



International Chamber of Commerce

The world business organization

Commission on Anti-Corruption

**Combating Extortion and Bribery:
ICC Rules of Conduct and
Recommendations**

2005 edition

International Chamber of Commerce

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General introduction

The International Chamber of Commerce (ICC) has always been at the forefront of the drive for integrity in business life, because only a corruption-free system makes it possible for all participants to compete on a level playing field.

The signing of the United Nations Convention on Corruption in December 2003 at Mérida, Mexico, marks a new era in the fight against extortion and bribery. This comprehensive international instrument paves the way for the establishment of a global prohibition of all forms of corruption. ICC, as the world business organization, welcomes this further evolution in the combat against corruption.

ICC has emphasized the critical role of compliance by enterprises with self-imposed rules based on their own values, while recognizing the basic responsibility of national governments and international organizations in the fight against corruption. Adhering to strict rules defined within the enterprise will help businesses fulfil their legal obligations in a more natural and effective way. The adoption and implementation of their own integrity programmes is therefore strongly recommended.

Already in 1977, in the aftermath of the international bribery scandals of the 1970s, ICC produced its first Report on Extortion and Bribery in International Business Transactions. This included the first version of the Rules of Conduct to Combat Extortion and Bribery recommended by ICC for voluntary application by enterprises. These Rules of Conduct strongly expressed the objective of ending both bribery and extortion. ICC also recommended that the United Nations adopt an international convention to prohibit corruption. UN efforts to reach such an agreement fell through in the 1980s.

It took another round of corruption scandals in the 1990s to revive international interest in matters of integrity. Again ICC was at the forefront and issued its second Report in 1996. The Organisation for Economic Cooperation and Development (OECD) became the key forum for anti-corruption reforms. In particular, the adoption in 1997 of the Convention on Combating Bribery of Foreign Public Officials represented a major milestone. This was recognized in a revised version of the ICC Report which was issued in 1999.

ICC has continued to work actively with the OECD and with other international organizations, including the United Nations, the Council of Europe and the European Union, to promote awareness of the need for integrity and to further the combat against all forms of corruption in business transactions. ICC has emphasized that as much energy should be devoted to fight extortion or solicitation as to bribery. ICC has also insisted on the need to confront private-to-private corruption (corruption between private entities), as this form of bribery also distorts competition and can no longer be ignored in light of increasing moves to privatization as well as the blurring of lines between the private sector and the public sector.

The ICC Commission on Anti-Corruption has published “Fighting Corruption, A Corporate Practices Manual”, which provides detailed practical guidance for compliance with the ICC Rules of Conduct and the OECD Convention. It is a handbook for all who wish to put into place an efficient and well-run integrity programme. The manual was first published in 1999 and substantially revised and expanded in 2003.

Because of the accelerating pace of anti-corruption developments, as well as ICC’s work on corporate responsibility and corporate governance, the ICC Commission on Anti-Corruption decided to revisit and rethink the ICC Rules of Conduct and to refine its stance on a number of integrity matters.

Work on anti-corruption is never finished. Sustained efforts will still be necessary in the future. A better awareness is needed among public officials, in board rooms and at the working level. ICC is committed to contribute to this awareness.

Guy Sebban
ICC Secretary General

François Vincke
Chair, ICC Commission on Anti-Corruption

Outline

The 2005 edition of the ICC Rules of Conduct and Recommendations to Combat Extortion and Bribery consists of three parts:

- Part I contains substantive rules and implementation procedures for voluntary application by enterprises;
- Part II sets forth follow-up activities by the ICC Commission on Anti-Corruption for the promotion of the Rules of Conduct;
- Part III covers the work of the ICC Commission on Anti-Corruption with international organizations and national governments to strengthen the legal and administrative framework to combat bribery and extortion.

Part I: Rules of Conduct to Combat Extortion and Bribery

Introduction

These Rules of Conduct are intended as a method of self-regulation by business against the background of applicable national laws. Their voluntary acceptance by business enterprises will promote high standards of integrity in business transactions, whether between enterprises and public bodies or between enterprises themselves. These Rules will play an important role in assisting enterprises to comply with their legal obligations and with the numerous anti-corruption initiatives at international level. They will also provide an appropriate basis for resisting attempts at extortion.

These Rules of Conduct are of a general nature constituting what is considered good commercial practice but are without direct legal effect. All enterprises should conform to the relevant laws and regulations of the countries in which they are established and in which they operate, and should observe both the letter and the spirit of these Rules. While the highest priority should continue to be directed to ending large-scale extortion and bribery involving politicians and senior officials, the 2005 revision of the Rules also provides for action against facilitation payments to lower-level officials.

For the purposes of these Rules, the term “enterprise” refers to any person or entity engaged in business and other economic activities, whether or not organized for profit, including any entity controlled by a state or a territorial subdivision thereof; it includes a parent and its controlled subsidiaries.

The success of the ICC Rules will depend on the “tone at the top”: a clear message from the chief executive that bribery and extortion are prohibited and that an effective compliance programme will be implemented.

To provide further guidance on the implementation of these Rules, the ICC Commission on Anti-Corruption has published “Fighting Corruption: A Corporate Practices Manual”. Each of the articles below includes a short cross reference to the relevant chapters of this handbook.

Article 1: Prohibition of Bribery and Extortion

Enterprises should prohibit bribery and extortion at all times and in any form, whether direct or indirect, including through agents and other intermediaries:

- a) Bribery is the offering, promising, giving or accepting of any undue pecuniary or other advantage to or by:
 - o a public official, at national, local or international level;
 - o a political party, party official or candidate; and
 - o a director, officer, employee or agent of a private enterprise

in order to obtain or retain a business or other improper advantage, e.g., in connection with 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” as used in these Rules shall include extortion.

- c) Enterprises should not (i) kick back any portion of a contract payment to government officials or to employees of the other contracting party, or (ii) utilize intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government officials, or to employees of the other contracting party, their relatives, friends or business associates.

Defining bribery is the central theme of Chapter 3 of the handbook. The prohibition of private-to-private bribery is covered in Chapter 6.

Article 2: Agents and Other Intermediaries

Enterprises should make their anti-corruption policy known to all agents and other intermediaries and make it clear that they expect all activities carried out on their behalf to be compliant with their policy. More particularly, enterprises should take measures within their power to ensure:

- a) that any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered by such agent;
- b) that no part of any such payment is passed on by the agent as a bribe or otherwise in contravention of these Rules of Conduct;
- c) that agents agree explicitly not to pay bribes. Enterprises should include in their contracts provisions to terminate agreements with agents if a bribe is paid, except for agreements with agents performing routine administrative or clerical tasks;
- d) that they maintain a record of the names, terms of employment and payments to all agents who are retained by them in connection with transactions with public bodies, state or private enterprises. This record should be available for inspection by auditors and by appropriate, duly authorized governmental authorities under conditions of confidentiality.

The foregoing provisions should be applied to all agents or other intermediaries used by the enterprise to obtain orders and permits, including sales representatives, customs agents, lawyers and consultants.

Chapter 4 of the handbook looks specifically at issues raised by the use of agents and other intermediaries.

Article 3: Joint Ventures and Outsourcing Agreements

Enterprises should take measures within their power to ensure that anti-bribery provisions consistent with these Rules of Conduct are accepted by joint-venture partners as applicable to the joint venture and by parties to outsourcing agreements.

Chapter 3 (p50-52) touches upon the role of joint ventures.

Article 4: Political and Charitable Contributions and Sponsorships

- a) Enterprises should only make contributions to political parties, party officials and candidates in accordance with applicable laws, and all requirements for public disclosure should be fully complied with. The amount and timing of political contributions should be reviewed to ensure that they are not used as a subterfuge for bribery.

- b) Enterprises should take measures within their power to ensure that their charitable contributions and sponsorships are not used as a subterfuge for bribery. Charitable contributions and sponsorships should be transparent and in accordance with applicable law.
- c) Enterprises should establish reasonable controls and procedures to ensure that improper political and charitable contributions are not made. Special care should be exercised in reviewing contributions to organizations in which prominent political figures, or their relatives, friends and business associates are involved.

Political contributions are further discussed in Chapter 7 of the handbook.

Article 5: Gifts, Hospitality and Expenses

Enterprises should establish procedures covering the offer or receipt of gifts, hospitality or expenses in order to ensure that such arrangements (a) are limited to reasonable and bona fide expenditures, and (b) do not improperly affect, or might be deemed to improperly affect, the outcome of a procurement or other business transaction.

Gifts, hospitality and expenses are one of the four critical issues analyzed in Chapter 3 (p49-50)..

Article 6: Facilitation Payments

- a) Enterprises should not make facilitation payments. In the event that an enterprise determines, after appropriate managerial review, that facilitation payments cannot be eliminated entirely, it should establish controls and procedures to ensure that their use is limited to small payments to low-level officials for routine actions to which the enterprise is entitled.
- b) The need for the continued use of facilitation payments should be reviewed periodically with the objective of eliminating them as soon as possible.

The critical issue of facilitation payments is also explored in Chapter 3 (p43-48) of the handbook.

Article 7: Corporate Policies

In order to prevent bribery and extortion, enterprises should implement comprehensive policies or codes reflecting these Rules of Conduct as well as their particular circumstances and specific business environment. These policies or codes should:

- a) provide guidance and training in identifying and avoiding bribery or extortion in the daily business dealings of the enterprise;
- b) offer confidential channels to raise concerns, seek advice or report violations without having to fear retaliation;
- c) include disciplinary procedures to sanction misconduct; and
- d) apply to all controlled subsidiaries, foreign and domestic.

Chapter 2 of the handbook examines the responsibilities of enterprises in providing the means to fight extortion and bribery. The issue of parent company responsibility for controlled subsidiaries is addressed in Chapter 3 (p50-51).

Article 8: Financial Recording and Auditing

- a) All financial transactions must be properly and fairly recorded in appropriate books of account available for inspection by boards of directors, if applicable, or a corresponding body, as well as auditors.
- b) There must be no “off the books” or secret accounts, nor may any documents be issued which do not properly and fairly record the transactions to which they relate.
- c) Enterprises should take all necessary measures to establish independent systems of auditing, whether through internal or external auditors, in order to bring to light any transactions which contravene these Rules of Conduct. Appropriate corrective action must then be taken.
- d) Enterprises should comply with all provisions of national tax laws and regulations, including those prohibiting the deduction of any form of bribe payment from taxable income.

Chapter 5 of the handbook offers further guidance on financial recording and auditing issues.

Article 9: Responsibilities

The board of directors or other body with ultimate responsibility for the enterprise, should:

- a) take reasonable steps to ensure compliance with these Rules of Conduct, including
 - o making resources available and supporting management in implementing the corporate policies reflecting them;
 - o establishing and maintaining proper systems of control and reporting procedures, including independent auditing;
- b) sanction violations and take appropriate corrective action; and
- c) make appropriate public disclosure of the enforcement of its anti-corruption policies or codes.

The audit committee of the board or other body with similar responsibility should conduct regular independent reviews of compliance with these Rules of Conduct and recommend corrective measures or policies as necessary. This can be done as part of a broader system of corporate compliance reviews.

Chapter 2 of the handbook deals specifically with the responsibilities of enterprises in the fight against corruption.

Part II: ICC Follow-up and Promotion of the Rules

To promote the widest possible use the Rules set forth in Part I, to propose initiatives to combat corruption and to stimulate cooperation between governments and world business, ICC has established a Commission on Anti-Corruption. This Commission is composed of business representatives from a wide range of business sectors and national backgrounds.

Among its primary tasks, the Commission shall:

1. Provide guidance on the implementation of the Rules of Conduct by promoting and updating the ICC handbook “Fighting Corruption: a Corporate Practices Manual”;
2. Prepare ICC statements and develop views on major developments in the fight against extortion and bribery;
3. Report to the Secretary General and ICC’s governing bodies on any major development in the fight against corruption that may have an impact on world business;
4. Maintain contacts with international organizations dealing with extortion and bribery, including civil society organizations, and, as appropriate, support their international initiatives;
5. Assist ICC national committees in promoting the use of the Rules of Conduct;
6. Organize or encourage the organization of conferences, seminars and other events to raise awareness and stimulate interest in, and discussion of, the Rules of Conduct among the business community;
7. Propose possible changes or improvements to the ICC Rules of Conduct and Recommendations to Combat Extortion and Bribery to the ICC Executive Board, in light of new developments in the fight against extortion and bribery.

Part III: ICC Cooperation with International Organizations and National Governments

Introduction

The success of the ICC Rules of Conduct in combating corruption through corporate self-regulation will be enhanced by actions by international organizations and by national governments to strengthen the legal and administrative framework for combating corruption. The political will of governments to enforce anti-corruption laws is of paramount importance. The need for complementary and mutually supportive action by the business community and by governments and international organizations was recognized in 1977 when the ICC issued its first Report on Extortion and Bribery, including the initial version of the ICC Rules of the Conduct, and again when the Rules were revised and updated in 1996 and 1999.

In the period since the last revision of the ICC Rules, the need to combat corruption has been widely recognized around the world, and considerable progress has been made in strengthening the legal framework for combating corruption. From the standpoint of international business the key step has been the adoption of the OECD Convention prohibiting bribery of foreign public officials, which ICC actively supported. In addition, several regional anti-corruption conventions have been adopted, and the UN Convention against Corruption has been signed by over one hundred countries. National governments are beginning to take action to implement the commitments embodied in these international conventions, although the response has been uneven.

The Global Compact in 2004 added working against corruption as one of its ten principles. The World Bank, the IMF and other international financial institutions have also launched important anti-corruption initiatives.

The ICC Commission on Anti-Corruption has played an active role in the development of the new framework for combating corruption. However, considerable further work is required to ensure that this framework is effectively implemented. The Commission expects to be active in the following areas:

International Conventions

OECD Convention

- Provide ICC support for OECD monitoring of national enforcement programmes.
 - Promote private sector participation in country reviews.
 - Endorse continuation of monitoring beyond the 2007 limit of current funding commitments.
- Encourage OECD and member governments to take steps to assist companies to resist extortion by foreign public officials.
- Urge action on “unresolved issues” identified in 1997:
 - Extend prohibition of foreign bribery to cover private sector bribery. This has been a major initiative of the ICC Commission, and has involved the study of private commercial bribery laws in collaboration with the Max Planck Institute in Freiburg. The next step should be the formation of a joint OECD/ICC study group to develop recommendations for action.
 - Clarify coverage of foreign subsidiaries; parent companies should require controlled subsidiaries to adopt anti-bribery policies.
 - Prohibit bribery of foreign political parties, party officials and candidates.

United Nations Convention Against Corruption (UNCAC)

- Encourage governments to ratify UNCAC promptly. UNCAC should secure balanced support from industrialized countries, as well as developing countries.
- Support establishment of an effective follow-up monitoring programme to ensure that parties implement and enforce UNCAC.
- Urge international donor agencies, such as UNDP and the World Bank, to help governments that need technical assistance to implement UNCAC.

Coordination of Conventions

The adoption of anti-corruption conventions by the OECD, the Organization of American States (OAS), the Council of Europe, the African Union and the UN gives a strong positive signal of the commitment by the international community to address the problem of corruption. However, from an international business standpoint, the proliferation of anti-corruption instruments raises concerns about inconsistent rules, overlapping enforcement and the lack of common definitions. The Commission will urge the organizations responsible for the various conventions to coordinate their work in order to promote a coherent approach along the following lines:

- The OECD Convention should remain the principal instrument focusing on the supply side of international corruption.
- Regional conventions – the instruments adopted by OAS, Council of Europe, African Union – should give priority to issues on which progress can be made by cooperation among their participating parties – such as technical assistance, preventive measures, criminalization and law enforcement, including combating extortion by public officials.
- UNCAC should give priority to issues requiring worldwide cooperation, particularly strengthening mutual legal assistance procedures for investigating and prosecuting foreign bribery cases and improving arrangements for repatriating the proceeds of corruption. UNCAC should also serve as the principal source for anti-corruption rules in areas which are not covered by regional conventions.
- Monitoring programs at OECD and at regional and UNCAC levels should be coordinated to avoid duplication, to share information and to utilize limited resources to best advantage.

International Organizations and Initiatives

World Bank and other International Financial Institutions

- The Commission will encourage the World Bank, IMF and other international financial institutions to strengthen procedures to prevent bribery on projects they finance, including requirements that contractors adopt anti-bribery compliance programmes.
- The Commission will encourage the World Bank, IMF and other international financial institutions to require governments to adopt transparent procurement rules and to ratify and implement UNCAC.

World Trade Organization (WTO)

- Because corruption causes serious distortions in international trade, the Commission will continue to urge WTO to address trade-related aspects of corruption. WTO action to promote the use of transparent procurement rules would reduce opportunities for corruption and help contribute to the strengthening of a rules-based and non-discriminatory global trading system.

Global Compact

- The Commission will cooperate with the Global Compact Office at the international and national level to encourage companies participating in the Global Compact to adopt corporate compliance programmes consistent with the ICC Rules of Conduct to Combat Extortion and Bribery.

National Governments

The Commission will work with ICC national committees to encourage national governments to take the following measures to fight extortion and bribery:

- **Capacity Building.** Governments should provide adequate resources – including funding, staffing and training – for the organizations combating corruption. These resources should be aimed at raising public awareness of the economic and social consequences of corruption.
- **Strengthen Enforcement.** Even though laws prohibiting extortion and bribery have been on the books in virtually all countries, enforcement is weak or non-existent in many countries. The Commission will urge governments to strengthen enforcement of anti-bribery laws, including laws prohibiting extortion by public officials and laws prohibiting commercial bribery. Governments should also establish reporting channels for complaints about corruption and provide protection for bona fide whistle blowers. Because it is difficult for local prosecutors to undertake foreign bribery cases, governments should assign responsibility for such cases to a national office.
- **Economic Regulations.** Governments should, as far as possible, minimize the use of systems requiring issuance of individual permits, authorizations, etc., because such systems offer scope for extortion and bribery. Where such systems cannot be eliminated, governments should take appropriate measures to prevent their abuse.
- **Public Procurement.** Governments should commit themselves to improve transparency in public procurement, including public bidding, and publication of the criteria upon which awards are based. Adoption of anti-bribery compliance programmes should be a condition for bidding on major government contracts. In particular, in the case of projects financed by an international financial institution, observance of these principles should be reflected in contractual arrangements between the parties.

- **Political Contributions.** Undisclosed political contributions can be a source of abuse. Governments should, subject to the specifics of their national political system, regulate the conditions under which political contributions can be made and how such contributions are to be reported by donors and recipients.
- **Accounting and Auditing.** Governments should require auditing by independent public auditors of the accounts of all economically significant enterprises. Governments should also support the adoption of strong and consistent international standards for accounting and auditing.
- **Export Credit Agencies.** Export credit agencies should include in their conditions that financing and guarantees are not provided for contracts secured through bribery and that sanctions shall be applied in the event of violations.
- **Official Development Assistance (ODA).** Development assistance programmes should require strict adherence to anti-corruption rules by government officials and contractors.

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The International Chamber of Commerce

ICC is the world business organization, the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

ICC promotes an open international trade and investment system and the market economy. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution.

Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC was founded in 1919. Today it groups thousands of member companies and associations from over 130 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.



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