How to prevent corruption?

Useful recommendations and information for Hungarian businesspersons

This brochure was prepared by the Swiss Contribution Office in cooperation with Budapest Corvinus University and Transparency International Hungary

Second, revised edition, 2010
« Corruption is a real problem for many Hungarian companies. »
In the framework of the Swiss-Hungarian Cooperation Program the Swiss Federal Council and the Hungarian Government undertook to ensure transparency and openness on every level of the implementation of the program. This social cooperation lasts from the selection of applications to the successful implementation of the projects. The National Development Agency, the institution responsible for the coordination of the program, has undertaken – as in the course of the distribution of other funds as well – to meet all these obligations.

With the help of several legal means we guarantee that the projects, programmes are duly and transparently implemented and also that the different layers of the society are involved in the applications procedures more and more frequently. This is ensured by public consultations and the participation in the evaluation committees. Our objective – through simplifying and making the procedures clearer - is to combat transparency, as aimed at by several other countries as well.

We hope that with the present publication we give a solid assistance to those who would like to support the economic and social development of the country, utilising the available funds without corrupt practices, in a most efficient and transparent way.

Balázs Simó
Head of Department
Managing Authorities of International Cooperation Programmes
The Swiss Contribution is a government financed program that aims at reducing economic and social disparities in Hungary and between Hungary and the European Union. Spending tax payer’s money entails a great responsibility. Various measures have been agreed between the National Development Agency of Hungary (NDA) and the Swiss Authorities to ensure the correct and transparent use of the funds (see last chapter). The focus of this brochure – addressed to the business sector in Hungary including its interaction with the public sector – is on corruption prevention. It aims to raise awareness about rights and obligations of involved actors. This is the second electronic edition in English with up-dates following the changes in the legal situation in Hungary. It is our contribution to the important efforts aiming at enhancing the efficiency and transparency of the business transactions.

Liliana de Sá Kirchknopf
Head of the Swiss Contribution Office
Embassy of Switzerland

Acknowledgements:

The first edition of the brochure (2009) was a joint project of the Swiss Contribution Office (SCO) at the Swiss Embassy to Hungary and the Corvinus University of Budapest. The content and layout is based on the original version “Preventing corruption – Information for Swiss businesses operating abroad”, a brochure by the State Secretariat of Economic Affairs (SECO), Switzerland (second revised edition, 2008). The Hungarian version of the brochure was prepared by PhD student Szabolcs Varga, under the leadership of prof. Zoltán Szántó, Director of the Institute of Sociology and Social Policy, Corvinus University. Transparency International Hungary kindly reviewed the content of the brochure and the printing was financed by the SCO. The content of the second edition was up-dated by Petra Burai and on behalf of Transparency International Hungary, Tamás Szügeti and it contains an up-dated foreword from the National Development Agency which also financed the printing of this edition. All the rights are maintained for SCO and the information contained hereby can only be published with its prior approval. The pictures originate from free sources and are not protected by copyrights.
At the same time, the community has agreed on a wide range of further measures to improve prevention, detection, and sanctioning of corruption. In the so-called country evaluations, individual states are monitored as to how they comply with their international commitments and where additional efforts are necessary. Thus the aim is to create a level playing field in relation to corruption for companies operating internationally.

This also applies to Hungary. Whoever bribes an official at home or abroad, or bribes a private person in a business context, commits an act that is a criminal offence in Hungary. Companies as well as private persons can be liable to prosecution.

In business, besides legal operation, there are other important aspects. Even an action that is considered legal may bring a company into disrepute. It may be that advantages granted to persons abroad contravene the rules and regulations of another state. Or they may be viewed as unethical in the public opinion.

**Introduction**

**Why this brochure?**

This brochure gives an overview of the problem of corruption in local and international business transactions and helps you apply the relevant local legal regulations. Case studies are used to illustrate concrete situations and assess their legal ramifications. The brochure highlights the impacts of corruption on your business and proposes possible measures to prevent and actively combat corrupt practices.

Corruption is a real problem for several Hungarian companies. In local and international markets companies are under pressure: competition is stiff, the order situation tough, the margins tight. On the top of it the legal situation, conventions and political circumstances in a foreign country are sometimes quite elusive.

For a company, much can depend on whether a particular contract can be awarded, a license is granted, or a product can be marketed in good time. Influential people may offer to help you accordingly. You might know of competitors who promote their businesses with gifts or disguised payments – who bribe. What do you do?

In order to make the right decisions in such circumstances, you, as a company representative, must be able to adequately assess the consequences of your actions. It is particularly important that you be committed for a clear and transparent operation.

**Strengthening the fight against corruption**

The fight against corruption has been intensified substantially on national and international levels over the last few years. The international community has committed itself in a number of international treaties to establish corrupt practices at home and abroad as criminal offences.

At the same time, the community has agreed on a wide range of further measures to improve prevention, detection, and sanctioning of corruption. In the so-called country evaluations, individual states are monitored as to how they comply with their international commitments and where additional efforts are necessary. Thus the aim is to create a level playing field in relation to corruption for companies operating internationally.

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1 This publication was prepared by Szabolics Verga based on the brochure „Preventing corruption – Information for Swiss businesses operating abroad“ issued by the Swiss State Secretariat for Economic Affairs (SECO) in 2008.
Corruption means any abuse of a position of trust in order to gain an undue advantage. This involves the conduct of both sides: that of the person who abuses his position of trust as well as that of the person who seeks to gain an undue advantage by this abuse.

At the same time, as many studies underline\(^2\), the actors in the business life do not find it difficult to define corruption. It shows that they deal with this phenomenon and that this expression is part of their business vocabulary. The interviewed businessmen – just as an illustration – have defined corruption as follows:

- “non-business part of a business transaction when the partner should be won in a non-business way”;
- “to make interests accepted through illegal means”;
- “to get undue advantage”.

In addition corruption can be defined as a moral category, in an ethical way, using a wider range of definition: in this case also that phenomenon is regarded as corruption which is not sanctioned by law, but which is publicly disapproved. For some people corruption is a legal category, while others think that it varies in a given social-cultural environment, adding that corruption is defined differently by different countries and societies.

Those who apply the network approach, interpret corruption as a kind of personal intertwining. Based on this approach those engaged in corrupt practices would like to get certain advantage by going around the rules. Most of those interviewed during the research considered corruption the following: intermediation, securing a business with payment, unofficial, personal payment by the seller to the buyer or providing political, organizational insider information. While some clearly link corruption with financial advantages, others do not link it expressly to money, but by all means consider it a phenomenon materialized as a financial favor. There are also persons who think that family holidays received as a gift or lunch, dinner invitations qualify as corrupt practices.

We can say that this is an extremely varied, complex phenomenon appearing in numerous forms that cannot be connected to concrete situations, persons or fields. However, it is particularly prevalent in certain kind of transactions (for example, when awarding public contracts), in certain economic sectors (for example, in extractive industries), and in certain countries (see the annual indices of Transparency International\(^3\)). This brochure does not only focus on these typical fields, situations and mechanisms but intends to assist in general in preventing and combating corruption.

\(^2\) One of the most recent is: Corruption Risks in the Business Sector; National Integrity System Country Study (Part Two). Transparency International Hungary, Budapest, Nyitott Könyvműhely, 2008. The study is based on the results of the research work undertaken by the Corruption Research Center of the Budapest Corvinus University in 2008. Co-authors are Noémi Alexa, Rita Bárán, Zoltán Sabri and István János Tóth, http://www.transparency.hu/files/g/206/4148910138.pdf

\(^3\) Transparency International is an international non-governmental organization aiming at fighting corruption, creating clear and accountable conditions in the utilization of public funds. It focuses on research, drafting guidelines and cooperating with the business and governmental sectors, the civil society, international organizations and other important actors in the fight against corruption. Transparency International Hungary aims at tracking down local corruption problems, recommending solutions, assisting in preventing corruption, establishing transparency and accountability in the public procurement and at improving the accessibility of public information.
Corruption means any abuse of a position of trust in order to gain an undue advantage.

For a long time and almost everywhere, the fight against corruption was restricted to domestic occurrences. The bribery of public officials and private persons abroad was either ignored or considered a necessary evil allowing to hold one’s own against competition. The opening up and liberalisation of markets as well as public pressure have changed this perception. Internationally, the combat against corruption has consistently gained importance in recent years.

Corruption gives rise to substantial economic and social costs. It thus needs to be fought worldwide, in spite of differences in cultures and traditions. The most important reasons are as follows:

Social and political reasons
- In many countries corruption is one of the primary obstacles to development.
- Corruption distorts access to public services, leads to unlawful enrichment of individuals and causes tension in the social structure.

Economic and business reasons
- Corruption undermines the rule of law and provides fertile ground for organized crime.
- Corruption weakens trust in public institutions and puts the principles of democracy at risk.
- In general it has a demoralizing impact on youth, but in reality it affects the whole society.
- Corruption leads to increasing prices and squandering of public and private resources.
- Corruption shakes the confidence of investors and in the long run results in capital investments being transacted elsewhere.
- Corruption impedes transparency in economic procedures and distorts competition.

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Why fight corruption?
The company that bribes a public official or private person commits a criminal offence that is punishable. If the corruption takes place abroad, you have to be aware, that certain governments and international organisations, such as the World Bank, publish lists of companies that have been found guilty of corruption. Access to public services and international projects may be denied to these companies.

Under certain circumstances, a company that has paid bribes can also be subjected to a civil action, brought about, for example, by a competitor who has lost a bid.

The reputation of a company can be seriously damaged in the eyes of investors, business partners, and the public at large if it becomes known that the company committed an act of corruption. It takes years to build up a good reputation, but it may take only one corruption scandal to ruin it quickly.

- A company that corrupts others encourages distrust and unethical conduct within its own ranks. Whoever tolerates corruption in his own company, or even condones it, fosters a climate in which other offences also thrive.

- Once a company makes a corrupt payment, it lays itself open to blackmail by those who know about it.

Legal environment

The Law no LVII of 1996 on unfair market approach and the prohibition of restricted competition contains regulations on anti-trust and competition which are of primary importance in the business sector in Hungary. The Law on Competition ensures an appropriate system of instruments (reviews without prior notice, high penalties, law enforcement for private persons and since 2003 the policy of compliance) to fight against cartelling enterprises. As a result of the modified law, the company managers are criminally liable if it is proved that their company has made anti-competition agreements.

The most important legal sources of the regulations on banking and against money laundering are the law no CXII of 1996 on credit institutions and financial enterprises, the law no CXX. of 2001 on capital market and the law no XV of 2003 on the prevention of money laundering (law on money laundering). The law on money laundering was overall modified when in July 2001 Hungary was put on the “black list” of the Financial Action Task Force (FATF), operating along with OECD, i.e. a list of countries and areas not cooperating in the field of money laundering. This modification solved the deficiencies claimed by FATF and harmonized the law on the prevention of money laundering with the relevant EU guidelines. As a result of the modification new professions, e.g. lawyers, public notaries as listed in the guidelines have been also included into the law on preventing money laundering.

The Law no IV of 1978 on Criminal Code regulates criminal acts against a clean public life and economic criminal acts. In case of bribery and abuse of influence both the active and the passive party is sanctioned. Corruptive international relations are also pursued under criminal law.

Criminal liability

The Hungarian laws and regulations curbing corruption have been continuously improved since the transition and today – in general – they meet international requirements. The anti-corruption programmes were initiated

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by the government partly due to international pressure. Hungary joined several anti-corruption programmes and signed many international contracts and treaties against corruption.\(^5\)

The international pressure had an impact on the modification of the law on financial institutions, resulting in FATF removing Hungary from the list of countries not cooperating in the fight against corruption in 2002.

Nevertheless and maybe due to the wide interpretation of this phenomenon, „corruption“ per se does not exist in the Hungarian legal regulations. However, the Criminal Code identifies different types of illegal acts that can be clearly related to corruption. They are among others bribery, abuse of official position, trafficking with influence, the pursuit of the person making public announcement, acquiring undue economic advantage, insider trade, agreement on restricting competition in public procurement and concession procedures or bribery and abuse of official position in international relation.\(^6\)

In such cases of corruption – depending on the type of the criminal act – the individuals at fault can be sentenced to prison for a term of up to ten years. However, there is an important note in the Criminal Code saying that e.g. in case of bribery „the offender cannot be punished, if he announces this to the authorities before it is found out and hands over the accepted undue financial advantage or its counter value and unveils the circumstances of the act“.\(^7\)

\(^5\) Among these the most important are: the UN Anti-corruption Agreement signed in Merida on 10 December 2003, the Civil Law Agreement on Corruption by the European Council signed in Strasbourg on 4 November 1999, the Criminal Law Agreement on Corruption by the European Council signed in Strasbourg on 27 January, 1999 and the UN Agreement against international organised crime signed in Palermo on 14 December 2000. Hungary also signed the OECD Agreement on the fight against the bribery of foreign officials accepted in Paris on 21 November 1997, the Agreement on money laundering, the searching and confiscating of goods originating from crimes signed in Strasbourg on 8 November, 1990 and the Agreement on the mutual criminal law assistance among the EU member countries, signed on 29 May, 2000.

\(^6\) The relevant paragraphs of the Criminal Code: 225. §, 250-257. §, 258/A-258/B. §, 274-276. §, 288-290. §, 296/B. §, 298/A. §, 303-303/C. §, 310-310/A. §, 317-320. §, 351. §, 359. §. It is to be noted that in Hungary only those criminal acts are considered corruptive that violate the transparency of public actions (chapter XV, title VII – bribery, abuse of influence).

\(^7\) Criminal Code 255/A. §
Case study – Test yourself by assessing the situation!

Using the following illustrative cases, you can test and deepen your understanding of the issue. See if you can assess the various situations and weigh up the consequences.

Case study

As a result of efforts taken in previous years — among others the reduction of company registration costs, less documents have to be handed in to the court of registration — the company formation has become a simpler procedure in Hungary, more transparent, fast, and less effected by corruption. It may happen, however, that you want to establish a company in a country where this is a more complex and lengthier procedure and where the threat of corruption is higher.

Establishing a company abroad

Your company wants to strengthen its presence in Country X. To this end, the management has decided to set up a subsidiary in Country X. Your inquiries indicate that the process of setting up a company there is rather complicated and can take more than a year.

1.

Your goal for the subsidiary is to start operations as soon as possible. According to reports, other foreign companies have been successful in being entered in the company register within a few weeks without fulfilling all the statutory requirements. It is irrelevant whether money actually changes hands — the offer of promise alone is sufficient — or whether the government office has been bribed by other companies.

An „undue advantage” is being offered for an unlawful transaction by an official: the registration of a subsidiary without fulfilling all the statutory requirements. It is irrelevant whether money actually changes hands — the offer of promise alone is sufficient — or whether the government office has been bribed by other companies. This is a case of (active) bribery of a foreign public official and as such is a criminal offence.
2. Would the legal situation be evaluated differently if the payment were not offered by your company, but by the government agency?

The „undue advantage“ can be of any kind. This can include, for example, a valuable object as a gift or an excessive fee for a service that has been performed.

Granting an advantage to a third party is specifically mentioned in the law as a variety of bribery.

If your company responds to the request of the government agency, this likewise amounts to the offence of bribery of a foreign public official.

3. Would the legal situation be evaluated differently if the payment were not offered by your company, but by the government agency?

4. Would the legal situation be judged differently if your project leader himself did not contact the government agency directly, but rather commissioned a „local agent“ to take care of the registration of your subsidiary within a few weeks in return for a certain amount?

The „local agent“ who is not part of your organization, is supposed to attempt to induce the government office to perform an official act contrary to duty. You are jointly responsible.

5. Would the legal situation be judged differently if you did not want to set up a subsidiary in Country X for the time being, yet with a view to an eventual future need, you instruct your local representative to present an expensive gift each year to the head of the government agency?

Such an annual gift is likely to be an „undue advantage“. The question here is whether there is sufficient connection between the benefit granted and a future official act. Dependant on that, the granting of advantages may be punishable under the laws of Country X.
Licensing

Your company needs a certain license to ensure its smooth operation in the future. In order to obtain the necessary license you go to the relevant authorities.

1. During the licensing procedure it turns out that the relevant authorities claim that certain conditions shall be fulfilled to receive the license, e.g. “extra services” should be undertaken such as the preparation of an impact study. However, the authority requests that the impact study should be prepared by a certain company and you undertake to commission this company or expert. In this case it is about a corruptive act serving the private interests of the licence granter which, under Hungarian law, is considered to be bribery.

2. For long months your company has undertaken all the necessary steps to obtain all the licenses in the proper way. The granting of the license is a formality only, although it is particularly time-consuming. The responsible authorities and offices are overburdened and a delay of several more weeks is expected. To speed up the process, you send money or a dinner invitation to the administrator of the responsible authority. Here the expedition of an official procedure is purchased. The preferential timing disadvantages other applicants directly, because their applications remain waiting and as a result they may suffer losses. On the other hand, even if you pay just a little money to a public official to carry out a task which would have been his job anyway, this is to be regarded as a compensation to smooth the procedure.
Assistance programs

A local municipality decides to apply for development funds, but they are facing liquidity problems at the same time. In order to acquire these funds the municipality submits its application with the assistance of a certain company.

1. Knowing that this municipality cannot provide the own funds for the application, neither have they the necessary capacities to prepare the application, you offer your help to solve this problem in exchange that your company would be contracted to do the job.

Here the procedure is driven by your business target, so that your company can sell its own product or services or trade others. You create a demand for these products or services by knowing the possible project applications. This way, however, there is no guarantee that the municipality will spend its funds where the community would really need it. So in this case the public matters are decided based on private business aspects. This form of pre-financing goes against the principles of fair competition and as such it is classified as punishable.

2. Would the legal situation be judged differently if you, as a representative of your company offer to carry out tasks, in exchange for pre-financing, which the municipality would need anyway?

An offer of this kind is also considered as an anti-competitive approach and it goes against the principle of Competition Law saying that it is forbidden to violate the cleaness of competition – with special regard to tenders and applications – in any way. Nevertheless, it cannot be expressly clarified that the given settlement would really need that product or service which is offered by the company in question in the form of pre-financing. This kind of approach delays the development of enterprises and has, by all means, a price rising effect.

Based on Para 7 of Law LVII of 1996 on the prohibition of unfair market approach and the limitation of competition.
Controls

During its lifetime, a company is subject to numerous reviews and controls carried out by, among others, the Tax Authorities (APEH), the National Public Health Institute (ÁNTSZ), the Consumer Protection Inspectorate, the Hungarian Commercial Licensing Office as well as the National Labour Protection and Employment Inspectorate. These reviews mainly aim at checking whether the companies have fulfilled their legal obligations as declared by relevant laws and regulations. However, given the nature of these situations, they may be susceptible to provoke corruption cases. Your company is being reviewed by a certain authority and it turns out that the legal requirements were not kept.

1. Due to deficiencies found by the review you can expect that your company will be seriously fined, its operational license will be suspended or withdrawn. You want to avoid being sanctioned or at least, to suffer minimum losses. You are informed that other companies which also violated or did not keep certain requirements, could avoid penalization because they had paid a certain sum to the representative of the authorities. As a consequence, in order to avoid being sanctioned, you “make an offer” to the authority.

In this case you, as a representative of your company, give or promise undue advantage in connection with the work of an official person, and this is a criminal act and as such is to be penalized in accordance with the law. The bribing person might as well be sanctioned to a prison term, if he gives or promises this advantage in exchange for this official violating his official obligations, exceeding his competence or abusing his power.

2. Would the legal situation be judged differently if you, as a representative of your company, in connection with the bookkeeping problems found by the official review, say that the financial data of the previous financial period will be recalculated and then declare that based on the corrected figures, the company has broken even or become loss-making.

With regard to a mistake of this type, the proceeding authority – in this case the APEH – will consider whether the communicated data are real or the result of “creative booking”, only. If they think that it is rather the latter, they can initiate a tax review. During the review the best scenario is if the book-keeping records, documents, invoices and declarations are found in a proper state. During the review the tax authority may state a tax deficit as well. In addition, if they find invalid documents, such as fictitious invoices, bills, expenses not covering economic transactions, they can officially initiate a criminal law procedure. If the violation (or criminal act) is proven, a term of prison can be imposed.
Corruption is one of the most challenging problems for Hungarian companies operating in Hungary or abroad. Depending on the sector or country, it is more or less likely that you or your competitors will be exposed to corruption in some way. Don’t allow yourself to be unpleasantly surprised! Especially as a member of management, it is your responsibility to be adequately informed and to react appropriately. This is the only way for you to counter the risk of corruption effectively.

Be informed!

Every anti-corruption strategy begins with collecting information. Find out what corruption is about, where it arises and in what forms, what the risks are, and what you personally can do about it. Timely knowledge can keep you out of trouble.

In advance

Corruption can vary quite considerably. It will depend on how large your company is, how it is structured, and the countries and sectors in which it operates. For a smaller company, where all matters end up on the manager’s desk, a far simpler set of policies will suffice than for a multinational enterprise with thousands of employees working in many different locations.

The following points should be taken into account in the development of an anti-corruption strategy. Various organizations offer specific suggestions in this respect, such as the International Chamber of Commerce’s (ICC) Corporate Practices Manual, Transparency International and the Internet portal www.business-anti-corruption.com.

Take appropriate measures!

In certain markets and business sectors, it can be especially difficult to stay away from corrupt practices. It is therefore all the more important to recognize the risks in advance and to take appropriate precautions.

The form and range of measures against corruption can vary quite considerably. It will depend on how large your company is, how it is structured, and the countries and sectors in which it operates. For a smaller company, where all matters end up on the manager’s desk, a far simpler set of policies will suffice than for a multinational enterprise with thousands of employees working in many different locations.

What can you do against corruption?

« Do not let yourself to be unpleasantly surprised! »
Organisational measures

- Ensure transparent business processes. Document and keep records of procedures and archive them.
- Ensure that every employee’s competencies are clearly specified in his job description.
- Identify activities and jobs that are especially at risk in relation to corruption. By applying the principle of dual control and by requiring the counter-signature of commitments the risks can be reduced.
- Add an “integrity clause” to your contracts.

Measures relating to staff and management

- Make your employees aware of the problems and consequences of corruption.
- Provide special training to employees who are particularly exposed. Job rotation can reduce the risk of corruption.
- Draw up and distribute a checklist compiling typical clues for corrupt activities.
- Set up a reporting mechanism that enables employees to report sources of problems or suspicions of corruption without taking the risk of reprisal and from which they can receive further information.
- Pay your employees appropriate salaries.

Supervisory measures

- The best intentions are of little use if they are not properly implemented and supervised. Check on compliance with directives as well as contractual and accounting provisions by conducting regular inspections and random tests.
- Regularly test your employees’ level of knowledge to identify areas of weakness.
- Evaluate problems that arise and any incidences of bribery in a systematic manner and make revisions where necessary. Compile a collection of examples for successful problem solving (best practices).

What can you do as an employee if you see a corruptive activity in your surroundings? 9

The Act on the Protection of Fair Procedures entered into force on 1 April 2010 with the aim of providing effective protection for employees submitting information about breaches of public interest 10. Upon the order of procedure set up by the act reports shall be first submitted to the employer, who has to conduct an investigation suitably.

If you experience a corruptive act in your surrounding, report it to your supervisor and he/she as a competent person will take the appropriate measures. It can also happen that you cannot turn to your direct supervisors. In this case you can report the activity to several organizations.

According to the Act on the Protection of Fair Procedure if the employee suffers detrimental effects because of his report, he can turn to the Office in charge or any authority with competence on the matter. However, the report does not mean exemption from other legal obligations of turning to criminal authorities or taking different measures. During the investigation protection is provided, if the employee had suffered detrimental consequences beforehand or it is likely that he is going to. Upon his request legal advice, representation and financial support is offered, the latter depends on the decision of the investigating Office. The employee might also be awarded, if the investigation conducted establishes that the organization concerned has breached the requirements on fair procedure.

You might also turn for help to the National Justice Office, the central unit of which is the Central Justice Office (acting nation wide) and its field organizational units are the county or municipal justice offices. Beyond their official functions the employees of these


10 Act No. CLXVIII of 2009 on the protection of fair procedure and its related amendments to acts. As to the closing date of the brochure it has not been clarified which organization is responsible for acting in case of breaches of fair procedure and protection of reporters.
justice offices serve as helpdesk and give advice in simpler cases to those interested for free of charge. The Office also operates a legal assistance service.

In accordance with Law XIX of 1998 on Criminal Procedure (Be), anybody can report a criminal act; however, in case non-reporting is considered to be a criminal act, reporting is obligatory for everybody. The corruption cases shall be primarily reported to the police, since these acts are regarded as criminal acts. The police then shall take the appropriate steps. In case of certain corruptive acts e.g.: bribery by senior officials, or non-reporting of bribery or the abuse of position, the prosecution will do the investigation (Be Para 29, d). The Customs Office (VPOP) shall investigate misuses of taxes, commissions or budget support or cases of money laundering (Be Para 36 § (2) c). If corruption has been committed by members or colleagues of these institutions, the information shall be forwarded to the Protection Service of Police Organs, whose competence is to check the police, the Directorate of Disaster Prevention, the VPOP, the Prison Services and their ministerial supervisory bodies and to track down criminal activities.

With regard to a corruption case one can simply supply information in connection with a certain case, make an anonymous phone call11 or also report the case in writing or in person. In principle reporting can be made at any prosecution or investigating authority and if they are not competent in that issue, the case shall be forwarded to the appropriate organization. If the denunciation is rejected by the authorities or the investigation has come to an end, the denunciator shall be notified accordingly.

As to cases suspicious of corruption in relation to EU funds, the internet portal run by the government: www.anti-lop.hu can provide assistance. The website was set up by the National Development Agency (NDA) in November 2007 in order to help in utilizing EU funds in a correct and transparent way. For the government it is particularly important that the misuse of EU funds shall be revealed by the Hungarian party, because the funds withdrawn can be then assigned to another project. If, however, the EU authorities discover the irregularities, the funds shall be paid back to the EU.

On the NDA homepage anyone can make a short report by giving an email address. If the email address is not a valid one, then the information will be treated as anonymous. However, as each piece of information is registered by a number, the status of the case can be followed on the homepage. The cases are investigated by the competent body of the NDA in 30 days and the result is communicated to the informer. A separate note is sent to the supplier of the information if the investigation period is prolonged or extended.

In specific cases and upon certain conditions those submitting indispensable information about so-called hardcore cartels might be entitled to an award. Since cartels often operate in secret, collaborations are difficult to discover. Information about cartels shall be submitted to the Cartel Section of the Hungarian Competition Authority (GVH), where inquiries can be made – even without the disclosure of personal identity – about whether the information is capable of paying an award. You might obtain more details about the topic on the website of the GVH (www.gvh.hu) and with the help of the Cartel Section.13

On behalf of the European Union, the European Anti-Fraud Office (OLAF) is responsible to review the misuse of EU funds. Therefore, cases of this kind, or any case where the suspicion of corruption arises on part of EU employees or regarding EU budget may also be reported to the OLAF. In Hungary the work of OLAF is assisted by an OLAF Coordination Office operating at the VPOP. This Coordination Office, however, does not carry out any investigation.

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11 Anonymous phone call can be made on the free „Phone witness“ number of the Police (06-80-555-111).
13 The GVH’s Cartel Section can be reached: 1054 Budapest, Alkotmány u. 5., Tel.: (06 1) 472-8871, (06 1) 472-8872, E-mail: kartell@gvh.hu
Specific cases

Information obtained in advance as well as preventive measures help you to make an informed assessment of the situation in an actual case. If need be, seek assistance. At the end of the day, as representative of your company, it is you that carries the responsibility. Help your staff to identify the threats of corruption in good time and deal with them appropriately.

Recognize the signs

A checklist helps recognize the warning signs of corruption in your company in connection with a local partner or a foreign authority at an early stage. If one or more signs crop up, employees should spot the risk and report the incident. Typical warning signals are:

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<tr>
<td>• Inadequate administrative and supervisory instruments.</td>
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<td>• Ill-defined competencies and responsibilities.</td>
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<td>• Poorly managed inventory.</td>
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<th>In financial procedures</th>
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<tr>
<td>• Non-transparent, poorly managed bookkeeping and irregularities in financial and audit reports.</td>
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<tr>
<td>• Excessively high budget in relation to planned activities and unfounded changes of the budget or invoicing.</td>
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<tr>
<td>• Unusual short- or long-term expenditures.</td>
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<td>• Excessive commissions.</td>
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Seek assistance!

As a citizen you are entitled to whistle blowing. The state and local municipalities are responsible for dealing with complaints and reports of public interest in accordance with Para 141 – 143 of Law XXIX of 2004. According to the law the complaint is a request that aims at terminating a legal or interest offence suffered by an individual and which does not fall under the competence of any other - particularly court, state administrative – procedure. On the contrary whistle blowing draws the attention to something that shall be solved or discontinued for the sake of the public or the whole society.

Anyone can lodge a complaint or report a case of whistle blowing – verbally, in writing or by e-mail – to the competent authorities. The verbal report shall be then documented by the authority. If the complaint or the case of public interest is not reported to the appropriate authority, then it shall be forwarded to the competent authority within eight days and the whistleblower shall be notified accordingly. Both the complaint and the case of public interest shall be judged in 30 days. Upon closing the procedure, the competent authority shall notify with no delay the offended party and/or the whistleblower about the measures taken or the lack of it – describing the reasons - in writing or by email.

The personal data of the whistleblower can only be forwarded to the authority officially processing the case, provided this body is authorized by law to administer personal data or if the whistleblower clearly approves of the forwarding of his/her personal data. Otherwise the data of the whistleblower cannot be published without his/her explicit approval. The whistleblower is protected by Para 257 of the Criminal Codex. According to the law, it is considered an offence to take steps detrimental to the whistleblower due to his/her report and can be sentenced to prison up to two years, to public labor or a fine. Consequently, the whistle blower, if acts in good faith, shall not be discriminated if having lodged a complaint or reported a case of public interest.

In operational procedures
- Irregularities or substantial delays in operational reports.
- Significant and unsubstantiated deviations from operational plans.
- Deficiencies in procurement processes.

In personnel procedures
- Disregard of internal instructions.
- Inappropriate engagements, payments, commissions, intermediatory fees.
- Lavish lifestyle, personal dependencies and favouritism.
**Methods of Preventing Corruption**

Besides the data provided by international organizations, numerous researches prove that the world economy and certain economic actors are directly or indirectly affected by corruption in a very harmful way. Therefore, it is of vital importance to discontinue corruption through state interventions such as: distributing resources in an efficient and transparent way, safeguarding the cleanness of competition or establishing the legal, unambiguous and clear operational conditions of economic institutions as well as that certain economic actors, companies and enterprises shall set up and apply anti-corruption measures. In addition to the measures as shown previously, there are further ways to fight corruption, and the brochure wants to introduce the most important ones.

**Integrity Pacts**

An efficient way of creating a clean public and business life is the application of the Integrity Pact that was first introduced at the beginning of the nineties. The Integrity Pact elaborated by Transparency International is a civil law contract aiming at – primarily through public procurements\(^\text{14}\) – reducing corruption. By voluntarily signing a contract the parties agree to abstain from any kind of corruption during the public procurement and at the same time disclose all available information.

The Integrity Pact can improve the cleanness and openness of the competition. By involving an independent expert based on the Pact the parties can contribute to the enforcement of the legal requirements and that of publicity with regard to public procurement procedure and the subsequent contract signed. The appointed independent expert or organization shall perform the monitoring activity. Should the independent monitor opine that any of the parties has violated the Integrity Pact the sanctions mentioned therein shall come into effect at once. This is an agreement which creates mutual contractual rights and obligations and can be applied in different types of projects. The Integrity Pact covers the full project cycle from the preparation of the tender documents until the final stage of implementation and it guarantees, by the monitoring activities of the independent expert that the entire project procedure to be transparent, credible and ethical.

By signing an Integrity Pact the parties record their obligations in a contract. The caller for offer is obliged e.g. not to claim or accept any advantage in exchange for granting advantage during the public procurement procedure; to disclose all technical, legal and administrative information in connection with the purchase; to treat confidentially the business secrets of the bidder and if necessary,

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\(^{14}\) In Hungary public procurement explicitly is susceptible to corruption. According to international estimates, the systemized corruption can make purchases 20-25% more expensive. As experienced by TI, through the application of integrity pacts, the purchase prices can be lowered accordingly and it also enhances the trust towards public institutions and assists competition in the business sphere.
to report the violation of the above obligations, its suspicion or attempt. At the same time each public officer and external advisor involved in public procurement shall fill in a declaration of conflict of interest. Also the bidder is obliged not to accept or offer any advantage in exchange for granting advantage during the public procurement procedure; not to form cartels with other interested parties and to make public all payments made to agents and/or intermediaries.

**Integrity Clause**

In order to enhance transparency, project agreements and tender documentations shall include an integrity clause. The integrity clause states, among others, that if the contracting party is involved in corrupt, fraudulent, collusive or coercive practices, the organization deciding about the contract has the right to annul the contract within a certain amount of time – usually one year – from the notification. It has also the right to retain the next installment of the contractual amount and/or to exclude for good or for a definite amount of time the contracting party involved in corruptive practice from participating in further procurement procedures.

**Code of Conduct**

Several Hungarian companies operating internationally and nationally have already decided to introduce and apply an Anti-corruption Code of Conduct. Such a code has several advantages: employees are confronted with the problems of corruption and their implicit consequences; they receive guidance on how to recognize corruption in good time and to fight it. As a result, you can trust that your business partners and clients as well as the general public perceive your company to be reliable and trustworthy.

By adopting a Code of Conduct, a company undertakes to act with integrity. Normally, a Code of Conduct encompasses general principles and models of conduct to prevent corruption at its start, and instructions on how to proceed in an actual case. The most important information which should be part of such a code, include the following:

- The stance of the company’s management regarding corruption and the involvement and role of its employees.
- The basic principles of the company’s relations to third parties (agents, clients and suppliers).
- The company’s mechanism through which corruption or suspected corruption can be reported.
- The definition of “advantages” that may be permitted (e.g.: small gifts up to a certain value).
- The principles of handling conflicts of interest.
- The sanctions for disregarding the Code of Conduct.

An Anti-corruption Code can be part of the company’s overall Code of Conduct or be drafted as a separate set of regulations in its own right.

Even more important than the Code of Conduct is its implementation. Ensure that your employees and those who represent your company know the Code and understand the company’s anti-corruption policy. By signing a written agreement, your employees commit themselves to act in accordance with the code. Regular training, combined with the monitoring of practices and adaptations when necessary keeps the Code up-to-date and effective.
Measures to prevent corruption under the Swiss Contribution

The Framework Agreement on the implementation of the Swiss-Hungarian Cooperation Programme and its annexes describe the rules of the programme, the procedures to be applied on project level, the requirements in connection with project proposals, the roles with regard to financial assistance, undertaking responsibilities and special provisions. The control and monitoring of the programme are realized in the following way:

- Switzerland is part of the decision making process

Switzerland participates in the decision making. The calls are consulted with the Swiss party, which also acts as an observer in the Screening Committee. This committee selects and recommends projects to Switzerland for financing. The NDA is responsible for the programme on the Hungarian side, shares assessment reports, scoring and ranking of all projects with the Swiss party. Prior to the financial decision, Switzerland reserves the right to carry out its own appraisal if needed.

- Project implementation agreement and tender documentation with integrity clause

In order to prevent corrupt, fraudulent, collusive and coercive practice, the integrity clause is part of the project implementation agreements and tender documentation.

- Integrity Pact, anti-corruption brochure

The Swiss party intends to pilot an Integrity Pact with regard to an infrastructure project in order to enhance transparency and to prevent corruption. The present brochure also aims at raising awareness, informing actors, and thus preventing corruption.

- Stricter public procurement regulations

Tender documents shall contain an integrity clause. In case of public tenders Switzerland requests the English translation of the official tender evaluation reports for information purposes – at the latest 30 calendar days after the contract has been awarded. Switzerland may also request a copy of the tender documents for non-objection and contracts for information. In addition, Switzerland has the right to participate in the tender committee as an observer. Audits can be conducted on procurement practices and procedures. In case of irregularities, Switzerland is entitled to stop reimbursement immediately.

- No pre-financing from Switzerland

As a general rule, the Swiss party initiates the payment only after the Hungarian government has already reimbursed the applicant. In some well defined cases advance payment can be provided e.g. to NGO-s, but it shall not exceed 20% of the overall project budget. Also in this case Switzerland reimburses the NDA.

- Audits

Within the Swiss Contribution a project is audited every two years – with the exception of smaller sized projects – and a final audit is carried out as well. The comparable projects financed by the European Union are mainly checked on a random basis.

- Access to documents

According to the bilateral Framework Agreement, Switzerland or any mandated third party acting on its behalf is entitled to have a look at, monitor, review, audit and evaluate all activities and procedures related to the implementation of projects financed under the Swiss Contribution.
A company undertakes to act with honesty and integrity by adopting a Code of Conduct.
Useful homepages:

In Hungarian

http://k-monitor.hu/
http://korrupcio.lap.hu/
http://www.anti-lop.hu/
http://www.transparency.hu/
http://transparency-magyarorszag.blogspot.com/

In English

http://www.u4.no/
http://www.epac.at/
http://www.transparency.org/
http://www.business-anti-corruption.com
http://www.coe.int/t/dghl/monitoring/greco/default_en.asp
http://www.oecd.org/topic/0,3373,en_2649_37447_1_1_1_1_1_37447,00.html
http://www.worldbank.org/anticorruption
« Take responsibility consciously and cautiously. »