

Doing business **honestly** without **corruption**



This guide is a joint publication of the Ministry of Foreign Affairs, the Ministry of Justice and Security, the Ministry of Economic Affairs and Climate Policy, the International Chamber of Commerce Netherlands, the Confederation of Netherlands Industry and Employers (VNO-NCW), and the Royal Association MKB-Nederland.

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Foreword

Corruption in business distorts fair competition, erodes trust in government and the private sector, imposes a high cost on companies and society at large, constitutes a criminal offence and is morally wrong. A system that is free from corruption is essential to ensure equal opportunities for all (both in markets and more broadly) and well-functioning societies and economies.

Corruption undermines honest business. And you may be unwillingly exposed to it. What do you do for example if you're asked in a foreign country to pay a bribe? How can you make sure that you and your employees know how to respond in that kind of situation?

Since bribery is a criminal offence, it's important to know what you can and can't do under national and international law. The International Chamber of Commerce (ICC) has drawn up Rules on Combating Corruption. They provide guidance for businesses drawing up anti-corruption policies.

Self-regulation by the business community plays an important role in the fight against corruption. It is important that your business has a culture in which corruption is not tolerated. Drawing up a code of conduct is a good first step towards an improved corporate culture.

In this way, your business will be contributing to a level international playing field where all companies have the

same opportunities. It is also a means to ensure you or your employees do not become involved in improper or criminal practices.

Corruption is a large, global problem that cannot be solved by acting alone. Dutch businesses often operate internationally and can help prevent corruption. For this it is important that they learn more about the problem and receive guidance on how to act. The International Chamber of Commerce Netherlands, the Confederation of Netherlands Industry and Employers, and the Royal Association MKB-Nederland are working with central government to provide Dutch businesses with this information.

The tips in this guide will help you gain a deeper understanding of corruption in business, and find out more about a corporate culture that encourages honesty among employees engaged in international business dealings. As a result, you and your employees will be better able to make the right decisions when faced with corruption.

Liesje Schreinemacher
*Minister for Foreign Trade and
Development Cooperation*

Dilan Yeşilgöz-Zegerius
Minister of Justice and Security

Micky Adriaansens
Minister of Economic Affairs and Climate Policy

Mirjam Bakker-Vergouw
Chair, ICC Netherlands

Ingrid Thijssen
President, Confederation of Netherlands Industry and Employers

Jacco Vonhof
President, MKB-Nederland



1 In brief

Government authorities and businesses must stand together to defeat corruption. This guide offers you:

- Insight into the importance of doing honest business abroad and with foreign companies.
- A step-by-step plan for preparing to enter new markets.
- An overview of the risks that you and your employees run when they act outside the law.
- Insight into how the Dutch government can help you avoid coming into contact with corruption, and what the government does if things nevertheless go wrong.
- Useful resources and contact information for relevant government bodies, business organisations and civil society organisations.

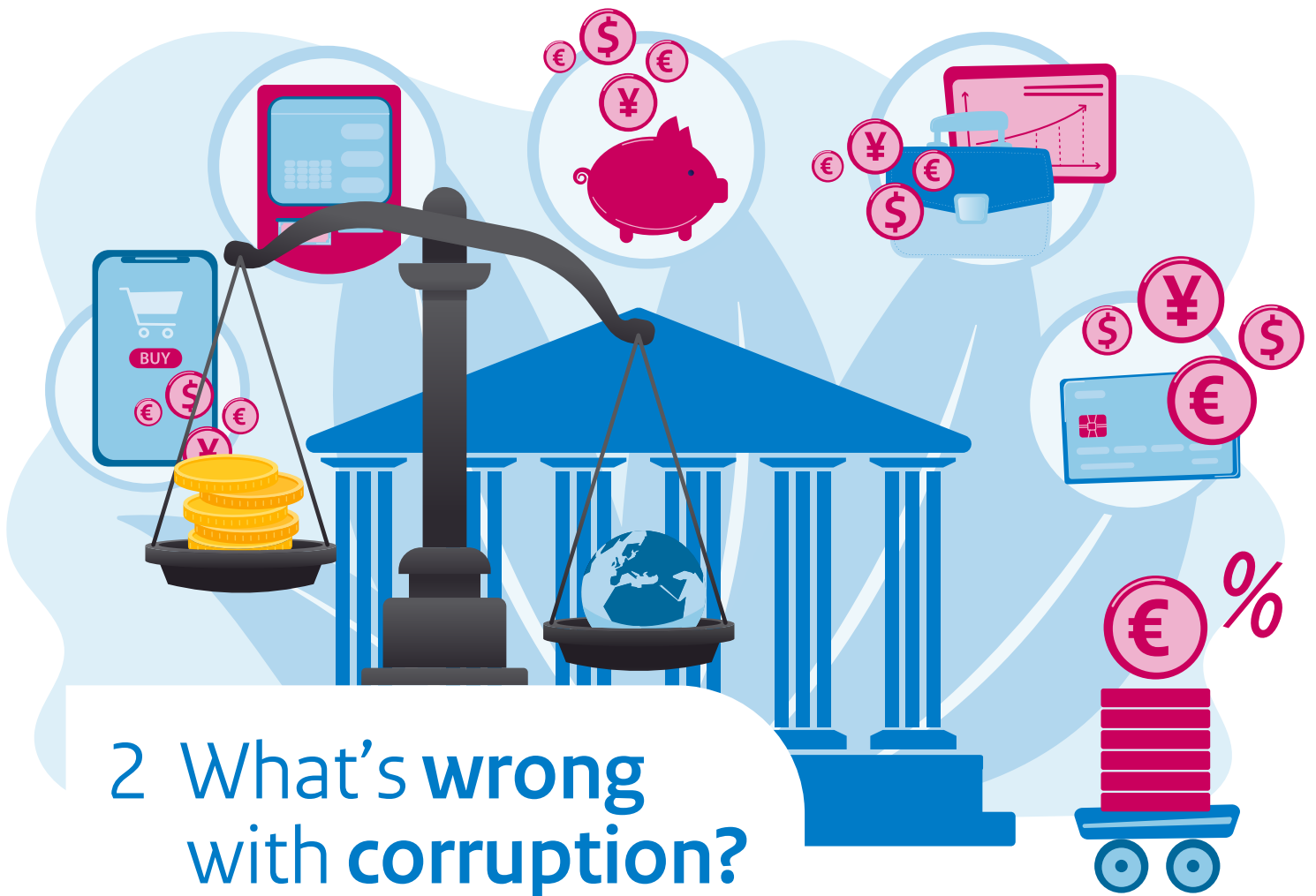
What is **corruption**? What does it include?

This guide refers to both corruption and bribery. 'Corruption' and 'bribery' are often mentioned in the same breath. This guide also refers to both concepts. But what is the difference?

Corruption is an umbrella term that includes every form of the abuse of power for personal gain. Besides bribery this also includes nepotism, trading in influence and extortion. It makes no difference if the recipient or instigator is a public official, politician or private individual. Corruption can also go hand-in-hand with laundering the proceeds of the corrupt practices, forgery and accounting fraud.

Bribery is a common manifestation of corruption. Bribery is prompting someone to act or refrain from acting by offering gifts, services or hospitality or making promises with a view to gaining an unfair business advantage. Facilitation payments are a familiar manifestation of bribery. These are small sums paid to low-level public officials for routine actions, such as arranging customs clearance.

Please note: Legislation is subject to change. This guide was last updated in June 2022.



2 What's wrong with corruption?

Corruption is a very common phenomenon. Research has shown that bribery of foreign public officials – whether at their own instigation or otherwise – is a serious problem. Corruption occurs in developing countries, emerging economies and developed countries.

Corruption threatens the integrity of the market, damages public confidence, increases disparities in income and prosperity, undermines the rule of law and imposes a heavy financial burden on society. Corruption is also a significant source of finance for the waging of war and destabilises societies. Corruption can result in safety regulations being disregarded, with potentially serious consequences. Besides the suffering it causes the people concerned, for businesses it entails the risk of reputational damage, financial loss and prosecution.

Integrity in business dealings and avoiding corrupt practices is part and parcel of responsible business conduct. Bribery can result in heavy fines and lengthy prison sentences, regardless of who initiates it. You should also be aware that business partners can hold you to account for your actions. And banks and auditors have an obligation to report any unusual transactions on the part of their clients.

Practical tips - business dinners

Bear in mind that, in some cultures, it is common for business relationships to be established over several dinners. Always ask yourself whether this is proportionate, and whether it is creating an unequal power relationship or setting up expectations.



3 Bribery abroad and criminal law

Bribery abroad

It is a criminal offence under Dutch law for a Dutch business to bribe public- or private-sector employees in foreign countries.

In many cases this is also an offence under the law of the foreign country. It is prohibited to promise, give or offer gifts or services to foreign officials¹ or private individuals to induce them to behave in a certain way with a view to gaining an advantage.

Kickbacks and payoffs

'Kickbacks' and 'payoffs' are commonly used terms for bribes. Any benefit that someone is offered can be seen as bribery and can therefore constitute a crime. This might include, for example, giving or holding out the prospect of foreign trips, excursions, and expensive lunches or dinners. Both public officials and private individuals collect payoffs worth millions of euros every year. It is important to realise that what starts out small can grow into something bigger. Moreover, it makes no difference how a benefit is 'packaged' or whether it is offered by a third party. Even a donation to a good cause can end up being construed as bribery.

It is therefore a good idea to be acutely aware of how such spending and gestures can be interpreted.

Example 1: Kickbacks and payoffs

You run the office of a multinational in a foreign country and still need to secure a big deal to meet your annual sales target. You prepare a bid for a major contract that you are keen to win. You are approached by an adviser of this potential customer. He offers to disclose the evaluation criteria to you. And he offers to give you information about the bids made by some of your competitors in return for payment.

Another manifestation of bribery is facilitation payments. Paying these small sums to public officials for routine actions is a criminal offence. And what might be a small sum for one person can be very valuable to another. Although the Public Prosecution Service must always weigh up the option of prosecution, there is no exemption in its policy for facilitation payments.

¹ This includes people employed in strictly regulated sectors or at state-owned companies.

You should therefore reject facilitation payments. It is important to have a clear policy on facilitation payments. Ever more businesses are opting for a zero tolerance policy in order to create clarity and to minimise the risk of facilitation payments (for more information see *chapter 4, Reject facilitation payments*).

Example 2: Facilitation payment

Your business has recently started up new operations in a remote area. You are waiting for technical approval for certain goods and you receive an unannounced visit from a local government official from the department responsible. The official makes it clear that the goods will not be approved unless you pay them a 'fee' in cash.

Government official

Bear in mind that the terms 'public official' and 'government official' that are used internationally are broader than the Dutch term *ambtenaar* (public servant). For example, government officials include the employees of state-controlled companies. This means it is quite likely that gifts to such officials in foreign countries will fall under anti-corruption prohibitions.²

Intermediaries

As a business, you are also responsible for the actions of intermediaries you engage, such as representatives and commercial agents. As a result, companies are increasingly requiring intermediaries to adhere to the company's anti-corruption policy or similar procedures. This must not be simply a formality. You must ensure that your intermediaries actually act in line with your policy. Economic reality is important in this regard: who are your intermediaries? Why do you do business through these intermediaries? What are they paid and what do they have to do to earn that payment? Is the payment commensurate with the service provided? How do you check that intermediaries do what they have agreed?

Example 3: Commercial agents

A Dutch company specialising in high-quality technical equipment wants to enter the South American market and is using commercial agents to explore local markets.

The company has conducted brief background checks on the agents. Given the interests at stake, it has decided to pay the agents relatively high commissions.

When management are alerted to instances of bribery a year later, the company carries out an extensive internal investigation. It becomes clear that the agents have passed on a share of their commission to government officials in South America in exchange for access to the market. Some of the Dutch company's senior managers were aware of these bribes, but are no longer with the company. The company reports its findings to the Dutch Public Prosecution Service.

The company could be prosecuted in the Netherlands for bribing foreign public officials. An important factor in this regard is that company's control mechanisms were clearly not effective. Also, some of the company's directors were aware that bribes were being given by the intermediaries. These directors could also be prosecuted. In deciding on the disposal of the case and on the severity of the penalty, the Public Prosecution Service takes account of the fact that the company came forward on its own initiative.

² The term 'public official' is defined in article 1, paragraph 4 (a) of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Bribery is a criminal offence, wherever it takes place

Companies involved in bribery abroad are not only subject to Dutch criminal law. They can also be liable to prosecution in the country where the bribery took place, as well as the country of the giver or receiver of the bribe. The authorities in some countries – the US and the UK in particular – have powers that reach even further (see ‘Important foreign anti-corruption legislation’). Increasingly, authorities in different countries are working together to investigate and prosecute cross-border corruption. If a company comes forward of its own accord and cooperates with an investigation, this – along with all other circumstances – will be taken into account by the Public Prosecution Service when it decides on the disposal of a case and the severity of the penalty to be imposed.

Penalties in the Netherlands

In the Netherlands, a legal person found guilty of bribery can be fined up to €900,000 (a sixth category fine) per offence. The fine can even be up to 10% of the annual turnover from the previous financial year. Natural persons found guilty of involvement in bribery of public officials are liable to a term of imprisonment of up to six years and/or a fine of €90,000.³ The maximum penalty for the bribery of persons who are not public officials is four years’ imprisonment. As an additional penalty, a person may be disqualified from practising their profession. And any financial benefits gained from the payment of a bribe may be regarded as proceeds of crime and be confiscated as a result. It should be remembered that these are the penalties under Dutch law.

Important foreign anti-corruption legislation

Examples of foreign anti-corruption legislation that give authorities far-reaching, cross-border powers include the US Foreign Corrupt Practices Act (FCPA), the UK Bribery Act and France’s Sapin II Act. This means that you, as a Dutch business, may also have to contend with this legislation.

United States

For a long time, the US has been very active in combating cross-border corruption. Bribery abroad has been a criminal offence under the FCPA since 1977.

You should be aware that the US asserts broad jurisdiction. This means that even non-US resident people and businesses can be prosecuted under the FCPA. The FCPA applies to:

- ‘domestic concerns’, i.e. persons who are citizens or residents of the United States or companies that are organised under the laws of the US or headquartered in the US;
- ‘issuers’, i.e. companies that are listed on stock exchanges in the US or that are required to file reports with the US Securities and Exchange Commission;
- any foreign business or entity other than an issuer that engages in an act in furtherance of corrupt payment in the US or that affects US territory.

The use of resources and systems in the US such as payments in US dollars (even if using a dollar account held in the Netherlands) or using the US postal system can be enough to enable prosecution under the FCPA. The sanctions imposed by US law enforcement agencies can be considerable and infringements of the FCPA can result in the imposition of penalties under civil or criminal law, including fines and/or prison sentences. For more information about the FCPA, see:

www.justice.gov/criminal/fraud/fcpa/

Example 4: Criminal liability in the US

An international oil company has its headquarters in Rotterdam and is listed on the stock exchange in the US. A wholly owned subsidiary wants to enter the oil market in an Eastern European country. To do this, they are looking for a local intermediary and they enter into consultations with an ‘offshore’ company.

A local government official with a powerful position in the oil market is the offshore company’s owner and beneficiary, despite having no link with it on paper. For many years, in exchange for help obtaining energy licences, the oil company pays large sums of money to the offshore company.

The authorities launch a criminal investigation into bribery in a foreign country, because the offshore company is suspected of having paid bribes to the government official in exchange for market access. Since the headquarters of the parent company are in Rotterdam, the case can be prosecuted in the Netherlands. However, because the company is also listed on a US stock exchange, the US Department of Justice can also carry out an investigation.

³ Fines are periodically adjusted for inflation.

United Kingdom

The UK Bribery Act came into force in July 2011. It makes bribery of foreign public officials a criminal offence. The definition used is rather broad in this regard. British enforcement agencies can launch investigations and initiate prosecutions if a suspected briber has a 'close connection' to the UK. Examples include having a subsidiary company in the UK or bribery committed by a British national. Companies can also be prosecuted if they neglect to take sufficient measures to prevent bribery. In such cases, they can even be prosecuted for bribery in a different country if they only do business in the UK, but the business is registered elsewhere. Businesses suspected of corruption must be able to prove they had an effective anti-corruption policy in place at the time of the alleged offence. The UK Bribery Act includes the possibility of issuing considerable financial penalties to companies and prison sentences to natural persons.

For more information, see:

<https://www.gov.uk/anti-bribery-policy>.

France

Following the example of the US FCPA and the UK Bribery Act, the Sapin II Act entered into force in France in 2017. It enables the French authorities to prosecute foreign businesses that bribe public officials, even if the businesses' connection with France is only slight. And even if the bribery is not related to the French connection. This Act requires companies, regardless of their turnover or the size of their workforce, to draw up a code of conduct. It thereby magnifies the extraterritorial effect of French anti-corruption law and bolsters mechanisms for the internal reporting of corruption, for example by giving whistleblowers extra protection. It also makes provision for reaching an out-of-court settlement with the French Public Prosecution Service. The enforcement of the Act entails a range of sanctions. More information about the French Sapin II Act is available at:

<https://www.agence-francaise-anticorruption.gouv.fr/fr/document/french-anti-corruption-agency-guidelines>



4 What *can* businesses do to avoid corruption?

The first step is always to comply with the law. It is important that employees are aware of the rules. However, exclusive focus on the rules can create a box-ticking culture. It is therefore essential that companies promote behaviour among all employees that is transparent and grounded in ethical values. This improves their ability to recognise corruption risks and hence do business responsibly and successfully.

Foster a transparent corporate culture

Transparency offers the greatest protection against corruption. So it's vital that employees feel comfortable raising questions and dilemmas with managers and are encouraged to do so. Management should send out a clear message that this is important. This prevents employees from getting involved, secretly or unwittingly, in corruption, such as by paying or receiving bribes. Managers and employees abroad need good advice and guidance, so that they make the right decisions and respond appropriately. And companies need to base their commercial decisions not only on commercial criteria, but also take ethical and legal considerations into account. The corporate culture must contribute to employees' intrinsic motivation to do business honestly.

Establish a code of conduct and a whistleblowing procedure

It is strongly recommended that all businesses have an internal code of conduct. A code of conduct makes it clear what the business stands for and what is expected from staff in terms of honest business practices and transparency. The management should promote this code and lead by example. Some industry associations have codes of conduct that their members can use as templates. Raising awareness is also crucial so that employees observe the code. This can be achieved for example by holding training sessions (possibly externally), organising targeted internal communication campaigns, and taking measures if employees fail to observe the code of conduct.

Businesses and organisations in the Netherlands with 50 employees or more are legally required to have a whistleblowing procedure. This requirement also applies to organisations with fewer than 50 employees in the following sectors: financial services, products and markets, and the



offshore oil and gas industries. In addition, organisations engaged in anti-money laundering and combating the financing of terrorism, as well as those operating in the civil aviation and maritime sectors, also fall under this requirement.

It is advisable to link a procedure of this kind with the code of conduct. For advice on a whistleblowing procedure (or notification procedure) contact The Whistleblowers Centre ([Huis voor klokkenluiders⁴](#)). Employees who suspect abuses or an infringement of EU law, or are aware of violations of, for instance, the company's code of conduct, must be enabled to report them without fear of reprisals. An effective whistleblowing procedure is easy to read and clearly set out. Its design and implementation should inspire confidence. Here too, it is advisable to provide training and information.

Adopt clear internal guidelines and discuss them

Employees benefit from unambiguous guidelines that provide concrete tools to prevent corruption. Adopt clear

definitions of terms like 'corruption' and 'commercial agents' to avoid confusion. Also describe what is permissible in certain countries. It also makes sense to make clear what is not permissible and to give practical examples. The guidelines should be discussed regularly.

Prepare properly when doing business internationally and take stock of risks in relation to your business activities

As an entrepreneur, you need more than just a solid general knowledge of the country where you want to do business. It is important to be aware of its culture, and customs and norms surrounding gifts and hospitality. You should also remember that a custom can also be a criminal offence. The degree to which bribery is a risk to your business will depend on the industry in which you operate, and the degree to which you are reliant on foreign government organisations in your activities. You should also take stock of risks in your supply chain.

You can get ready to do business in a particular country by gathering information (for helpful websites, see

⁴ For the centre's contact details, see page 18.

section 6: Where can I go for advice and useful resources?) or get in touch with your industry association, other businesses, the Netherlands Enterprise Agency (RVO) or the local Dutch embassy.

Be aware that foreign anti-corruption laws with extraterritorial force may apply to your international activities (for more information see *chapter 3: Bribery abroad and criminal law*).

Apply specific controls to reduce corruption risks

Build controls into your financial accounting system (especially cash management) to identify costs related to corruption. Consider for example the extent to which staff are permitted to make cash payments and the amounts they are authorised to pay without needing to involve another colleague. Specific training for bookkeeping staff can be useful. Internal and external audits are also helpful tools in this regard. Unambiguous guidelines for employees are crucial in this regard. This helps ensure they do not unwittingly transgress norms.

Select business partners carefully: know their background and reputation

Corruption often involves business partners who have a relationship with a foreign company and/or close ties with local government authorities. You are responsible for the actions not only of your own staff but also of intermediaries such as representatives and commercial agents. Bribery by intermediaries can result in criminal liability for their client. A criminal investigation will examine whether you knew corruption was happening, whether there were any red flags, and whether you could reasonably have relied upon the integrity of your intermediaries. You can carry out thorough checks of parties you want to do business with by engaging an external service provider with expertise in this field.

Selecting intermediaries requires great care. You may need to conduct due diligence, especially in countries where corruption is endemic. It is important to know an intermediary's reputation and to take any red flags into account when selecting an intermediary, for example an intermediary is the relative of a government official or was a suspect in a corruption case. It is advisable to draw up a list of red flags, either independently or with other businesses. Industry and employers' associations often have model lists that you can use.

The ICC's *Anti-Corruption Third Party Due Diligence: A Guide for Small- and Medium-sized Enterprises* provides practical advice on how to conduct due diligence.

Include clear anti-corruption provisions in contracts and control risks when making agreements

Include anti-corruption provisions in contracts with business partners. The provisions should contain rules and standards that both parties must respect. Audit rights should be included in every contract, so that compliance by contract partners can be monitored and checked. If the agreed rules and standards are not observed, companies can take steps to terminate the contract. It is important to take sufficient time to conclude a contract. Be cautious about making agreements that fall outside the contract. This can entail substantial risks. For example, you may be unwittingly abetting corruption by means of overpricing. This can occur if your business partner asks you to increase the invoice amount and to pay the difference into a separate bank account.

Some governments require foreign businesses to use local services, or local products, as a condition for doing business in their country. These are known as 'local content requirements'. Be aware that local businesses and service providers can abuse local content requirements by channelling money to corrupt government officials or family members. Consider asking a recognised expert, such as a legal adviser or a trusted government body, to help draw up and supervise a contract you intend to conclude.

Reject facilitation payments

Facilitation payments are small sums paid to low-level public officials for routine actions, such as arranging customs clearance or issuing visas and work permits. On this point you should follow the code of conduct drawn up by the International Chamber of Commerce (ICC) for example. The bottom line is: don't make facilitation payments. However, if making such payments cannot be avoided, because of a threatening situation for example, you should take precautions to limit the risks.

In these circumstances it is important to enter facilitation payments transparently and accurately in your accounts. It is therefore advisable, if possible, to get written confirmation that the payment is necessary. This will enable you to highlight the circumstances in which the payment was made if an investigation is subsequently launched against you.

In addition, you should evaluate facilitation payments internally and adopt a strategy to prevent them in the future. Openly discussing facilitation payments within the management team and with external parties can contribute to this process and the organisation's overall transparency.

Finally, it is important to provide training to staff whose work may involve dealing with the issue of facilitation payments or requests for them. It is especially important that they understand exactly what a facilitation payment is. *RESIST - Resisting Extortion and Solicitation in International Transactions* is a tool for employee training produced by the ICC, Transparency International, the World Economic Forum and the United Nations Global Compact.

Raadpleeg ambassades en andere bedrijven voor advies

It is recommended that you consult other businesses for advice about countering corruption abroad. Fellow businesspeople who have already had dealings with the local authorities are the best source of information. They will know how to steer clear of corrupt public officials or convince them that there is no point seeking to solicit bribes from your company⁵. Dutch embassies can help (see section 5a, Help from embassies), for example if you systematically have problems at a particular customs post. In addition, you can obtain advice from RVO (see section 5b, Contact with government bodies in the Netherlands).

Take suitable measures if things do go wrong

In certain difficult situations, it is advisable to ask yourself and your employees the following crucial questions:

- Are you infringing national or international rules or criminal law through your actions?
- Is the transaction consistent with your company's guidelines and code of conduct?
- Are you encouraging illegal activity?
- Could the transaction put your business or your employees in danger in any way?
- Could the transaction harm the business financially or damage its reputation?
- Does anyone profit (directly or indirectly) from the corrupt transaction or are there any victims?
- Are there any better and more ethical alternatives?

If the answer to any of these questions is 'yes' you should get advice and take appropriate measures.

⁵ For more information about cooperating with other companies, see page 16.

Tips *for* preventing corruption



Foster a transparent corporate culture



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Apply specific controls to reduce corruption risks



Select business partners carefully: know their background and reputation



Include clear anti-corruption provisions in contracts and control risks when making agreements



Reject facilitation payments



Get advice from embassies and other businesses



Take suitable measures if things do go wrong



5 How can the government help you?

Doing responsible business abroad

Doing honest business in a socially responsible manner, taking account of the effects of your company's actions on people, the environment and the local community, is increasingly important to your customers, your employees, your suppliers and consumers in general.

Due diligence

The Dutch government is encouraging the private sector to contribute to social and economic development to help make a more sustainable world. The Organisation for Economic Co-operation and Development (OECD) has drawn up Guidelines for Multinational Enterprises. They provide an important framework for businesses to deal with issues like supply chain responsibility, human rights, child labour, the environment and corruption⁶. The Guidelines help businesses carry out due diligence in their operations. Due diligence is an ongoing process that helps companies identify risks, and to prevent them. By applying the OECD Guidelines and carrying out due diligence you can minimise the risks to which your business is exposed. The Guidelines also promote the transparency of your business. This in turn instils confidence in your customers, financiers, shareholders and society at large. Companies that exclude child labour,

corruption and pollution from their supply chains have easier access to financing, may have an advantage in supplying products and services to governments, and are less vulnerable to social pressure (see chapter 6).

RBC support office for businesses

As part of new government policy to promote responsible business conduct (RBC), a support office was set up in September 2022. The support office will provide businesses with information about RBC and help them carry out due diligence in their operations and their value chain. In this way they will be able to learn, for example, about the OECD Guidelines, and get practical support applying RBC in their business processes.

Combating corruption in developing countries

Combating corruption is a priority of Dutch development policy. In addition to taking measures to prevent development aid ending up in the wrong hands, the government supports programmes that address corruption in several partner countries. The government helps these countries to improve their procurement agencies and procedures, and works with the private sector and civil

⁶ VII. Combating corruption <https://www.oecdguidelines.nl/oecd-guidelines/c/combating-corruption>

society to advocate for transparent procurement. The government also helps them simplify regulations and ease the administrative burden, which reduces the risk of corruption.

5a. Help from embassies

Business support

If your business receives requests to act in a corrupt manner, the Dutch embassy can use its contacts with the government to obtain transparency and possibly take action. Embassy staff can for example contact the superiors of the official who asked for a bribe. In special cases embassy staff may accompany the Dutch business's representative to interview the official about the request for a bribe.

In most cases, an official will deny having made such a request because they will be well aware that the embassy staff will report their findings. This duty to report corruption is explained in more detail below.

Information on the country

Embassy staff are well informed about local corruption. They know how best to approach the local authorities, which branches of government are known for corrupt practices and which services or people will offer a good and ethical working relationship. Embassies often have information about the reliability of agents.

Embassies can also inform you about local and Dutch laws, the most common forms of corruption, and local customs regarding gifts and hospitality.

Conversely, it is important for businesses to provide the embassies with information. To ensure that competition is fair, it is important to notify the embassy of actual or attempted bribery, even in cases where no Dutch business or individual is involved. Although the Netherlands itself is not responsible for investigating and prosecuting such cases, the Dutch embassy can decide to inform the embassy of the country where the business is established. They can in turn pass the information on to the criminal justice authorities. If the country does not take any action, the matter can be raised within the OECD. By contacting and consulting the embassy, you can therefore contribute to an honest business culture.

Example 5: Investing in the sustainability of your host country

An international construction firm with a commitment to social responsibility has tendered for a contract to build a transshipment terminal in a large port in a developing country. The call for tenders provided all the technical specifications. A senior official in the regional government promises the company it will be awarded the contract if it transfers \$100,000 to a government fund he manages for slum development in the port area. There is no reference to this in the call for tenders. It sounds really positive to contribute to slum development in this way but this is a major red flag in a contract award procedure. The official would actually appear to be asking for a large bribe, and it is doubtful whether the destination of the \$100,000 will be as stated. The 'investment' in the fund is not related in any way to the contract and unquestionably amounts to a distortion of competition.

Facilitating contact between businesses

It can sometimes be difficult for you as a businessperson to investigate the reliability of potential business partners yourself. Doing background checks can take a lot of time and money. Cooperating with other businesses in this area could help, given that lots of businesses face the same problems. But you should take care to avoid being accused of making agreements that restrict competition. It is advisable to conduct such discussions in the presence of an independent legal adviser, such as a lawyer, since every country has its own rules and policy.

Embassies are obliged to report cases of corruption

The Dutch government makes the provision of government support (including financial support) in international trade and investment activities conditional on compliance with the OECD Guidelines for Multinational Enterprises, including combating bribery, bribe solicitation and extortion.

This applies, for example, to participation in trade missions, RVO grants, financing from Invest International, and export credit insurance from Atradius Dutch State Business. Businesses are requested to endorse the OECD Guidelines. Failure to comply with the Guidelines may ultimately result in government support being withdrawn or funds being claimed back.

If embassy staff suspect that foreign public officials are being bribed by Dutch citizens or businesses, they are obliged by law to pass on their suspicions to the Integrity Reporting Office of the Ministry of Foreign Affairs. In the event there are clear indications that a criminal offence has been committed, the Ministry of Foreign Affairs will lodge a criminal complaint with the Public Prosecution Service directly. Fear of prosecution can deter businesses from seeking support or assistance in combating corruption. It is important to remember that the obligation to report corruption only applies to corruption that has actually taken place. It is of course always possible to seek preventive advice.

Who can you call?

If you call an embassy, ask for a member of staff from the economic section.

5b. Contact with government bodies in the Netherlands

Public Prosecution Service and the Fiscal Information and Investigation Service's (FIOD) Anti-Corruption Centre (ACC)

It can be useful to contact the Fiscal Information and Investigation Service's (FIOD) Anti-Corruption Centre (ACC) or the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation.⁷ These bodies can say whether certain actions could be considered to constitute corruption.

You can also pass on information about the following issues to the Public Prosecution Service or the FIOD/ACC:

- the payment of bribes to foreign public officials by a Dutch company; or
- the payment of bribes to a foreign company or the employee of a foreign company by a Dutch company; or
- the payment of bribes by companies that are not registered in the Netherlands.

The national corruption officer will pass the information on to the authorities in the country in which the business is located and/or to the authorities in the country of the bribed official so that the case can be investigated and prosecuted. Such reports are very important because they help the authorities to identify and combat corruption.

If you wish to report an instance of corruption to the FIOD directly, contact its Anti-Corruption Centre at FIOD.ACC@belastingdienst.nl. Be aware that this will entail disclosing your name or that of your company.

If you wish to discuss a case or report an instance of corruption to the FIOD without your name or that of your company appearing in the case file, contact the human intelligence section of the FIOD's Criminal Intelligence Team on +31 88 155 1661 (available 24/7).

This team is specifically authorised and trained to deal with corruption cases, whether involving public officials or otherwise. The following link provides more information about how the team works: <https://www.fiod.nl/criminal-intelligence-team-tci/>.

Example 6: The local consultant

A successful entrepreneur wants to expand his operations into the Middle East and contacts the local authority in a large port city.

They advise him to engage a consultant from company X, who will deal with all the licences and fees for \$1,200 a day. The entrepreneur has heard from other businesses that arranging the necessary licences could take months, so engaging a consultant seems like a good idea. A month goes by and he receives the first two licences and an invoice. The consultant has charged not only the daily fee for two weeks' work but also \$55,000 in vaguely defined expenses. The entrepreneur assumes he will have no difficulty recouping the costs now that he can get down to work without delay, so he pays the invoice.

The entrepreneur is now criminally liable because the licences have clearly been issued unusually quickly and the cost is disproportionately high for a licence. Furthermore, the entrepreneur deliberately refrained from asking any questions. Issuing licences unusually quickly, as in this example, is a major red flag.

⁷ <https://www.om.nl/onderwerpen/corruptie/aanpak-corruptie>

Netherlands Enterprise Agency (RVO)

The Netherlands Enterprise Agency (RVO) provides support to Dutch companies that do business internationally in the form of financial and other programmes and instruments. It also promotes responsible business conduct by making its assistance conditional

on compliance with the OECD Guidelines for Multinational Enterprises. And by providing information and advice, and setting specific assessment requirements for businesses and projects. RVO instruments are also available that help you tackle risks in your value chain directly.

The website www.rvo.nl features information on many countries worldwide, including their markets, legislation and potential growth sectors. It also presents general information on corruption.

The Whistleblowers Centre

Since the Whistleblowers Centre Act came into effect in July 2016, all Dutch companies and organisations with 50 employees or more are obliged to have a whistleblowing procedure in place. This requirement also applies to organisations with fewer than 50 employees in the following sectors: financial services, products and markets, and the offshore oil and gas industries. In addition, organisations engaged in anti-money laundering and combating the financing of terrorism, as well as those operating in the civil aviation and maritime sectors, also fall under this requirement. The Whistleblowers Centre can give advice to people who suspect wrongdoing or infringements of European Union law at their place of work. It can also investigate their suspicions, and any unfair treatment they have received from their employer because of their whistleblowing. Employers can get support and advice from the Whistleblowers Centre in promoting integrity and devising a strong integrity policy.



6 Where can I go for advice and useful resources?

International Chamber of Commerce

The International Chamber of Commerce (ICC) is the world's largest business organisation. It represents the private sector in initiatives to combat corruption, including those of the OECD and the UN.

ICC's main objective in the fight against corruption is to encourage self-regulation in the private sector to prevent bribery and corruption. ICC denounces corruption and develops resources and measures to combat it.

These include:

- **ICC Rules on Combating Corruption.** Guidance for businesses drawing up their anti-corruption policies.
- **ICC Guidelines on Gifts and Hospitality.** Guidelines on what is and what is not permissible with regard to offering or receiving gifts and hospitality.
- **ICC Guidelines on Agents, Intermediaries and Other Third Parties.** Guidelines to help companies avoid becoming involved in bribery through third parties.
- **ICC Anti-Corruption Clause.** A clause that can be included in a contract, whereby all parties commit to complying with ICC Rules on Combating Corruption.
- **ICC Guidelines on Whistleblowing.** Guidelines to help businesses establish and implement a whistleblowing management system.
- **Resisting Extortion and Solicitation in International Transactions (RESIST).** Training resources with real-life scenarios for employees and managers.
- **ICC Anti-Corruption Third Party Due Diligence for SMEs.**

Practical advice on how to cost-effectively conduct due diligence on intermediaries.

For more resources, see the ICC Netherlands website: <https://www.icc.nl/cr-anti-corruptie/>

Industry associations

Industry associations are excellent sources of practical advice for Dutch businesses. They understand the problems in their sectors better than anyone else. If they do not have specific information on combating corruption, you can raise the matter with them so that they can take action. For more information, contact the Confederation of Netherlands Industry and Employers and the Royal Association MKB-Nederland.

Transparency International

Transparency International (TI) is a civil society organisation whose mission is to promote integrity, transparency and accountable governance to stop corruption across the globe. TI has published **Business Principles for Countering Bribery**, which offer businesses a framework for developing anti-bribery programmes. Each year TI publishes the **Corruption Perception Index**, which charts the perception of public sector corruption in over 160 countries. TI also has a Dutch chapter, **Transparency International Nederland (TI-NL)**, which counts both businesses and individuals among its members. For more information, see: <https://www.transparency.nl/>

MVO Nederland

MVO Nederland is an organisation for businesses in the 'new economy'. Specifically in the area of [responsible business conduct](#), it supports businesses that buy and sell abroad. They facilitate practical support by means of tools like the [CSR Risk Check](#). This risk tool provides insight into the risks a business might face in its supply chain in a specific country. It also gives an indication of corruption risks in the supply chain and recommendations on how to deal with them. For more information, see: <https://www.mvonderland.nl/>

United Nations Global Compact

The Global Compact is a United Nations initiative supported by the Netherlands that works to promote social and environmental principles worldwide. It is joined in this effort by a network of thousands of businesses and organisations. One of its main priorities is the fight against corruption. For more information, see: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-10>

OECD

The Organisation for Economic Co-Operation and Development's (OECD) activities span a wide area. The OECD Guidelines for Multinational Enterprises provide a voluntary framework to help businesses deal with issues like supply chain responsibility, human rights, child labour and the environment. They also address the fight against corruption. By adhering to the OECD Guidelines you can minimise the risks to which your business is exposed. Compliance with the Guidelines also promotes the transparency of your business. This in turn instils confidence in your customers, financiers, shareholders and society at large. The OECD Guidelines are recommendations by governments to international businesses regarding corporate responsibility.

All countries that have signed the OECD Anti-Bribery Convention are required to implement its provisions at national level, including making bribery a criminal offence. Corruption is a criminal offence under Dutch law, even if the acts of corruption take place abroad. By acting in accordance with the Anti-Bribery Convention, you can help to improve the investment climate in the country where you do business and significantly reduce the risk of coming into contact with the criminal justice authorities.

The National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) deals with specific instances of alleged non-observance of the OECD Guidelines and educates companies about applying them. The government expects businesses operating internationally to use the OECD Guidelines as the point of reference for their international activities. By applying the OECD Guidelines your business will also help towards

the achievement of the Sustainable Development Goals. For more information, see: <https://www.oecd.org/corruption-integrity/>

World Bank

The World Bank's website includes a standard anti-bribery code. You can also find specific country information, examples of how to deal with corruption, and information on the form and extent of the problem and reporting options. There is also a blacklist of corrupt businesses and individuals that are debarred from tendering for World Bank contracts. For more information see: <http://www.worldbank.org/en/topic/governance/brief/anti-corruption>

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