



Best practices as proposed by FIATA

PREVENTION OF BRIBERY

in the International Logistics and Freight
Forwarding Industry





DISCLAIMER

It should be borne in mind that this document does NOT include any legal advice. Readers are urged to seek advice from legal professionals if they have any question about laws and regulations on corruption and bribery.

This document does not specifically address fraud, cartels and other anti-trust/competition offences, money-laundering or other activities related to corrupt practices, although an organization can choose to extend the scope of the risk management system to include such activities.

It should be noted that this best practices guide lists recommendations that are applicable on a general global basis; therefore, the forwarder should adjust and implement the recommended measures based on applicable laws and regulations on corruption and bribery, its corporate structure, business model and risk control requirements in the country or geographic areas where it is operating.

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FIATA Advisory Body Legal Matters (ABLM) has produced this best practice guide to assist both FIATA Association Members and Individual Members as well as the global logistics and freight forwarding industry at large.

Corruption and bribery may have existed ever since trade itself came into existence. Corruption and bribery distort market competition, undermine productivity and ultimately impede economic growth. Corruption Perceptions Index 2018 (Transparent International) showed that more than two-thirds of the 180 countries assessed in the index scored below 50, meaning over six billion people live in countries that are corrupt.

In the logistics and transport sector, the World Bank revealed a correlation between the level of transparency in cross-border processes and regulations of a country and its Logistics Performance Index (LPI) scores. Logistics Performance Index Report 2007 showed that poor performers in the LPI were also poor performers on transparency of border processes; solicitation of informal payments was rare among the top 30 countries but common among lower performers (close to or more than 50 percent of responses).

Corruption and bribery is a systematic problem deeply rooted in legislation, law enforcement, culture heritage and economy development along with many other factors. This makes it tougher to conquer compared to various other challenges confronted by the logistics and transport industry. The LPI Report 2018 (World Bank) showed that, in comparison with 2015, the improvement in incidence of

corruption is slower than that of Customs, other broad procedures or trade and transport infrastructure.

As a sector deeply involved in cross-border trade and frequently interacting with public officials, the international logistic and freight forwarding industry has a relatively high risk of exposure to corruption or bribery. Companies may pay or be requested to pay a bribe in order to speed up customs clearance or to be issued an import/export certificate. Freight forwarders usually need to appoint agents abroad in order to arrange international transport, the bribery actions of whom can also create considerable risks and damages to the forwarder.

Fighting against corruption and refraining from any bribery behaviour would help create a level-playing field for the international logistic service providers and freight forwarders, lower logistics costs of the entire supply chain and eventually promote economic development.

To reach such objectives, this document is drafted to assist international logistic service providers and freight forwarders (hereinafter “the forwarder” or “forwarders”) in establishing and implementing an anti-bribery policy, dealing with bribery solicitations and joining efforts with public authorities to create a transparent business environment for the transport and logistic industry.



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Best practices proposed by FIATA

Adopt an anti-bribery policy

Anti-bribery policy (the “Policy”) is the overarching policy document of a forwarder towards corruption and bribery, which gives guidance to the behaviour of directors, management and employees and sends a strong message to the authorities, clients, agents, suppliers and other business partners. The Policy can be a stand-alone document or a part of code of conduct/ethics. It should be easily accessible to all stakeholders on the website or other communication means of the forwarder.

✓ Leadership commitment

A strong commitment from the top management level of the forwarder in the anti-bribery policy will provide a sound base for implementation of the Policy by all employees in practice. Leadership in the forwarder’s operation should clearly demonstrate their commitment to abide by the Policy, support to the employees to turn down bribery solicitations and encouragement for reporting any breach of the Policy.

✓ Clearly define bribery behaviour

The Policy should provide a clear scope of bribery behaviours, mainly based on applicable laws and regulations. It is also advised to combine the definition with examples of bribery scenarios that possibly occur in daily business, so it is easier to understand and implement the Policy.

The following definition of “bribery” given by Transparency International¹ can be used as a reference: *“The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, favours etc.).”*

✓ Adopt zero-tolerance principle to bribery

It is crucial that the anti-bribery policy stipulates the fundamental principle of **zero-tolerance to bribery**, namely all kinds of bribery behaviour are strictly prohibited, whether these practices are engaged in directly (through directors and employees of the forwarder) or indirectly (through third parties acting on behalf of the forwarder).

Penalties for breach of the Policy should be included to enhance its implementation, such as termination of employment for directors and employees or withdrawal of business for business partners.

¹ Transparency International: <https://www.transparency.org/glossary/term/bribery>



✓ Clarify rules on facilitation payment and duress payment

Facilitation payment is defined by OECD as a small payment to public officials to perform routine government actions², sometimes also called “grease payment” or “coffee money”. For example, a forwarder may be required to make a payment to public official to speed up customs clearance at port and avoid storage charges. Facilitation payment is deemed bribery by the legislations of most but not all jurisdictions. It is important for the forwarder to have clear rules on facilitation payments in accordance with the legislation of the country where its headquarters or office is located, or where the business is conducted.

Duress payment is a payment made to public officials when the health, security or safety of any employee is at risk. Duress payment should be excluded from bribery behaviour. However, such payments need to be immediately reported to the management and correctly recorded in bookkeeping.

✓ Establish rules on gifts, hospitality and donations

In the business environment, gift-giving, meals, and entertainment are common to build up and maintain business relationships. However, these practices also have higher risk exposure to bribery than others. It is advised that forwarders adopt controlling measures such as monetary limits, invoice requirements and approval processes on gift-giving, meals, entertainment, travel and other relevant issues.

Political donation and charitable donations can also give rise to bribery. If the forwarder wants to make political donations, it needs to ensure that such donation is legitimate in its country or in the country the donation is made, conduct proper disclosure of the donation and carefully decide the amount of the donation. When making charitable donations, it is important to conduct reasonable due diligence and ensure that the charity is not directly or indirectly associated with any governmental official.

Implement the anti-bribery policy

✓ Train the employees regularly

Awareness and compliance of employees are critical for successful implementation of anti-bribery policy. The forwarder should hold training sessions on a regular basis for employees, introducing domestic and foreign anti-bribery laws, its anti-bribery policy, internal governance measures on preventing bribery as well as the consequences of breaching the laws and anti-bribery policy.

² OECD: *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf



✓ **Conduct due diligence before employing agents**

Before employing any agent, intermediary or any third party to work on its behalf, the forwarder should conduct proper due diligence on the candidate, especially on its commercial and technical competence, reputation for integrity, how the candidate is identified and why it is recommended. The required information can be obtained from the candidate itself or from public resources, such as records of governments, courts and financial institutions.

In order for the due diligence to be effective, it is important to ensure that an independent department/personnel takes charge of reviewing the information collected and decides on whether the candidate should be employed, instead of the department/personnel that are recommending the candidate.

✓ **Incorporate compliance provisions in contracts**

The forwarder should incorporate its anti-bribery policy into the commercial contracts with agents, intermediaries and other third parties, making it clear that all activities carried out on its behalf should be in compliance with the policy and any breach can result in termination of contracts or legal action.

✓ **Strengthen payment review and book-keeping**

It is highly recommended that the forwarder establishes detailed guidelines on the review and approval of all payment requests. The forwarder is advised to prohibit cash payment totally, require all payments to be reflected with invoices, keep full and accurate records of the payments as well as use internal and external audit.

✓ **Be sensitive to “red flag” scenarios**

“Red flag” scenarios refer to circumstances that may indicate bribery behaviours. For instance, government or court record shows that the third party has previous bribery behaviours; the third party refuses to sign a contract with an anti-bribery policy; the main value a third party claims to bring to the project is its relationship with public officials; the employee requests payment in cash to governmental authorities, etc.

The forwarder should, according to its business model, make a list of “red flags”, remain vigilant to “red flags” scenarios and act without delay when any “red flags” appear.

✓ **Whistleblowing**

Employees should be encouraged to report misconduct on the condition that the forwarder would take measures to ensure the safety and confidentiality of reporting. The report should be heard by a person or body of undisputable reputation or an independent, external service provider. Investigation should be conducted promptly after such report is made.



✓ Adopt an anti-bribery management standard

Forwarders that intend to establish a more comprehensive anti-bribery management system are advised to adopt a relevant national or international standard, such as ISO 37001 *Anti-bribery management systems* of the International Organization for Standardization. This ISO document specifies requirements and provides guidance for establishing, implementing, maintaining, reviewing and improving an anti-bribery management system.

Deal with bribery solicitations

In case forwarders are confronted with demands for bribery from public officials, the following procedures are advised to be taken, for protecting the best interests of the forwarders and for creating a level playing field in the industry:

- 1) Personnel confronted with a bribery demand should **refuse the demand**, state to the soliciting person clearly that this is in violation of company policy and national law and could lead to termination of employment, criminal prosecution or other negative consequences for both sides.
- 2) The bribery demand should be immediately **reported to the management and recorded**.
- 3) Return to the soliciting person and **reaffirm the willingness to continue business and ignore the solicitation**. If the bribery demand is raised again, emphasize that company policy requires all payments to government to be paid directly to government account with official receipt, not to any individual account, and that further solicitation could lead to public disclosure of the situation.
- 4) **Communicate this situation to more senior management** of the soliciting person.
- 5) **Seek assistance** from other forwarders or associations of freight forwarders.
- 6) Take **collective actions with relevant authorities and organizations** to prevent such bribery demands in the future.

Join collective action with other stakeholders

Bribery is a widespread phenomenon and can only be effectively addressed with joint efforts of the public and private sectors. Apart from international agreements and national legislations that directly address the problem of corruption and bribery, some other measures will also help create a corruption-free market from different perspectives. Forwarders are strongly encouraged to persuade and assist their national authorities in adopting these measures.

For instance, several trade facilitation measures provided under the *Trade Facilitation Agreement* of the World Trade Organization, such as the advance ruling and Authorised Economic Operators (AEO) program, will set up a transparent and formal process to facilitate the customs declaration and clearance processes, substantially reduce the possibility for bribery and corruption.



Useful documents for further reading:

- [United Nations Convention against Corruption](#): is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The vast majority of United Nations Member States are parties to the Convention.
- [OECD Anti Bribery Policy and Compliance Guidance for African Companies](#): contains check lists that assists companies to draw up a corporate anti-bribery policy as well as insights on how to put them into practice; applicable for companies not only in Africa but also other continents.
- [ICC Rules of Conduct and Recommendations to Combat Extortion and Bribery](#): is a handbook for all who wish to put into place an efficient and well-run integrity programme.
- [ICC Guidelines on Agents, Intermediaries and Other Third parties](#): illustrates detailed due diligence processes for evaluating and supervising agents and third parties.
- [WCO Integrity Development Guide](#): gives detailed advice on the self-assessment process and action planning process for Customs authorities in integrity development.
- [Transparency International](#): publishes reports and indexes on corruption regularly that are helpful for evaluating corruption risks in various countries.