



RECOMMENDATIONS FOR LITHUANIAN BUSINESS ENTITIES, OPERATING IN FOREIGN COUNTRIES:

How to identify corruption risks and react to it?

What is corruption?

Corruption is recognised worldwide as a particularly harmful phenomenon for any country. Although corruption, its features, corruption related criminal offenses, the subjects involved can be described differently in the country's legislation, the basic provisions and their essence are close.

Corruption is generally understood as the abuse of entrusted power for personal gain. Some of the most common forms of corruption are: active and passive bribery, trading in influence, favouritism.

Corruption harm for the global economy alone amounts to trillions of dollars. According to the World Bank, more than \$ 1 trillion in bribes are paid annually to public officials in favour of international businesses, while states suffer about \$ 2.6 trillion in damage as a result.

How to fight international corruption?

Currently, 44 OECD member countries (including those having partnership status) have signed the 1999 OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (hereafter - the Convention), which imposes obligations on signatory states:

- Combat bribery of foreign officials;
- Apply effective, proportionate and dissuasive liability to legal and natural persons for bribery of foreign public officials;
- Cooperate internationally in the fight against corruption.

At the end of 2019, according to the OECD, 28 signatories of the Convention had conducted 492 investigations into foreign bribery. The amount of investigations on corruption in foreign countries indicates that the fight against such bribery in the world is intense.

If you have encountered corruption, please inform STT:

by email report@stt.lt, by phone +370 5 266 3333, via mobile app „Pranešk STT“

Anti-corruption
institution of foreign
country

Law enforcement authority of
foreign country (e.g. the
police) by phone or come to
the authority directly

Embassy or consular
office of the Republic of
Lithuania

What is the harm of corruption for businesses?

Corruption harm to a country and public interest is usually mentioned the most, but the negative consequences of corruption for a business are severe as well.



The threat of legal prosecution

Corruption is a significant legal risk for both business entities and their employees - the risk of assuming criminal and civil liability for the organisation, as well as liability for business partners and suppliers actions. Parent companies are exposed to the risk of liability for the activities of their subsidiaries, and organisations with businesses outside Lithuania are subject to the additional risk of being prosecuted under the laws of other countries.

According to the OECD report of 2019 on the implementation of the Convention, since the beginning of the Convention in 1999 until 2019, the signatories had convicted 651 natural and 230 legal persons for foreign bribery. Moreover, 87 individuals and 115 legal entities were subject to administrative or civil liability. By the end of 2019, 28 signatory states had conducted 492 investigations on foreign bribery. Such data indicates that the threat of legal prosecution for corruption related crimes committed abroad is indeed real.



The threat of reputational damage

Corruption can have an irreversible negative impact on the reputation of both an individual business entity and the Lithuanian business community. Corrupt actions of individuals and companies in the country can lead to a decline in the sector's or country's business credibility in the international community. Damaged reputation affects an organisation's value, stock price, and future business opportunities. Organisations with a reputation for unethical practices are considered undesirable business partners, they lose customers and it is harder to attract good employees. Even a suspicion of corruption can negatively affect the decisions made by business partners and customers. Growing public authorities' and society's accountability expectations increase the pressure on companies to act ethically and in such way the potential reputational risk and severe consequences become even a larger threat.



The threat of higher operating costs

The cost of an organisation's involvement in corruption can be very high, both in terms of fines, damages, and the cost to businesses of conducting internal investigations into corruption. According to the 2014 OECD report on bribery of foreign officials, legal and natural persons who bribed foreign officials received 5.4 billion USD worth sanctions (including fines, confiscations of property, compensations). In the worst case, corruption can threaten the very existence of an organisation. Businesses that are perceived as vulnerable to corruption are also at risk of being excluded from public procurement. This practice of blocking corrupt suppliers is becoming more common in private sector tenders as well. Once companies and their managers are involved in corruption, they can be blackmailed in the future, which can also contribute to the company's financial losses. Therefore, an ineffective corporate corruption prevention policy can also mean significant economic losses.



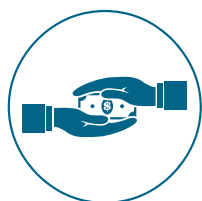
The threat of business stagnation

The real threat of corruption is the inability to grow financially and attract investors. It is difficult for the organisations involved in corruption to obtain a loan from national and international financial institutions. Existing loan agreements with creditors and financial institutions may be terminated if the beneficiary is found to be involved in corruption. Responsible investors refuse to invest in shares and may withdraw the investments already made if it turns out that the organisation is embroiled in a corruption scandal. Thus, corruption slows down the development, innovation and adaptation of organisations in the markets.

How to identify corruption?

When developing business in foreign countries, it is necessary both to know and comply with the laws of the Republic of Lithuania, be familiar how corruption activities are defined in the legal acts of foreign country, in which business operates. Under the foreign country law certain activities may be permitted, but such conduct can incur liability under Lithuanian law, which complies with the highest OECD standards. Not knowing what actions can be considered by foreign public officials and business partners as prohibited criminal offenses does not protect against possible negative consequences.

Articles 225–228 of the Criminal Code of the Republic of Lithuania establish criminal offenses of a corrupt nature. Similar indications of corruption exist in other countries as well. According to the Criminal code, the following are corruption related criminal offenses: **passive, active bribery, trading in influence** and **abuse of office**. How to identify these forms of corruption?



Active bribery

A civil servant or a person equivalent thereto, for his or her own benefit or for the benefit of others, directly or indirectly, himself or through an intermediary: promises to accept a bribe, agrees to accept a bribe, demands a bribe, provokes a bribe, accepts a bribe for lawful or unlawful acts or privileged position or favour.

For example: *when inspecting a company's compliance with environmental requirements, foreign official identifies minor violations and provokes the company's director to give a bribe by manipulating information known to him about possible sanctions so that these violations would not be recorded in the inspection report.*



Trading in influence

Bribery of a person trading in influence, directly or through a third party. “Trader in influence” means a person who, through his or her influence over a decision-maker (e.g. politician, civil servant, officer, judge), promises to influence the decision-maker for a bribe in order to take an action in favour of the bribe-giver.

For example: *one of the new foreign business partners offers its services in country X to expand the market of your exported goods geographically. The said business partner offers for a fee to speak and arrange an agreement with influential officials of the relevant ministry known to him to license you to market your products in this country on an exceptional basis and within a shorter than officially required period.*



Abuse of office

A civil servant or a person equivalent thereto, has abused his or her official position or exceeded his or her powers, and if the state, the European Union, an international public organisation, a legal or natural person has suffered significant damage as a result.

For example: *you are seeking a permit to build a commercial building in a foreign country. An employee of the permitting authority, exceeding the deadlines provided by the laws of the country, examines the documents submitted by you for an unreasonably long time, requires documents not provided for in the permit issuance rules, and delays the issuance process.*



Passive bribery

A person directly, indirectly or through an intermediary has offered, promised, agreed to give a bribe to a civil servant or a person equivalent thereto or to a third party for the desired lawful or unlawful act or omission or seeking to obtain an exception or favour, regardless how his actions were understood by a civil servant.

For example: *your company is involved in an international public procurement in country X. One of the companies' employees reports that a representative of the contracting authority hinted at an informal meeting that the director of other participating company Z has offered a bribe to the chairman of procurement commission to win the tender.*

What are the *red flags* for corruption?

The focus of businesses operating abroad should be primarily on avoiding corruption, i.e. on corruption prevention. In order to avoid engaging in corrupt activities, the following points should be taken into account before cooperating with foreign entities:

- Companies that disclose little information about themselves (no clear executives, shareholders, company structure, etc.) may be set up specifically for fraudulent purposes or to disguise the contacts of those responsible for potential corruption related offenses.
- Companies operating in the energy, construction and infrastructure development sectors are at higher risk of corruption. These companies that want to exploit energy resources, start construction of buildings or participate public tenders in foreign countries, often have to deal with civil servants in these countries in order to obtain appropriate permits or win tenders. Such intense communication with foreign civil servants increases the risk of bribery.
- When a company is owned or partly controlled by a civil servant or a politician, there may be a risk of a conflict of interest that servant will abuse the entrusted authority to him or her for the benefit of the company he or she represents.
- When a civil servant or a politician insist on a particular company, there is a risk that this public sector representative may have a direct interest in the success of the recommended company e.g. be one of the managers or be offered an illegal reward (bribe) for such recommendation.
- Companies that are registered in so called "tax haven" (offshore companies) seek lower income taxation, but can also be used for the transfer and legalisation (money laundering) of illegally obtained money, including bribes.
- Companies that have a history of illegal or suspicious activities and do not manage the risks of corruption may continue to engage in illegal activities.
- When foreign companies offer opportunities for large-scale cooperation and business development, but have little relevant experience or are unknown in this field of business, there may be a risk that these companies are created to fraudulently or illegally influence civil servants, or illegally seek to absorb public finances through public procurement, project implementation, concession contracts, etc.
- Companies seeking unusual payment procedures, such as oddly high commissions, success fees, or cash settlements, run the risk that the money could also be used to pay bribes.
- When companies avoid written contracts or offer to sign contracts that do not comply with business and government standards, there is a risk that this may be aimed at concealing illegal activities or avoiding legal liability for corruption related crimes.
- While expanding a business to foreign countries, local agents from foreign countries offer to accelerate the business development process for a certain fee, there is a risk that these agents may engage in bribery of foreign public officials.
- When foreign companies support or have connections with charities related to civil servants or politicians, there is a risk that charities may be used to bribe civil servants or politicians for decisions made in favour of the companies.



What to do when it is unclear whether it is corruption?



With the ever-changing world, the mechanisms of corruption are becoming more and more complex. Here are several useful questions that people working abroad can ask themselves in case of doubt as to whether or not they face corruption:

Is it legal? In case of doubt regarding the legal assessment of the situation, it should be checked and consulted with the company's lawyer, how such situation could be interpreted in the legislation of a foreign country describing corruption crimes. In case of suspicion of corruption - both the foreign anti-corruption institution and the Special Investigation Service can be consulted directly.

Is it ethical? In case of doubt regarding the ethics of the situation, it should be assessed whether the situation complies with the company's code of conduct and /or ethics, work rules and declared values.

Could it be detrimental to the public interest? In case of doubt as to whether a particular situation is detrimental to the public interest, it should be examined whether there are similar situations which have occurred in the past and became public and what assessment they have received.

If further questions still arise, it is advisable to speak openly and discuss the situation with managers or other trusted persons, as well as consult with the anti-corruption institutions of a foreign country or the Special Investigation Service.

What to do after noticing manifestations of corruption?

Companies' efforts to recognise corruption abroad should not be directed only to external corruption risk factors. According to the OECD report on bribery of foreign public officials, the largest part - **31% of cases of international corruption - is revealed when companies themselves report corruption**. Companies that in their own initiative report corruption to law enforcement may expect milder-than-expected legal liability (including lower financial sanctions) in some countries. Companies that themselves report the detected acts of corruption most often identified the corruption in the following ways:



Following an internal audit and after a merger or acquisition of company. Corporate accountants and auditors are critical in detecting corrupt practices within companies. They should be encouraged to report suspicious situations to the company's management, supervisory bodies and / or to consider reporting to the relevant law enforcement authorities.



After receiving information from whistleblowers. Reports of corporate corruption were mostly received from company executives, who submitted it to audit committees and boards. Reports were received through hotlines and from company employees who were laid off after refusing to participate in bribery schemes. Companies should implement and strengthen both internal and external reporting channels.

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