriate remuneration for their legitimate services.

### **Paragraph 3: No Conflict of Interest**

Parties undertake to declare that it has no conflict of interest with respect to the execution of this Contract and agree to promptly inform the other Party if such a situation should arise during execution thereof.

### **Paragraph 4: Non-compliance, remedial action and sanctions**

#### **Non-compliance with the ICC Rules**

If a Party becomes aware that the other Party has committed material or several repeated breaches of the provisions of the ICC Rules on Combating Corruption 2023, it will notify the other Party accordingly.

A Party invoking corruption must bring evidence that corruption is at stake. Evidence is often difficult to find, as is the disclosure of it to the other Party without losing it or causing damage for the further use of it. Therefore, the requirement to bring evidence does not necessarily mean that corroborative evidence should be produced or that all evidence be disclosed to the other Party in every case. Evidence should, however, be sufficient to prove that suspicions of corruption are not invoked in a vexatious or otherwise unjustified manner.

The Clause includes no formal requirements as to how the Parties should make a notification of suspected breach under Part I of the Rules, but typically the mechanism applicable generally to contractual communications between the Parties, will apply to this notification as well. Thus, a Contract containing a requirement that any notification will be made in writing will cover notices on suspected corruption as well.

#### **Possible remedial action**

In order to ensure to the highest degree possible the continuity of a Contract, the allegedly non-complying Party will be allowed to remedy the situation to the extent possible. Necessary remedial action might include providing cooperation in evidentiary action in conducting an examination or calling for an external audit of the incident, issuing warnings, reorganising work, terminating subcontracts or contracts of employment with persons or employees involved in corruption, or correcting the detrimental economic effect on the other Party of any proven non-compliance by, for example, adjusting the amount of the price of the Contract. The nature and quantity of the remedial measures required of the Party subject to allegation will depend on the circumstances of the case in question, e.g. on the gravity of the infringement and on the conclusiveness of the evidence provided. In some situations, a remedy may consist of simply providing counterevidence regarding non-existence of any breach. The allegedly non-complying Party will as soon as possible inform the other Party about the measures it has taken to remedy the situation.

It is recognised, however, that not every infringement of the anti-corruption provisions can be remedied, but it is expected from the allegedly non-complying Party that it will do its utmost to repair the situation to the best of its abilities.

### **Invoking the defence of adequate anti-corruption preventive measures**

Where a remedy is not or cannot be taken, the Party allegedly in breach may invoke a defence by proving that it had, by the time the evidence of breach had arisen, put into place adequate anti-corruption preventive measures, as described in Article 11 of the ICC Rules on Combating Corruption 2023, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organisation. Such adequate anti-corruption prevention measures should (i) reflect the ICC Rules on Combating Corruption 2023, (ii) be based on the results of a periodically conducted assessment of the risks faced in the Party's business environment, and (iii) be adapted to the Party's particular circumstances.

### **Evidence of non-compliance**

Producing evidence of an infringement of the anti-corruption provisions, laid down in the ICC Rules on Combating Corruption 2023, will not be an easy task, as corruption very rarely occurs in the open.

One of the few means to produce such evidence will be to provide the conclusions of an audit of the accounting books and financial records of the allegedly non-complying Party. Witness statements (as a result of a whistleblowing mechanism or otherwise) may sometimes be used. Applicable criminal law should be taken into account when considering the involvement of law enforcement bodies.

### **Audit right**

The reference in the Clause to a contractually-provided audit right does not, however, imply that an audit right can be easily obtained in all circumstances nor that such audit right will be suitable for all situations. Although some Contracts give one or more Parties the right to conduct an audit on the other Party (ies), the reference in this Clause to an audit right does not mean that ICC advocates giving Parties an extensive audit right as a recommended business practice.

Parties will have to determine if their commercial relationship allows for an audit right, and if the circumstances surrounding the negotiation, execution and future implementation of the Contract warrant the need for such audit right.

### **Sanctions**

If the Party allegedly infringing the provisions of the ICC Rules on Combating Corruption 2023, does not remedy the situation within a reasonable period of time or if no such remedy is possible, and no defence of adequate anti-corruption preventive measures is effectively invoked, the other Party will have the right, at its discretion, to suspend the Contract or terminate it, it being understood that the amounts contractually due at the time of suspension or termination will remain payable, as far as permitted by applicable law.

When the other Party exercises its right of suspension or termination, it bears the full burden of proof that a breach or breaches of the provisions of the ICC Rules on Combating Corruption 2023 has taken place.

Applicable law may determine whether the Party may be held accountable for a breach or breaches of the provisions of the ICC Rules on Combating Corruption 2023.

Bringing a large or long-term Contract to an end due to an infringement might be disproportionate. This should also be borne in mind when Paragraph 3 of the Clause is applied.



### **Paragraph 5:** Dispute resolution

Parties refer all disputes related to the contractual consequences of any alleged non-compliance with the Clause to the entity provided for in the dispute resolution provisions of the Contract, such as an arbitral tribunal. However, the non-compliance may be the subject of parallel criminal proceedings which may result in criminal sanctions or other civil law consequences than contractual, in particular liability in tort.

## **Option III**

### **Paragraph 1:** Corporate compliance programmes

#### **Corporate compliance programmes, as described in Article 11 of the ICC Rules**

Many Enterprises have put into place a corporate compliance programme with the aim of preventing their business activity from being affected by corruptive practices. Such programmes can have different forms and content and will need to be adapted to each Enterprise's particular circumstances in order to be effective. They also should make it possible to detect Corruption and should aim at promoting a culture of integrity in the organisation. Article 11 of the ICC Rules on Combating Corruption 2023 provides an extensive, non-comprehensive list of measures, which may be included in such programme. Each Enterprise will select from this list the measures it deems necessary or adequate for organising its own anti-corruption prevention system.

#### **Putting into place a corporate compliance programme**

When the Parties enter a Contract, it helps reinforce trust between them to know that their counterpart has put into place—or is going to put into place soon—a corporate compliance programme. Parties will commit to maintain their corporate compliance programme and to implement its provisions at least during the term of the Contract, thus maintaining during that period of time an atmosphere of trust between the Parties.

#### **Designation of a qualified corporate representative**

In order to evidence the effectiveness of the programme and the continuity of its implementation, each Party will designate among its personnel a qualified corporate representative, whose name will be notified to the other Party. These qualified corporate representatives will issue, at regular intervals, statements on the continued existence and implementation its Enterprise's programme.

### **Paragraph 2:** Deficiencies in a qualified corporate representative's statement, remedial action and sanctions

#### **Deficiencies in a qualified corporate representative's statement**

If a Party becomes aware that the other Party's qualified corporate representative's statement contains material deficiencies, undermining the efficiency of that Party's programme, it will notify the latter Party accordingly. A statement will be considered deficient if it contains materially untrue, false or incomplete declarations.

A Party invoking a deficiency in a qualified corporate representative's statement must bring evidence that either the statements are missing or that the statement contains materially untrue, false or incomplete declarations.

Evidence is often difficult to find, as is the disclosure of it to the other Party without losing it or causing damage for the further use of it. Therefore the requirement to bring evidence does not necessarily mean that corroborative evidence should be produced or that all evidence be disclosed to the other Party in every case. Evidence should, however, be sufficient to prove that suspicions of deficiencies in a qualified corporate representative's statement are not invoked in a vexatious or otherwise unjustified manner.



The Clause includes no formal requirements as to how the Parties should make a notification of a suspected deficiency in a qualified corporate representative's statement, but typically the mechanism applicable generally to contractual communications between the Parties, will apply to this notification as well. Thus, a Contract containing a requirement that any notification will be made in writing will cover notices on suspected deficiency as well.

### **Remedial action**

In order to ensure to the highest degree possible the continuity of a Contract, the Party having allegedly issued a deficient statement, will be allowed to remedy the situation to the extent possible. Necessary remedial action might include providing a new, accurate, complete and sincere statement, giving a full and fair picture of the implementation by the Party concerned of the provisions of its corporate compliance programme as well as any corrective action such Party will take to improve such implementation. The nature and quantity of the remedial measures required of the Party subject to allegation will depend on the circumstances of the case in question, e.g. on the gravity of the deficiency and on the conclusiveness of the evidence provided. In some situations, a remedy may consist of simply providing counter-evidence regarding non-existence of any deficiency. The allegedly non-complying Party will as soon as possible inform the other Party about the measures it has taken to remedy the situation.

It is recognised, however, that not every deficiency can be remedied, but it is expected from the allegedly non-complying Party that it will do its utmost to repair the situation to the best of its abilities.

### **Other Commentary**

The Commentary provided hereinabove under items 4, 5 and 6 on Paragraph 3 of Options I and II is applicable to Paragraph 2 of Option III.

### **Paragraph 3: Dispute resolution**

Parties refer all disputes related to any alleged non-compliance with the Clause to the entity provided for in the dispute resolution provisions of the Contract, such as an arbitral tribunal. However, the non-compliance may be the subject of parallel criminal proceedings which may result in criminal sanctions or other civil law consequences rather than contractual, in particular liability in tort.

## **ICC Rules On Combating Corruption (2023)**

### **Introduction**

The ICC Rules on Combating Corruption (the "Rules") 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 Combating 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.

## **1. 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.

## **2. Guidance to support the implementation of 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 corporate 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 10 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 10 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 the ICC 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.

### **3. 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 Officers 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 the [ICC 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.

## 4. 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.

**Bribery of Public Official** 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.

**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 private 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 Combating 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.

## About the International Chamber of Commerce

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



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