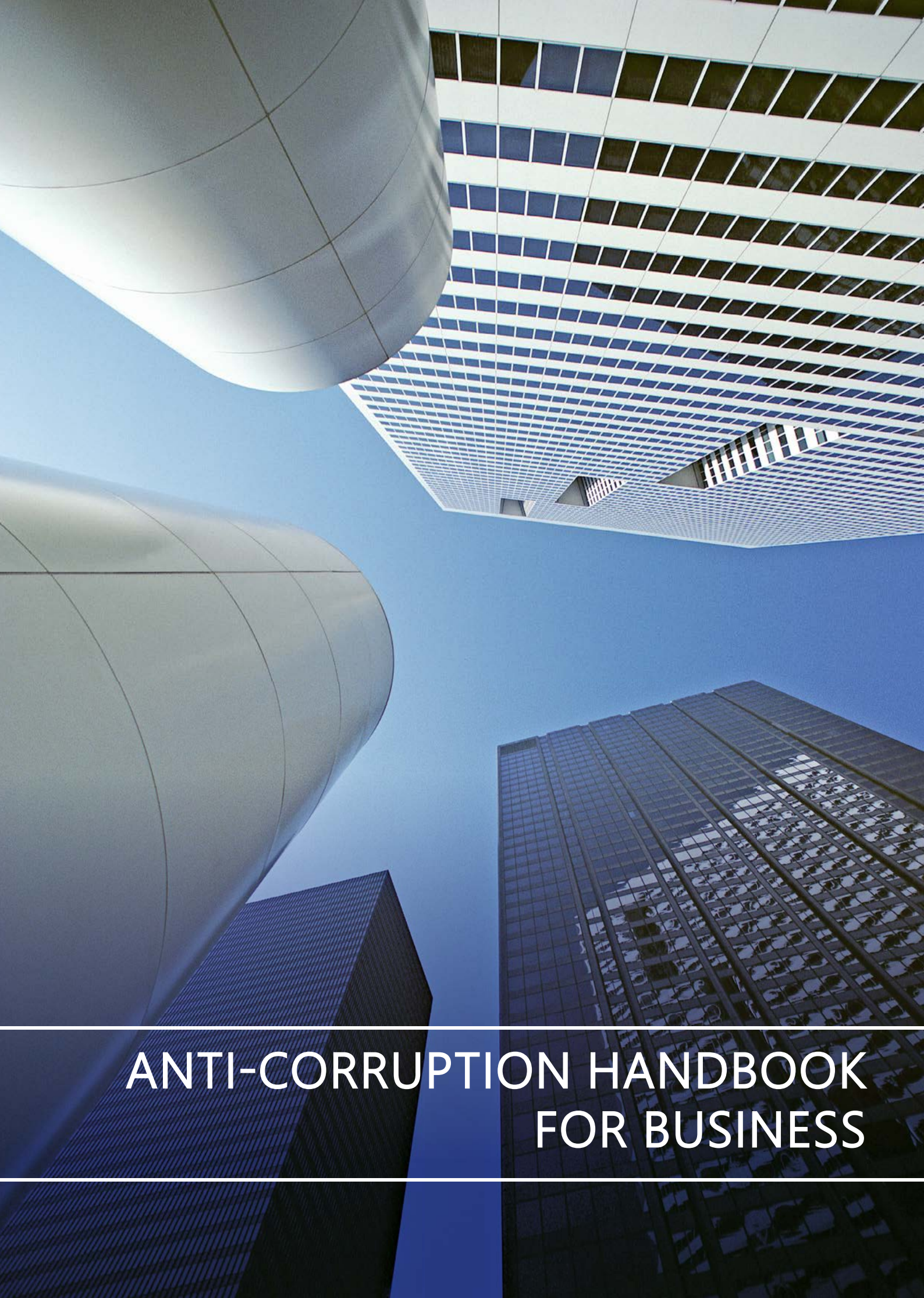


A low-angle, upward-looking photograph of several modern skyscrapers against a clear blue sky. The buildings feature glass facades and curved architectural elements. The perspective creates a sense of height and scale.

ANTI-CORRUPTION HANDBOOK FOR BUSINESS



VTEK
VYRIAUSIOJI TARNYBINĖS
ETIKOS KOMISIJA



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TM
LIETUVOS RESPUBLIKOS
**TEISINGUMO
MINISTERIJA**



LIETUVOS RESPUBLIKOS
KONKURENCIJOSTARYBA



LAVA
Lietuvos atsakingo
verslo asociacija

Luminor

EY
Building a better
working world

 **TRANSPARENCY
INTERNATIONAL**
Lietuvos skyrius

 **Telia**

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sistemas

ANTI-CORRUPTION HANDBOOK FOR BUSINESS

Vilnius
2018

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1. PREFACE

Transparent, fair and open business activities are one of the key elements of impeccable business reputation. According to sociological and scientific research, in the long run business companies implementing anti-corruption measures acquire a greater competitive advantage against the rest of the market participants thus protecting and even improving their image, attracting more investments and establishing long-term relations with reliable business partners.

1. 1. Purpose

A Handbook for the Creation and Implementation of Anti-Corruption Environment in the Private Sector (hereinafter referred to as the Anti-Corruption Handbook for Business, Handbook or AHB), is a methodological tool of practical application for Lithuanian business organisations (entities)¹, the purpose of which is:

- to assist in creation of the anti-corruption business environment, to enhance business transparency and responsibility;
- to enhance the awareness of damage caused by corruption in business sector and to encourage the taking of active measures in combating this phenomenon;
- to advise on identifying corruption risks, measures to be taken and implemented for management of the risks;
- to educate business on legal regulation of corruption, to inform about the liability of both employees and business organisations for corruption-related offences, to share specific practical examples of corruption-related offences;
- to provide advantages of the implementation of corruption prevention measures and transparent business practice in favour of business competitiveness.

1. 2. Background of the Development of the Anti-Corruption Handbook

The **Anti-Corruption Handbook for Business** was prepared in implementing measure 2.1.2 of the Inter-institutional Action Plan for the Implementation in 2015-2019 of the National Anti-corruption Programme of the Republic of Lithuania for 2015-2025² and having regard to the following:

¹ The term “business entities” means private legal persons as well as state and municipal enterprises, public limited companies.

² <https://www.e-tar.lt/portal/lt/legalAct/13fd20601e6e11e586708c6593c243ce/MKQLUXNlbT>

1) Article 12 of the United Nations Convention against Corruption, which was ratified by Lithuania in 2006, states that each state must take measures to prevent corruption in the private sector.

2) The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*³, that was ratified by the Seimas of the Republic of Lithuania on 20 April 2017, establishes the enforcement of the extensive liability of legal persons for the bribery of foreign public officials, immediate and effective mutual legal assistance in criminal investigations brought by a Party concerning offences.

3) Corruption is universally-recognized as a serious hindrance to a country's social, economic and political development. Corruption:

- undermines the rule of law, results in the inefficient allocation of scarce resources, demoralizes democratic political systems and undermines respect for human rights;
- impedes economic growth, destroys predictability, thus increasing business costs and discouraging both domestic and foreign investments⁴.

4) The results of sociological research show that the problem of corruption is widespread in the private sector and it significantly damages the sector. The actions and decisions of corrupt leaders and lower-level managers of business organisations are most often detrimental to organisation owners (stockholders, partners, shareholders, etc.). When the public becomes aware of such cases, huge damage is caused to the organisation's reputation, the restoration of which requires a lot of time, efforts and cash resources.

5) According to preliminary calculations, the cost of corruption for the taxpayers of the European Union is approximately EUR 120 billion annually, which almost equals the annual EU general budget and constitutes 1% of the EU's GDP⁵.

6) Striving for the long-term economic growth and welfare of citizens in the country, a transparent, cost-efficient and effective investment and management of the EU Structural Funds assistance and the State resources in both business and public sectors, also enhancement of the public trust in transparency of the EU Structural Funds assistance investment process and procedures are of crucial importance⁶.

Moreover, international companies, in order to reduce business risks, while searching for business partners quite often take note of the fact whether their potential partner applies anti-corruption measures; and some international organisations, in making decisions on project funding and the opportunities of organisations for participating in the projects, also check whether these organisations are not included into the blacklists, whether they have the anti-corruption measures in place, etc.⁷

Lithuanian Standardization Department in 2017 has taken over the international standard ISO 37001 Anti-Corruption Management System⁸, which sets requirements and provides guidance on how to design, implement, maintain, improve and control the anti-corruption management system. The ISO 37001 certificate benefits all organizations operating on the domestic and international markets.

³ <https://www.e-tar.lt/portal/lt/legalAct/6dfc3d402f3c11e78397ae072f58c508>

⁴ *Corruption prevention to foster small and medium-sized enterprise development* prepared by the United Nations Office on Drugs and Crime (UNODC) and the United Nations Industrial Development Organization (UNIDO). https://www.unodc.org/documents/corruption/Publications/2012/Corruption_prevention_to_foster_small_and_medium_size_enterprise_development_Vol_2.pdf

⁵ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee regarding Fighting Corruption in the EU of 6 June 2011 (COM(2011) 308 final). <http://register.consilium.europa.eu/doc/srv?l=LT&f=ST%2011237%202011%20INIT>

⁶ The Operational Programme for Economic Growth directly designed for competitiveness enhancement by creating a favourable environment for innovations and small and medium business as well as improvement of economic infrastructure efficiency was implemented from the EU Structural Funds assistance and the State resources (a total of approximately EUR 3.9 billion). The Operational Programme for the EU Structural Funds' Investments in 2014-2020 also envisages funding for promoting the competitiveness of small and medium business, fostering employment-enhancing economic growth which reduces unemployment, etc.

⁷ <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984;>

⁸ <http://www.lsd.lt/index.php?-1009414613>



Therefore, it follows that the anti-corruption measures implemented by business organisations on their own initiative are useful, effective, cost-efficient and generating value added. All the more that an organisation actively working towards transparency is more successful in dealing with its reputation restoration matters in the case of corruption manifestations.

1. 3. International Experience

The preparation of the Anti-Corruption Handbook for Business involved the use of the following international documents of the EU and other countries, which also define the guidelines for detecting and reducing corruption in business:

- 1) Anti-corruption Handbook for the Norwegian Business Sector prepared by Transparency International Norway⁹;
- 2) Anti-Corruption Ethics and Compliance Handbook for Business jointly prepared by the OECD, United Nations Office on Drugs and Crime (UNODC) and the World Bank¹⁰;
- 3) OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance¹¹;
- 4) OECD Principles of Corporate Governance for 2015¹²;
- 5) OECD Principles of Corporate Governance of State-owned Enterprises for 2015¹³;
- 6) OECD Risk Management by State-Owned Enterprises and their Ownership for 2016¹⁴;
- 7) The Third UN Anti-corruption Toolkit of the Global Programme Against Corruption 2004¹⁵.

1. 4. Message from the Authors

The Anti-Corruption Handbook for Business was prepared in 2017 and updated in 2018 through cooperation between the public and the private sector, i.e. the major initiator and originator of this Handbook is the Special Investigation Service of the Republic of Lithuania (*lead author until April 2017 – Aloizas Šafranovič*, Chief Specialist of the Corruption Risk Division of the Department of Corruption Prevention of the Special Investigation Service of the Republic of Lithuania. An update was organized by Senior Specialist of the same department *Agnė Putrimienė*; *direct supervisor of the author – Vidmantas Mečkauskas*, Head of the Corruption Risk Division of the Department of Corruption Prevention of the Special Investigation Service of the Republic of Lithuania, *coordinator – Romualdas Gyls*, Head of the Department of Corruption Prevention of the Special Investigation Service of the Republic of Lithuania, *technical assistance editing the manuscript – Ger-*

⁹ http://www.transparency.no/wp-content/uploads/sites/10/TI_beskyttedinvirksomhet_eng_web.pdf.

¹⁰ <http://www.oecd.org/corruption/anti-corruption-ethics-and-compliance-handbook-for-business.htm>.

¹¹ <https://www.oecd.org/daf/anti-bribery/44884389.pdf>

¹² <http://www.oecd-ilibrary.org/docserver/download/2615021e>.

[pdf?expires=1464293837&id=id&accname=guest&checksum=DF1E08DF261420BEE60A60276798FD8C](http://www.oecd-ilibrary.org/docserver/download/2615021e.pdf?expires=1464293837&id=id&accname=guest&checksum=DF1E08DF261420BEE60A60276798FD8C).

¹³ <http://www.oecd.org/daf/ca/soemarket.htm>.

http://www.oecd-ilibrary.org/governance/oecd-guidelines-on-corporate-governance-of-state-owned-enterprises-2015_9789264244160-en.

¹⁴ http://www.keepeek.com/Digital-Asset-Management/oecd/finance-and-investment/risk-management-by-state-owned-enterprises-and-their-ownership_9789264262249-en#.WiUI3oZI-Uk.

¹⁵ Prieiga internete: <http://www.u4.no/recommended-reading/the-global-programme-against-corruption-un-anti-corruption-toolkit-third-edition/downloadasset/803>.

da Jurgelevičiūtė, Specialist of the Corruption Risk Division of the Department of Corruption Prevention of the Special Investigation Service of the Republic of Lithuania), with active contributions from the Lithuanian Association for Responsible Business (commonly called LAVA; in Lithuanian: *Lietuvos atsakingo verslo asociacija*) (represented by Renata Gaudinskaitė, Expert of Business Responsibility Development, Chapter 2 and subchapters 4.3, 6.13, 6.16), Vytautas Danta – Head of Compliance Service of Lithuania at AB Swedbank and Aušrinė Suslavičienė – compliance officer at AB “Luminor” bankas, subchapters 6.1, 6.6, 6.12, Ernst & Young Baltic, UAB (Liudas Jurkonis, Head of Fraud Investigation & Dispute Services for the Baltic Region, Chapter 5 and subchapters 6.13, 6.17), Chief Official Ethics Commission (Tomas Čiaplinskas, Senior Adviser of the Investigations Department, subchapters 6.7, 6.8, 6.11), Evelina Matulaitienė, Senior Adviser, acting Chief of the Prevention Division, subchapter 6.11 Ministry of Justice (Marius Vainauskas, Adviser of the Division of Criminal Justice under the Administrative and Criminal Justice Department, subchapter 6.12), Transparency International Lithuania (Project Manager Rugilė Trumpytė, subchapter 6.14), AB “Telia Lietuva” (Tatjana Lukoševičienė, Chief legal counsel, Head of Compliance Team, subchapter 6.13), National Anti-corruption Association (Expert Vytas Rimkus, Chapter 5), Clear Wave (Project Manager Andželika Rusteikienė, Chapter 3), *Algoritmy sistemos*, UAB (Paulius Vaitkevičius, Director for Business Development, digital versions of the Handbook, web interface and its system management). During the preparation of the Draft Anti-Corruption Handbook for Business, was submitted for public coordination and, for coordination with business associations as well as state and municipal institutions – their comments and proposals were taken into consideration, and in 2018 the Anti-corruption Handbook for Business was adjusted accordingly.

On updates of the Handbook also helped Daumantas Grikinis – deputy Head of Anti-competitive Agreements Investigation Division of Competition council of the Republic of Lithuania; Irma Sanvaitytė – Head of Corruption prevention and control subdivision of Department of internal security of State tax inspection of the Republic of Lithuania; Legal division and International cooperation division of Administration department of Special investigation service of the Republic of Lithuania.

The Handbook was supplemented by the examples of the Corruption-seeking Policy for Small and Medium-Sized Enterprises as Annex 1 and the Gift Policy for Business as Annex 2.

The Anti-Corruption Handbook for Business consists of four main parts:

- introduction;
- theoretical part (Chapters 2-4), the purpose of which is to help understand the concept of corruption, its detrimental effect and why business needs anti-corruption policy;
- practical part (Chapters 5, 6), the purpose of which is to give practical advice on creating the anti-corruption environment in organisations;
- annexes with specific examples of good practice.

The authors believe that this Handbook is a unique tool for business entities seeking to implement transparent and responsible activities, which will help business organisations apply effective anti-corruption measures in their activities that will help identify and manage the potential risks of corruption therein, raise business anti-corruption awareness, promote ethical behaviour, immunity to corruption, develop responsibility and accountability.

It is important to understand that “corruption is a complex phenomenon with economic, social, political and cultural dimensions, which cannot be easily eliminated. An effective policy response cannot be reduced to a standard set of measures; there is no ‘one size fits all’ solutions”¹⁶, thus, there is no single model fits all diverse businesses.

The Anti-Corruption Handbook has no single specific model, which a specific business entity could adapt to itself.

The Anti-Corruption Handbook for Business is of a recommendatory nature, therefore it is designed in such a manner that business entities of different levels of creativity and abilities are able to adapt it differently, and it fits a specific business entity. We believe that the Handbook will help to achieve best results.

¹⁶ European Commission 2014 Report “Fighting Corruption in the EU”, p. 3, Internet Access: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf.



2. EXPECTATIONS FOR BUSINESS

Transparency is a prerequisite for corruption prevention and disclosure.

Business stakeholders – *state institutions, investors, market participants, employees, public organisations, consumers and the general public*. Their expectations for business are **transparent, ethical and corruption-free activities**, bringing the best results: good and high-quality products, services developed by business, and well-paid jobs.

These expectations encourage businesses to take appropriate actions: to declare their determination to prevent corruption, implement anti-corruption programmes or individual anti-corruption measures, and be transparent in terms of corruption-related issues.

2. 1. Public Expectations

Every citizen has the right to live in a transparent and fairly-governed society, which pursues the principle of the rule of law; therefore, both the society and various public organisations believe that all business organisations, despite their country of operation, will be fair, carry out their activities in an ethical, responsible and transparent manner.

Growing concerns of the public, authorities and international organisations over the levels of corruption and problems caused by it result in increasing numbers of various public organisations and associations established on the initiative of active public participants that promote transparent and responsible business operations.

Such types of organisations also operate in Lithuania. Some of them may be distinguished, such as: Transparency International Lithuania, the Association for Responsible Business of Lithuania (LAVA) and Investors' Forum.

- Transparency International Lithuania (commonly called TILS; in Lithuanian: *Transparency International Lietuvos skyrius*) is a division of the international organisation Transparency International¹⁷ operating in Lithuania since 6 June 2000. The Open Society Fund Lithuania is the founder of this organisation. TILS is a non-political organisation cooperating and coordinating its activities with both public sector and non-governmental organisations (NGOs) in Lithuania and abroad. The purpose of this organisation is to promote civic anti-corruption initiatives and their organisation in Lithuania.
- The Association for Responsible Business of Lithuania (LAVA)¹⁸ unites enterprises and organisations seeking to introduce the principles of responsible and ethical performance in their activities. This is an independent national platform for sharing good

17 <http://www.transparency.lt/apie-mus/>

18 <http://asociacijalava.lt/>

practices of responsible business, promoting the creation of value through cooperation between organisations, the public and the State. The LAVA originated from the National Network of Responsible Business Enterprises (commonly called NAVIT; in Lithuanian: *Nacionalinis atsakingo verslo įmonių tinklas*), which launched its activities in Lithuania in 2005. The LAVA is a representative office of the UN Global Compact¹⁹ in Lithuania and a member-partner of the European Business Network for Corporate Social Responsibility (CSR Europe)²⁰ in the country.

- *Investors' Forum*²¹ is a voluntary, totally independent and self-managed business association of the largest and most active investors in the Lithuanian economy. Founded in June 1999, *Investors' Forum* today has over 50 members.

Mission of *Investors' Forum* to improve business environment and investment climate in Lithuania through cooperation with public institutions and the business community. Vision of *Investors' Forum* the most investor-friendly business climate in the EU, attracting FDI for the benefit of Lithuania.

Investors' forum together with the United Nations Development Programme was one of the pioneers to raise corporate social responsibility issues in Lithuania. Association participates in OECD anticorruption network for Eastern Europe and Central Asia. Investors' Forum manages business driven social labelling initiative "Clear Wave" to promote business integrity and transparency.

2. 2. State Expectations

The National Security Strategy of the Republic of Lithuania²² states that one of the internal risks, dangers and threats to the national security, which must be given particular attention by institutions ensuring national security, is corruption, which undermines legitimate interests of individuals and the State, discredits the principle of the rule of law, diminishes the citizens' trust in democratic values and democratic authorities, as well as reduces the country's attractiveness to foreign investors.

The problem of corruption has also been addressed by the European Commission in its Report for 2014²³ by stating that corruption is a threat to the State and society, citizens' safety, human rights, fosters shadow economy and reduces the country's attractiveness to foreign investments. This phenomenon is detrimental to good governance, efficient management of the public funds and market competition. In extreme cases it breaks the citizens' trust in democratic institutions and processes.

"Corruption is the spoke in the State's wheels, preventing faster development and better life to our persons," affirmed President Dalia Grybauskaitė (in January 2016).

The Special Investigation Service of the Republic of Lithuania (commonly called STT; in Lithuanian: *Specialioji tyrimų tarnyba*)²⁴ founded in 1997 is the central national body of Lithuania for combating the corruption phenomenon in the country. This body is independent of the executive authority and accountable to the President of the Republic and the Seimas (Parliament) of the Republic of Lithuania.

The main objectives of the STT are to detect and investigate corruption-related criminal offences, develop and implement anti-corruption measures²⁵. The service focuses its activities on reducing corruption in the public sector and promoting intolerance of the public for this phenomenon.

¹⁹ <https://www.unglobalcompact.org/>

²⁰ <http://www.csreurope.org/>

²¹ <http://www.investorsforum.lt/lt/>

²² National Security Strategy approved by Government of the Republic of Lithuania Resolution No IX-907 of 28 May 2002, subpar. 14.12.: https://www.e-tar.lt/portal/lt/legalAct/TAR.2627131DA3D2/TAIS_429234

²³ *EU Anti-corruption Report* by the European Commission, 2014, which is available on the website: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_lt.pdf

²⁴ More information on the STT and its activities is available on the website: <http://www.stt.lt/lt/menu/stt-veikla/#turinys>

²⁵ <https://www.e-tar.lt/portal/lt/legalAct/TAR.9C9FA25983BC/feJGonqQtE>.



The National Anti-Corruption Programme. In order to ensure a long-term, effective and targeted anti-corruption and control system in Lithuania, the National Anti-Corruption Programme of the Republic of Lithuania for 2015-2025 was approved in 2015²⁶. To implement the objectives and tasks of the Programme, the Government of the Republic of Lithuania approved the Inter-Institutional Action Plan for 2015-2019²⁷ (*as it was mentioned, measure 2.1.2 of the Plan involves the preparation of handbooks on the creation and implementation of the anti-corruption environment in the public and private sectors*).

The implementation of the Programme is organised and controlled by the Government with participation of the STT. The Programme is implemented by the ministries, the Special Investigation Service, the Prosecutor General's Office of the Republic of Lithuania, the Public Procurement Office, the Chief Official Ethics Commission, and the Central Electoral Commission of the Republic of Lithuania and other state and municipal institutions and bodies within their remit.

Non-governmental organisations, the groups of society concerned and private sector entities may contribute to the implementation of the Programme and achievement of its objectives and tasks.

Anti-Corruption Policy and the OECD

The Ministerial Council of the Organisation for Economic Cooperation and Development (OECD²⁸) unanimously agreed to invite Lithuania to the accession process. On 20 April 2017, Lithuania had ratified and joined the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997. On 30 of May of the 2018 Lithuania has signed Treaty to join OECD. This Treaty and OECD Convention were ratified by Lithuanian Seimas on 28 June 2018. On 30 June 2018 President signed mentioned documents and Lithuania officially became a member of OECD.

Each Party shall take such actions as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official. The objective of the Convention – the export of corruption to foreign countries, especially cases, when more developed countries are trying to enter to the markets of the third countries by fraudulent means.

By joining the Convention, the Republic of Lithuania will contribute to the efforts of the international community in preventing corruption at the international level. The event is also expected to lead to Lithuanian law enforcement authorities significantly improving their capacity to effectively reveal, process and persecute the bribery of foreign public officials in international business transactions, and the reduction of possibilities for corruption-related crime, thereby increasing the country's resilience against corruption.

²⁶ National Anti-Corruption Programme of the Republic of Lithuania for 2015-2025 adopted by Government of the Republic of Lithuania Resolution No XII-1537 of 10 March 2015: <https://www.e-tar.lt/portal/lt/legalAct/25c529d0cbcd11e4aaa0e90fce879681>

²⁷ Government of the Republic of Lithuania Resolution No 648 of 17 June 2015 On the Approval of the Inter-institutional Action Plan for 2015-2019 for the Implementation of the National Anti-Corruption Programme of the Republic of Lithuania for 2015-2025, which is available here: <https://www.e-tar.lt/portal/lt/legalAct/13fd20601e6e11e586708c6593c243ce/MKQLUxNlbT>.

²⁸ The Organisation for Economic Co-operation and Development <http://www.oecd.org/about/>

It should be mentioned that during the second assessment, which took place in June 2016, the OECD Working Group provided a very positive assessment of the general institutional and legal system for corruption control existing in Lithuania and noted several directions, where Lithuania should make greater efforts: to expand the application of criminal liability to legal persons, to ensure without reservations the seizure of income received from transactions made through bribery of public officials, and to provide for the possibility that persons offering bribes through intermediaries operating in other countries could be prosecuted in all cases.²⁹ In view of the OECD recommendations laid down, appropriate amendments to the Criminal Code of the Republic of Lithuania were adopted on 10 November 2016.³⁰

2.3. Expectations of Employees

Organisations believe that their employees will be loyal and motivated. In their turn, employees believe that their employer will demonstrate ethical values, social responsibility, defend the interests of the staff as well as give a clear position in combating corruption and other types of dishonest behaviour.

An organisation and its staff usually have a lot of common interests, however, in the event of the corruption incident, they often diverge.

Although both sides may experience very negative effects (the organisation – *costs for lawyers and restoring reputation, possible big fines, limitation of activities or even liquidation, loss of potential investors and partners*; an employee – *a fine or imprisonment, conviction, ruined professional career, difficulties in searching for a new job, etc.*), during criminal prosecution the organisation will be interested to lay the greater blame on the employee who participated in the act of corruption, while the employee will maintain that he/she was acting on behalf of the management, that the management was informed, and that the organisation had no sufficient anti-corruption policy, which prohibits appropriate action, or that there was no such training at all.

It is noteworthy that:

According to the Labor Code, the employer allows the employee to start work only after acquaints the employee upon signature to the conditions of his work, working place rules, health and safety requirements.³¹

- In its cassation practice the Supreme Court of Lithuania has stated that should the employer fail to comply with the obligation to introduce the employee to his / her duties and if the employee, although being careful enough, fails to comply with certain duties or performs them insufficiently, these actions on behalf of the employee may not be regarded as culpable and used as the basis for disciplinary liability³²;
- Article 20(3) of the Criminal Code states that a legal entity may be held liable for criminal acts of a natural person, where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, or as a result of insufficient supervision or control;
- The implementation of the provisions of the OECD Convention *on Combating Bribery of Foreign Public Officials in International Business Transactions* provides for liability of legal persons regardless of prosecution of natural persons.

Therefore, it is very important to ensure that all organisations include clear anti-corruption provisions and requirements for ethical behaviour in their legal acts and introduce them to employees upon signature, as well as organise periodical anti-corruption training.

There is a trend towards staff selection companies that they more and more often receive

²⁹ <http://www.juozasbernatonis.lt/lietuva-kyla-laipteliu-auksčiau-stojimo-i-ebpo-procese/>

³⁰ Law Amending Articles 20, 225, 226, 227, 230 of the Criminal Code of the Republic of Lithuania and the Annex to the Code: <https://www.e-tar.lt/portal/lt/legalAct/c371df70abe111e6b844f0f29024f5ac>

³¹ Paragraph 4 of Article 42 of the Labor Code of the Republic of Lithuania: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

³² The judgement of the Lithuanian Supreme Court in Civil Case No. 3K-3-314/2005 of 30 May 2005.



employers' requests for recruiting personnel from such organisations, which implement the anti-corruption programmes and training of an appropriate level.

2. 4. Expectations of Business Partners

Business organisations believe that their business market participants (partners, suppliers, clients, etc.) will be fair in implementing their contractual obligations and free of corruption, otherwise the organisations would risk of becoming accomplices in corruption activities and thus being subjected to criminal or civil liability.

There is also a huge risk for reputation if it turns out that a certain organisation maintains contacts with corrupt companies or individual natural persons involved in corruption.

The proper management of corruption risks in business relations means having and consistently implementing the stringent anti-corruption policy. Therefore, a potential business partner should always be clearly informed at once of the future requirements and expectations raised by the organisation in the field of combating corruption. More and more often organisations include these requirements and expectations in their contracts with business partners³³.

2. 5. Expectations of Investors

More and more investors engage in responsible investment practices, raising clear expectations for an organisation's risk management, business ethics and social responsibility. The essence of these expectations is *zero tolerance for corruption* and consistent corruption prevention.

These expectations shall mean:

- **Responsibility assumed by the management.** A business organisation must have a determination to declare zero tolerance for corruption and a publicly-available policy approved by the management defining what this means for the company, which would include the main corruption risks related to the appropriate business sector. The management must also ensure that the organisation has a system in place for dealing with potential incidents of corruption.
- **Implementation and compliance.** The requirement of zero tolerance for corruption must be implemented by applying effective corruption prevention measures which must be integrated into the organisation's business processes. The anti-corruption measures must help prevent corruption, identify situations, which put organisations at risk, and include the guidelines for incident management.
- **Accountability and communication.** The requirement of zero tolerance for corruption must be clearly communicated top-down to the entire organisation. The voice of the top management is critical in efficient combat against corruption.

The adherence to the Anti-corruption Programme should be reported in a bottom-up manner, i.e. from the lowest level units of the organisation up to the Board or other supreme management body. The principle of transparency should be exercised in the company's public reports

³³ See Annex No.8. Declarations of Transparency in the Implementation of a Contract to the Handbook.

by providing information on the anti-corruption programme, organisation's ownership interests and the main financial data. Incidents should be reported to the Chief Compliance Officer, the Audit Committee, the Board and appropriate institutions in accordance with the provisions of the Anti-corruption Programme.

In the case of serious corruption incidents, the management itself should inform the major stakeholders, such as clients, partners or owners.



3. SOCIOLOGICAL RESEARCH ON CORRUPTION

The majority of international business organisations, in making decisions on business development and investment directions, often perform analyses of the business environment in individual countries, during which the factor of corruption is singled out as one of the key factors influencing business conditions. Therefore, there are many various sociological and scientific researches/surveys conducted for measuring the level of corruption or its prevalence in a country, its influence on the society and business, as well as for assessing the anti-corruption measures implemented in both the public and private sectors, their effectiveness and cost-efficiency.

It is worth mentioning some of the more significant researches/surveys³⁴ which include:

- 1) Corruption Perceptions Index by Transparency International³⁵;
- 2) TRACE Matrix (Corruption Threat Assessment Index)³⁶;
- 3) Eurobarometer Sociological Survey *Businesses' Attitudes Towards Corruption in the EU*³⁷;
- 4) *International Business Attitudes to Corruption Survey 2015/2016* by Control Risk Company³⁸;
- 5) *The True Cost of Compliance 2011 and 2017*³⁹;
- 6) *The Lithuanian Map of Corruption*⁴⁰;

³⁴ The STT provides and summarizes information on sociological researches/surveys available on its website: <http://www.stt.lt/lt/menu/tyrimai-ir-analizes/>

³⁵ More information on the results are available on the website: <https://www.transparency.org/cpi2015>; https://www.transparency.org/news/feature/corruption_perceptions_index_2016

³⁶ The purpose of the Association founded in 2001 is to help companies, first of all, large international corporations, adhere to anti-corruption standards (the US Foreign Corrupt Practices Act of 1977 and OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) and be able to make their commercial intermediaries do the same.

³⁷ The Survey results are available on the website: <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2084>

³⁸ The Survey results are available on the website: <http://rai-see.org/wp-content/uploads/2016/01/corruption-survey-2016.pdf>

³⁹ The Survey results are available on the website: <http://dynamic.globalscape.com/files/Whitepaper-The-True-Cost-of-Compliance-with-Data-Protection-Regulations.pdf>

⁴⁰ The Survey results are available on the website: <http://www.transparency.lt/wp-content/uploads/2015/10/korupcijoszemelapis20141.pdf>

- 7) Investor Confidence Index for Lithuania (ICIL)⁴¹;
- 8) Transparency of private sector by Transparency International in Lithuania⁴².
- 9) Index of Economic Freedom⁴³;
- 10) Doing Business rankings⁴⁴;
- 11) Business Anti-Corruption Portal⁴⁵.

More comprehensive description of the above-mentioned surveys is provided in **Annex 3** to the **Handbook**.

⁴¹ The Survey results are available on the website: <http://www.investorsforum.lt/lt/publikacijos>

⁴² The Survey results are available on the website: <http://www.skaidrumas.lt/imones>.

⁴³ The Survey results are available on the website: <http://www.heritage.org/index/country/lithuania>

⁴⁴ The Survey results are available on the website: <http://www.doingbusiness.org/rankings>

⁴⁵ Website: <http://www.business-anti-corruption.org/>



4. THE CONCEPT OF CORRUPTION

4. 1. Definition

There are a lot of various definitions of corruption, but the most precise and clear definition of this social phenomenon is provided in the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: Fighting corruption in the EU of 2011⁴⁶:

Corruption shall mean *an abuse of power for private gain*.

This concept includes corruption in both the public and private sectors.

The scientists of the Law Institute of Lithuania offer a more detailed definition⁴⁷:

Corruption shall mean any behaviour of any person employed in **civil service** (*state politician, judge, state official, civil servant or other equivalent person*) or in the **private sector**, exceeding one's authority, behavioural standards established in legal acts or company's internal rules, in the pursuit of private or other persons' advantage thus causing harm to the interests of the State or individual natural or legal persons.

The key elements of corruption⁴⁸:

Corruption = monopoly + discretion – accountability

1) personal authority held

– ***the authority defines a person's behaviour in certain circumstances. It is usually embedded in:***

- a specific legal act (for example, the ethical principles of civil servants are embedded in the Republic of Lithuania Law on Civil Service, the Law on the Adjustment of Public and Private Interests in the Civil Service, etc.);
- the procedure descriptions or rules approved by an organisation (for example, internal rules of conduct, codes of ethics, employment contracts, staff job descriptions of companies / institutions / organisations, etc.).

⁴⁶ [http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2011\)0308_/com_com\(2011\)0308_Lt.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0308_/com_com(2011)0308_Lt.pdf)

⁴⁷ P. Ragauskas, E. Kavoliūnaitė-Ragauskienė, E. A. Vitkutė (2014). *Korupcija privačiame sektoriuje: normatyvinė samprata ir paplitimas tam tikrose srityse* (in English: *Corruption in the Private Sector: Normative Concept and Prevalence in Appropriate Sectors*), Vilnius: Justitia. http://www.stt.lt/documents/soc_tyrimai/Korupcija_privaciam_sektoriuje_LTI.pdf

⁴⁸ Internet access: <https://globalanticorruptionblog.com/2014/05/27/klitgaards-misleading-corruption-formula/>

- 2) behaviour conflicting with the authority held
 - **this behaviour can manifest in the following:**
 - active actions, when it is behaved on the contrary to the rules established;
 - omission, when no required actions are taken deliberately.
- 3) pursuit of undue advantage for oneself or other persons
 - **the advantage may be pursued for:**
 - the private person himself / herself;
 - a friend, co-worker/associate, family member;
 - any other person.
 - **possible type of advantage:**
 - material advantage (money, property, services);
 - immaterial advantage (avoidance of costs, experience, fame, etc.).
- 4) damage
 - **damage may be caused to:**
 - the State and the society (the public interest);
 - any enterprise, institution, organisation in any legal form;
 - any natural person or a group of persons.
 - **possible type of damage:**
 - material (loss of property, losses, etc.);
 - immaterial (loss of good reputation, investments, income, etc.).
- 5) weakness of responsibility.

Corruption-related criminal acts shall mean bribery, trading in influence, graft, other criminal acts committed in the pursuit of private or other persons' advantage in the public administration sector or by providing public services, namely the abuse of office or exceeding one's authority, abuse of one's authority, tampering with official records and measuring devices, fraud, misappropriation or embezzlement of property, disclosure of an official secret, disclosure of a commercial secret, misrepresentation of information about income, profit or property, legitimisation of the proceeds and property of crime, interference with the activities of a public servant or a person discharging public administration functions, or other criminal acts, if these acts are committed with the aim of seeking or demanding a bribe, offering a bribe, or concealing or covering up the act of taking or offering a bribe⁴⁹.

4. 2. Forms of Corruption in the Private Sector

Corruption between business and the public sector entities

According to public opinion, corruption is the most prevalent in relations between the public and private sectors. The **representatives of the public sector** whose duty is to satisfy and defend the public interest, for undue advantage (bribes) from the representatives of the private sector, perform actions or make decisions for the advantage of the latter and to the detriment of the public interest.

Public sector shall mean the entirety of state and municipal bodies and institutions, which perform the functions of public administration and are financed by the resources of the State budget and municipal budgets.

*Public administration*⁵⁰ involves:

- adoption of administrative decisions;
- control of the implementation of laws and administrative decisions;

⁴⁹ Article 2(3) of the Republic of Lithuania Law on the Special Investigation Service: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9C9FA25983BC/FKJzDWUtdy>.

⁵⁰ Article 2(1) of the Republic of Lithuania Law on Public Administration. <https://www.e-tar.lt/portal/lt/legalAct/TAR.0BDFFD850A66/auNowyYNdc>.



- provision of administrative services⁵¹ established by law;
- administration of the provision of public services⁵²;
- internal administration of an entity of public administration⁵³.

Private sector shall mean the entirety of private legal entities (*including state and municipal enterprises as well as public limited companies*), the purpose of which is to satisfy private interests (mostly – to earn money / profit) and the activities of which in terms of their compliance with the requirements laid down in legal acts are to a greater or a lesser extent monitored by the representatives of the public sector.

Corruption-related acts committed by the representatives of the public and private sectors are usually divided into:

Systemic (grand) corruption, which refers to cases, when business entities offer bribes to the higher-level civil servants or politicians in order to gain favourable decisions or state orders for their business. This type of corruption is common in the following fields:

- lawmaking (when politicians with legislative powers are bribed in order to achieve legal regulation in favour of only a small group of private business interests);
- public procurement (when bribed civil servants protect specific business entities by setting qualification requirements for suppliers or technical specifications for purchased objects, etc., which limit competition);
- civil engineering and territorial planning sectors (when bribed persons authorised by the State, in breach of the requirements of legal acts, issue building permits to business entities, change land purpose, approve detailed plans illegally, etc.);
- environmental protection sector (when corrupt environmental protection officials issue pollution permits illegally, adjust environmental impact assessments, are negligent in controlling waste management implemented by business entities, etc.);
- justice system (when judges are bribed in order to gain favourable decisions during the trial; this field is characterised by exceptional immunity and great discretion in decision-making).

Characteristics of grand/systemic corruption:

- This type of corruption has both material and moral detrimental effect on Lithuania's political and economic system.

⁵¹ **Administrative service** means activities of an entity of public administration comprising the issue of authorisations, licences or documents confirming particular legal facts, accepting and processing declarations, providing consultations to persons on issues regarding the competencies of the entity of public administration, providing information of the entity of public administration as defined by the law, performing administrative procedure.

⁵² **Civil service** means social, education, science, culture, sports and other services defined by laws, provided by legal entities controlled by state or municipality institutions. In cases and procedures defined by laws, public services may be provided by other persons as well.

⁵³ **Internal administration** means activities aimed at ensuring independent functioning of an entity of public administration (structure arrangement, management of documents, personnel, available material and financial resources) in order to implement the functions of public administration.

- The corruption of such level is characterised by higher bribe amounts, and often there are long-term mutually-beneficial corruption relations between bribers (usually business representatives) and bribe takers.
- Systemic (grand) corruption not only diminishes the trust of the citizens of Lithuania in democratic governance of the State, promotes disrespect for laws and ruins the concept of a democratic state governed by the rule of law, but it also results in huge economic losses. Economic losses manifest through the loss of the State budget revenue, decline in investments, weak economic growth or distortion of competition in the market.

Petty (or household) corruption refers to illegal reward paid by citizens to the lower-level civil servants in order to avoid penalties or obtain public services by avoiding bureaucratic procedures or possible delays in decision-making. The ultimate premises for manifestation of petty corruption are in city and district municipalities, healthcare institutions, also in bodies and institutions that are authorised to implement administrative supervision and apply administrative penalties (*Police, Tax Inspectorate, Customs, etc.*).

Characteristics of petty corruption:

- This type of corruption usually involves a larger group of persons and has a particularly negative moral effect on the citizens of Lithuania.
- Business and citizens encounter this type of corruption in their daily environment; therefore even a one-time negative personal experience creates an impression of massive bribery involving all levels of authorities.
- The belief that all authorities are highly *corrupt* promotes disappointment with state institutions, distrust with politicians and the Government, and thus creates an impression that bribery is the best and fastest way of solving a problem. Due to the aforementioned reasons, a part of the corruption crimes in these institutions are committed on the initiative of citizens themselves.

Corruption among business entities

Information about cases of corruption in the private sector or between individual entities of the private sector is practically never made public. It is likely that this occurs for several reasons:

- business entities do their best to conceal this type of information in order to protect their reputation;
- this problem was not yet examined in depth and its extent was unknown, thus it did not receive proper attention;
- the society treats such offences in the private sector as unfair actions that do not incur criminal liability rather than corruption-related offences, thus showing partial tolerance.

A research conducted by the scientists of the Law Institute of Lithuania in 2014⁵⁴ showed that Lithuania is not a stranger to corruption in the private sector either. The research identified various potential corruption mechanisms in the following fields, for example:

- **the media** (withholding (non-publication) or retouching detrimental information about the person who paid a bribe; defamation and other types of repression or harm to the interests of persons who have fallen into disfavour of media representatives, competitors or other clients for a payment, etc.);
- **sports** (voting violations in sports organisations and federations, bribery, gifts and other types of remuneration for falsification of sports results; manipulation of the course, results or statistics of sports competitions, etc.);
- **education** (trade in grades, examination tasks, diplomas, entrance examinations to higher education institutions; “buying” ratings for institutions of high education, etc.);

⁵⁴ P. Ragauskas, E. Kavoliūnaitė-Ragauskienė, E. A. Vitkutė (2014). *Korupcija privačiame sektoriuje: normatyvinė samprata ir paplitimas tam tikrose srityse* (in English: *Corruption in the Private Sector: Normative Concept and Prevalence in Appropriate Sectors*), Vilnius: Justitia. http://www.stt.lt/documents/soc_tyrimai/Korupcija_privaciame_sektoriuje_LTI.pdf



- **provision of legal services** (simultaneous representation of two opposing parties; provision of fictitious services in order to launder money; unfair representation of interests, etc.);
- **personal healthcare services** (payments in order to receive treatment without a queue, forgery of health certificates; protecting pharmaceutical companies by prescribing more expensive or inappropriate medicines/pharmaceuticals for patients, etc.);
- **pharmacy** (fictitious clinical research; illegal sponsorship for physicians and pharmacists; market sharing, etc.);
- **business operations** (embezzlement or misappropriation of a company's property; cartel agreements between competitors⁵⁵; choosing suppliers that offer bribes, etc.);

Thus, in their nature and purposes, corruption-related acts characteristic to the private sector are analogous to the acts committed in the public sector; only in this case, damage is caused not to the State, but to one or several business organisations.

It is noteworthy that shareholders of companies often even do not give thought to the massive extent of damage caused to the business organisations managed by them due to an organisation's inappropriate internal rules of conduct and job descriptions, which give a broad discretion to company directors or ordinary managers; also, due to absence of effective control of activities of the latter resulting in abuse of the authority entrusted to authorised employees of a company and the employees' quite frequent use of organisation's property for personal purposes by choosing suppliers that each time offer them an undue payment rather than those that offer the best price-quality ratio for their goods and services.

These unfair actions of employees cause triple damage to their business organisation, as it: 1) receives lower-quality goods / services and thus incurs irregular costs, 2) purchases the required goods / services for a higher price, 3) loses its reputation in the market, and, when the news go public – in the society.

4. 3. Corruption-Related Risks and Potential Consequences of Corruption

It is generally agreed that corruption is unacceptable. Both business organisations and the authorities refer to combating corruption as a part of companies' social responsibility, thus more and more companies list anti-corruption as one of their values.

Organisations are interested in fighting corruption, because otherwise it can lead to serious legal sanctions and other negative outcomes. Therefore, organisations increasingly more often analyse their operations in order to define the key risks of corruption and apply preventive measures.

⁵⁵ Cartel - an agreement between companies operating in one market would work together and restrict competition rather than competing with each other. In almost all cases, company agreements are considered unlawful. a) set prices; b) restrict production; (c) sharing markets or customers; (d) exchange of commercially sensitive information; e) to coordinate the submission of tenders in public procurement. Cartels are generally not classified as corruption offenses, and this guide is not applicable to them in their entirety. Cartels are authorized to investigate the Competition Council of the Republic of Lithuania. Online access: <http://www.kt.gov.lt/lt/veiklos-sritys/konkurencija-ribojantys-susitarimai>.

Potential consequences of corruption:

Risk of legal persecution. Corruption poses a huge legal risk both to business organisations and their employees – the risk of assuming criminal and civil liability for the organisation as well as responsibility for business partners and suppliers. Responsibility risk for the performance of subsidiaries lies with their parent companies, and organisations doing business outside Lithuania take additional risks of being prosecuted under laws of other countries.

Risk of costs. The cost of organisation's participation in corruption can be very high in terms of fines, compensations for damages, etc. In the worst cases corruption, can pose a threat to an organisation's existence. Ruined reputation may result in lost business opportunities. In public procurement, the anti-corruption clause is defined by law. This practice – used to block corrupt suppliers – is becoming increasingly common in tenders of the private sector as well.

Financial risk. A real threat is the inability to grow up financially and to attract investors. Organisations involved in corruption often have difficulties in getting a loan from national or international financial institutions. Should the recipient of funds prove to be involved in corruption, the available loan agreements with creditors and financial institutions may be terminated. If it transpires that an organisation is involved in a corruption scandal, responsible investors refuse to invest in shares and may withdraw the investments they have already made.

Risk to reputation. Ruined reputation influences the value, share price and future business opportunities of an organisation. Organisations with a reputation of unethical practices are regarded as undesirable business partners, thus, they lose clients and have difficulties in attracting good employees.

Increasing expectations of accountability raised by the authorities and the general public put increasing pressure on companies to act ethically, enhance the reputation risk and aggravate the potential consequences.

In Lithuania, high ethical standards are most often met by the international players, i.e. foreign investors or companies exporting their products or goods to Western European, US and Scandinavian markets, still, gradual orientation of the rest of business organisations towards these markets is also observed.

According to a quarterly research – Investors' Confidence Index for Lithuania (ICIL)⁵⁶ (Q1 2016) one of the major factors promoting ethical behaviour in business is the importance of a company's trademark and reputation. This factor was marked by 83% of respondent investors. Other equally important factors include public recognition (57%), consumer pressure (38%) and globalisation (31%). The interesting thing is that one of the more distinct reasons for business ethics indicated by business representatives is a mere belief that it is *just the right thing to do*. According to the trustworthiness survey of Lithuanian investors (fourth quarter of 2017)⁵⁷, 31% investors believe that the level of business transparency in Lithuania is low.

It should be noted that quite often the companies enforcing ethical and transparent practices may decide to refrain from expanding their businesses in countries with tenacious and prevalent corruption or even leave such countries altogether. Unfortunately, this does not solve the problem, as the market is then entered by organisations with lower standards. Companies with high standards should perceive themselves as a part of the solution to the problem by being a good example and using their influence on the authorities, suppliers and business partners, by initiating cooperation with other market players and supporting civil society organisations. Helping the society to act properly, companies would actually also help themselves.

Corruption causes a huge damage to the State, business and each individual of the society. Some of the resonant scandals, which caused severe damage to all above-mentioned entities, include:

Schools in Sichuan Province. In 2008 an earthquake in the Chinese province of Sichuan

⁵⁶ More information on the results is available on the website: http://investorsforum.lt/wp-content/uploads/2016/02/LIPI_2016_Q1_-_LT_-_Final.pdf

⁵⁷ http://investorsforum.lt/wp-content/uploads/2017/12/LIPI-LT-2017-IV-KETV-FINAL_FINAL.pdf



resulted in a collapse of more than 7,000 classrooms (mostly in rural areas), leading to the death of nearly 5,000 students and the injury of over 15,000 students⁵⁸.

The schools attracted most attention namely because of the fact that in some areas they were the only buildings, which collapsed. By the way, older schools did survive the earthquake. This led to allegations of corruption on the part of the officials of the Chinese Ministry of Education and agreements between construction companies, as new schools were built without meeting technical standards for construction, saving on construction materials or using low-quality materials.

Volkswagen emissions scandal ("emissions defeat devices"). Unfortunately, even the large companies with good reputation worldwide that have been there for years are also not safe from greed-driven corruption scandals. One of such companies is the German car producer Volkswagen. In 2015 it turned out that approximately 11 million cars manufactured by this company have a piece of software, which falsifies pollution emissions data (commonly called "**emissions defeat devices**")⁵⁹. It is acknowledged that the cases of forgery resulted in huge losses to the giant car manufacturer.

Shopping Centre Babilonas in Panevėžys. A similar case in the Lithuanian case-law practice can also be mentioned. Fortunately, in this case it was possible to avoid specific accidents. The essence of the case: a representative of the Fire and Rescue Department under the Ministry of the Interior of the Republic of Lithuania, being fully aware of the serious violations of fire safety measures and deviations from project documentation (e.g. insufficient number of fire alarm sensors, the distribution of which did not comply with building standards) at Shopping and Entertainment Centre Babilonas, gave illegal and unjustified instructions to his subordinate employees to abuse office and sign the deed of compliance of the above-mentioned object as suitable for use, which, in case of fire, would pose a substantial threat to the safety of the society, health and life of the people⁶⁰.

Rolls-Royce case. The bribery scandal forced the Rolls-Royce - luxury car and aviation engine maker to pay 671 million pounds to US and British officials dealing with corruption cases. The FTSE 100, a separate Rolls-Royce automotive division, has agreed to pay fines after an international investigation led by the British Sophisticated Crime Officer (SFO). The investigation found that the company was paying bribes itself or through brokers to win civilian and military procurement in several countries: Indonesian airlines "Garuda" selling Rolls' Trent 700 engines to Airbus A330 aircrafts; Indian Hawk combat training aircraft for jet engines; In Brazil - bribe for a contract with Petrobras State Oil Company.⁶¹

⁵⁸ https://en.wikipedia.org/wiki/Sichuan_schools_corruption_scandal

⁵⁹ <http://www.telegraph.co.uk/finance/newsbysector/industry/11886419/The-Volkswagen-scandal-reveals-the-corruption-of-the-Lefts-regulation-dreamworld.html>

⁶⁰ Case No. 2K-359/2010 of 2 February 2010 of the Panel of Judges of the Division of Criminal Cases of the Lithuanian Supreme Court.

⁶¹ <http://www.telegraph.co.uk/business/2017/01/16/rolls-royce-pay-almost-700m-settle-bribery-corruption-claims/>;
<http://www.telegraph.co.uk/business/2017/11/08/us-prosecutors-name-five-rolls-royce-corruption-case/>.

4. 4. Legal Regulation of Corruption and Related Liability

The application of criminal law is an **extreme sanction** (*ultima ratio*) used to defend the society against illegal actions and applied only for the **most dangerous** of offences, including **corruption-related offences/criminal acts**.

Lithuania is a member of the major international anti-corruption conventions, which have established the obligation of the State to criminalize corruption. The majority of these conventions, *inter alia*, obligate the signatory state to implement criminal liability for bribery in the **private sector**⁶²

- 1) *EU Council Framework Decision*⁶² 2003/568/JHA of 22 July 2003 on combating corruption in the private sector;
- 2) United Nations Convention against Corruption⁶³;
- 3) Criminal Law Convention on Corruption⁶⁴;
- 4) Civil Law Convention on Corruption⁶⁵;
- 5) **Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**⁶⁶.

Corruption-related criminal acts, which incur criminal liability, are listed in the Republic of Lithuania Law on Prevention of Corruption, and their composition is defined in the Criminal Code of the Republic of Lithuania (hereinafter referred to as the CC). Less dangerous corruption-related offences are defined in other legal acts and usually result in milder punishment (for example, disciplinary or administrative liability).

Article 2(2) of the Law on Prevention of Corruption, **corruption-related criminal acts** shall mean bribery, trading in influence, graft, other criminal acts committed in the pursuit of private or other persons' advantage in the public administration sector or by providing public services, namely the abuse of office or exceeding one's authority, abuse of one's authority, tampering with official records and measuring devices, fraud, misappropriation or embezzlement of property, disclosure of an official secret, disclosure of a commercial secret, misrepresentation of information about income, profit or property, legitimisation of the proceeds and property of crime, interference with the activities of a public servant or a person discharging public administration functions, or other criminal acts, if these acts are committed with the aim of seeking or demanding a bribe, offering a bribe, or concealing or covering up the act of taking or offering a bribe.

The Annex No. 4 to the Handbook provides a detailed description and analysis of 5 main corruption-related criminal acts⁶⁷: **bribery** (Article 225), **trading in influence** (Article 226), **graft** (Article 227), **abuse of office** (Article 228) and **failure to perform official duties** (Article 229).

Criminal liability for the above-mentioned criminal acts applies to persons that have committed these criminal acts in the **territory of the Republic of Lithuania** or the citizens of the Republic of Lithuania as well as other persons permanently living in Lithuania that have committed criminal offences abroad; and the liability for the criminal acts listed in Articles 225-227 of the CC (bribery, trading in influence and graft), which must be criminalized under international law or international agreements signed by Lithuania, is applied to **all persons, regardless of their citizenship and place of residence, or the place of offence, or if the person is held liable for the offence according to the laws of the place of the offence**.

It should be noted that for a long-time corruption was regarded a national offence, i.e. an offence, which stays within the borders of one state. However, in the long-run, in the context

⁶² http://www.stt.lt/files/129_doc_file_1_115815.pdf

⁶³ <https://www.e-tar.lt/portal/lt/legalAct/TAR.6B16C92046F2>.

⁶⁴ <https://www.e-tar.lt/portal/lt/legalAct/TAR.9FD3E0DFACD5>.

⁶⁵ <https://www.e-tar.lt/portal/lt/legalAct/TAR.E6A9ED296E27>.

⁶⁶ <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> (English version);

http://www.stt.lt/files/103_doc_file_1_094520.pdf (Lithuanian version)

⁶⁷ Chapter XXXIII *Crimes and Misdemeanours Against Civil Service and Public Interest* of the Criminal Code of the Republic of Lithuania.



of globalisation processes, business organisations started to expand and relocate their activities to other countries, often located on different continents, including the less developed countries.

Vicious practices became prevalent, where businesses, in order to enter and establish themselves on the third-country markets without any competition, started making undue payments to the government representatives working in these countries.

Understanding that this type of international corruption has become an urgent moral and political problem, which hinders the principles of good governance of the state and the principles of economic development as well as distorts international competition, in 1997 the OECD adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions⁶⁸.

Pursuant to this Convention, any attempts to bribe any foreign public official are regarded as corruption-related **criminal offence** and **incurs criminal liability according to the national law**. Criminal liability for this type of offences/acts is also applied in Lithuania. More detailed information on the national legal regulation of corruption in some foreign states and international legal regulation of corruption as well as specific examples of corruption are provided in **Annex No. 4 to the Handbook**.

⁶⁸ An authentic text of the Convention in Lithuanian is available here: https://e-seimas.lrs.lt/rs/lasupplement/TAP/1b1cff20316211e6a222b0cd86c2adfc/cf641ec1316211e6a222b0cd86c2adfc/format/ISO_PDF/



5. CREATION OF ANTI-CORRUPTION ENVIRONMENT

In Lithuania both the public and private sectors have to strive for *zero tolerance for corruption*.⁶⁹ Keeping in mind all measures created for that purpose, it seems that this is the case. For example, the public sector has the National Anti-Corruption Programme and other corruption prevention measures developed⁷⁰, while the private sector implements various measures regarding zero tolerance for corruption, for example, Anti-Corruption Policy, Gifts Policy, Policy for Avoiding Conflicts of Interest and Ethical Codes, which constitute an integral part of organisations' internal rules of procedure.

Greater transparency and zero tolerance for corruption in the private sector could be achieved by developing anti-corruption policies for different fields of the private sector or individual companies, for example, an anti-corruption handbook for industrial organisations, an anti-corruption handbook for banking and credit organisations, an anti-corruption handbook for small businesses, etc.

It is noteworthy that there is no single universal model for creating anti-corruption (*unfavourable for corruption*) environment in business organisation(s). Organisations differing in size and type of activities can encounter different risks of corruption, thus the individual corruption prevention measures discussed in this Handbook may be unequally effective and / or relevant.

Depending on the goals set, risks posed by corruption, anti-corruption awareness and financial capacities, each business organisation should choose its own model of creating anti-cor-

⁶⁹ The concept of **zero tolerance** was developed in the USA around 1980s with increasing cases of drug use at schools. The USA took matters in their hands. Thus schools were introduced to the concept of *zero tolerance at schools*. This was a message for school communities, implying that certain violations will not be tolerated. Inevitable punishment with no excuses, no matter if the misdemeanour is petty or serious. First of all, the attention was focused on drug use. <http://www.eosgrupes.lt/lt/psichologija-ir-pedagogika/1/nuline-tolerancija> The strategy of zero tolerance was based on the *broken windows theory*, developed by G. Kelling and J. Wilson in 1983. The *broken windows theory* states that there is a connection between disorder and crime. Ignorance to small crimes results in a sense of having no laws, thus encouraging more serious offences – criminals don't believe that they will be arrested. **The authors of the broken-windows theory noticed:** if a building has broken windows and they are not repaired, eventually they will be accompanied by other signs of disorder – graffiti, rubbish, vandalism; the abandoned building might even be broken into by drug dealers or the homeless. So, even the most petty of crimes should receive the same amount of attention as the serious ones, thus seeking to ensure the implementation of the principle of inevitable punishment // Lecture of Gintautas Sakalauskas. // http://www.google.lt/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&cad=rja&ved=0CC4QFjAB&url=http%3A%2F%2Fweb.vu.lt%2Ftf%2Fg.sakalauskas%2Ffiles%2F2012%2F09%2FKriminologijos-paskaitos-2012-IV-dalis.ppt&ei=Lr_wUuq8M6WBywPmslGoAQ&usg=AFQjCNFj6Qz22BLthqc98VO1FWvDcBzkEg

⁷⁰ Corruption prevention measures implemented in the public sector are defined in the Republic of Lithuania Law on Prevention of Corruption: <https://www.e-tar.lt/portal/lt/legalAct/TAR.4DBDE27621A2/AeGwNWRfhL>.

ruption environment, corruption prevention measures and the extent to which these will be applied in the organisation.

The **two** alternative models for creation of anti-corruption environment and Ernst & Young methodology below are presented as an example, while the individual corruption prevention measures to be applied in business are provided in the subsequent chapter.

The first alternative – creation of anti-corruption environment in organisations by implementing typical corruption prevention measures:

1) The success of anti-corruption activities mostly depends on the will and determination of the management of an organisation to implement the policy of zero tolerance for corruption. Namely the management must be the main initiator and promoter of anti-corruption ideas at the organisation. The management must transmit the main message that corruption will not be tolerated in this organisation. Therefore, first of all, it is necessary to agree upon the role of the management of the business organisation in anti-corruption policy, transparency rules for directors, shareholders, board and council members; it should also be agreed on impeccable reputation requirements and management of conflicts of interest. It is essential to develop the management's understanding about the damage caused by corruption and fraud, in order to make them support anti-corruption initiatives.

2) Later on the organisation should analyse the situation and identify the extent of risk of corruption at the organisation, the level of employees' tolerance for corruption, corruption risk factors in the most significant areas of the organisation's activities, elimination of which would reduce the risk of corruption and dishonest behaviour.

3) The gathered information should be the basis for deciding on the content and scope of the organisation's anti-corruption policy as well as creating the Codes of Ethics and Conduct for the employees, the major purpose of which would be transparency⁷¹, integrity and exemplary behaviour.

4) For the organisation's anti-corruption policy were practicable, the provisions of the Codes of Ethics and Conduct were not declarative and the compliance with them were ensured, penalties for non-compliance with them on equal conditions were applied, a person responsible for corruption prevention should be assigned.

5) Later on the whistleblower protection mechanism should be set up and the procedure for reporting cases of corruption should be defined.

6) Then, the rules for the management, use and disposal of the organisation's property should be established.

7) Further on, gifts and representation policies, adjustment and avoidance of conflicts of interest policies should be discussed and regulated, and the rules for charitable donations and sponsorships should be established.

8) If an organisation is involved in lobbying, it should be agreed on the principles of such involvement.

9) The company should establish the principles and procedure for its accountability to the public, clients, partners, and other interested parties.

10) The company should conduct honesty and loyalty assessments of prospective employees and those working in the company; it should also identify the level of staff tolerance for corruption. Periodic anti-corruption education and development of the employees' anti-corruption awareness should also be implemented by the company.

⁷¹ **Transparency.** In performing activities, intolerance for unfair means of competition as well as illegal actions, such as:

- 1) dissemination of misleading information about competitors or their activities;
- 2) failure to comply with the Law on Competition;
- 3) bribery in order to achieve more favourable conditions / decisions for business or harm to competitors;
- 4) public criticism of competitors' activities;
- 5) forgery of financial documents;
- 6) concealment of taxes.



11) Regular analysis of the environment at the organisation and identification of potential corruption risk factors should also be performed, and specific corruption prevention measures for elimination of the corruption risk factors identified should be agreed upon.

12) Also, transparency requirements for business partners and procedures for checks on them should be established.

13) Each organisation should agree on measuring the overall anti-corruption awareness of the organisation, the principles and procedure for anti-corruption education.

14) Where appropriate, the organisation should develop an anti-corruption programme and the plan of its implementing measures.

The second alternative – planned creation of anti-corruption environment considering the needs of a specific organisation.

As it was mentioned, there is no single model to guarantee success in creating and implementing the anti-corruption environment in a business organisation. Corruption prevention experts⁷² propose implementing this process in several stages:

1) Stage one – organisation's self-assessment / analysis of the current situation in a business organisation

First of all, an organisation should assess what has already been done in the field of anti-corruption, transparency and other fields related to formation of an unfavourable environment for corruption as well as to identify the major risks of corruption, their degree, potential effects, etc. (this involves an "informal analysis" – a pragmatic corruption risk analysis of all operational processes – based on the personal knowledge and experience of the expert). This may require hiring external consultants.

2) Stage two – choosing a model (its scope) for creation of the anti-corruption environment

This stage involves a self-assessment of the organisation's size, volumes of activities, carrying out of a cost-benefit analysis and making the "political" decision on what anti-corruption measures (and to what extent) will be implemented in the organisation, as well as the time-span and human resources (independently or by hiring external experts) for that, etc.

This stage should be consolidated by a "political declaration", i.e. an internal document adopted by the supreme management body of the organisation, which would establish the "political will", define the principal values, consolidate the model for the formation of anti-corruption environment chosen at that stage, and assign the persons responsible for the creation of anti-corruption environment, etc.

3) Stage three – creation and implementation of the model of anti-corruption environment

⁷² An alternative operating model was described by Vytas Rimkus, the expert of the National Anti-Corruption Association of Non-Governmental Organisations, which was revised and supplemented by the compilers of the AHB.

Depending on the size of the organisation and the degree of the risk of corruption in its activities, the anti-corruption environment in the organisation could be of two models (levels):

a) **Basic model of anti-corruption environment** – formation of anti-corruption environment based on the correction methods of the behaviour of the members of the organisation's collective.

b) **Extended model of anti-corruption environment** – formation of anti-corruption environment based on behaviour correction and organisational-technical methods focused on elimination of the key reasons and preconditions for corruption both in the company's collective and operational processes.

a) **The basic model of anti-corruption environment** provides for a possibility to influence the key reason for corruption – the aim to gain illegal profit at the cost of the State, competitors or the employer. The main purpose of this model is to create and maintain an organisation's micro-climate, which would encourage the employees to be fair, responsible, transparent and loyal in performing the duties assigned to them, as well as adhere to the rules of conduct, etc. This model could be implemented by using the following measures:

- 1) defining and consolidating organisational values and behavioural rules / standards for all collective members with no exceptions based on principal values (intolerance for corruption, honesty, responsibility, loyalty, etc.);
- 2) regulating the issues related to the adjustment of work-related and private interests in the implementation of assigned duties;
- 3) providing for sanctions, as measures having effect, for failure to comply with the established requirements (in order to create conditions that would make corrupt and other intolerable behaviour inexpedient);
- 4) regularly and purposefully implementing the staff training in this field;
- 5) providing a description of procedures and appointing responsible persons who would ensure effective and regular implementation of the rules of conduct, the requirements for adjustment of work-related and private interests.

Where appropriate, additional measures could include:

- At the stage of staff selection:
 - appropriate assessment of the candidates' personal data, biography and references from previous workplaces;
 - testing of the candidate's personal qualities.
- During employment:
 - periodical assessment of the employees' honesty (adherence to the rules of conduct, loyalty);
 - developing the staff cross-checking system (to provide for a duty to report "dishonest behaviour" / non-compliant with behavioural standards and to promote such reporting behaviour), ensuring the "four-eyes principle"⁷³.
 - assessment of transparency in operational processes.

b) **The extended model of anti-corruption environment** refers to formation of anti-corruption environment based on behaviour correction and organisational-technical methods focused on elimination of the key corruption problems, reasons and preconditions at the organisation. Its purpose is to create and maintain an organisation's micro-climate, which would encourage employees to be fair, responsible, transparent and loyal in performing their duties/functions as well as to adhere to the rules of conduct; in addition, to use technical and organisational measures to withdraw or markedly restrict the opportunity to act not in compliance with behavioural standards, and to enhance the probability of being caught upon violating them.

This model could be implemented by using the following measures:

⁷³ The "four-eyes principle" refers to a situation, when certain actions of one employee must be reviewed and approved by another.



- 1) defining and consolidating organisational values and behavioural rules / standards for all collective members with no exceptions based on principal values (intolerance for corruption, integrity, responsibility, loyalty, etc.);
- 2) regulating the issues related to the adjustment of work-related and private interests in the implementation of assigned duties;
- 3) providing for sanctions, as measures having effect, for failure to comply with the established requirements (in order to create conditions that would make corrupt and other intolerable behaviour inexpedient);
- 4) regularly and purposefully implementing the staff training in this field;
- 5) developing the corruption risk management system (process) in the organisation, which would include:
 - defining processes that would be deemed as risky in terms of corruption, as well as reasons and conditions, which create preconditions for the probability of manifestation of corruption, therein;
 - an assessment of risks and potential consequences of corruption (including potential damage by assuming risks and cost assessment) as well as making the decision to ignore / assume risk or manage it, i.e. implement all actions immediately or by preparing a measure plan;
 - the implementation of planned actions (i.e. the elimination of reasons and conditions that are determined by inappropriate regulation, management, absence of control and accountability or insufficiency; also, the implementation of technical and organisational measures withdrawing or restricting the opportunity to act against behavioural standards and increasing risk of being caught upon violating them);
 - the preparation and implementation of corruption prevention programmes and measures, as well as monitoring their effectiveness;
- 6) developing an effective structure / system ensuring regular assessment of adherence to behavioural standards and law requirements (for example, by implementing a compliance policy at the organisation).

The possible additional measures for implementing the extended model of anti-corruption environment could be as follows:

- At the stage of staff selection:
 - appropriate assessment of the candidates' personal data, biography and references from previous work places;
 - testing of the candidates' personal qualities.
- During employment:
 - periodic assessment of the staff honesty (adherence to the rules of conduct, loyalty);
 - developing the staff cross-checking system (to provide for a duty to report "dishonest behaviour" / non-compliant with behavioural standards and to promote such reporting behaviour);

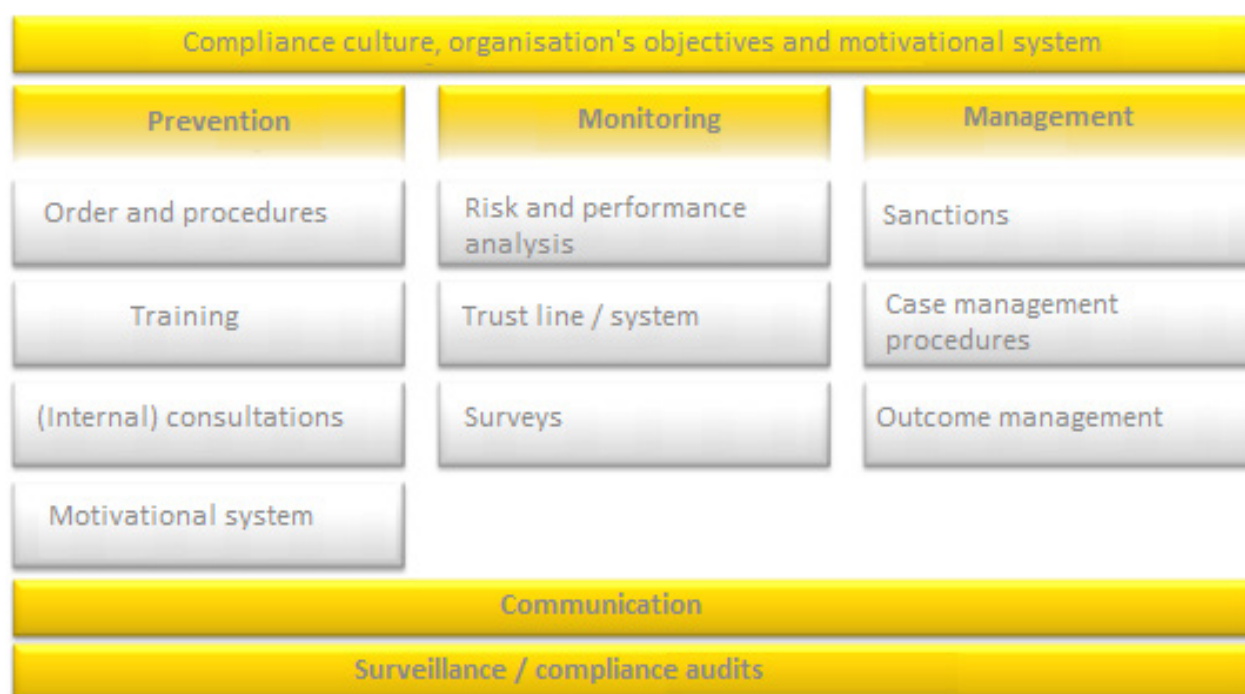
- joining networks of socially-responsible groups of business enterprises: UN Global Compact, LAVA, *Baltoji banga* (in English: *Clear Wave*), etc.

Ernst & Young (hereinafter referred to as EY) methodology for creation of anti-corruption environment, which includes the key elements of the compliance (corruption-prevention as well) programme reflecting the good international practice.

In order to ensure the effective functioning of the compliance programme, each compliance and corruption prevention element named in the provided model should be adapted to a specific organisation and its environment, but in all cases the programme should include:

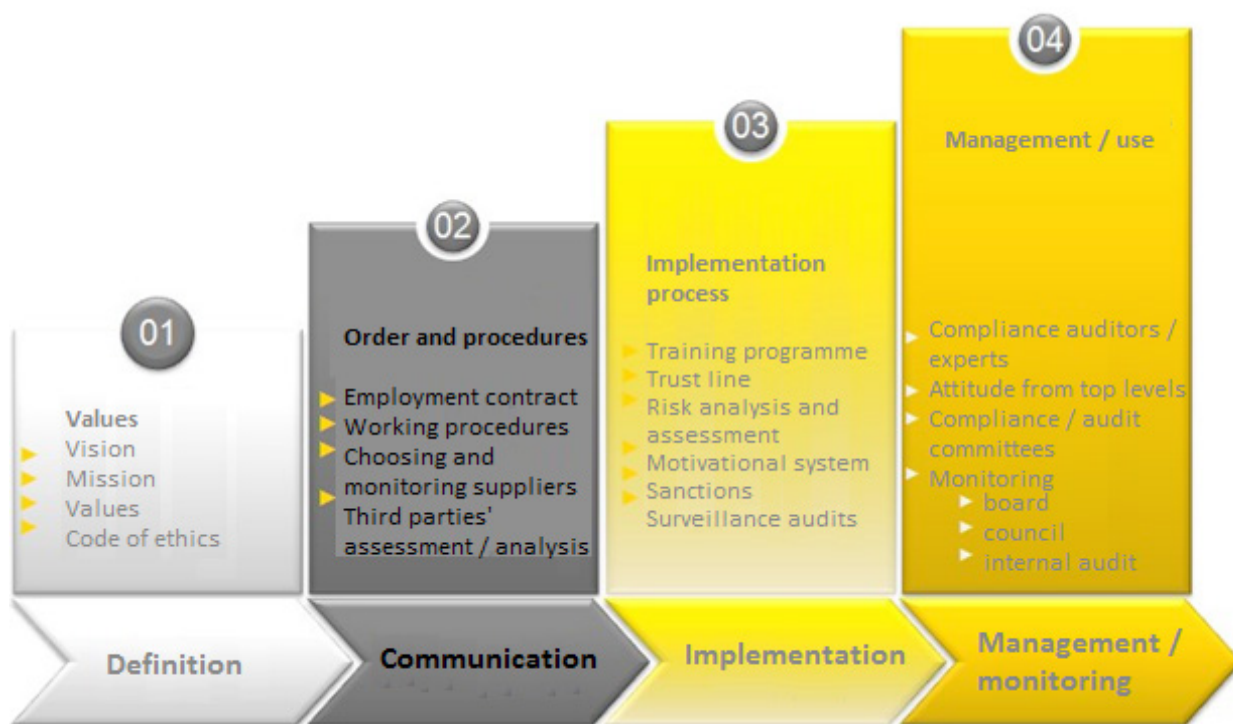
- *preventive actions and measures* (e.g. anti-corruption-related disciplines and procedures, training, motivational system);
- *monitoring actions and measures* (e.g. risk and activity analysis, implementation of trust lines or other tools, surveys and interviews);
- *control actions and measures* (sanctions, procedures for managing incidents or fraud cases, and consequence management procedures).

The efficiency of compliance system requires a clear and consistent communication of organisational values and position as well as periodical monitoring and / or compliance audits to assess the efficiency of policy implementation.



The principles of EY method for the creation of anti-corruption environment are provided in the figure below, by listing the proposed procedures for implementing elements of compliance / corruption prevention system:

- 1) determining organisational values and principles of transparency;
- 2) communication of the principles listed in the code of ethics and transparency policy;
- 3) implementation of tools and measures to establish the implementation of transparency policy;
- 4) management and monitoring of the measures to ensure the application of the principle of transparency.



One of the alternative tools for combating corruption and creation of the anti-corruption environment is the new **ISO Standard 37001**⁷⁴.

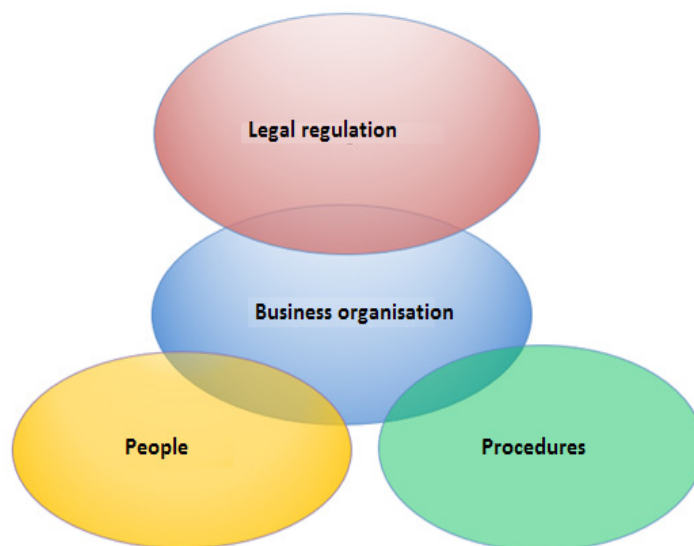
⁷⁴ More information on the website: <http://www.lsd.lt/index.php?1922119988>, http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=65034, <http://www.iso.org/iso/iso37001>



6. MEASURES FOR TRANSPARENCY IN BUSINESS AND THEIR APPLICATION

Corruption is caused by three major problems: **dishonest persons, gaps in legal regulation and insufficient processes and work organization**. Therefore, both in analysing the current situation and creating anti-corruption measures, they should be grouped by corruption issue they target.

The major **principles** to be followed by business striving for creation of anti-corruption environment are:



1. Publicity and openness;
2. Transparency and clear procedures;
3. Honesty;
4. Loyalty and reliability;
5. Awareness and integrity;

6. Encouragement to refrain from taking and giving bribes as well as to report and show zero tolerance for dishonest behaviour.
7. "Four eyes" principle for control and monitoring⁷⁵.

Further on this Handbook discusses the most commonly-used corruption prevention methods and the aspects of their application:

1. The role of management in anti-corruption activities;
2. Organisation's anti-corruption policy;
3. Assessment of risks of corruption, which may be encountered by an organisation in its business environment;
4. Investigation of tolerance for corruption and unethical behaviour among employees;
5. Assessment of honesty and loyalty of prospective employees;
6. Anti-corruption education for staff;
7. Codes of Ethics and Conduct;
8. Policy for managing conflicts of interest;
9. Gifts and representation policy;
10. Policy for charitable donations and sponsorships;
11. Lobbying policy;
12. Reporting system and whistleblower protection;
13. Checks on business partners;
14. Transparency and accountability to the public;
15. Organisation of anti-corruption activities;
16. Preparation, implementation and review of anti-corruption programmes;
17. Maturity assessment of the organisation's corruption prevention system.

6. 1. The Role of the Management in Anti-Corruption Activities

Organisational culture that is transparent, honest and based on values is especially important in developing organisation's activities on the basis of high ethical standards and giving no opportunity to corruption. The message of intolerance for corruption should reach every staff member of the organisation.

The most important role of combating corruption falls on **the management** of the organisation, the example of which, **active involvement and commitment**, ensures the creation of an effective anti-corruption programme and its consistent implementation at the organisation.

The duty of the management is to initiate the implementation of the anti-corruption programme in the organisation, to be actively involved in its creation and selection of the required measures. The anti-corruption policy and the anti-corruption programme should be approved by the decision of the management (*the board of the company or the director, where the organisation does not have a board*), thus providing it with the necessary strength and emphasizing their importance to the organisation.

Do as I do, not as I say

The management must not only declare its determination to combat corruption, but also regularly promote compliance with the highest standards by showing their personal example – their position must be clear and up-front to everybody. The top-management behaviour is particularly important in formation of the attitude of the middle management and all the staff of the organisation in combating corruption.

The management should promote their staff education and development of competencies in combating corruption, also value internal discussions, where the staff could discuss problem

⁷⁵ <http://www.youtube.com/watch?v=2purKpLrTR4>;



situations, possible solutions, gain equal understanding of what is acceptable and what should be clearly rejected in the organisation.

The management of the organisation should also participate in periodic assessments of potential corruption-related risks, improving the anti-corruption programme and defining measures for threat reduction.

If the organisation decides to appoint an employee or a department to conduct the implementation of the organisation's anti-corruption programme, the management should provide them with appropriate authorisations of discrete and independent action, enabling them to influence processes and participate in discussions on relevant transactions.

Such appointed person (department) should be accountable directly to the management and, if necessary, be able to contact the management.

6.2. Organisation's Anti-corruption Policy

An anti-corruption policy is an organisation's "anti-corruption visiting card" / "public anti-corruption declaration", which:

- includes the organisation's obligation to comply with the requirements laid down in the national and international laws, performance standards established therein, also standards of business ethics as well as the principles of transparent business listed in Chapter 5 of the Handbook;
- defines intolerable behaviour in the organisation (corruption, bribery, improper gifts, conflict of interests, non-transparent sponsorships, etc.);
- provides a shortlist of corruption prevention measures for ensuring transparent operations in the organisation;
- indicates the major expectations on combating corruption for employees, managers, official representatives, partners, clients and the public sector⁷⁶.

Since the anti-corruption policy is addressed both to the staff of the organisation and the general public, and it contains values cherished in the organisation, it is advisable to make it available to the public (for example, on the website of the organisation) in the visible place near the mission, vision and goals of the organisation.

It should be noted that the anti-corruption policy is probably the most important document for implementing anti-corruption in the organisation, which demonstrates its clear position, and informs all potential partners and clients in advance that the organisation does not tolerate any types of corruption, and shapes a positive image of the organisation.

⁷⁶ Some of the private organisations operating in Lithuania have prepared their anti-corruption policies, such as: <https://www.telia.lt/tvarus-verslas/principai-kuriu-laikomes/skaidrumas-ir-antikoru-pcija> https://www.ambergrid.lt/lt/apie_mus/bendroveskorupcijosprevencijospolitika; <http://www.teva.lt/Social/Documents/Translation%20FCPA%20-%20Lithuania.pdf>; <http://www.rokvelas.lt/lt/vertybes/korup>; http://www.le.lt/files/74/3/9_0/Nulin%C4%97s%20tolerancijos%20korupcijai%20politika.pdf.

6. 3. Assessment of Corruption Risks Encountered by an Organisation in Its Business Environment

Depending on their size, field and type of activities, geographical position, structure, age, education and social status of the staff, available suppliers and clients, the type of their activities and many other factors, different business organisations may encounter different risks of corruption, therefore, in order to prepare an effective anti-corruption programme for a specific organisation and / or choose the best anti-corruption measures, it is necessary to determine the corruption risk factors that can manifest namely in the operating environment of the specific organisation⁷⁷.

For this purpose, it is first of all advisable to perform an **environment analysis** of the organisation.

The environment analysis is based on the principles of strategic planning and includes the analysis of external and internal factors as well as the analysis of threats and opportunities in the organisation.

In performing the analysis, the following may be used:

- sociological research data on most common unlawful acts in the private sector⁷⁸;
- information received by conducting performance audits in the business organisation;
- information received by investigating disciplinary and other forms of misconduct;
- consultations of experts of business, law, corruption prevention and specific fields of business;
- summarised information on the key and major corruption-related problems in different fields of the public sector prepared by the STT⁷⁹;
- corruption risk factors in the private sector identified by scientists⁸⁰.

The aforementioned information should help understand the problems of corruption and corruption risks in a specific organisation.

The analysis should be followed by the selection of most appropriate corruption prevention measures for dealing with the problems identified during the analysis.

Probably the most common corruptive acts in the private sector occur, when employees:

- use the organisation's property (*misappropriation or using it for personal purposes*);
- contact suppliers (*choosing specific suppliers and negotiating the prices of goods, services and other things*);
- contact competitors (*agreements regarding market division or price fixing*);
- contact the public sector (*using administrative services of the public sector (for example, applying for permissions, licences or documenting a certain legal fact, submitting declarations and their administration, etc.), participating in public procurement, when public administration entities conduct audits in business organisations, etc.*).

In view of the foregoing, it is of essential importance that:

1. The functions, tasks, the work and decision-making procedure as well as responsibility of the persons authorised to conduct these actions are covered by detailed **regulations**.
2. Periodic **checks** on the activities are **performed**.
3. Ethical behaviour and anti-corruption awareness of employees is **developed**.

⁷⁷ **Corruption risk factors** – conditions, events and circumstances, which may give preconditions for corruption.

⁷⁸ Please refer to the sociological research described in Chapter 3 of the Handbook.

⁷⁹ [http://www.stt.lt/documents/nkkp_2015-2025/rastas_TKKK_del_rizikos_veiksniu_2016-02-08_\(1\).docx](http://www.stt.lt/documents/nkkp_2015-2025/rastas_TKKK_del_rizikos_veiksniu_2016-02-08_(1).docx);

<http://www.stt.lt/documents/nkkp/4-01-7239.pdf>

⁸⁰ http://www.stt.lt/documents/soc_tyrimai/Korupcija_privaciam_sektoriuje_LTI.pdf



It should be noted that as of 1 January 2017 the Republic of Lithuania Law Amending Article 6 of the Law on Prevention of Corruption No. IX-904⁸¹ enters into force. Pursuant to which, within the scope of Article 6, **all state and municipal enterprises**, as defined in the Republic of Lithuania Law on State and Municipal Enterprises, also enterprises, where the ownership of the shares grants the State or a municipality more than 50% of the votes at the general meeting of shareholders as well as enterprises, where the State or a municipality can appoint more than half of the members of the company's administration, managerial or supervisory body, will be treated as state and municipal institutions.

Having regard to the new amendments, the above-mentioned state and municipal enterprises, following Article 6 of the Law on Prevention of Corruption and paragraph 7 of the Procedure for Performing the Corruption Risk Analysis⁸², in the third quarter of each year must perform the determination of **the probability of corruption manifestation** in their activities and to provide information on that to appropriate ministries or municipalities managing them.

More information on the determination of the probability of corruption manifestation is available in Chapter 7 of the Handbook on the Creation and Implementation of Anti-Corruption Environment in the Public Sector.

It should be noted that the determination of **the probability of corruption manifestation** might be one of the tools, by using which the vulnerable to corruption activity areas may be identified in the organisation; and on the basis of the results, the necessary prevention measures are selected.

An example of an organization's anti-corruption policy is given in Annex 1.

6. 4. Investigation of Tolerance of the Employed Staff for Corruption and Unethical Behaviour

Having determined the probable of manifestations of corruption risk factors in business activities, it is also important to determine the general attitude of the organisation's staff to corruption – how widespread this corruption phenomenon is and what is the staff relation with such type of manifestations⁸³. For this purpose an anonymous survey of the staff may be invoked.

It is up to each organisation to identify its most topical issues, the information the organisation expects to obtain and the purposes for its use.

Usually it is important to assess at least two aspects:

1. The prevalence of the corruption phenomenon in the organisation.
2. The tolerance for corruption and bribery in the organisation.

⁸¹ <https://www.e-tar.lt/portal/lt/legalAct/31ecf140ab3f11e6a6f98c1425a5ffa8>

⁸² The Procedure for Corruption Risk Analysis approved by Government of the Republic of Lithuania Resolution No. 1601 of 8 October 2002 is available here: <https://www.e-tar.lt/portal/lt/legalAct/TAR.B96A881B578F>

⁸³ More about staff tolerance for corruption is available here: http://www.stt.lt/documents/soc_tyrimai/Korupcijos_tolerancija.pdf

The issues reflecting the specified aspects may be placed in a more comprehensive questionnaire, which would contain more questions, or just several specific questions may be specifically asked (as provided, for example, in [Annex No. 5 to the Handbook](#)).

In preparation of the questionnaire, it is essential that the respondents understand what is expected from them, therefore, it is important to provide clarifications for the concepts of *corruption*, *bribery* and *corruption prevention*.

- **corruption** means abuse of the entrusted power to obtain personal advantage;
- **bribe means** illegally obtained undue reward, illegal material benefit;
- **corruption prevention** means disclosure and elimination of reasons and conditions for corruption by setting-up and implementing a system of appropriate measures, also, an impact on persons in order to deter them from committing corruption-related criminal acts.

In order to obtain the answers reflecting the real situation, it is necessary to ensure total anonymity of the questionnaire and to indicate that in the questionnaire itself.

Having performed the business environment analysis and the investigation of the staff tolerance for corruption, an anti-corruption programme could be developed, which would contain specific corruption prevention measures (cases of their application), and the persons responsible for the implementation of individual measures.

6. 5. Assessment of Honesty and Loyalty of Prospective Employees

Each employer is interested in having employees that are not only experts in their field, but also honest and loyal to their organisation.

As it was already mentioned, corruptive behaviour is impossible without human will and his/her purposeful actions; therefore, in order to minimise the risk of abusive practices of employees and the risk of threat of potential corruption in the organisation, it is necessary to conduct a very careful and responsible staff selection, which includes not only testing of the candidate's competencies, knowledge and professional skills, but also his/her personal qualities.

The absolute majority of employers put scrupulous efforts to analyse their candidate's background data and recommendations, and often call the former employers to check the candidate's background facts and collect reliable information characterising the person.

Here it is expedient to note that collection of information in such manner might bring opposite results, as the former and / or current employers: 1) sometimes they are not willing to diminish the opportunities for their employees to find a new job and tend to express their positive opinions about their former employees; 2) can purposefully provide false or misleading information, if they know that the employee intends to get employed with competitors and are unwilling to lose him / her; or, on the contrary, – are willing to get rid of an incompetent and dishonest employee.

For the process of checking recommendations is efficient, it would be advisable to consider the persons giving recommendations only as a source of reference for obtaining knowledge about other persons who would be able to provide more objective data on the prospective employee.

Moreover, in order to form a better view of the candidate, it would be advisable to contact at least two supervisors, two colleagues and two subordinates from the previous workplace.

Still, psychological tests are considered to be a more reliable staff selection measure. They allow to easily anticipate the candidate's inclination to unfair behaviour and other undesirable factors (for example, the Staffing Methodology *such as BRASS – Behaviour Risk Assessment System*); however, this requires an access to a qualified HR specialist / psychologist, which would be able to evaluate these tests, or hiring appropriate staff selection companies; therefore, this measure is recommended only in selection of employees to more responsible positions, which are also "risk-



ier" in terms of corruption (for example, procurement manager; chief accountant; head of the unit; person responsible for the property of an organisation, etc.).

6. 6. Anti-Corruption Education for Staff

The implementation of corruption prevention measures should be followed by a well-planned staff training programme. Anti-corruption training should target all employees, but the content of the training could differ, depending on the particularities of units and specific positions and the risks encountered by them in their activities. The content and scope of the training programme can also differ, depending on the size of the organisation, the type of its activities and the level of risk of corruption.

The training should include all anti-corruption measures and demonstrate what each requirement means in employees' daily activities. It would be very useful to provide specific examples that the organisation has encountered, cases made public in the media or court decisions. The training can also benefit from using dilemmas, where ambiguous situations are discussed, by encouraging employees to participate in discussions and to search for decisions acceptable to all. This forms high organisational culture, common understanding and contributes to the application of high ethical standards in the organisation.

Anti-corruption training should be adapted to specific groups of employees and may be conducted in the form of meetings, seminars, on-line training or by combining these methods variously depending on the needs of each group. Anti-corruption training could also be included into other periodical training programmes.

The employees that encounter greater risks of corruption – operate in countries or sectors of high risk of corruption, or those who are expected to show high financial results – should receive special attention. For those employees seminars, discussions of practical situations should be organised by invoking internal (from the organisation itself) and external lecturers/moderators. Generally, high-risk positions need more than only on-line training, for them more individualised live training should be organised. After the end of the training it would be expedient to conduct knowledge tests or examinations of the employees.

Organisations should keep track of their anti-corruption training, when they took place, who attended them and what was the content of the training. Further training should be organised in case of changes in the requirements of legal acts, changes in the organisational structure of an organisation, transfer of employees to other positions, the organisation launches its activities in new markets, countries or sales of new products and services.

Anti-corruption training should not be a one-time training, it should be continuous. How often the training should be organised depends on the risk of corruption in the specific business organisation, its unit or position. Basically, anti-corruption training is usually repeated every second year. The training should be mandatory for all employees.

If during the corruption risk assessment it was found that the certain risks are related to agents, consultants, suppliers and business partners of the organisation, they should also be in-

cluded into the training. This is of major importance if such persons carry out their activities in high corruption risk countries or act on behalf of the organisation by communicating with the government officials, for example, e.g. in obtaining permissions or making arrangements.

One of the good examples of anti-corruption training could be the anti-corruption training⁸⁴ prepared by Poland's Central Anti-Corruption Bureau and available on the internet. This training consists of three blocks of topics: corruption in the public sector, corruption in the private sector and the social consequences of corruption. Anyone interested in it can register and undergo online anti-corruption training under the chosen topic, to pass a test and, in case of success, print out the training completion certificate.

6. 7. Codes of Ethics and Conduct

An organisation's code of ethics along with the anti-corruption policy are the main anti-corruption tools in the organisation.

A code of ethics is a document, which defines the principle behavioural provisions and sets the ethical requirements for all persons related to the organisation (administration, employees, consultants, representatives, etc.).

A code of conduct is a document which defines the behaviour of the employees of the organisation in various situations (for example, in case of being offered the proposal of corruptive nature or upon the receipt of a gift of prohibited value, or in case of noticing a colleague abusing his / her office, etc.).

The introduction of a code of ethics usually provides the main principles and provisions of ethical behaviour, explanation on what the organisation expects by such statement, presentation and explanation of the values, mission and vision of the organisation.

Each organisation must choose the aspects suitable for it, shorten or supplement them with particularities of the specific activity. The obligations can also be personalised: "I" understand and oblige, not "we" and not the "company".

The preparation of a code of ethics must include the following:

- its purpose;
- its objectives;
- its target group(s) of users;
- its main principles (individual principles could be explained in more detail and in more detailed definition).

A code of ethics shall be approved by the supreme management body in the organisation. This can be the board, council, shareholders, and director/head of the organisation.

The implementation of the ethical provisions is ensured by employees or a responsible reporting person, council formed or authorised unit in the organisation.

An example of a code of ethics is available in **Annex No. 6 to the Handbook**.

It should be noted that a number of Lithuanian business organisations already have their codes of ethics, which could be also used as an example in preparation of this document in own organisation⁸⁵.

⁸⁴ Training platform of the Central Anti-Corruption Bureau is available here: <https://szkolenia-antykorupcyjne.edu.pl/>

⁸⁵ AB Telia Lietuva, available on the website: https://www.telia.lt/documents/20184/34947/Etikos_ir_elgesio_kodeksas.pdf/ec1e0cc5-fb19-4233-af2c-946688a43bef.
LAVA; <https://www.telia.lt/tvarus-verslas/principai-kuriu-laikomes>.
Lietuvos reklamos biuras, available on the website: http://www.reklamosbiuras.lt/download.php?file_id=42;
Delfi, available on the website: <http://www.delfi.lt/news/ringas/lit/delfi-pristato-savo-etikos-kodeksa.d?id=62344011>;
Lietuvos kredito unijos, available on the website: <http://lku.lt/apie-mus/etikos-kodeksas/>;
Lithuanian Business Confederation, available on the website: <http://www.lvkl.lt/lt/tiekejau-etikos-kodeksas-viesuosiuose-pirkimuose>;
Kelprojektas, UAB, available on the website: http://www.stt.lt/documents/naujienos_2014/Kelprojektas_Etikos_kodeksas_1.pdf;
Mykolas Romeris University, available on the website: http://www.mruni.eu/lt/universitetas/apie_mru/dokumentai/etikos_kodeksas/.



It is advisable that a code of ethics⁸⁶ contains specific, most common situations in the organisation and examples on how should the organisation's employees behave in them.

A code of ethics is more effective, when it is made public (for example, by posting on the website of the organisation) and placed among other documents relevant for the organisation, such as, for example: the organisation's anti-corruption policy, articles of association, s mission, vision, objectives and values of the organisation.

6. 8. Policy for Managing Conflicts of Interest

A conflict of interest is a situation, where a representative of any profession (government, business, media, public organisation, etc.) must choose between execution of his / her official duties required by his/her official position and the private interest.

Approach to conflict of interest in the public sector

Public interest means the public's expectations with regard to impartial and just decision-making of the persons in civil service.

Article 2(2) of the Republic of Lithuania Law on the Adjustment of Public and Private Interests in the Civil Service, defines **conflict of interest** as a situation, where a person in the civil service, discharging his duties or carrying out instructions, is obliged to make a decision or participate in decision-making or carry out instructions relating to his private interests.

According to that definition, **private interest** means a personal economic or non-economic interest⁸⁷ of a person in the civil service (or a person close to him) which may affect his decision-making in the discharge of his official duties.

For example:

- *a municipal officer, responsible for public order, receives a complaint regarding a violation of public order committed by his brother;*
- *a member of a ministry's public procurement commission must vote regarding an agreement between the ministry he represents and a company, partially owned by his wife as a shareholder;*
- *a deputy director of a state enterprise must make a decision on granting assistance to beneficiaries, which include a public institution headed by his mother;*
- *a director of a budget institution must select the best candidate to a vacant job position in his institution, and one of the prospective candidates is his daughter-in-law, etc.;*

In the public sector, when performing any actions and making any decisions, the public interest must always be given a priority over the private interest.

In order to avoid a possible conflict of interest, a person employed in the civil service:

⁸⁶ http://www.stt.lt/documents/nknp/II_Elgesio_kodeksai.pdf

⁸⁷ **Private interest** means a moral debt, moral obligation, pecuniary or non-pecuniary advantage, or any other similar interest.

- Must declare his / her private interests by submitting a declaration of private interests⁸⁸, which contains information about the person concerned and his/her spouse, cohabitee or partner (place(s) of employment and position, participation in legal entities, individual activities, membership in and duties to enterprises, bodies, associations or foundations (with the exception of membership in political parties and trade unions), gifts, gifts received during the past 12 calendar months (except for the gifts received from close persons) if the value of such gifts exceeds 150 euros), information about the transactions concluded or other transactions valid during the past 12 calendar months, if the value of such a transaction exceeds 3,000 euros, close persons or other persons he/she knows or the data who/which may be the cause of a conflict of interest, etc.).
- May not participate in the preparation, consideration or making of decisions or from otherwise influencing decisions which may give rise to a conflict of interest situation. Should this type of situation occur, a person must inform the appropriate head, declare his self-exclusion and must not in any form participate in the subsequent preparation, consideration or making of the decision.
- May not represent the state or municipality, or state or municipal institutions:
 - when he is dealing with natural or legal persons from whom he or persons close to him receive any kind of income;
 - when he is dealing with all types of undertakings in which he or persons close to him own over 10% of the authorised capital or shares.
- May not represent private groups or persons and defend their interests in state or municipal institutions, except for where he acts as a legal representative in accordance with the Law.
- Upon violation of the set requirements, such person may not be given incentives for a certain period of time, and in case of a gross violation of the provisions of the Law⁸⁹, such person may not be given incentives, accepted, appointed to the office or promoted for three years following the day the violation has come to light.

Moreover, legal acts also provide for certain restrictions related to a person who has left his office in the civil service:

- a person shall have no right, within a period of one year, to take up employment of company head, deputy head, company board or management board member and run other offices directly related to decision-making in company management, property management, financial accounting and control sphere, provided that during the period of one year immediately prior to the termination of his service in public office his duties were directly related to the supervision or control of the business of the company or its controlled undertaking, or the person participated in preparation, consideration and making of favourable for these companies decisions for obtaining state orders or financial assistance in the course of public tenders or otherwise.
- a person may not for a period of one year represent natural or legal persons in the institution in which he held office for a period of one year immediately prior to his leaving the service.
- a person may not for a period of one year represent natural or legal persons in other state or municipal institutions on the issues which had been assigned to his official functions.

For example, on 4 November 2014 the Chief Official Ethics Commission announced that the former Vice-Minister of Justice confused public and private interests, whereas, within the one-year pe-

⁸⁸ In accordance with Article 10 of the Republic of Lithuania Law on the Adjustment of Public and Private Interests in the Civil Service, the majority of the **data declared by such persons is public** and available on the website of the Chief Official Ethics Commission: <http://www.vtek.lt/index.php/deklaravimas>.

⁸⁹ The person is recognised as gross violator of the provisions of this Law, if:

- the person had been provided with prior written recommendations on what decision preparation, consideration and making he should refrain from;
- the violation was repeatedly committed within a year the day the person was sanctioned for violating the law.



riod when leaving the office as Vice-Minister, he took up employment in the State Enterprise Centre of Registers, which he governed as Vice-Minister, and due to that he must be dismissed from the new office.

Approach to conflict of interest in the private sector

A conflict of interest in the private sector also refers to any situation, where the employee's private interests may conflict with those of the company. In case of a conflict of interest the risk occurs that the employees will make biased decisions that may have a negative effect on the property or reputation of the business organisation.

Private interests may occur due to a person's material or immaterial interest, most often due to personal friendship, family or extended family connections, and in appropriate cases, also due to membership in political activities, financial, profit or non-profit, religious or charity organisations.

Each employee of an organisation should receive a written notice that in case he/she encounters a conflict of interest in the place of employment, he/she must immediately inform his / her head and declare self-exclusion.

Codes of ethics of business organisations often contain the provisions which require avoiding conflict of interest, for example, to:

- pursue one's private advantage at the expense of the employer;
- cover private costs by using one's position;
- pursue one's private or family interest in transactions with the organisation or between the organisation and any supplier or client;
- hire family members for employment in the organisation;
- work for the advantage of other enterprises, institutions or organisations during the working hours;
- use organisation's property, name and reputation for the secondary office;
- taking up activities, which would be detrimental to the organisation in terms of competition or would cause a conflict of interest;
- to work for or have any interest in enterprises that compete with the organisation, supply goods or services to it, or have other business relations.

Declaration of private interests

In order the provisions of their code of ethics are not merely of a declarative nature and they are pursued in practice, some organisations, in hiring new employees to the positions significant for the company, ask them to fill in their declarations of private interests.

Moreover, information on possible private interests of the employees may be also collected from public sources (for example, social networks).

Later on, in conducting audits of the organisation or checks on the activities of individual employees, it may be evaluated whether the employees comply with their obligations assumed regarding avoidance of conflict of interest.

The declaration of private interests is one of the most effective measures for prevention of conflicts of interest, which helps the employee to identify potential threats and to report them to his / her heads.

This measure serves not only for prevention of possible conflicts of interest, but also demonstrates the organisation's accountability to the public as well as its clients, and its strive for transparent action and trustworthy conduct.

The system of declaration of private interests functions at three levels:

- **private** (at the level of a person who must file a declaration). An employee, in filling in the declaration of private interests, thinks hard about which of his private interests may be relevant for the official duties assigned to him and has an opportunity to evaluate the risks of potential conflict of interest or perhaps even those of corruption nature himself/herself.
- **institutional** (at the level of heads of organisations, heads of organisational units, the collective of the organisation). Heads of the organisation must be familiar with the private interests declared by their subordinates. In cases of reasonable doubt that private (business) interests of an employee may conflict with the objectives of the organisation he/she is employed with, in order to ensure the supremacy of these interests over the private interests of the employee, the head may declare the exclusion of the specific employee from execution of appropriate tasks and to delegate the execution of them to other persons.
- **public** (at the level of the media, public organisations and the public). The public may directly get familiar with the private interests of public persons whose information provided in their declarations of private interests is publicly available. This type of public control is the most effective measure for prevention of potential conflicts of interest, as it always and (in real time) allows checking whether the specific employee acts impartially and transparently.

The form of a declaration of private interests for persons in the civil service, in accordance with the provisions laid down in the Law on the Adjustment of Public and Private Interests in the Civil Service, shall be prescribed by the Chief Official Ethics Commission.

Non-governmental organisations and private equity companies operating in Lithuania, following their internal legal acts, may impose an obligation on their employees (or a certain group of employees) to declare their personal (financial) interests, which may be relevant in performing their official duties, under the procedure and in the form established in them.

For example, TILS on its website: www.transparency.lt publicly announces the declarations of private interests of its shareholders, which contain all their paid and unpaid offices, solid property, companies, where they own more than 5% of total property, relations with the civil service. *Ambergrid, AB*, also requests to file declarations of private interests from the members of the Board of the Company prior to their entry into this office, where they specify all circumstances, which might cause a conflict of interest between the Board member and the Company. An analogous requirement for the Board and Supervisory Board members is established in the Articles of Association of *Klaipėdos nafta, AB*.

There are opinions that in small business organisations, often called "family business organisations", the conflict of interest is unavoidable, as the majority of their employees are the members of one family (or extended family); therefore, there is no sense in applying the conflict of interest prevention measures.

Prior to supporting this opinion, it should be noted that a private interests in such organisations usually coincide with those of the organisation. On the other hand, as business grows and expands, it will inevitably hire more and more employees who have no connection to the family. It is presumable that in this case it would be beneficial to start assessing the compatibility of interests of the newly employed staff with those of the organisation.

It is also noteworthy that a conflict of interest may occur not only between private interests of an employee and the organisation (employer), but also between the organisation and its clients / beneficiaries of services. Such situations may emerge in providing advisory/consultancy, expertise, legal, bankruptcy administration and other services for two or more persons with conflicting interests.



In order to avoid such uncomfortable situations, organisations are recommended to prepare their policies for avoidance of conflicts of interest⁹⁰.

6. 9. Gifts and Representation Policy

Gift means any material thing having any value given to another person as a sign of friendship or gratitude according to the international protocol, established traditions and customs. Gifts are usually given without expecting any consideration back; however, depending on the **value of the gift**, also **whom** to it was given and **on what circumstances** as well as **for what purpose**, a gift may be interpreted as an illegal advantage or a bribe; therefore, it is extremely important to know the divide between a gift and a bribe both in the public and private sectors.

Thus, **a gift** is a voluntary transfer of one's property to another person free of charge, with no compensation. The concept of a gift should be synonymous with the word "free".

A real gift can never become a bribe, and a bribe will never be a gift.

Service⁹¹ means an intangible activity having material value (*repair works, design, beauty, health promotion procedures, recreational services, consultations, etc.*), used to satisfy specific material or immaterial need of a customer.

Hospitality means a pleasant and courteous manner of welcome, reception or service to a person, including a complex of tangible (*food, drinks, bedding*) and intangible (*service, atmosphere, and image*) elements.

Approach to gifts (including services and hospitality) in the public sector

Legal acts of the Republic of Lithuania prohibit any type of gifts, services, gratuities or hospitality expressions for the employees in the public sector if they are **related to the current official duties of the employee**. Granting or acceptance of such advantage, irrespective of the value of the advantage, shall be deemed an illegal act and lead to disciplinary, administrative or criminal liability proceedings.

It should be noted that the Criminal Code of the Republic of Lithuania establishes criminal liability for giving or acceptance of undue advantage even in the value lesser than 1 MSL (**38 euros**).

⁹⁰ For example:

Policy for avoidance of conflict of interest of Vanhara Law Firm is available here: <http://vanhara.lt/interesu-konfliktu-vengimo-politika/>;

Policy for avoidance of conflict of interest of SEB Group is available here:

https://www.seb.lt/sites/default/files/web/pdf/Interesu_konfliktu_vengimo_politika.pdf;

Policy for avoidance and management of conflict of interest of the bank FINASTA, AB is available here:

http://www.finasta.com/files/Reglamentai%20ir%20tvarkos/Interesu_konflikto_vengimo_politika_LT.pdf.

⁹¹ Article 10(2) of the Republic of Lithuania Law on Services:

Service shall mean any self-employed economic activity, normally provided for remuneration, in so far as it is not governed by the provisions relating to freedom of movement for goods, capital or persons, as referred to in Article 50 of the Treaty establishing the European Community.

On the other hand, in practice both a prosecutor and a court examine each case individually, taking into consideration the entirety of circumstances of committed act, therefore, it is presumable that the actions of a civil servant in acceptance of a bribe in the shape of a bottle of not expensive alcoholic beverage for the fast issue of a certificate to the visitor (*i.e. for legitimate performance in execution of his/her duties*) would be presumably regarded as a minor violation in the court which would exempt the civil servant from criminal liability; however, it would be a basis to apply disciplinary liability to the person. Meanwhile, acceptance of the analogous bribe for an unlawful issue of a forged certificate (*i.e. illegitimate performance in execution of his/her duties*), presumably, would be regarded as a criminal offence in court and incur criminal liability⁹².

The legal acts or their provisions, which prohibit acceptance of gifts by employees in the public sector as well as indicate how the employees must act in case of the receipt of such gifts, are provided below:

- Article 6.470(5) of the Civil Code of the Republic of Lithuania states that a gift shall not be permitted to politicians, officials of state and municipal institutions, and other public servants, as well as to their close relatives where it is connected with the official position of the politician, official or public servant or with the performance of their official duties.
- Paragraph 4(2) of Article 3 of the Republic of Lithuania Law on Civil Service states that a civil servant must exercise impeccable behaviour, be incorruptible, must not accept gifts, money or services, exclusive privileges and concessions from individuals or organisations that may influence him/her in performance of his/her duties as state politician or those of a civil servant.
- Article 14 of the Republic of Lithuania Law on the Adjustment of Public and Private Interests in the Civil Service states that:
 - a person in the civil service⁹³ may not accept or grant gifts or services if this may give rise to a conflict of private and public interests.
 - The restriction referred to above shall not be applicable to persons who have accepted gifts or services pursuant to the international protocol or customs usually connected with the official duties of the person in the civil service, as well as to gifts designated for representation (*symbols of the State or an institution, other symbols, calendars, books and other informative printed matter*) with a value of less than 30 euros (in case the gift specified is valued in excess of 30 euros, such a gift shall be considered the state or municipal property. The said gift shall be evaluated and kept in accordance with the procedure laid down by the Government).
 - A person in the civil service who personally or through intermediaries accepts a gift with the permitted value from a natural or legal person which could give rise to a conflict of public and private interests may not, for a duration of one year, participate in the preparation, consideration and taking of decisions or carry out other official duties in respect of that person.

Companies are encouraged to approve a gift policy that includes the concept of gift, defines intolerable gifts, gift accounting, etc. An example of a gift policy is given in Annex 2. Transparency International proposes to pursue *zero tolerance for gifts policy* and to follow the recom-

⁹² It is noteworthy that pursuant to paragraph 1(3) of Article 3 of the Republic of Lithuania Law on Civil Service, a person may not be regarded as being of impeccable reputation and be employed in the civil service if such person was legally found guilty of a **criminal offence in the civil service and the public interest** or corruption-related criminal offence, and the period since the effective date of the judgement has not exceeded **three years**.

⁹³ **Persons in the civil service** shall mean state politicians, public officials, civil servants, judges, intelligence officers, officers of professional military service, persons working at state and municipal enterprises, budget institutions and provided with administrative powers, persons working at public institutions and associations, which receive funds from the state or municipal budgets and funds, as well as provided with administrative powers, employees of the Bank of Lithuania, provided with administrative powers (performing the functions of financial market supervision, examining non-court disputes between consumers and participants of the financial market, as well as other functions of public administration), directors and deputy directors of public limited companies or private limited companies with shares, providing more than 1/2 of votes at the general meeting of shareholders, owned by the state or municipality, as well as other persons with administrative powers.



recommendations of the Chief Official Ethics Commission⁹⁴ on non-acceptance of any gifts and/or free services if the circumstances of their acceptance if this may result in ambiguous interpretations, controversial considerations on the part of the public and may create an appearance of conflict of interest.

Example. *A businessman is subject to regular delay, albeit insignificant, in submission of documents on the performance of his company to the controlling state (or municipal) institution. Moreover, the company's reporting documents are completed failing to comply with appropriate formal requirements. Publicly demonstrating his "regret" and as if "apologising" for such behaviour and believing that the state (municipal) institution, which accepts the documents, will not qualify his negligence as a violation and take a "humane" and "non-bureaucratic" approach to the situation, the businessman leaves the documents at the reception together with a box of chocolates and a flower bouquet.*

In such situations the civil servants who accept these "signs of personal attention" – even if symbolic or totally trivial "gifts" – inevitably face a psychological dilemma: how to deal with this "nice person" who does not follow formal "bureaucratic" requirements?

The answer is straightforward – in this case civil servants definitely should not accept any gifts, and the businessman should not give them.

A "thank you" and some nice words are more than enough to show gratitude to an employee in the public sector.

Some of the recommended ways of saying "thank you" for polite, cultured, courteous or professional behaviour include filling in a service feedback questionnaire, writing a letter/appreciation to the head of the institution, etc. This will be a legal way of expressing gratitude, which will allow avoiding both psychological discomfort and, at the same time, show appreciation to the employee and the institution.

Approach to gifts (including services and hospitality) in the private sector

The approach to gifts in the private sector is generally more flexible than in the public sector. All organisations usually decide on their gift policy individually. However, the basic rule still counts – all gifts should be given (received) *bona fide* (Lat. in good faith), i.e. openly, honestly and without any hidden intentions. Moreover, organisations should prohibit any gifts, the giving or receipt of which may affect mutual business transactions, influence decision-making or allow for a reasonable suspicion of such effect.

In order to avoid uncomfortable situations and their unnecessary interpretations, it would be expedient for each business organisation to formalise a gift policy acceptable to it, i.e. to state in writing and publicly announce (for example, on the website of the organisation) what type and value of gifts are allowed to be given or accepted by the employees of the organisation.

⁹⁴ Chief Official Ethics Commission Resolution No. KS-73 On Gifts and Free Services of 25 November 2015. Online access: https://www.vtek.lt/images/Duomenys/KS-73_D%C4%97I_dovan%C5%B3_ir_neatlygintin%C5%B3_paslaug%C5%B3.pdf

Such policy is also a very valuable informative measure for all partners of the organisation, which would allow both sides to avoid uncomfortable situations in the future.

Few organisations impose a strict total prohibition on any type of gifts for their employees. They usually establish appropriate conditions for granting / acceptance of gifts, for example, as follows:

- The maximum admissible value of gifts is fixed, for example, the value whereof does not exceed 50 euros;
- Specific allowable gifts are named (by providing their list) or the type and the maximum admissible value of gifts is specified, for example: office calendars, stationary, organisation's merchandise, representational souvenirs, small accessories, the value whereof does not exceed 30 euros;
- Any type of gifts in pecuniary expression, including gift vouchers or gift certificates, etc. is prohibited;
- The rules for acceptance of gifts are established, for example: 1) a duty to report all gifts to the direct supervisor and/ or the employee responsible for ethics and the implementation of anti-corruption measures in the organisation (the compliance officer); 2) a duty to register all gifts with the organisation's gift register and transfer the gift to the compliance officer; 3) in case of doubt over the value of the gift or the purposes of its granting, a duty to address the supervisor/compliance officer for advice on whether to accept or decline the gift; 4) at the end of the year the organisation forms a commission to decide the fate of the gifts received during the year (which of them should be stored in the souvenir showcase, which to be distributed to the employees through lottery, donated to charity, etc.) and publishes the decision on the website of the organisation.

Prior to deciding on whether to accept (grant) a gift or not, consideration should be given to the following:

- Circumstances of granting a gift: reasons, place, time, manner and form of the gift;
- Value of the gift, in particular, where it is clearly seen that its value is higher than that which would allow to be expected from the relationship with the grantor (or grantee) of the gift;
- Frequency and periodicity of such grantings (even small, but frequent gifts should raise concern);
- The intentions of the grantor (he/she does that out of courtesy or respect, or perhaps with an intention to affect the future decisions in his/her favour, or maybe directly or indirectly repay for the decisions being made or already made);
- If the behaviour with the grantor was not ambiguous, by the employee's own behaviour allowing the grantor to form a false impression that the gift was or is expected;
- If the fact of acceptance (granting) of the gift does not provide for a sense of potential commitment on the part of the grantor (or grantee) of the gift;
- If the fact of acceptance (granting) of the gift does not create any inconveniences or psychological discomfort, should it become known to all publicly (to colleagues, partners, the media, and the general public).

6. 10. Policy for Charitable Donations and Sponsorships

Sometimes it is attempted to disguise a bribe as charitable donation or sponsorship, therefore, it is also expedient to discuss the aspects of transparency in charitable donations and sponsorships.

Article 6.476 of the Civil Code of the Republic of Lithuania establishes the main characteristics of donation (i.e. aid and charity):

- A gift of property or property right for certain useful purposes shall be deemed to be a donation;



- No authorisation or consent shall be required for the acceptance of donations;
- A donation must be used for the determined designation.

The legal acts establish two types of possible donations by legal persons: charity and sponsorship.

According to the provisions of the Republic of Lithuania Law on Charity and Sponsorship (hereinafter referred to as the LCS):

Sponsorship is a voluntary and gratuitous provision of sponsorship items (*except where recipients may undertake the appropriate allowed obligations to the provider of sponsorship in accordance with the procedure prescribed by the Government of the Republic of Lithuania or its authorised institution*) by the providers of sponsorship to the recipients of sponsorship⁹⁵ for the purposes stipulated in this Law.

Charity is a voluntary and gratuitous provision of charity items by the providers of charity to the recipients of charity as specified in Article 6 of the LCS, which is conducted for the purposes and in a manner stipulated in this Law.

Charity and sponsorship **items** shall comprise:

- 1) monetary funds;
- 2) any other assets, including manufactured or purchased goods;
- 3) services provided.

Charity and sponsorship **items shall not include** funds from the State budget and municipal budgets of the Republic of Lithuania, the State Social Insurance Fund, Compulsory Health Insurance Fund and other state monetary funds, monetary resources of the Bank of Lithuania, other state and municipal monetary resources, tobacco and tobacco products, ethyl alcohol and alcoholic beverages as well as items of limited circulation.

The purpose of charity:

- meeting the minimal socially acceptable needs of the recipients of charity;
- ensuring healthcare;
- the aid in the liquidation of the effects of war and natural disasters, fires, ecological catastrophes, outbreaks of contagious diseases and epidemics.

According to Article 6 of the LCS, the following persons may be **the recipients of charity**:

- 1) the disabled;
- 2) the sick;
- 3) orphans and children deprived of parental care;
- 4) non-working pensioners whose income comprises only pensions and other social benefits;
- 5) the unemployed;
- 6) persons who have been recognised as having the legal status of victims in accordance with the procedure set out in the laws of the Republic of Lithuania;
- 7) families (persons) whose income fails to meet their minimal socially acceptable needs the extent of which is established by local municipalities;

⁹⁵ A person who seeks to be granted the status of a recipient of sponsorship must fulfil the requirements laid down in Article 13 of the LCS.

- 8) persons recognised as victims of war, natural disasters, fires, ecological catastrophes, epidemics, and outbreaks of contagious diseases in accordance with the procedure established by municipalities.

The purpose of sponsorship – to provide sponsorship to recipients of sponsorship for the purposes of public benefit stipulated in their articles of association or regulations or in the canons, statutes and other rules pertaining to religious communities, associations and centres. The following purposes shall be presumed to be for the public benefit including these activities:

- international cooperation;
- protection of human rights;
- integration of minorities;
- culture;
- promotion of religious and ethical values;
- educational, scientific and vocational development;
- non-formal and civic education;
- sports;
- social security and labour;
- healthcare;
- national security and defence;
- law and order;
- crime prevention;
- adjustment of living environment and development of housing;
- protection of copyright and related rights;
- environmental protection;
- as well as any activities in other fields recognised as selfless and beneficial to society.

According to Article 7 of the LCS, the following entities registered in the Republic of Lithuania may be **the recipients of sponsorship**:

- 1) charity and sponsorship funds;
- 2) budgetary institutions;
- 3) associations;
- 4) public organisations;
- 5) public institutions;
- 6) religious communities, associations and religious centres;
- 7) branches (divisions) of international public organisations;
- 8) other legal persons (with the exception of political parties) whose activities are regulated by special laws and the purpose of the activity whereof is not profit-seeking, while the profit received may not be allocated to their participants.

The recipients of sponsorship may also be Lithuanian communities abroad and other Lithuanian bodies or organisations⁹⁶ as well as legal entities or other organisations established in the European Economic Area, the purpose of the activity whereof is not profit-seeking, while the profit received may not be allocated to their participants⁹⁷.

⁹⁶ The list of Lithuanian communities abroad and other Lithuanian bodies or organisations, which may be the recipients of sponsorship according to the Republic of Lithuania Law on Charity and Sponsorship, is approved by Minister of Foreign Affairs of the Republic of Lithuania Order No. V-265 of 30 December 2011 available here: <https://e-tar.lt/acc/legalAct.html?documentId=d8d141d02cdb11e4a83cb4f588d2ac1a&lang=lt>

⁹⁷ This is regulated by: the Procedure for the Submission of Documents Proving that the Sponsorship by the Provider of Sponsorship is Provided for the Purposes of Public Benefit Stipulated in the Operational Documents of Legal Persons or Other Organisations Established in the European Economic Area, Which Are Specified in Article 3(3) of the Republic of Lithuania Law on Charity and Sponsorship, to the central tax administrator approved by Order No. VA-137 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 21 November 2016, which is available here: <https://www.e-tar.lt/portal/lt/legalAct/8b0f9b20afc611e6b844f0f29024f5ac>



Sponsorship may be provided by:

- Natural and legal persons of the Republic of Lithuania, except for political parties, political organisations, state-owned and municipal enterprises, budgetary institutions, state enterprises, state and municipal institutions, and the Bank of Lithuania. In accordance with this Law, sponsorship shall be recognised as such if it is provided by enterprises in which the State or municipality has ownership of the shares carrying over 50 percent of voting rights at a general meeting of shareholders and if the said enterprises do not have any tax arrears to the state budget and/or municipal budgets of the Republic of Lithuania or to the funds administered by the State Tax Inspectorate, arrears with overdue deadlines for payment to the budget of the State Social Insurance Fund as well as overdue debt liabilities under loan contracts and other instruments of debt signed with the Ministry of Finance or under contracts covered by a state guarantee;
- Foreign states, foreign natural and legal persons, and international organisations.

It is important to take note of whether the fact of provision/ receipt of sponsorship must be formalised by an appropriate contract or other free-form documents certifying the fact of transfer of sponsorship, which shall have all the mandatory details established by the Law on Accounting (a contract is not necessary if sponsorship is provided not under the procedure prescribed by the Law on the Notariate and if no additional conditions for the provider of sponsorship are established).

In order to avoid potential risks of corruption, business organisations should prepare their policies for charitable donations and sponsorships, where, along with the provisions discussed above, it is also recommended that they prepare the following procedures:

- prior to the provision of charity or sponsorship an organisation should **ascertain** that the recipients of charity or sponsorship are not somehow related to politicians, government representatives or other entities authorised to make decisions on the interests of the donor;
- after the provision of charity or sponsorship – it should attend to transparency and legitimacy of the use of charity or sponsorship;
- **publish** information on the charity provided at least on the website of the organisation.

It is noteworthy that according to the legal acts of the Republic of Lithuania, **legal persons may not fund or sponsor political parties and their political campaigns.**

6. 11. Lobbying Policy

The concept of lobbying in Lithuania is a controversial and ambiguous concept. Some persons consider it to be a synonym of certain secret agreements, others – a way of participating in the state governance. At present, the public's attitude towards people who are carrying out lobbying activities is usually negative, their activity is equated with corruption. It is forgotten that they often provide additional information to decision-makers and, with an effective accountability system, this information could be the subject of public discussions, making it more likely to make a mutually acceptable solution and at the same time reducing the risk of corruption.

The most general definition for lobbying is contacts with the persons involved in law-making in order to influence the process of lawmaking. Whom the lobbyists "contact" with and what type of contacts are considered as lobbying is defined in national law, but it should be noted that here we talk only about legal and allowable influence on persons involved in lawmaking.

Legal lobbyists and their legal activities is an element of a democratic society. It is not prohibited for civil servants and politicians to have contacts with lobbyists if it serves the right purpose and it is done properly. Lobbyists themselves should be bold in talking about their influence and contacts. The goal of all civil officials, servants and politicians must be to ensure that their activities and relationships with lobbyists are adequate, transparent and would not be misinterpreted.

Lobbying in Lithuania is regulated by the Law on Lobbying Activities, which came into force as of 1 January 2001 (a recast entered into force on 1st September 2017, further – and LLA),⁹⁸ the control and supervision over the monitoring of the implementation of the provisions whereof is assigned to the Chief Official Ethics Commission (COEC). Lobbyists are also subject to and follow the provisions of the *Code of Ethics for Lobbyists*⁹⁹ approved by the Resolution of the COEC on 31 March 2005.

The regulation of lobbying aims to legitimize the widest possible publicity of such activities, to encourage debate in society and, at the same time, help decision makers concerned not to be interested in the views of stakeholders, knowing that they are acting lawfully and reporting their activities to the public. Publication of lobbying activities to the public is, in essence, the sole objective of the LLA.

In accordance with the Republic of Lithuania Law on Lobbying Activities:

Lobbying activities is an act of a natural person whose purpose is to influence individuals in order to receive or refuse legislation, administrative decisions in the interests of the lobbyist.

The aim of lobbying is to influence following persons - state politicians, state officials, state employees and other persons who, in accordance with the procedure established by legal acts, are involved in the preparation, consideration and adoption of legal acts, administrative decisions.

A lobbyist - a natural person who performs lobbying activities.

A client of lobbying activities - a natural or legal person or other organization or its subdivision who has entered into a written agreement with a lobbyist for the performance of lobbying activities or a legal entity that has entrusted or ordered to his participant, member of the management body or employee to implement lobbying activities.

Thus, the concept of lobbying activities essentially means any actions of the person (except for the exceptions specified in the Law on Lobbying Activities) used to influence the legislative process.

It should be noted that although only a natural person is considered as a lobbyist, legal entities could register people as lobbyists (in this case they become clients of lobbying activities). In accordance with the provisions of Article 12 of the LLA, the declaration of lobbying activities must also specify a natural or legal person whose interests are intended by lobbying activities, so not only the legal entity that the lobbyist is serving must be indicated, but also whose interests is served (for example, if works for a law firm or a particular association).

In order for a person to engage in lobbying, he must be included in the list of lobbyists. The list included 57 lobbyists in 2017. The decision on persons inclusion in this list (and removal from it) is taken by the COEC, after examining the request and completed a relevant application form. These documents can be found on the web site www.lobistai.lt that is administered by the COEC.

If a person carries out actions aimed at influencing legislation, on behalf of a non-registered lobbyist or without registering in accordance with the procedure established by the Law

⁹⁸ The Republic of Lithuania Law on Lobbying Activities is available here:
<https://www.e-tar.lt/portal/lt/legalAct/TAR.7B9B89F840E2/icutzNLmxM>.

⁹⁹ www.vtek.lt/images/Lobistai/lobistu_etikos_kodeksas.doc.



on Lobbying, such activities are considered illegal lobbying activities, which entail administrative liability in accordance with Article 126 of the Code of Administrative Offenses.¹⁰⁰

It should be noted that since September, 2017 the procedure for declaring lobbying activities has changed substantially. If until now the activity of lobbyists was declared once a year, before February 15, for the previous calendar year, it is currently required to declare the activities carried out at the relevant time - within 7 days from the actual performance of the lobbying activity. Declaration could be made only electronically through the website www.lobistai.lt, the annual reports are no longer needed. Information about lobbying is public, posted on the website www.lobistai.lt.

Since 1st September, 2017 established more comprehensive LLA data declaration: obligation to declare not only the client of lobbying activity, but also the short description of the part of the legal act which he/she wants to change; to indicate the institution and the persons who have been contacted in the course of lobbying; waived the provisions of declaring lobbying activity costs and / or income.

It needs to be noted, that the Law on Lobbying Activities does not apply to non-governmental organizations (as non-governmental organizations defined by the Law on the Development of Non-Governmental Organizations of the Republic of Lithuania (Article 7 of the LLA)).

In view of the above, for organisations, which influence or plan to influence legal regulation, it is advisable to prepare a policy for transparent lobbying, which would state the following:

- the organisation shall influence legal regulation (i.e. implements lobbying) only through official lobbyists who are included into the list of lobbyists in accordance with the Law on Lobbying Activities;
- each year the organisation shall publish the title of the legal acts or draft legal acts regarding which the organisation had ordered lobbying and the name or title of the lobbyist who implemented lobbying activities.

6. 12. Reporting Mechanism and Whistleblower Protection

There is no single legal definition of **whistleblowers**; however, these persons are always related to reports on violations observed at work. In other words, whistleblowers are the persons who observe various violations (including corruption-related) due to their type of work, yet, at the same time, namely due to the fact that they work in such working places that they report on, encounter other type of potential negative consequences than other whistleblowers.

Whistleblowers may be persecuted at work or even fired, although their reports may often prevent crime and even accidents. Meanwhile, namely these persons usually possess valuable *internal* information, in particular, when we talk about areas, which require very specific knowledge, also when preparing contracts, participating in various procurement or service provision tenders or on corruption in such expert knowledge requiring areas as construction of the complex infrastructure projects or high technologies. At the same time, namely for these reasons, the information provided by them may be very valuable and help prevent serious crime or accidents.

¹⁰⁰ Lobbying in violation of the Law on Lobbying Activities of Republic of Lithuania incurs a fine of one hundred and forty to three hundred euros. This administrative offense committed repeatedly, incurs a fine of three hundred to five hundred and sixty euros.

The International Labour Organisation defines whistleblowing as “the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers.”

Various international organisations distinguish whistleblowers as persons who need special legal protection. More and more individual states adopt special laws for their protection or amend the already existing laws in such a manner that whistleblowers feel more safe, at least from legal perspective.

The term of the whistleblower in the Lithuanian legal system was established in 2017, November 28 following the adoption by the Seimas of the Republic of Lithuania of Law on the Protection of whistleblowers No. XIII-804. The whistleblower is the person who submits information about the offense in the institution with which he/she is bound or linked by the service or employment relationship or contractual relationship (counseling, equipment, internship, practice, volunteering, etc.) and which is recognized by the competent authority as the whistleblower.

Effective mechanisms for reporting unethical behaviour, fraud and corruption are important for preventing fraud and corruption as well as management and prevention of related risks in the company. An opportunity to report possible cases of corruption in a safe and simple manner is a very important part of combating corruption. However, so far, only a few rare business organisations in Lithuania clearly publicly encourage their employees to report unethical or possibly corrupt behaviour. Meanwhile, namely those employees who work at the organisation have the best knowledge of the risks related to the peculiarities of their work, see their colleagues' behaviour at close hand and may timely report possible fraud, corruption or other illegal behaviour.

An internal reporting channel with clear safety standards as well as a clear position of the management, which encourages reporting violations observed, may become an effective measure to ensure the better internal risk management. In their methodical publications international organisations provide the recommended elements for developing a sustainable violation reporting system¹⁰¹.

National legislation on the protection of whistleblowers

The Seimas of the Republic of Lithuania in 2017 November 28 adopted Law of the Republic of Lithuania on the Protection of Whistleblowers No. XIII-804 (hereinafter Law on the Protection of Whistleblowers), which will come into force in 2019, January 1. The Government of the Republic of Lithuania or its authorized institutions until 2018 December 31 are obliged to adopt implementing legislation of this law. It should be noted that the provisions of this Law apply to both - the public and private sectors.

Before adoption of this law, a lack of legal regulation of the protection of the whistleblowers was felt in Lithuania. Persons reporting potential violations in their workplace, if they were not recognized as witnesses in criminal proceedings, did not have clear legal protection.

The Law on the Protection of the Whistleblowers establishes the rights and obligations of the notifying persons, who has reported about violations in the institutions (according to this law, an institution - public or private legal entity, other organization, foreign legal entity's organization or organization's branch) as well as established the bases and forms of their legal protection, to ensure the protection, promotion and assistance of these persons in order to provide appropriate opportunities for reporting offenses that threaten or violate public interest, to ensure the prevention and disclosure of such violations.

Definition of a whistleblower introduced in the Law on the Protection of Whistleblowers is defined quite broadly. It also defines how a violation is understood in the context of this law and provides a list of offenses that may be subject to provide an information, which, given the variety of possible infringements, is not exhaustive. So, it will be possible to report not only corruption-related violations.

The law provides that the competent authority responsible for coordinating the process of protection and assistance of the whistleblowers is the Public Prosecutor's Office of the Republic of Lithuania.

¹⁰¹ https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf.



One of the circumstances, that deters whistleblowers from reporting violations is civil liability for defamation. The whistleblower may need to pay damages if he/she does not show that the disclosed information about the person is correct. Therefore, the law establishes the provision that no contractual or non-contractual liability, as well as liability for defamation, is brought to the person who provided information about the violation, in accordance with the procedure established by this law, if he/she reasonably thought that he/she was providing the correct information. Such a person shall not be liable for damage caused by the provision of information about the violation except if it is proved that the person could not reasonably believe that the information provided by him/her is correct.

In order to prevent abuse of provisions of the law and to protect other crucial legal asset, the law establishes a fuse which means, that provides for the knowingly false information as well as information constituting a state or official secret or information that is protected as a trade secret, according to this law does not provide guarantees to such a person.

The Law contains a list of the main protection, promotion and assistance measures for the whistleblowers:

- ensuring safe channels of reporting violations;
- ensuring person's confidentiality;
- it is prohibited to make a negative impact on a person who has provided information about violations;
- the right to receive remuneration for valuable information;
- the right to receive compensation;
- free legal aid;
- relief from liability.

Defined, to whom and when these measures can be applied, detail the essence, the content and application of the measures.

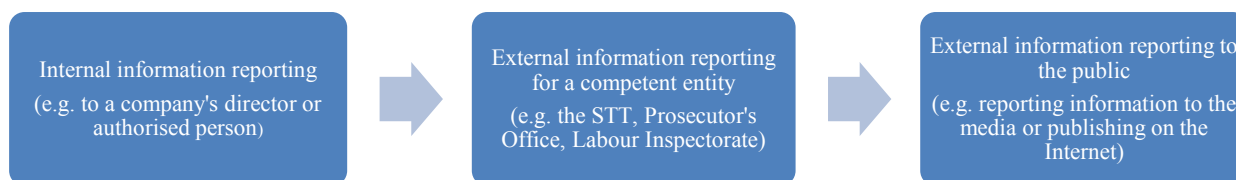
The law establishes a prohibition against a person who submitted information about an offense, to take disciplinary measures, to dismiss him from work or service, to lower his posts, to move to another workplace or to apply any other negative measures, the list of which is not exhaustive, and would not apply only directly to the employer, but also to other employees of the institution.

In order to motivate persons to report, the law provides a possibility of financial encouragement of whistleblowers. Taking into account the fact that the whistleblower after submission of notification while investigation is still in process may already suffer from negative effect or negative consequences, the Law provides a possibility to compensate for a corresponding amount according to the reasonable request of whistleblower. The procedure of compensation in order to mitigate the loss or negative impact of whistleblower is authorized by the Government of the Republic of Lithuania.

Reporting methods and channels

Was unanimously agreed during discussions that reporting channels must be clearly defined and create an optimal opportunity to receive reports, since otherwise whistleblowers may lack trust in the reporting channel as a convenient and effective means for disclosing information.

Whistleblower protection systems usually contain one or more reporting channels, which ensure a safe way of providing and disclosing information. Such channels are usually designed for internal reporting, external reporting to a competent entity and external reporting to the public or the media.



The newly adopted Law on the Protection of whistleblowers also sets out three ways of reporting irregularities: submission of information to the institution through the internal channel for reporting violations; directly to the competent institution; publicly.

Employees who became aware of illegal actions should have an opportunity to report this, first of all, inside the organisation, with no fear of possible retaliation or any other negative consequences.

It is noteworthy that an open and safe opportunity to report illegal or inappropriate actions may pave the way to open organisational culture between the whistleblower and the management of the organisation.

The effort in developing such organisational culture should, first of all, be shown by the top management, spreading top-down and maintained in the entire organisation. Organisations should act on a presumption that its employees will demonstrate good will and provide information on improper action, while the top management will support the bravery of such persons in disclosing the information at their disposal and take appropriate actions to protect them from negative consequences as well as will responsibly investigate any suspicions of improper or illegal action in the organisation.

Thus the top management promoting internal reporting might control the actions that may harm the organisation's reputation or cause damage if an employee disclosed the appropriate information through external channel.

However, although employers should support whistleblowers and responsibly react to the information provided by them, this is not always the case in reality. In such cases whistleblowers are often afraid of their employers' indifference and think that there is no other way than reporting the information externally, in anticipation of a timely reaction, which would result in the elimination of illegal action.

This that whistleblowers choose external channels for disclosure of information may be a clear signal that the organisation promotes insular culture and that the management does not take appropriate actions and does not feel responsible for protecting its employees.

The availability of internal and external information channels create an opportunity for the whistleblower to choose how and whom report the available information to. The case-on-case circumstances could determine the choice of the most appropriate channel. There should be more than one such reporting channel, for the whistleblower, having taken into consideration all the circumstances, to be able to choose the most trustworthy channel.

One of the most important principles of the effective system for reporting offenses is - reliable, easily accessible and clear channels for reporting offenses (Recommendation CM / Rec (2014) 7 adopted by the Committee of Ministers of the Council of Europe on the protection of whistleblowers on 14 April 2014, item 14). Law on the Protection of Whistleblowers establishes a mandatory rule that public and private sector institutions, in accordance with the procedure and requirements established by the Government of the Republic of Lithuania, will have to implement internal channels of information about violations and ensure their functioning. Principled provision of the law establishes that in the absence of exceptional circumstances, information in the first place should be provided to the institution through the internal channel of information about violations.



It is worthwhile to note that both (internal and external) levels (channels) should operate simultaneously that potential whistleblowers had an opportunity of choice whom they would like to disclose the available information to. Also, the whistleblower should have an opportunity to disclose information through external channel if, upon its disclosure, he/she has received no adequate reaction for a certain period of time or if no appropriate action was taken to investigate the facts reported. Moreover, potential whistleblowers should have an opportunity to apply to external supervisory authorities passing and not using the internal information disclosure mechanism if they are afraid or have the presumption that they will fail to safely use the internal reporting channels of the organisation, and that their anonymity or confidentiality of personal data may be not ensured, or that the violations reported will be covered up.

Article 4, paragraph 3, of the new Law on the Protection of Whistleblowers specifies specific cases in which a person can apply directly to the competent institution¹⁰², without providing information through the internal channel for reporting irregularities. Also, when a person becomes aware of elements of possibly committed or committed offenses, the notification must be made to the competent institution.

Direct access to external channels may also be necessary in case of a need to report an inevitable threat or danger, which may be difficult using internal channels. Article 4, paragraph 8 of the Law on the Protection of Whistleblowers, establishes that information on the offenses may be provided publicly in order to report an imminent threat to human life, public health or the environment, where urgent action is necessary to prevent such a threat and there is no possibility of notification violation in other ways due to lack of time or by notifying the offenses by other methods, the necessary steps have not been taken in due time.

In any case, despite the choice of the channel for disclosing information, the opportunity for the whistleblower to decide himself/herself whom to disclose the information to creates better objective opportunities to do so in an easier way.

As long as there are no procedures approved by the Government for the installation and functioning of internal channels for providing information on violations, to organisations with a separate notification channel it is recommended to:

1. Clearly indicate who is responsible for maintenance of the channel, who receives and manages information received by it for the whistleblower to know that his report will not be discussed by persons that are subject to be reported, and be sure that the channel is trustworthy. The objectivity should be preserved, the facts and evidence reported by whistleblowers must be consistently and objectively analysed.

¹⁰² 1) the violation has fundamental importance to the public interest; 2) it is necessary to prevent or stop the violation as soon as possible, as it may cause serious damage; 3) leading persons associated with an institution in the form of work or service or contractual relations may be committing or may have committed any violations themselves; 4) the information on the violation was submitted through the internal channel for reporting irregularities, but the response was not received or did not take action in response to the information provided, or the measures taken were ineffective; 5) there is reason to believe that the anonymity of the notifier or the confidentiality of the person may be unsecured or that the notified offense will be hidden when providing information of violation through internal channel for reporting irregularities; 6) institution does not have the internal channel for reporting irregularities; 7) a person can not use the internal channel of information on violations because he or she does not leave work, service or other legal relations with the institution anymore.

2. Clearly indicate and explain the type of this channel, by clarifying whether the person may report anonymously, what he/she might expect in each individual case and the difference between different ways of reporting, when the institution receives reports by different reporting channels.
3. Provide clear information on the storage of information related to the copyright of the report. In order the whistleblowers trust the reporting channels, they should clearly understand that their personal data will be protected and that the fact that they reported will not become known to the wrong persons.
4. Indicate if the whistleblowers receive feedback and how it will be provided. Reports on possible cases of corruption and ethical violations received must be investigated in due time as well as according to the procedures established by the organisation, while whistleblowers in all cases must clearly perceive whether they are to be informed on the results or the course of the investigation.

Increasing employees' awareness

It should be noted that increasing employees' awareness is a very important element of whistleblower protection, which enables the change in attitudes towards whistleblowers and elimination of negative attitudes and opinions on reporting illegal or dishonest behaviour. Therefore, it is agreed that open organisational culture and legal regulation of whistleblower protection must be strengthened by means of increasing awareness, communication, training and appropriate evaluations of processes that take place in the organisation. The use of clear and effective methods of communication with employees may result in emergence of mutual trust between the employer and an employee, it also allows the employee to clearly know how the whistleblower protection mechanism would be applied to him/her as well as the protection measures applied in the organisation, thus encouraging him/her to feel not indifferent to the illegal and dishonest actions taking place in the organisation.

In order to ensure the proper functioning of the protection mechanism and that it meets its purpose, the organisations should regularly review its whistleblower protection systems in place by evaluating their efficiency. If necessary, it should also improve the internal regulation by optimising the aforementioned system to eliminate any gaps and shortcomings detected.

Dealing with cases of corruption abroad

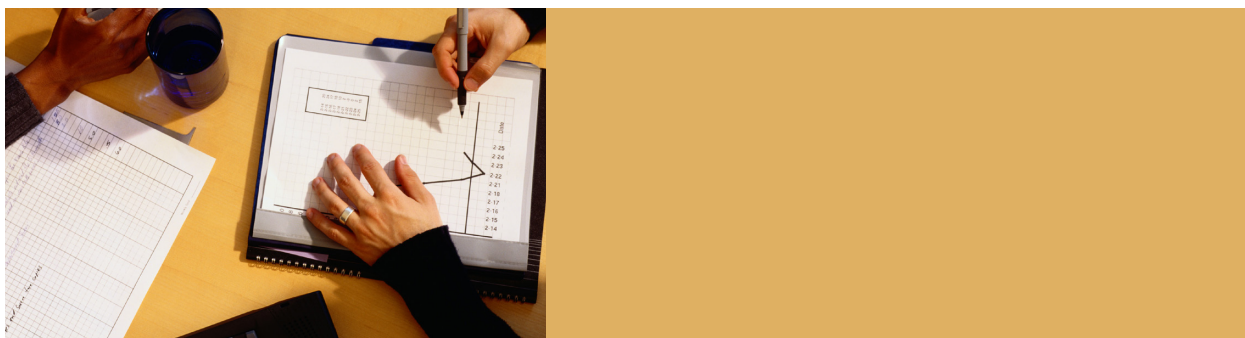
If a Lithuanian company or its employee encounters corruption abroad, where, for example, the company incurs significant losses because the competitors pay bribes, or a foreign state official demands a bribe, this should be reported to the STT or the Lithuanian Embassy (see [Annex No. 7](#)). The whistleblower may choose where to report improper behaviour or undesirable situations, a whistleblower may choose where to report the improper behaviour or undesirable situations – to the authorities in Lithuania or abroad.

Some countries have their own procedure for reporting corruption cases, which might be used by the employees of Lithuanian companies operating abroad. For example, the U.S. Securities and Exchange Commission has a disclosure system under which a whistleblower may receive a premium if the reported information contributed to the clear-up of an economic crime.

6. 13. Checks on Business Partners

In order to start cooperation with a new business partner, business organisations must be very careful in assessing all related risks (e.g. proper and timely implementation of transactions, honest fulfilment of obligations on behalf of the partner, or if the partner is related to fraud, corruption, etc.), therefore, this requires a financial-economic and reputation-honesty assessment. Organisations should also apply a consistent system of evaluating and monitoring their current partners as well.

Checking the reputation and due diligence of business partners is one of the typical means of corruption-prevention, usually widely used by business organisations. This measure al-



allows organisations to not only identify and properly manage potential risks of cooperation with a certain business partner, but also avoid cooperation with businesses of questionable reputation, the possibly illegal actions of which would put the organisation at risk of harm to its reputation or even criminal prosecution.

Business practice does not have a universal model for checking business partners, which could be applied to all. Therefore, each organisation should choose the means of assessment and monitoring that meet the needs of its organisational structure and activity best. Some of them are described below.

The system of checking and monitoring business partners could be divided into two main stages:

- checks on new business partners;
- monitoring of the current business relations.
- Before starting cooperation with a certain business partner, business organisations usually evaluate the following major corruption risk factors of:
 - a country;
 - a business transaction;
 - a business partner.

For the corruption risk assessment of a country the results of the one of the world's most famous survey, namely, the Corruption Perceptions Index of Transparency International, which shows how different countries of the world are doing in their attempts to bridle corruption. Information on the situation of corruption in each country of the world is also provided on the Business Anti-Corruption Portal¹⁰³.

When evaluating business transactions, it should be kept in mind that in international business practice certain types of transactions are classified as *high-risk* transactions and require a more comprehensive verification:

- legal services;
- financial consulting services;
- purchases from the public sector bodies, enterprises, institutions;
- agents and suppliers working with the public sector;
- construction and building supervision and maintenance;
- issue of visas / work permits and related services;
- purchase of equipment;
- purchase and lease of real estate and land;
- processing;
- customs services / cargo transportation;
- security services;
- charity and sponsorship;
- various consulting services (e.g. consultations on taxes, purchasing companies, relations with state institutions, performance regulation, lobbying, etc.);

¹⁰³ <http://www.business-anti-corruption.org/>

- relations with the public sector regarding the provision of administrative services (e.g. confirmation of a legal fact, issue of a licence or permit, etc.).

For the purpose of **evaluation of a business partner**, a check is carried out, which basically, is designed for finding out the details of the company's incorporation, its ownership, property, structure, competence, solvency and business reputation issues. For such a check, the State Tax Inspectorate (STI) provides its recommendations which emphasize the importance of asking the future partner to submit the following: a written commercial proposal, which would contain the future object of the agreement, commercial terms and conditions, its registered office and business operating addresses, bank account details, authorised contact persons and their contact details, persons authorised to sign accounting documents issued (it is also recommended to request the specimen signatures of the aforementioned persons). Moreover, it is advised to ask the future business partner to provide copies of the registration certificate, VAT payer registration certificate (if it is a VAT payer), permit for establishment of a warehouse subject to excise taxation, registered consignee/consignor certificate, also available permits and certificates related to their operating activities as well as licences for an appropriate activity (where the activity is limited or licensed).¹⁰⁴

In business practice, in order to reduce business risks, during searching for business partners it is also taken into account whether their potential partner applies corruption prevention measures, if he/she/it is not included into the black lists of persons who avoid paying taxes or the lists of enterprises undergoing the process of bankruptcy or liquidation, etc. In Lithuania this might be checked on the website of the Authority of Audit, Accounting, Property Valuation and Insolvency Management¹⁰⁵, also on private systems providing business partner creditworthiness assessment services¹⁰⁶. The data on companies registered with the VAT Payer Register in Lithuania is provided by the STI¹⁰⁷, while the data on companies registered in other EU countries may be checked on the website of the European Commission¹⁰⁸.

If the future partner is a foreign economic entity, alongside with the aforementioned sources for checking the reliability of the business partner, the services of appropriate country embassies or consular offices, trade promotion organisations (economic development agencies, chambers of industry and commerce, associations, etc.), which are also able to provide information on economic entities of their own countries, may also be used.

In evaluating a business partner, the fact that, in international anti-corruption practice business partners are assigned to the high-risk group should also be given notice if there is available credible evidence that the major shareholders, owners and other persons of the partner, including their close family members, participate in politics or are employed in the civil service (i.e. they are politically exposed persons (PEPs¹⁰⁹)), indicates that cooperation with such business partners poses a higher risk.

Moreover, in international business practice business organisations often focus special attention on the establishment and implementation verification of corruption prevention measures for their suppliers. For instance, an appropriate business organisation purchasing services and goods, in order to reduce the risk of corruption, may take additional measures presented below:

- to ask its business partners to sign a **Supplier's Code of Ethics/Conduct** (see **Annex No. 8**) (which may contain a detailed description of business partner's obligations related to protection of human rights, employees' health and safety, anti-corruption, environmental protection, including a list of appropriate prohibited chemical substances, etc.), including the right to terminate the contract in case of violation of appropriate provisions. The Supplier's Code of Conduct must be applicable not only to a particular

¹⁰⁴ <http://www.vmi.lt/cms/pvm-sukciavimas>

¹⁰⁵ www.bankrotodep.lt

¹⁰⁶ For example: www.creditinfo.lt, www.cr.lt

¹⁰⁷ <http://www.vmi.lt/cms/informacija-apie-mokesciu-moketojus>

¹⁰⁸ http://ec.europa.eu/taxation_customs/vies/?locale=lt

¹⁰⁹ https://en.wikipedia.org/wiki/Politically_exposed_person



business partner, but also their subcontractors invoked. In general, the Suppliers' Codes of Conduct usually set higher requirements for the business partners than those prescribed by legal acts and the latter are obliged to implement a process for checking if they or their partners meet the Code requirements;

- in the contract with the business partner to stipulate the **partner's obligations regarding the application of additional anti-corruption measures** both during the contract validity period and for an appropriate period after the expiry of the contract;
- in order to ensure that the obligations of the suppliers and their subcontractors are not merely declarative, but also effectively implemented, contracts with contractors should provide for not only the provisions on transparency of activities, but also the **opportunity to carry out independent performance and transparency audits** in the entire supply chain and among suppliers, should there be any reasonable doubt over the possible violations of transparency obligations.

The results of the checks on the business partner should be properly recorded in the checks report by specifying the major risk factors of cooperation with an appropriate business partner as well as the plan of actions to be taken with regard to an appropriate business partner in order to reduce the potential risks.

Business organisations should not limit themselves only to the financial-economic and reputation-honesty assessments of new partners, but also implement the proper control mechanisms for the current business relations which would enable regular ensuring that the business partner meets the established obligations. This might include both periodic training for business partners on transparency and corruption prevention requirements applied in the organisation and periodic audits or checks on business partners.

6. 14. Transparency and Accountability to the Public

Transparency

Some organisations do not have any programmes, policies or strategies clearly associated with anti-corruption and many of them avoid making that public.

This shows business organisations' lack of awareness, unwillingness to discuss this issue in public and lack of understanding that corruption is a material risk to the organisation itself and that it increases the risk of threatening consequences in case of incident.

An organisation's anti-corruption policy, codes of ethics, anti-corruption programme, corruption prevention procedures and recommendations must be published on the public website of the organisation and be available to all business partners as well as state institutions that the organisation has contacts with.

Organisations should prepare reports which would specify their anti-corruption practice, measures and progress, any cases of corruption or incidents, just as it is done according to the established practice in the field of healthcare, safety and environmental protection.

Organisations should provide information received from their whistleblowers on the number of:

- reported cases,
- investigated cases,
- unjustified cases,
- cases, where appropriate action was taken,
- cases that enabled improvement of anti-corruption measures.

Annual report and websites

The organisation should inform about the preparation, implementation, monitoring of the anti-corruption programme or individual corruption prevention measures and the results of the programme in its Annual Report or, Sustainable Development / Social Responsibility / Progress Report as well as on its public websites.

The requirements raised for the annual reports of big companies state that the companies must include non-financial information issues, including anti-corruption measures¹¹⁰, while the requirements applied to companies the activities whereof are related to extraction of natural resources envisage that these companies must report on their payments to the authorities and other major financial figures in each country.

Methodologies. The Global Reporting Initiative (GRI standard) may be applied in annual reports. GRI is a widely-used standard for the provision of reports related to social and ethical issues, including corruption-related aspects.

The UN Global Compact together with Transparency International published the guidelines for companies to prepare reports related to corruption. These guidelines conform to the GRI standard.

Accountability to the public

More and more businessmen in the world talk about corporate responsibility and higher accountability requirements for themselves. It is of major importance that businesses in Lithuania follow the best practice example and thus start to provide the largest possible amount of information about their activities, values and finances as well as that they not lose clients and trust of the residents of Lithuania.

According to the data of the Lithuanian Map of Corruption, businesses acknowledge that corruption hinders their activities and believe that eventually it will decrease in Lithuania. In order to reduce risks of corruption in the environment of businesses themselves, companies are recommended to make a clear statement of their position regarding intolerance to corruption and ensure the availability of the most relevant information on their websites.

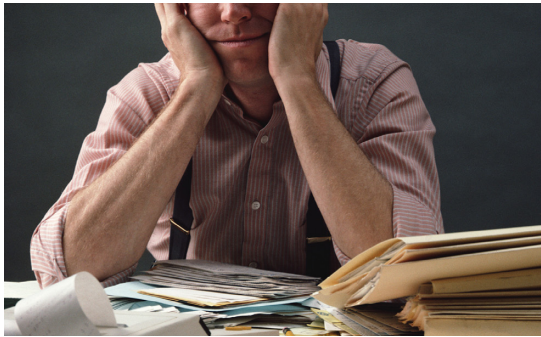
According to the guidelines prepared by the Transparency International Secretariat and Transparency International Lithuania, business organisations operating in Lithuania are proposed to improve their accountability and publish:

- a) their organisation's integrity policy,
- b) information on the organisational structure of the organisation,
- c) information on organisation's finances.

It is also recommended to publish on the websites of organisations the following:

- 1. Their attitude towards whistleblowers reporting potential corruption inside the organisation.** Lithuania continues to be unable to ensure protection of whistleblowers who report corruption, and the citizens are often afraid to report possible violations that they notice. Therefore, it is essential for an organisation to make a clear statement

¹¹⁰ For example, PricewaterhouseCoopers, UAB publishes its annual transparency reports on the website: <http://www.pwc.com/lt/lt/assets/document/skaidrumo-pranesimas-2015.pdf>; <https://www.pwc.com/lt/lt/assets/publications/PwC-Skaidrumo-pranesimas-2017.pdf>.



on whether its reporting channel is confidential or anonymous, also which individual employees have access to the reports and who is charged with the task to investigate the information received.

2. **The organisation's policy for gifts received/granted and other performance standards.** Publishing of this information would be helpful in getting a better understanding on the values and principles followed by each employee of the organisation as well as the methods usually used by the organisation for cooperation with potential partners.
3. **A comprehensive list of their ultimate owners (natural persons).**
4. **A comprehensive list of their subsidiaries under direct or indirect decisive influence of their organisation.** It is also recommended to announce publicly if a particular organisation has no subsidiaries.
5. **A comprehensive list of associated companies, i.e. companies, which may be significantly influenced by other company, which is not a subsidiary of that company, or a company operating under a joint activity (partnership) agreement.** It is also recommended to announce publicly if a particular organisation has no subsidiaries and/- or associated companies.
6. **Reveal which share of the subsidiaries or associated companies belong to the organisation.** It is also recommended to announce publicly if a particular organisation has no subsidiaries and/or associated companies.
7. **Reveal the countries of incorporation and performance of the subsidiaries and associated companies.** It is also recommended to announce publicly if a particular organisation has no subsidiaries and/or associated companies.
8. **Rates of income / sales in Lithuania.** In order to improve accountability for organisation's finances to clients and other interested groups, it is recommended to publish information on income / sales by type of activity (if there is more than one).
9. **Profit before tax and the real corporate tax amount paid in Lithuania.**

It is also emphasized that the financial documents should have a search engine for each interested person is able to easily find all the necessary information by using keywords. This is impossible to do in the scanned documents or in appropriate pdf format documents, therefore, publishing reports in these formats is inappropriate.

A lot of organisations, which are confident that this improves their reputation, attracts investors and talented employees as well as raises prices for shares, submit their social responsibility reports (including anti-corruption activities) to special rating agencies, for example, included into *Dow Jones Sustainability Index* and *FTSE 4Good*.

6. 15. Organisation of Anti-Corruption Activities

Anti-corruption activities should be organised according to the size of the organisation, its area of activities and region, the likely scope of corruption-related risks, organisational structure, distribution of responsibilities, objectives and other characteristics.

Large companies usually implement the most extensive anti-corruption programmes, while smaller companies may use measures that are simpler, but nevertheless ensure focus on combating corruption.

In cases, where the preparation of an anti-corruption programme involves external assistance, it is very important to ensure active involvement of the company's employees who would acquire the necessary knowledge as well as understand the relevance and responsibility of these measures.

Depending on the size of the organisation, a person or a unit may be assigned to govern its anti-corruption programme. It is essential that such a person or unit is independent of other business units and accountable directly to the top management of the organisation. The assigned person or unit should be responsible for the preparation and implementation of the anti-corruption programme, its dissemination, regular monitoring and improvement of the programme.

The draft anti-corruption programme should be presented to various units of the organisation, broadly discussed by hearing out the comments, remarks and proposals of employees on what measures might be the most effective in the case of a specific organisation.

In addition, it would be expedient to invoke the expertise and experience of a law unit or internal audit unit in order to assess as much as possible inherent risks of the organisation and apply effective measures.

It is also relevant to discuss the situations related to corruption, bribery and dishonest actions that have already happened, consider the possible ways for prevention of such situations and what measures should be taken if an analogous problem reoccurs.

The organisation may disseminate information on the anti-corruption programme under implementation, its progress and the measures applied the organisation on its Intranet page, it may also use handouts, e-mail messages as well as staff training aids and programmes.

In preparation for the implementation of the anti-corruption programme, it would be helpful to meet with the representatives of other organisations that have already implemented such programmes – to listen to their experience, learn what measures were particularly successful and brought good results as well as which situations were the most complicated ones and how they managed to tackle them.

Organisations may also use information provided, research/surveys, analyses as well as measures recommended by non-governmental organisations.

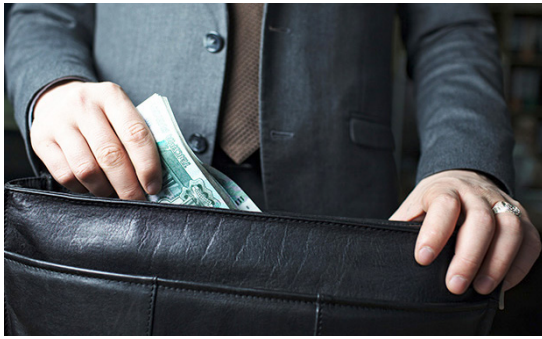
6. 16. Preparation, Implementation and Review of an Anti-Corruption Programme

Preparation of an anti-corruption programme

The preparation of broad anti-corruption programmes in small business organisations would be irrational due to the small number of their employees and simpler business procedures; however, the larger business organisation, the more complex procedures in it, and it has more contact points externally, thus, accordingly, also has higher corruption risk factors. Therefore, it is reasonable to provide for all anti-corruption measures, their target addressees, deadlines and persons responsible for their implementation in a single anti-corruption programme¹¹¹.

An anti-corruption programme must include only those risk areas and elements that are relevant to an individual organisation, directly related to its activities and were identified during risk assessments.

¹¹¹ Lithuanian Dictionary defines a **programme** as a plan of action and its printed or otherwise publication. In preparation of an anti-corruption programme in a business organisation the Guidelines for the Preparation of a Corruption Prevention Programme in a State Institution, approved by STT Director Order No. 2-100 of 3 April 2014 may be partially followed, which are available here: <https://www.e-tar.lt/portal/lt/legalAct/50865870bb0111e38766a859941f6073>



It is much better to start with a potentially incomplete programme, which covers at least the major risk areas, and then continue completing and adjusting it in the course of time than to have no programme at all.

The main focus of such programme should be on the following key aspects:

- identifying the major risks;
- including evaluation of risk sources and conditions into daily operations;
- defining possible forms of corruption, risky situations and mitigating measures;
- defining the risk of corruption in business market relations, property relations and purchases as well as specifying mitigating measures.

An anti-corruption programme should have an appropriate tone and structure:

- ensure an appropriate “top-down” tone from the top management;
- approve the policy of zero-tolerance to corruption;
- develop compliance culture;
- include compliance culture into staff policies (training, employment, evaluation of achievements, promotion and disciplinary actions).

In order to decrease the risk of violations, the anti-corruption programme must define control mechanisms, and the control procedures for high-risk processes should be approved and regular monitoring thereof should be carried out.

The programme should raise its awareness, ensure compliance, its observance and implementation by:

- planning mandatory all-level staff training;
- implementing disciplinary measures and incentives;
- implementing reporting requirements and motivating elements to maintain compliance;
- practising mandatory training for employees in risky positions, partners, contractors or suppliers;
- introducing anti-corruption provisions in business contracts.

The anti-corruption programme must be up-to date and adapt to any changes in the organisation by:

- considering and implementing changes in rules, financial operations, policies and procedures;
- implementing changes necessary for entering new markets and business segments;
- implementing adjustments based on the experience in the programme implementation.

Implementation of an anti-corruption programme

The preparation of an anti-corruption programme is then followed by its implementation in the organisation.

Along with the group of employees, the task of which is to implement the anti-corruption programme, several other segments of the organisation, namely, the management and communication specialists, should also be involved to achieve the successful implementation of the programme. The leadership of the programme implementation should be assigned to the employees appointed on the basis of their personal traits, dutifulness, trust and reliability that they possess at the organisation as well as taking into account how well they would be able to represent the implementation of the programme.

The programme must be implemented as a project – consistent with the organisation's type of activities, budget, action plans and progress checks. The implementation process might be easier if the anti-corruption programme is included into the processes that are already taking place in the company. This would also require ensuring that the anti-corruption measures do not become fragmented, unclear and unnoticeable actions.

Communication is the milestone of the development of the anti-corruption programme. For this purpose organisations should prepare a general communication plan. During the implementation of the programme employees should be introduced to the new requirements and clearly know where they may obtain more information. Information should be available on the organisation's Intranet or in a printed format.

It is recommended that during the implementation of the programme one person or a specific group of persons is appointed to answer the questions. Different methods may be applied for reinforcement of the implementation of the programme, for example, managers of several levels certify in writing that they received the information related to the programme and undertake obligations to implement it.

The head of the organisation and its board or board of directors/management board should ask the various units to submit reports on the implementation and compliance of the programme on a regular basis.

The top management should demonstrate its support to the implementation of the programme, for example, via the company's reports published on the Intranet and presented during the staff meetings related to the development of the programme.

The top management of the company should also ensure a high-quality implementation of the anti-corruption programme.

Generally, the communication of the anti-corruption programme and the company rules prohibiting the intensity of corrupt actions may provide a huge preventive effect, for instance, many violations occur due to the lack of awareness and ignorance.

During the preparation, implementation and further development of the programme, information on the plans, content and requirements under the programme should be regularly communicated to the employees and updated.

The internal communication measures in the company, especially those that are specially prepared for the implementation of the anti-corruption programme, may include:

- an e-learning programme;
- a help line on ethical issues;
- meetings and exchange of ideas;
- e-mails from the director general to the staff;
- information from the company's lawyers and ethical supervisors.

In order to ensure the efficient implementation of anti-corruption activities, it is necessary to conduct the evaluation and monitoring of the implementation of the programme by carrying out such activities as risk analysis, analysis of newly-adopted national legal acts regulating the organisation's activities and analysis of internal legal acts within organisation itself as well as continue further training.

It should be endeavoured to harmonise the monitoring of anti-corruption activities with other business processes. Risk assessment is the starting point for setting anti-corruption priorities, it might be coordinated and implemented as a general part of the risk review.

It is essential to take an adequate in-depth approach to corruption-related objects and issues in order to respond to them in an adequately specific and proper manner.



Having identified the anti-corruption activities, which occurred after risk assessment, they should be integrated into the business plans for the nearest period. It is crucial to include the corruption-related issues into the agenda of different-level meetings of the company on a regular basis.

The head of the organisation should regularly inform the board (in absence of the board, the shareholders) on how the anti-corruption programme works in practice. The administration's responsibility is regularly monitoring whether all planned activities are implemented. The best way to do that is through monthly, quarterly or semi-annual company meetings, which are jointly organised by the administration and units as well as business entities.

The greatest attention should be focused on how the agreed measures are implemented. Moreover, the company's internal and external changes (such as new procedures and other documents) must be reviewed and evaluated in order to determine if the agreed measures remain relevant.

It is also important to inform about any cases of attempted corruption and incidents of corruption, "nearly happened" corruption events, including information on how these cases were tackled. All this information is relevant in considering if the measures should be continued or if the programme requires improvement.

Along with this regular monitoring it would be expedient, for instance, that the heads of appropriate units of organisations each year signed the obligation on the implementation of anti-corruption activities in their unit, including planned training, measures to be implemented under the plan, etc. The heads should also monitor the implementation of the programme and regularly inform about the progress, achievements and incidents, should there be any.

This would ensure a natural "bottom-up" process, when the heads of units report about the anti-corruption activities through different levels of administration up to the director general. Later on the director general might submit such reports to the board (shareholders).

Review of an anti-corruption programme

It is important to create an approach to the anti-corruption programme as a part of constant improvement, caused by changing external and internal factors in the company. Along with regular monitoring, which manifests through identification and implementation of specific measures, it would be normal that the management initiates a formal evaluation of the programme.

Commonly, this would comprise the *adequacy* assessment (content and model) and *compliance* (efficiency) assessment.

The adequacy assessment of the programme requires the precise assessment criteria.

There are various standards and good practice, which might be useful. Transparency International has a Self-Evaluation Tool and an Assurance Framework, which defines an external review methodology. Both documents are available on Transparency International website.

Large auditing and consulting companies have their own voluntary defined good practice following which they may evaluate companies' programmes. In evaluating the structure of the programme, the assessment of actual compliance is not desirable (i.e. if the document or measure exists or not) – the programme should be substantiated by documents and specific tests should be carried out in order to determine that the programme is implemented under the plan.

A need for an *independent* evaluation depends on the fact if the programme is subject to internal evaluation at the company or external resources will be used. In some cases the management may require an independent evaluation of the anti-corruption programme.

The internal audit function is adequate for the independent evaluation, where the external advisers are not desirable. By using external advisers, the company may benefit from their experience and best practice examples accumulated in other companies.

It is of major importance for the external advisers to have a good understanding of the company's business nature and that their assessments, considerations and recommendations are adequate and proportionate to the company's risk situation and needs.

6. 17. Maturity Assessment of the Organisation's' Corruption Prevention System

The self-evaluation based analysis may also be an alternative to an external evaluation of the efficiency of the organisation's anti-corruption programme. The major purpose of such evaluation is to enable the management of the organisation to evaluate:

- the main structural elements of corruption prevention (the fact of their existence at their organisation),
- the principles and efficiency of their application in the organisation,
- the need and directions for improvement of the current system.

It is necessary to emphasize that each organisation is free to choose and decide on the best ways of implementation of the elements of its anti-corruption system and the level of efforts the organisation will devote to the automation, documentation and efficiency evaluation of this process (this might be determined by such objective factors as the size and economic branch of the organisation's operations, the complexity of its processes, etc.); however, the corruption prevention elements listed below are to be regarded as the key integral parts of the anti-corruption system at any organisation, for the latter is deemed to be full and efficient:

1. A defined strategy for managing corruption / fraud / illegal actions;
2. Transparency of activities is clearly and publicly defined as one of the most relevant activity areas/principles of the organisation;
3. The organisation has a code of ethics in place;
4. The organisation has clearly-defined procedures for reporting and managing cases of corruption / fraud / illegal actions;
5. The organisation conducts risk assessments of corruption / illegal actions / fraud on a regular basis;
6. The organisation conducts internal and/or performance audits on corruption/illegal actions/fraud in the most risk-sensitive activity processes;
7. The organisation has a unit/position, responsible specifically for managing corruption / fraud / illegal actions;
8. The organisation conducts training on how to identify and manage the risks of corruption / illegal actions / fraud on a regular basis;
9. The organisation has a "trust line" or other tools / measures for active involvement of employees, promoting transparency of its activities;
10. The organisation has an adequately-regulated incentive-penalty system ensuring proper and efficient corruption / performance transparency risk management.

Provided below is the maturity assessment model of the corruption prevention system, which includes the main elements of the corruption prevention system and different maturity levels of the development of these elements in the organisation.

Elements of corruption prevention systems	Levels of maturity of corruption prevention systems			
	1	2	3	4
1. Does your organisation have a strategy for managing corruption / fraud / illegal actions?	Yes, the strategy is prepared, formalised and actively implemented.	Yes, the strategy is prepared and formalised, but not really effective and / or implemented	Yes, there is a strategy, but it is informal and undocumented.	No, there is no such strategy.
2. Is your organisation's transparency clearly and publicly defined as one of the most important principles / areas of the organisation's activities?	Yes, transparency is one of the key principles of our activity – it is clearly defined in our mission and strategy, and consolidated by employees, contractors as well as other contracts and agreements as the major and key condition for our organisation's co-operation.	Yes, transparency is one of the key principles of our activity – it is clearly defined in our mission and strategy; however it is not consolidated by employees, contractors as well as other contracts and agreements as the major and key condition for our organisation's co-operation.	Yes, transparency is important, but it is not one of the documented or explicitly and publicly communicated principles of our activities.	No, transparency is not one of our key priorities / principles.
3. Does your organisation have and use a code of ethics?	Yes, the code of ethics is prepared, formalised and actively implemented by all departments.	Yes, the code of ethics is prepared and formalised, but not really effective and / or implemented.	Yes, there is a code of ethics, but it is informal and undocumented.	No, we do not have a code of ethics.
4. Does your organisation have clearly-defined procedures of reporting and managing corruption / fraud / illegal actions?	Yes, the procedures are prepared, formalised and actively implemented.	Yes, the procedures are prepared and formalised, but not really effective and / or implemented.	Yes, we do have certain procedures, but they are informal and undocumented.	No, there are no such procedures in our organisation.
5. Does your organisation conduct periodic assessments of risks of corruption / illegal actions / fraud?	Yes, we have periodic risk assessments at the organisation (at least once a year), which involve all organisation's processes, the assessment of factual incidents and qualitative measurements.	Yes, we have periodic risk assessments at the organisation (at least once a year), but they lack sufficient structure and are based on the principles of qualitative / expert assessments.	Yes, we have risk assessments, but they are not documented in detail – carried out as discussions with top management instead.	No, we do not have periodic risk assessments.

Elements of corruption prevention systems	Levels of maturity of corruption prevention systems			
	1	2	3	4
6. Does your organisation conduct periodic internal and / or performance audits regarding corruption / illegal actions / fraud in the most risk-sensitive processes?	Yes, we have periodic audits related to the management of these risks (at least once a year), which include the most sensitive processes and are based on the principles of data analysis.	Yes, we have audits related to the management of these risks (at least once a year), but they lack sufficient structure and are based on the principles of expert evaluations.	Yes, we have audits related to the management of these risks, but they are not documented in much detail or assessed, being limited to identifying the most significant risks.	No, we do not have periodic audits related to the management of these risks.
7. Does your organisation have a department / office, responsible specifically for management of corruption / fraud / illegal actions?	Yes, our organisation has a department / office, responsible specifically for management of corruption / fraud / illegal actions.	Yes, our organisation has a person, responsible for management of corruption / fraud / illegal actions, but this is not his/her main function (e.g. combined with internal audit and / or general risk management).	Yes, our organisation has a person, responsible for management of corruption / fraud / illegal actions, but this is his/her secondary function.	No, we do not have such a department / function.
8. Does your organisation conduct periodical training on how to identify and manage risks of corruption / illegal actions / fraud?	Yes, we have periodic training related to the management of these risks (at least once a year) and they involve ALL representatives of the organisation.	Yes, we have periodic training related to the management of these risks (at least once a year), but they do not involve ALL representatives of the organisation.	Yes, we have training related to the management of these risks, but they are not periodic, implemented according to the need and do not involve ALL representatives of the organisation.	No, we do not have periodic training related to these risks.
9. Does your organisation have a "trust line" or other measures / tools, actively used by the employees and promoting the issues of transparency?	Yes, we do have such measures / tools at our organisation and use them actively in solving issues of corruption / distrust related to transparency challenges.	Yes, we do have such measures / tools at our organisation and use them, but they are not convenient and effective for use and / or solving reported issues.	Yes, but these measures are almost never used or I am not aware of any cases.	No, we do not have such tools / measures.

Elements of corruption prevention systems	Levels of maturity of corruption prevention systems			
	1	2	3	4
10. Does your organisation have an appropriate system of incentives-punishments, ensuring appropriate and effective corruption / transparency risk management?	Yes, our organisation has a motivational system, it is effective and motivates all employees to stand together in fighting corruption / distrust / transparency risks at our organisation.	Yes, our organisation has a motivational system, but it is not very effective and / or related to the results of performance audits and / or risk analysis of possible illegal actions.	Yes, officially our organisation does have a motivational system, but in recent years there was not a single case of any punishments applied to our organisation's employees for known cases of possibly non-transparent activities.	No, our organisation does not have such measures / motivational system.

It should be noted that the model for evaluation of the maturity of the corruption prevention system provided above may be adjusted and expanded, should there be such a need.

EXAMPLE OF INTEGRITY POLICY FOR SMALL AND MEDIUM ENTERPRISES

The executives and owners of the company (_____) (hereafter - the company), taking into account the „Anti-Corruption Guide for Business“¹¹², the good integrity practice of small and medium business enterprises, the recommendations of the Organisation for Economic Co-operation and Development to multinational enterprises¹¹³, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions¹¹⁴:

- endorse this integrity policy, which is one of the company's integrity elements;
- agree to show a good example by their behaviour;
- inform the company's employees about the importance of this policy.

(Name of the Company) INTEGRITY POLICY

Commitments	Carry out activities under laws of the Republic of Lithuania, European Union's legislative, regulatory and administrative requirements and provisions of this policy.
Integrity	We do not tolerate any forms of criminal activity and unfair business behaviour: 1. Bribe request, bribe acceptance, bribe giving, or giving a permission to give a bribe directly or indirectly, trade of impact. 2. Bribery of Lithuanian and foreign public officials. 3. Involvement in the cartel arrangements. 4. Business transactions facilitating payments. 5. Provision or acceptance of the gifts that do not comply with traditions and international protocols, support or other benefits that could lead to unlawful decisions. 6. Incorrectly accounted activity and tax evasion. 7. Participation in criminal activities and other activities that do not comply with business ethics.
Conflict of interest	We avoid any conflict of interest that may negatively affect the impartial implementation of duties or functions of public sector entities, business development.
Employees	We take steps to ensure that our employees are loyal and trustworthy, adhere to this policy and keep the company's reputation. We encourage employees to behave honestly and ethically by showing a good example.
Business partners	We give priority to business partners who apply integrity measures, advertise and follow integrity policy.
Responsibility	We publicly announce the application of this policy to the company and enable employees or other interested parties to report any integrity opposite behavior that has been observed in the company. Our company's management processes allow us to detect possible violations, remove them and apply responsibility to the employees.

This policy approved (date) by (Company) Director / Board decision

.....

(Shareholders / Board members / Director)

(Date, signatures)

¹¹² Online access: http://www.stt.lt/documents/korupcijos_prevencija_2018/Antik_vad_Verslui_2018-01-12.doc.

¹¹³ The guidelines apply to business entities operating in several countries. Online access: <https://ukmin.lrv.lt/lt/veiklos-sritys/investiciju-veiklos-sritis/ebpo-rekomendacijos-daugiasalems-imonems-nkc>.

¹¹⁴ Online Access: <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

EXAMPLE OF THE GIFTS POLICY FOR BUSINESS ENTERPRISES

The executives and owners of the company (_____) (hereafter - the company), taking into account the „Anti-Corruption Guide for Business“¹¹⁵, the good gifts policy practice of business enterprises and recommendations¹¹⁶ of Organisation for Economic Co-operation and Development (hereafter – OECD):

- endorse this Gifts policy, which is one of the company's integrity elements;
- agree to show a good example by their behaviour;
- inform company's employees about importance of this policy.

(Name of the Company) GIFTS POLICY

General commitments	Carry out activities we follow the law, Chief Official Ethics Commission's ¹ and OECD recommendations and this policy.
Gifts definition	A gift is any tangible or intangible item that has a value (also an entertainment product of a value higher than is usual for our company) or a service, which is served to another person in accordance with the international protocol, established tradition or is intended for entertainment without having the hope of obtaining any benefits, remuneration or rights, duties or privileges ² in exchange for it.
Intolerable gifts	1. We do not tolerate delivery or acceptance of gifts, including a non-refundable service, unless the gift is permitted by law and consistent with international protocol, is well established tradition or is for entertainment. 2. We do not take and do not give gifts to: – public sector entities with whom we have been, are or can be connected through the goods, services or works written or unwritten contracts; – business partners with whom we have been, are, or can be connected through the goods, services or works written or non-written contracts or other agreements, except if the gifts are consistent with the international protocol, the established traditions or are for entertainment and company's manager or the owner knows and/or is aware of such a provision or receipt; – politicians.
Gifts accounting	We take steps to ensure, that company employees will inform company's responsible staff about given and received gifts and entertainment products. We keep records of gifts and entertainment products received and provided, as well as publicizing the related information.
Gifts and employees	We inform employees about the policies and procedures for providing and delivering gifts and entertainment products.
The value of the gifts	Under the provision of this policy, the value of the provided gifts or entertainment products cannot allow wealth, profitability, significant benefit to the person for whom it is intended, the recipient cannot be attentive to humility or commitment.
Responsibility	We publicly announced about application of this policy to the company. We will notify the competent state bodies about given or received gifts or entertainment products that do not comply with the terms of this policy.

¹ Online access: <http://www.vtek.lt/index.php/13-dirbantiems-valstybineje-tarnyboje/16-dovanos>

² Read more „Anti-Corruption Guide for Business“ 39 - 42 pages. Online access:

This policy approved (date) by (Company) Director / Board decision

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(Shareholders / Board members / Director)

(Date, signatures)

¹¹⁵ Online access: http://www.stt.lt/documents/korupcijos_prevencija_2018/Antik_vad_Verslui_2018-01-12.doc

¹¹⁶ Online access: <https://www.oecd.org/governance/procurement/toolbox/search/gifts-gratuities-checklist.pdf>

RESULTS OF SOCIOLOGICAL SURVEYS ON CORRUPTION

Transparency International “Corruption Perceptions Index”¹¹⁷

Corruption Perceptions Index is one of the best-known and the most widely recognized survey that aims to rank countries by assessing the countries' abilities to control corruption as a phenomenon by measuring the level of corruption in the public sector and politics.

Based on the results of the 2015 edition of the Transparency International Survey on Corruption Perceptions Index¹¹⁸ (hereinafter referred to as CPI), **Lithuania scored 59 points¹¹⁹ out of total points of 100 and was ranked at the 36th position on the list of 168 countries. According to the 2016th results of the CPI survey for Lithuania were appointed 59 points out of 100 possible and 38th place in the list of 176 countries.** The CPI in 2017, had assigned Lithuania with 59 points out 100, and put it at 38th place in the rankings of 180 countries.

A country's corruption perception is ranked by attributing a specific score on a one hundred points' scale from 0 (perceived to be highly corrupt) to 100 (perceived to be very clean).

It should be noted that CPI indicates the countries' perceived levels of corruption among civil servants in the public sector and politicians, their non-transparent relations with the private sector, in other words, the index indicates **not the actual corruption level** in the countries, but the **opinion** of national experts and foreign experts as well as business representatives of those specific countries, which is **based on their perception** of the corruption level within the country, therefore it is vital to adequately inform the public (including the private sector) on corruption cases and its actual prevalence level in order not to shape an impression that corruption is more widely spread than it is indeed, and thus not to diminish undeservedly the country's prestige on the international business market.

TRACE Matrix (Business Bribery Risk Index)¹²⁰

In November 2014 the U.S. international business association TRACE International in co-operation with the U.S. analytical centre RAND Corporation announced the release of a new edition of the TRACE Matrix¹²¹, a global business bribery risk index. Lithuania was assigned a very high position the **18th¹²² out of 197** by surpassing not only Estonia (22nd position) and Latvia (25th position), but also the United Kingdom, Denmark and other Western European countries that generally by far surpass Lithuania (in other surveys). According to this index, Lithuania in 2016 took 25th¹²³ place out of 199, 2017 - 22th¹²⁴ out of 200 and overtaken Poland (39th place) and Latvia (42nd place).

¹¹⁷ A more detailed information on the Survey results is available on the website: <https://www.transparency.org/cpi2015>

¹¹⁸ CPI is one of the best worldwide known corruption perception surveys performed on an annual basis. This index is a crucial source of information for the international political institutions, business and financial structures considering investment opportunities or development of new business projects in some countries.

¹¹⁹ Due to the mistake identified in 2017, Corruption Perception Index (KSI) in the Transparency International Global Corruption Perception Index has been changed. After correcting the mistake, Lithuanian points have changed from 61 to 59, and the place is from 32 to 36 in the list of 168 countries. Online access: <http://www.transparency.lt/keitesi-lietuvos-balai-2015-m-korupcijos-understanding-indekse/>.

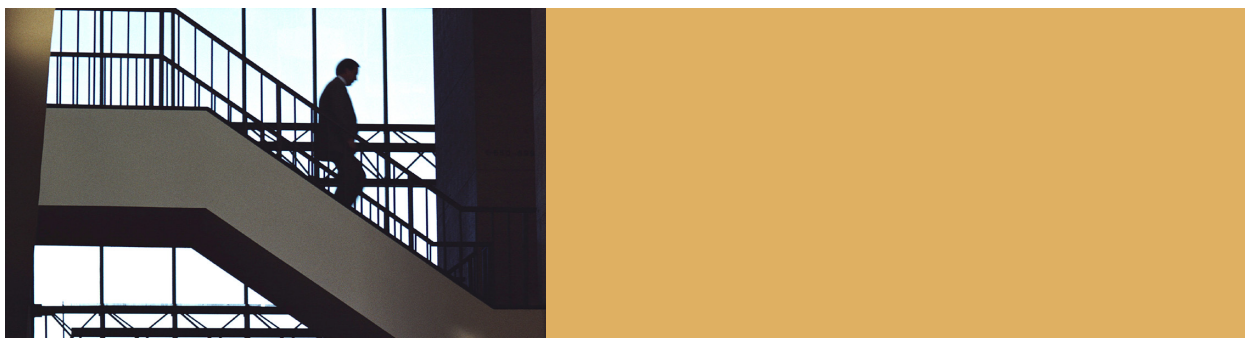
¹²⁰ The goal of the association established in 2001 is to aid companies and first of all major international corporations to follow anti-bribery standards (the U.S. Foreign Corrupt Practices Act as of 1977 and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) and to force their commercial intermediaries to follow these Standards.

¹²¹ A more detailed information on the index is available on the website: <http://www.traceinternational.org/trace-matrix/>

¹²² <https://www.traceinternational.org/trace-matrix?year=2014>.

¹²³ <https://www.traceinternational.org/trace-matrix?year=2016>.

¹²⁴ <https://www.traceinternational.org/trace-matrix/>



Based on the TRACE Matrix Index countries are measured according to the four main domain criteria:

1. Businessmen interactions with the country's government (the number of interactions, potential bribery expectations, the extent of the regulatory burden);
2. Anti-bribery laws and their enforcement in practice;
3. Transparency of the public sector and implemented procedures;
4. Capacity for the public oversight of the enumerated processes, for instance, by attracting the media.

Eurobarometer Sociological Survey “Businesses` Attitudes towards Corruption”

This Survey and many other surveys reveal the trend that business representatives who during the Survey declared an increased turnover of their companies over the past years were less inclined to complain about the bureaucracy, corruption, administrative burden and other factors aggravating business conditions than those business representatives whose companies' turnover decreased. This supposes that business, quite often blaming the existing legal regulation and alleged corruption, tries to justify its failures in such a way.

Based on the opinion of the respondent businessmen, corruption is not the main problem in business development and ranks the last among 9 factors having the negative impact on business and is followed by: 1) high tax rates; 2) fast-changing regulatory and policy environment; 3) weak financing and availability of credits; 4) lack of measures for debt recovery; 5) complexity of administrative procedures; 6) nepotism and protectionism; 7) restrictive labour relations regulation; 8) insufficient infrastructure.

Less than one third (**28%**) of the Lithuanian businessmen in 2015¹²⁵ indicated corruption as one of the problems having a negative impact on doing business. 2017¹²⁶ those who thinks so were even less, i.e. 21%. Nonetheless, in their opinion, this phenomenon is rather widely spread and even 82% of the respondents in 2015 sustained such opinion which was by 7% less than in 2013. In 2017, 80% of the respondents believed that corruption was widespread in the country, i.e. 2% less than in 2015. This indicator is even lower in Latvia (19%) and Estonia (16%) - while in the EU it is 37%.

Besides, in spite of the fact that the Lithuanian businessmen think that nepotism¹²⁷ and cronyism¹²⁸ play the important role in the public sector, they also acknowledge that this problem is even **more widely spread** in the **private sector**.

¹²⁵ <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2084>.

¹²⁶ <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/flash/surveyky/2177>

¹²⁷ Nepotism means favouritism shown to the relatives or close friends by those with power or influence.

¹²⁸ Cronyism means the practice of appointing friends to the high-level posts regardless their suitability.

Control Risk Survey “Business` Attitudes towards Corruption in 2015–2016”¹²⁹

Even **41%** of the respondent international business representatives interviewed by the Control Risk reported that the risk of corruption was the primary reason they pulled out of a transaction which they had already invested in and which they spent time on (*the major part of companies that acted in such a way were from the Western countries*) and it evidences that corruption may be considered as one of the greatest obstacles impeding foreign investment.

Based on the Survey results and as compared to the Survey results of 2006, Western countries pursuing stringent anti-corruption policy tend to suffer lower damage due to unfair competition. In the Survey of 2006 **44%** of respondents indicated having suffered damage due to unfair competition, while only **24%** in 2015.

The respondents expressed a very positive attitude towards international legislation designed for fighting corruption: **81%** of respondents believe such legislation improve the business environment; **64%** of them indicated that it deters corrupted competitors; and **55%** indicated that it creates more favourable conditions for ethically minded companies to enter the high-risk markets.

The companies participating in the survey indicated **that they implement the following anti-corruption measures:**

- 1) 87% of the companies have a formal policy that clearly prohibits bribes;
- 2) 64% of them implement anti-corruption training programmes for employees;
- 3) 58% have anonymous whistle-blowing lines;
- 4) 58% use standard clauses providing for bribery prohibition in contracts with sub-contractors;
- 5) 43% perform the procedures for prior legal and financial checks on business partners;
- 6) 43% carry out corruption-specific audits or review procedures;
- 7) 43% have the right to audit third parties;
- 8) 39% have procedures in place for corruption risk assessment when entering new countries;
- 9) 30% have developed training programmes for the senior management and board members;
- 10) 21% use transaction risk monitoring software/applications;
- 11) 19% use third-party verification software.

It is noteworthy that the Control Risk Survey performers pointed out that:

- Compliance (anti-corruption) programmes often **do not reach their original goals** therefore, a significant gap remains between the perceivable efficiency of the programmes and the real situation. This occurs due to the inconsistency, **incompleteness or improper implementation of the programmes, finally**, the decisions are often taken in the companies without a proper assessment of the risks that are faced in practice specifically by their employees.
- Reduction of corruption should be the duty of each employee; however, this purpose requires a **leader who might be an** example for everybody. Such leader should perceive the risks encountered by the employees in their daily activities and support them by real actions and advice without limiting himself/herself to notifications of threatening sanctions only. In absence of such leader and his/her consistent performance, there is a probability of employees' distrust in the implemented compliance (anti-corruption) programme, non-compliance with its provisions and, finally, violations.

¹²⁹ The Survey results are available on the website: <http://rai-see.org/wp-content/uploads/2016/01/corruption-survey-2016.pdf>



The True Cost of Compliance 2011 and 2017¹³⁰

The U.S. Ponemon Institute in cooperation with Tripwire, Inc. conducted a benchmark study of 46 multinational organisations in 2011 to determine the effectiveness and the cost-efficiency of the compliance (anti-corruption) measures applied by business organisations.

This benchmark study is the first study of such type, where the use of empirical data was aimed to estimate the true cost of compliance with the requirements of appropriate regulations for business organisations, including their duty to implement anti-corruption measures, and the cost of non-compliance with these regulations. Based on the data of the 2017th Survey results the cost of preventive measure implementation is **3.5 times** less (\$ 3.5 million) than the cost of solving problems caused by violations of law (\$ 9.4 million), and according to the data of 2017th, 2.7 times less (\$ 5.5 million) than cost of sorting issues caused by violations (\$ 15 million).

The Lithuanian Map of Corruption¹³¹

At the initiative of the STT, in 2014 and 2016 company *Vilmorus* conducted a survey "The Lithuanian Map of Corruption" during which three target groups were surveyed: the residents of Lithuania, managers of business companies and civil servants.

Corruption situation in Lithuania – main tendencies:

1. Changes in anti-corruptive potential and/or awareness:

1.1. Increasing intolerance to corruption and bribery as:

- 53.66% decrease in the number of respondents who believe that bribes help to solve problems, and - 55.33% in 2014;
- There is a decline in respondents who are willing to give a bribe, 24% (2016) and 30.6% (2014).

1.2. The public awareness about where to turn for reporting corruptive events is rapidly increasing:

- 57.3% of respondents (2014 - 41.66%) know where corruption should be reported.

1.3. The number of respondents reporting corruption is increasing 33.3% (2014: 27.33%).

1.4. The potential of public participation in anti-corruption initiatives is increasing:

- 20.3% of respondents (18.3% in 2014) would like to participate in anti-corruption activities.

2. Changes in perception of corruption:

2.1. Due to the increased of anti-corruption potential and/or awareness all target groups, viewed corruption as a phenomenon negatively, this increase has led to the importance of corruption as a problem. It takes the 5th place after a small salary, emigration, rising prices, alcoholism.

¹³⁰ The Study results are available on the website: http://www.tripwire.com/tripwire/assets/File/ponemon/True_Cost_of_Compliance_Report.pdf <http://dynamic.globalscape.com/files/Whitepaper-The-True-Cost-of-Compliance-with-Data-Protection-Regulations.pdf>.

¹³¹ The Survey results are available on the website: <http://www.transparency.lt/lietuvos-korupcijos-zemelapis/>, also <http://www.stt.lt/lt/menu/tyrimai-ir-analizes/>.

- 2.2. Has grown the number of those indicating that corruption has increased as in 5 years, so over the past 12 months (42% in 2015, 35% in 2014). We think that the assessment of these indicators is related to the growing perception of the importance of the problem of corruption – the greater recognition of the importance of the problem is, the more it is perceived as a widespread.
- 2.3. In assessing the most common corruption cases: residents and state employees indicated employment through acquaintances (38% and 28% respectively); has increased the number of those who believe that corruption when entrepreneurs try to influence political parties is a widespread in Lithuania (from 29% in 2014 to 36% in 2016).
3. Changes in corruption experience:
 - 3.1. Corruption experience decreases. 9% of respondents indicated they gave a bribe during the last 12 months (2014 – 15.6%) and 22.3% of respondents indicated they gave a bribe in the last 5 years (2014 – 31.3%).
 - 3.2. When assessing the actual corruption of public sector institutions, the bribe extortion and bribe giving indices are significantly lower.

Although, according to respondents, corruption is growing in Lithuania, but their corruption experience is decreasing. If a person's corruption experience points to his direct experience faced the corruption, the opinion of the corruption problem in the country nevertheless is most affected by indirect experience – information obtained through the media.

Investors` Confidence Index for Lithuania (ICIL) Survey¹³²

The Investors` Confidence Index for Lithuania (ICIL) survey is carried out by the Lithuanian Association Investors` Forum on a quarterly basis. The ICIL reveals attitudes and expectations that the largest foreign capital businesses operating in Lithuania have for the country's business and investment climate. The purpose of the Index is to evaluate the country's business environment and the attractiveness of the Lithuanian economy to foreign investors based on the experiences and observations of market players already operating in Lithuania.

One of the emerging ICIL trends shows the growing concern of investors over the business transparency situation in the country. Based on the data of the 1st quarter of 2016 four fifths of the respondents (79%) indicated business transparency as the area requiring immediate changes. If compared with the data of the 4th quarter of 2015 this number increased by ten percent.

2017 in the fourth quarter 31% of investors believed that the level of business transparency in Lithuania is low.¹³³

“Transparency International” Transparency of the private sector¹³⁴

Transparency study of the largest companies operating in Lithuania was carried out by the initiative of Transparency International's Lithuanian Division (TILD). The purpose of this initiative is to simply and clearly demonstrate how much information about their activities companies provide. The website www.skaidrumas.lt/imones presents the assessments of the largest companies' for 2014 and 2017. The research assessed corporate integrity policy, organizational and financial transparency. As the most transparent private sector companies were announced: Swedbank, AB Group (1st place), Lietuvos energija, AB (2nd place), Lietuvos geležinkeliai, AB (3rd place) – in 2014; Tele2, UAB (1st place), Telia Lietuva, AB (2nd place), Maxima LT, UAB (3rd place) – in 2017.

Economic Freedom Score ¹³⁵

The economic Freedom score is compiled by the U.S.A. Economic Survey Centre “Heritage Foundation” in cooperation with the Wall Street Journal. This Survey ranks countries according to such criteria as business freedom, labour relation regulation, governmental spending, fiscal freedom, etc. Freedom from corruption is one of the constituent parts of the Survey.

¹³² The Survey results are available on the website: <http://www.investorsforum.lt/lt/publikacijos>

¹³³ The Survey results are available on the website: <http://investorsforum.lt/category/publikacijos/lipi-res/>.

¹³⁴ The Survey results are available on the website: <http://www.skaidrumas.lt/imones>.

¹³⁵ The Survey results are available on the website: <http://www.heritage.org/index/country/lithuania>



According to the global ranking in 2016¹³⁶ Lithuania was ranked to be in the 13th **position out of 178 countries** and, as compared to the previous years, it went up by two positions, thus leading to the overall score increase by 0.5 point up to 75.2 points. Such Lithuania's ranking is the best since 1996. On the other hand, the Survey results reveal that the labour relations regulation and freedom from corruption in Lithuania were assigned the lowest points. 2017 in this index, Lithuania ranked 16th place out of 180 countries, with a total score of 75.8. The lowest evaluated was judicial efficiency (62.4 points) and regulation of employment relationships (63.6 points).

Doing Business 2016 and 2018 Survey¹³⁷

Doing Business 2016 Survey might be indirectly related to corruption. The Survey analyses the following aspects: opportunities for starting business, availability of credit, connection to the power grid, investor protection, trading with other countries, end of the business, insolvency / bankruptcy. Such areas as legal framework, changes in procedures, reforms conducted in the country, etc. are surveyed in each area. It is considered that the simpler the procedures and the fewer of these need to be undertaken in each of the above-mentioned areas, the more favourable business environment is created, thus leading to lower corruption level.

In 2015 Lithuania is ranked to be in the 20th **position out of 189 countries**. Acceleration of the VAT payer registration procedure, protection of minor shareholders partially added to the country's higher ranking position, as well as two reforms in relation to the connection to the power grid were also taken into consideration – a shorter term for the provision of the connection service for connection of non-domestic consumer electrical equipment to the power grid and a reduced number of procedures for connection to the power grid. However, the long-lasting dealing with insolvency procedures, insufficient credit availability for business had the most detrimental effect on the overall ranking. In fact, with regard to opportunities for starting a business, Lithuania ranked 8th, while with regard to ownership registration it ranked 2nd. In 2017 Lithuania ranked 16th place out of 190 countries in this survey.

Therefore it must be considered that the preconditions for the spread of corruption appear in those areas, where the regulation of procedures is complicated, and document management requires from business much time and human resource-consumption related costs. Striving for better ranking and more favourable business environment, the facilitation of procedures and simplification of legal regulation in problematic areas is necessary.

Business Anti-Corruption Portal¹³⁸

A lot of useful information on the anti-corruption environment in Lithuania and other countries of the world (*corruption spread level within the judicial system, police, civil service, land planning, tax administration, customs, public procurement, environmental protection, etc.*) are available in the Global **Business Anti-Corruption Portal** (BACP) as well as it is possible to make self-assessment using this tool <http://www.c-detector.eu/>.

¹³⁶ The Survey results are available on the website: http://www.heritage.org/index/pdf/2016/book/index_2016.pdf.

¹³⁷ The Survey results are available on the website: <http://www.doingbusiness.org/rankings>

¹³⁸ Website: <http://www.business-anti-corruption.org/>

LEGAL REGULATION OF CORRUPTION AND RELATED LIABILITY

The application of criminal law is a **last resort** measure (*ultima ratio*) for protection of society from actions contrary to law and shall be applied solely for the **most dangerous** acts to which **corruption-related criminal acts** are also assigned.

Corruption-related acts that incur criminal liability are established in the Criminal Code of the Republic of Lithuania. Less dangerous corruption-related offences are established in other legal acts and usually incur more lenient consequences (for example, disciplinary or administrative liability).

1. INTERNATIONAL LEGAL ACTS ON CORRUPTION

Lithuania is a party to the main international anti-corruption conventions where the State commitment for criminalisation of corruption is enshrined. The major part of these conventions, *inter alia*, obliges the signatory states to them to provide criminal liability also for bribery in the **private sector**.

EU Council Framework Decision 2003/568/JHA on combating corruption in the private sector

Point 10 of recital of the Framework Decision establishes that the aim of this Framework Decision is in particular to ensure that both active and passive¹³⁹ corruption in the private sector are criminal offences in all Member States, that legal persons may also be held responsible for such offences, and that these offences incur effective, proportionate and dissuasive penalties. Article 2 of the Framework Decision defines what constitutes active and passive corruption in the private sector.

United Nations Convention against Corruption¹⁴⁰

Lithuania ratified the Convention on 5 December 2006. Article 21 of the Convention establishes that Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

- The promise, offering or giving, directly or indirectly, **of an undue advantage to any person who directs or works, in any capacity, for a private sector entity**, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
- The solicitation or acceptance, directly or indirectly, **of an undue advantage by any person who directs or works, in any capacity, for a private sector entity**, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 26 of the Convention establishes that each State Party to this Convention shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention; subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative; such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

¹³⁹ In international legislation "bribing" (*giving a bribe*) is often called "active corruption" or "active bribery", and "bribery" (*receiving a bribe*) – "passive corruption" or "passive bribery".

¹⁴⁰ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.289015>.



Criminal Law Convention on Corruption¹⁴¹

Lithuania ratified the Convention on 25 January 2002. Articles 7 and 8 of this Convention also oblige the States which have acceded to it to adopt such legislative and other measures as may be necessary that under their domestic law would result in criminal liability for bribery in the **private sector**.

Moreover, Article 19 of this Convention prescribes that each Party shall ensure that legal persons held liable shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Civil Law Convention on Corruption¹⁴²

This Convention establishes that each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain **full compensation for such damage**. Such compensation may cover material damage, loss of profits and non-pecuniary loss.

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions¹⁴³

The OECD members and the countries which have acceded to the Convention shall undertake the obligation to establish criminal liability for bribery of foreign public officials in their domestic law. The aim of the Convention is to prevent exporting corruption to foreign states, in particular in the cases where more developed countries are trying to enter the markets of third countries in unfair ways.

Currently, Article 230(2) of the Criminal Code of the Republic of Lithuania establishes the concept of a person held equivalent to a civil servant which also includes foreign public officials and heads of undertakings and organisations managed by foreign states¹⁴⁴, therefore, the Lithuanian business organisations that develop their businesses not transparently in any foreign country and pay bribes to foreign public officials and heads of undertakings and organisations managed by foreign states may even now be subject to criminal liability in Lithuania (it is noteworthy that the amendments to the CC as of 19 November 2015 prevented release from criminal liability of a person who offered or promised to give or gave a bribe to a foreign public official).

¹⁴¹ <https://www.e-tar.lt/portal/lt/legalAct/TAR.9FD3E0DFACD5>.

¹⁴² <https://www.e-tar.lt/portal/lt/legalAct/TAR.E6A9ED296E27>.

¹⁴³ <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>, also http://www.stt.lt/files/103_doc_file_1_094520.pdf (in Lithuanian).

¹⁴⁴ Article 230(2) of the CC considers to be equivalent to a civil servant the persons who perform the functions of a government representative, hold administrative powers or otherwise ensure the implementation of the public interest while working or performing official duties on other grounds at a foreign state or European Union institution or body, international public organisation or international or European Union judicial institution, or a legal entity or other organisation that are controlled by a foreign state, also official candidates for such office. <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/CXvImbEApq>.

It should be noted that legal regulation in Lithuania within the context of bribery of foreign public officials in international business transactions essentially meets the requirements of the OECD Convention and the OECD recommendations.

Pursuant to the OECD Best Practice Guidelines on the Implementation of Individual Articles of the Convention¹⁴⁵, on 10 November 2016 the Seimas (Parliament) of the Republic of Lithuania adopted Law No. XII-2780 On the Amendment to Articles 20, 225, 226, 227, 230 of the Criminal Code of the Republic of Lithuania and the Annex to It which established that:

- A legal entity may be held liable under the Criminal Code also in such cases where a natural person is not subject to criminal liability for the act committed by him or her;
- A legal entity shall be held liable not only in such cases where a crime has been committed by an employee or authorised representative of the legal entity as a result of insufficient supervision or control by his or her head, but also upon instruction or permission by the head;
- A legal entity may be held liable also for the act committed for the benefit of it by its related legal entity.

Under the newly established legal regulation, parent organisations in Lithuania will be also subject to criminal liability for corruption-related acts committed by subsidiaries of Lithuanian organisations operating abroad in these foreign countries, where criminal acts are committed for the benefit of the parent organisation upon the instruction or permission by the person in the executive position or his authorised person, or as a result of insufficient supervision or control.

As an example illustrating such situation, it is worth mentioning the case, when the US Department of Justice punished the Company *Data Systems & Solutions* established in the State of Virginia by a fine in the amount of 8.82 million US dollars for it that in 1999-2002 the representatives of the Company through intermediaries paid bribes to the officials of SE Ignalina Nuclear Power Plant of Lithuania to obtain contracts for provision of services to the Plant¹⁴⁶.

On the other hand, in analysing the routine practice for imposition of sanctions in Lithuania, it is noteworthy that penalties imposed on both natural persons and legal entities trigger criticism by foreign experts as insufficiently dissuasive¹⁴⁷. For example, in assessing the penalty of a fine imposed on legal entities, the Generalisation of the OECD Anti-Corruption Network for Eastern Europe and Central Asia distinguishes that the minimum amount of a fine in Lithuania, which may be imposed on a legal entity, is the lowest among the surveyed countries. The Generalisation also presents the fact as subject to criticism that in Lithuania the maximum amount of a fine imposed on a legal entity was well below the average of a fine which may be imposed on it. In addition, the property confiscation conditions applied in Lithuania are also criticised as not providing the total benefit of property, directly or indirectly received from bribery or taking.

Such attitudes allow stating that the current Lithuanian regulation and internationally developed practice, including fines imposed on legal entities, may be considered as still requiring additional review and amendments not only in the direction of imminence of liability, but also in the direction of its tightening.

It should be noted that after the receipt of information indicating characteristics of possible bribery of a foreign public official, it should be immediately transferred to the Special Investigation Service.

More detailed information on liability for bribery of foreign public officials and the role of the Lithuanian diplomatic missions in limiting bribery cases abroad is provided in [Annex No. 7](#).

¹⁴⁵ Part B of Annex I to the OECD Recommendations for Further Combating Bribery of Foreign Public Officials in International Business Transactions 2009.

¹⁴⁶ Link: <http://www.delfi.lt/verslas/energetika/generaline-prokuratura-tirs-kaltinimus-jav-imonei-davus-kysius-uzsakymams-ignalinos-ae-gauti.d?id=58948963>

¹⁴⁷ Articles on the websites: <http://www.diena.lt/naujienos/lietuva/politika/planuojama-skubos-tvarka-padidinti-baudas-uz-visus-nusikaltimus-830773>;
<https://www.delfi.lt/news/daily/law/teisininko-komentaras-ar-drastiskai-padidintos-baudos-pades-nugaleti-korupcija.d?id=76117247>.

2. REGULATION OF CRIMINAL LIABILITY FOR CORRUPTION-RELATED CRIMINAL ACTS IN NATIONAL LAW

In the Criminal Code of the Republic of Lithuania¹⁴⁸ (hereinafter referred to as the CC) the following 6 corruption-related criminal acts are criminalised: bribery, trading in influence, graft, abuse of office, unlawful registration of rights to an item, and failure to perform official duties. Under appropriate circumstances other criminal act, for example, swindling, disclosure of official secrets, etc., may also be regarded as corruption-related criminal act.

The persons who have committed criminal acts **within the territory of the state of Lithuania** or citizens of the Republic of Lithuania and other permanent residents of Lithuania who have committed the crimes abroad shall be subject to criminal liability for the aforementioned criminal acts; and **all persons regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime** shall be liable for criminal acts referred to in Articles 225-227 of the CC (bribery, trading in influence and graft) that must be criminalised under binding international conventions and international treaties to which Lithuania is a signatory.

Article 225 of the CC Bribery (passive corruption)

1. A civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly himself/herself or through an intermediary, promises or agrees to accept a bribe, or demands or provokes giving it, or accepts the bribe for a lawful act or inaction in exercising his/her powers

shall be punished by a fine or by arrest or by imprisonment for a term of **up to five years**.

2. A civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly himself/herself or through an intermediary, promises or agrees to accept a bribe, or demands or provokes giving it, or accepts the bribe for an unlawful act or inaction in exercising his/her powers,

shall be punished by a fine or by imprisonment for a term of **up to seven years**.

3. A civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly himself/herself or through an intermediary, promises or agrees to accept a bribe, or demands or provokes giving it, or accepts the bribe in the amount exceeding 250 MSLs for a lawful or unlawful act or inaction in exercising his/her powers,

shall be punished by imprisonment for a term of two **up to eight years**.

4. A civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly himself/herself or through an intermediary, promises or agrees to accept a bribe, or demands or provokes giving it, or accepts the bribe in the amount less than 1 MSLs for a lawful or unlawful act or inaction in exercising his/her powers shall be considered to have committed a misdemeanour and

shall be punished by **a fine or by arrest**.

5. A public servant or equivalent person is liable in accordance with this Code for a promise or an agreement to accept a bribe or a claim or provocation to give a bribe, or acceptance of a bribe, for either a particular act or omission while exercise a mandate, or for an exclusive position or favor.

¹⁴⁸ Chapter XXXIII "Crimes and Misdemeanours against Civil Service and Public Interest" of the Criminal Code of the Republic of Lithuania.

6. **A legal entity** ¹⁴⁹ shall also be held liable for the acts provided for by this Article.

Article 226 of the CC Trading in influence

1. Any person who, seeking that a person, by taking advantage of his/her social status, office, powers, family relationship, contacts or other likely influence on a state or municipal institution or agency, international public organisation, a civil servant thereof or a person equivalent thereto, exerts an influence on the respective institution, agency or organisation, civil servant or person equivalent thereto to ensure their lawful or unlawful act or inaction in exercising their powers, has offered, promised or agreed to give or has given a bribe to that person or the third person directly or indirectly himself/herself or through an intermediary ,

shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of **up to four years**.

2. Any person who, by taking advantage of his/her social status, office, powers, family relationship, contacts or other likely or supposed influence on a state or municipal institution or agency, international public organisation, a civil servant thereof or a person equivalent thereto, for own benefit or for the benefit of other persons, directly or indirectly himself/herself or through an intermediary, has promised or agreed to accept a bribe, or has demanded or provoked giving it, or has accepted the bribe upon promising to exert an influence on the respective institution, agency or organisation, civil servant or person equivalent thereto to ensure their lawful or unlawful act or inaction in exercising their powers,

shall be punished by a fine or by arrest or by imprisonment for a term of **up to five years**.

3. Any person who has committed the acts provided for in paragraph 1 of this Article by, directly or indirectly himself/herself or through an intermediary, offering or agreeing to give or giving **a bribe in the amount exceeding 250 MSLs**,

shall be punished by a fine or by imprisonment for a term of **up to seven years**.

4. Any person who has committed the acts provided for in paragraph 2 of this Article by, directly or indirectly himself/herself or through an intermediary, promising or agreeing to accept, or demanding or provoking to give or accepting **a bribe in the amount exceeding 250 MSLs**,

shall be punished by imprisonment for a term of two **up to eight years**.

5. Any person who has committed the acts provided for in paragraphs 1 and 2 of this Article by, directly or indirectly himself/herself or through an intermediary, offering, promising or

¹⁴⁹ Article 20 of the CC establishes that:

1. **A legal entity** shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of this Code.
2. A legal entity shall be held liable for the criminal acts committed by a natural person solely where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying an executive position in the legal entity, was entitled: 1) to represent the legal entity or 2) to take decisions on behalf of the legal entity or 3) to control activities of the legal entity.
3. A legal entity may be held liable for criminal acts also in such case, when, for the benefit of a legal entity, they have been committed by an employee or authorised representative of the legal entity upon the instruction or permission by the person indicated in Article 2 of this Article or as a result of insufficient supervision or control.
4. A legal entity may be held liable for criminal acts committed by other legal entity controlled by or representing it in the conditions referred to in paragraphs 2 and 3 of this Article, when they are committed for the benefit of the aforementioned legal entity upon the instruction or permission by the person occupying an executive position in the legal entity or his authorised person or as a result of insufficient supervision or control.
5. Criminal liability of a legal entity shall not release from criminal liability a natural person who has committed, organised, instigated or assisted in commission of the criminal act. Criminal liability of a natural person shall not release from criminal liability a legal entity where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person who has committed, organised, instigated or assisted in commission of the criminal act, as well as the fact that the natural person shall be released from criminal liability for this act or that he shall not be subject to criminal liability due to other reasons.
6. According to this Code, the state, the municipality, state and municipal institution, and institution and international public organization are not responsible. Institutions responsible according to this Code, which by definition of this Code are not State and municipal enterprises : public institutions, the owner or shareholder of which is a state or a municipality, as well as public limited liability companies and private limited liability companies, all shares of which or part of shares belongs to the state or municipal institution.



agreeing to give or giving, or promising or agreeing to accept, or demanding or provoking to give or accepting **a bribe in the amount less than 1 MSL**, shall be considered to have committed a misdemeanour and

shall be punished **by a fine or by restriction of liberty or by arrest**.

6. A person who has committed the act provided for in paragraphs 1, 3 or 5 of this Article shall be released from criminal liability if he/she was demanded or provoked to give a bribe, and if he/she, directly or indirectly himself/herself or through an intermediary, upon offering or promising to give or giving a bribe, within the shortest possible time, but no later than before the delivery of a notice of suspicion raised against him (her), **has notified on his own free will a law enforcement institution** thereof, and shall also be released from criminal liability if he/she has promised to give or has given the bribe with the **law enforcement institution being aware thereof**.

7. Paragraph 6 of this Article **shall not apply** to a person who, directly or indirectly himself/herself or through an intermediary, has offered or promised to give or has given a bribe to the person referred to in paragraph 2 of Article 230 of this Code.

8. A legal entity shall be also liable for the acts provided for in paragraphs 1, 2, 3, 4 and 5 of this Article.

Article 227 of the CC Graft (active corruption)

1. Any person who, directly or indirectly himself/herself or through an intermediary, has offered, promised or agreed to give or has given a bribe to a civil servant or a person equivalent thereto or the third person for a desired **lawful** act or inaction of the civil servant or a person equivalent thereto in exercising his/her powers,

shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of **up to four years**.

2. Any person who, directly or indirectly himself/herself or through an intermediary, has offered, promised or agreed to give or has given a bribe to a civil servant or a person equivalent thereto or the third person for a desired **unlawful** act or inaction of the civil servant or a person equivalent thereto in exercising his/her powers,

shall be punished by a fine or by arrest or by imprisonment for a term of **up to five years**.

3. Any person who has committed the actions provided for in paragraph 1 or 2 of this Article by, directly or indirectly himself/herself or through an intermediary, offering, promising or agreeing to give or giving **a bribe in the amount exceeding 250 MSLs**,

shall be punished by imprisonment for a term of **up to seven years**.

4. Any person who has committed the actions provided for in paragraph 1 or 2 of this Article by, directly or indirectly himself/herself or through an intermediary, offering, promising or agreeing to give or giving **a bribe in the amount less than 1 MSL** shall be considered to have committed a misdemeanour and

shall be punished **by a fine or by restriction of liberty or by arrest**.

5. A person who has committed the actions provided for in Paragraphs 1, 2, 3, or 4 of this article shall be liable in accordance with this Code for the pursuit of a bribe of a public servant or a person treated as such of particular action or omission who exercise a mandate, as well as the

exceptional condition of this person or favor, despite of how his actions was realized by a public servant or a person treated as such.

6. A person shall be released from criminal liability for grafting if he/she was demanded or provoked to give a bribe, and if he/she, directly or indirectly himself/herself or through an intermediary, upon offering or promising to give or giving a bribe, within the shortest possible time, but no later than before the delivery of a notice of suspicion raised against him (her), **has notified on his own free will a law enforcement institution** thereof, and also if he/she has promised to give or has given the bribe with the **law enforcement institution being aware thereof**.

7. Paragraph 5 of this Article **shall not apply** to a person who, directly or indirectly himself/herself or through an intermediary, has offered or promised to give or has given a bribe to the person referred to in paragraph 2 of Article 230 of this Code.

8. A legal entity shall also be held liable for the acts provided for in paragraphs 1, 2, 3 and 4 of this Article.

Article 228 of the CC Abuse of Office

1. A civil servant or a person equivalent thereto who **abuses** his/her official position or **exceeds** his/her powers, where this incurs **major damage** to the State, European Union, an international public organisation, a legal or natural person,

shall be punished by a fine or by arrest or by imprisonment for a term of **up to five years**.

2. Any person who has committed the act provided for in paragraph 1 of this Article **seeking material or another personal gain**, in case of the absence of characteristics of bribery, shall be punished by a fine or by imprisonment for a term of **up to seven years**.

3. **A legal entity** shall also be held liable for the acts provided for in this Article.

Article 228¹ of the CC Unlawful Registration of Rights to an Item

A civil servant or a person equivalent thereto who, while performing the functions of a registrar in a public register, has unlawfully registered rights to an item,

shall be punished by a fine or by arrest or by imprisonment for a term of **up to five years**.

Article 229 of the CC Failure to Perform Official Duties

A civil servant or a person equivalent thereto who fails to perform his/her duties **through negligence** or performs them inappropriately, where this incurs **major damage** to the State, European Union, an international public organisation, a legal or natural person,

shall be punished by a fine or by arrest or by imprisonment for a term of **up to two years**.

Article 230 of the CC Interpretation of Concepts

1. The **civil servants** indicated in this Chapter shall be state politicians, state officials, judges, civil servants according to the Law on Civil Service and other persons who, while working or performing official duties on other grounds established by this Law at state or municipal institutions or agencies, **perform the functions of a government representative or hold administrative powers**, also **official candidates for such office**.

2. **A person** who performs the functions of a government representative, holds administrative powers or otherwise ensures the implementation of public interest while working or performing official duties on other grounds at a foreign state or European Union institution or agency, international public organisation or international or European Union court institution, or a legal entity or other organisation controlled by a foreign state, also official candidates for such office **shall be held equivalent to civil servants**.

3. Moreover, **a person** who works or on other grounds established by the Law performs official duties at a **public or private legal entity or other organisation** or **pursues professional**



activities and holds appropriate administrative powers, or has the right to act on behalf of a legal entity or other organisation, or provides public services, and has the right to act as an arbiter or juror shall also be held equivalent to a civil servant.

4. The bribe referred to in this Chapter shall be an unlawful or undue advantage in the form of any property or other personal gain for oneself or other person (material or immaterial, having economic value in the market or having no such value) for a desired lawful or unlawful act or inaction of the civil servant or a person equivalent thereto in exercising his/her powers.

5. The exercise of the powers specified in this section includes any use of the position of a public servant or a person equal to him, despite of whether it falls within the scope of the statutory mandate of a public servant or a person equal to him or not.

6. For the purposes of application of the provisions of Article 72 of this Code, property of any form obtained directly or indirectly from acts prohibited by paragraphs 1, 3, 5 of Article 226 and Article 227 of this Chapter shall be considered as a result thereof, including the gain which has occurred due to a desired act or inaction of the civil servant or a person equivalent thereto in exercising his/her powers, regardless of whether it has been received through operational activities that may be pursued lawfully or unlawfully in accordance with the procedure prescribed by legal acts.

FOREIGN STATES' LEGAL ACTS DEALING WITH CORRUPTION

Business organisations engaged in or planning to be engaged in their commercial activities internationally or in certain foreign states should know the specific anti-corruption requirements applicable in such states.

The Foreign Corrupt Practices Act of the United States of America (the US) of 1977 (hereinafter referred to as the FCPA).

This federal law consists of the following three principal parts:

- Anti-corruption provisions;
- Requirements for companies' accounting;
- Requirements for companies' internal control.

The FCPA characterizes with strict anti-corruption requirements applicable both in the US and, in certain cases, outside the US.

According to this federal law *any actions by a US national or organization, aimed at, directly or indirectly, giving or promising to give any benefit to a foreign official in order to acquire or keep illegitimate advantage* are considered a crime.

The concept of the "US national or organization" covers:

- All US residents, including any other US citizens, independently of their location;
- Legal entities incorporated in accordance with the US laws;
- US securities' issuers¹⁵⁰;
- Employees, officials, managers, directors, shareholders and agents of the US legal entities and issuers;
- Any natural persons or legal entities during their stay in the US.

¹⁵⁰ Issuer means a private company or a state institution (Ministry of Finance, Central Bank), which issues money or securities.

For instance, in 2016 the US Department of Justice publically announced that the Massachusetts IT company PTV INC will have to pay 28 million US dollars for violation of provisions of the FCPA, namely for organization of amusement trips, costing approximately 1 million dollars, for employees of Chinese companies in 2006 – 2011 by covering it as training courses. As the result, PTV INC signed contracts with the said Chinese companies for the amount of 13 million US dollars. It was established that the Chinese employees spent one day in training at PTV INC headquarters in Massachusetts and, during the remaining days, enjoyed leisure activities, which included different excursions to other states and other entertainment, including golf playing. In order to disguise such illegitimate expenses, PTV INC stated them in its books as paid commission fees and business expenses¹⁵¹.

With reference to the foregoing, the FCPA may, in certain cases, be applicable to the Lithuanian business organizations, for instance:

- Lithuanian companies listed on the US securities' stock exchange;
- Lithuanian companies' subsidiaries operating in the US;
- US companies' subsidiaries operating in Lithuania;
- Lithuanian companies performing their commercial activities in the US;
- US employees, hired by Lithuanian companies;
- Lithuanian citizens during their stay in the US.

Differently from the Lithuanian legal regulation, the FCPA allows businesses to perform small payments to representatives of foreign states' public sector, i.e. so-called facilitation payments for the latter's legitimate activities under respective authorizations.

In order for such payments to be legitimate, the following several conditions must be satisfied:

1. The payment must be small (in each case it is individually established whether the payment is a bribe or a facilitation payment);
2. The payment may be paid only to a foreign state's officer;
3. The payment is paid only for legitimate actions, i.e. the paying subject has the right to expect such actions and has completed all the requirements in order for such actions to be performed and the state officer, performing the actions or making the decisions is authorized to perform such actions or make such decisions;
4. The only legitimate aim of the payment is to ensure that a certain public or administrative service is provided as soon as possible;
5. Business organizations must account for such payments, the payments must be declared and clearly accounted in the organization's financial accounting.

For instance, according to the FCPA, a US company, which provides all the necessary documents in order to obtain a permission to perform construction works in Lithuania and pays a small facilitation payment to the municipal officer, holding the respective authorizations, for a quicker issuance of such permission, will not incur criminal liability in the US. However, in this case it is necessary to state that such actions are **forbidden** according to the Lithuanian criminal laws, therefore in Lithuania both the US company who paid the facilitation payment and the state officer who accepted the payment would incur criminal liability for bribery.

The United Kingdom's UK Bribery Act of 2011 (hereinafter referred to as the UKBA).

The UKBA is considered among the strictest anti-corruption legal acts in Europe, which, differently from the FCPA, forbids any facilitation payments and foresees criminal liability for bribery in the private sector and establishes requirements for business as regards prevention of corruption and compliance programmes.

According to the aforementioned Act, non-performance of preventive measures in business is equal to criminal acts; therefore, in case a person, employed in a business organisation or acting on behalf of a business organisation commits a corruption related crime, as the result of

¹⁵¹ <http://www.reuters.com/article/us-ptc-settlement-corruption-idUSKCN0VP23P>

which the represented organisation could receive benefit, the organisation also incurs criminal liability. The only possibility for such company to defend against the incriminations is to evidence that the company has taken all the possible actions in order to prevent the employee's criminal behaviour, i.e. implemented the respective corruption prevention measures in its activities.

The British legal institutions have prepared the guidelines, which are considered the proper anti-corruption programme, allowing for avoiding a legal entity's criminal liability, i.e. *The Bribery Act 2010 – Guidance*¹⁵², which includes the following six main principles:

- The corruption prevention measures must be proportionate, clear and efficient, prepared in consideration of the peculiarities of the performed business and potential specific corruption risks;
- When implementing the corruption prevention measures, obligation and participation of the company's management, board and shareholders / owners is necessary;
- The business must be continuously evaluated, taking into consideration the external and internal risk factors;
- The business partners must be evaluated in advance in a proportionate and risk based manner;
- There must be appropriate communication and training in order for the anti-corruption procedures to be realized and comprehended at all levels of business;
- The procedures must be continuously controlled, revised and, if necessary, updated.

In addition, it should be mentioned that:

- In Belgium for bribery a legal entity can be disqualified from state supported contracts and agreements.
- In 2013 in Denmark the tax code was modified, resulting from prohibiting companies to perform deductions from facilitation payments.
- In Estonia a parent company incurs criminal liability as a co-defender in case it is established that its subsidiary committed a crime of bribery after being authorized or financed by the parent company. The Estonian Public Procurement Act stipulates that a contracting authority may not conclude a contract with a legal entity or apply public procurement procedure in regard to a tender participant, who has been convicted for bribery or similar crimes.
- In Latvia a company, convicted for bribery, is prohibited to participate in public procurement procedures for three years and Latvia's Law on Enterprise Income Tax establishes that the expenses, not related with the economic activities (including bribes), may not be deducted from the applicable taxes.
- In France a parent company may incur criminal liability as a co-defendant or the main culprit in the crime of bribery, committed by its subsidiary in another country.
- In Germany a legal entity is liable for corruption crimes under the procedure established by the Law on Administrative Violations. A company may also incur liability in case it does not take sufficient preventive measures in order to prevent its employees from bribery; the company's liability exists independently of whether the natural person, who actually performed the act of bribery, incurred criminal liability. The amount of fine, applicable to such companies, may reach up to one million euros. Such companies may also lose much more in case their economic benefit, obtained through bribery, is confiscated and also may be penalized by withdrawal or temporary suspension of licences or permits to engage in certain activities.

¹⁵² <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

DEFINITIONS AND PRACTICAL EXAMPLES OF CORRUPTION-RELATED CRIMINAL OFFENCES

Each business organisation employee should be aware of the following:

- what is corruption (i.e. what are corruption-related offences, what liability those incur to the offender and his or her organisation),
- what is the conflict of interest and how to deal with such situations,
- how gifts are regarded in the public sector,
- what kind of gift policies are implemented by his or her business organisation (i.e. the employer),
- what is charity and support and how to provide those in order to avoid suspicion due to a lack of transparency.

Therefore, it would be appropriate to at least briefly discuss these aspects in an anti-corruption policy or developed anti-corruption policy of each organisation.

BRIBERY

Currently, the majority of the public identifies corruption, first and foremost, with bribery. This form of corruption has been regarded as a particularly latent event¹⁵³. The latency of bribery is determined by the following factors:

- both parties (the briber and the bribe taker) are interested in covering up the event;
- the criminal offence is useful to both parties involved;
- the consequences are not obvious and is usually revealed after a certain period of time (if revealed at all);
- although, in general, the public condemns this phenomenon, many are still willing and ready to give/take bribes.

According to Article 225 of the Criminal Code of the Republic of Lithuania, there are five independent forms of bribery:

- *accepting a bribe*;
- *promise to accept a bribe*;
- *agreement to accept a bribe*;
- *demanding a bribe*;
- *provoking a bribe*.

The listed bribery-related offences are further differentiated according to:

- the nature of actions defining a bribe:
 - *legal* actions performed in exchange for a bribe;
 - *illegal* actions performed in exchange for a bribe.
- the value of a received bribe:
 - under 1 MGL (**up to EUR 38**) – *misdemeanour*;
 - 1 MGL to 250 MGL (**EUR 38 to EUR 9,500**) – *average-gravity or serious crime*;
 - over 250 MGL (**over EUR 9,500**) – *serious crime*.

Taking bribe

The first and foremost, bribery is viewed as accepting a bribe (*in other words, misappropriation of illegally obtained material benefits*). It is the oldest form of bribery defined by the criminal legislation of all countries, criminalizing this phenomenon, as one of the acts of alternative manifestation of bribery.

Taking of a bribe is deemed complete from the moment when the offender becomes the bribe holder, for example, takes the money into his or her hands, places the money into his or her pocket, briefcase or desk drawer, signs a fictitious contract or agreement, withdraws a loan note, learns about the emergence of money in the bank account, and so on. The criminal offence is deemed complete after the offender accepts at least part of the bribe.

¹⁵³ The latency of criminal offenses is determined by the fact that only insignificant part of all bribery cases is registered.

For example: an environmental inspector agrees with an offender that for a bribe of EUR 100 the offender will receive no protocol of administrative offence for inappropriate disposal practices. Since the offender does not have the specified amount of money on him or her, the parties agree that the offender shall give part of the amount (i.e. EUR 50) to the inspector immediately, and another EUR 50 later in a location agreed upon by the parties.

In this particular case, the offence is considered complete after the first part (i.e. EUR 50) of the bribe has been given.

Promise or agreement to accept bribe

Based on the definition of bribery established by the Criminal Code, criminal liability arises for a promise or agreement¹⁵⁴ to accept a bribe alone, i.e. the criminal offence is deemed complete from the moment of such promise or agreement and the person may be prosecuted.

Article 6.162 of the Civil Code of the Republic of Lithuania indicates that “an agreement is made by submitting a proposal (offer) and accepting this proposal (acceptance)”. In this way, an agreement to accept a bribe, as one of the acts of alternative manifestation of bribery, may also be viewed as a certain criminal transaction, where the briber (offerer) submits his or her proposal (offer), and the bribe taker (acceptor) accepts it.

The concepts *promise* and *agreement* to accept a bribe are often used as synonyms and generally considered together, without separating one from the other. However, the promise is usually given without specifying the nature and size of a bribe, or agreeing upon specific activities, for which the bribe will be given. The agreement, on the other hand, requires mutual willingness and compatibility, i.e. both parties of criminal transaction agree upon the actions to be performed, the size of the bribe, also, when, how and in what form the bribe will be paid.

For example: A member of the Seimas (Parliament) of the Republic of Lithuania is offered to vote for a certain amendment useful only to a small group of interested participants. In return, he or she is offered a “generous” reward. However, the bribe itself is not specified. Being tempted by the unspecified bribe, the member of the Seimas promises to perform the actions required without even delving into the contents of provisions of the amendment proposed.

In this case, the offence is considered complete even from the moment of extracting a promise to perform actions in return for an unspecified undue benefits.

Demanding or provoking bribe

The definition of demand is any expression of desire to receive a bribe, which may be associated with a threat to cause damage to both legal and illegal interests of a person as well as any other insistence without an explicit threat to cause any damage.

A bribe may also be demanded for lawful or unlawful actions already performed to satisfy one's interests.

In addition to demanding a bribe, the definition of bribery includes *provoking*¹⁵⁵ a bribe, both acts constituting an alternative (in a way similar to agreement and promise). The major difference between demanding a bribe and provoking a bribe is that the demand is open, straightforward and usually expressed verbally; the provocation, by contrast, is indirect, masked, and often encouragement is the result of the culprit's implicative¹⁵⁶ actions.

¹⁵⁴ According to the Dictionary of Contemporary Lithuanian (<http://www.autoinfa.lt/webdic/>) the term “promise” (in Lithuanian: “pažadąs”) is defined as to give one's word to do something (in Lithuanian: “davimas žodžio ką padaryti”), to promise (in Lithuanian: “pažadėti”), to make a promise (in Lithuanian: “duoti pažadą”), and agreement (in Lithuanian: “susitarimas”) as establishing relations (in Lithuanian: “santykių nustatymas”), reconciliation (in Lithuanian: “suderinimas”).

¹⁵⁵ The Dictionary of Contemporary Lithuanian defines the term “provocation” (in Lithuanian: “provokavimas”) as to cause intentionally (in Lithuanian: “tyčia kelti”), to incite performance of certain actions (in Lithuanian: “kurstytis atlikti tam tikrus veiksmus”).

¹⁵⁶ Implicative actions – a person's behaviour that shows his or her desire to enter into a transaction.

Usually civil servants or other equivalent persons create situations, where individuals are forced to give them bribes in order to protect personal interests or speed up problem solving. In other words, the bribe is provoked, triggered.

For example: in order to engage in food processing activities, a legal entity accordingly equipped its new cooking facilities and provided the State Food and Veterinary Inspectorate with all necessary documents. However, authorized inspectors linger and examine the documents unreasonably scrupulously, do not arrive to assess equipped facilities and use all means possible to delay the issuance of a food business operator's certificate, thus provoking the legal entity to pay a bribe for the lawful conduct of their powers.

It should be noted that in the case of demanding or provoking a bribe it is the offender who shows the initiative to receive a bribe without being encouraged to do so.

The nature of actions defining bribe

For a bribe the offender may perform legal or illegal active actions, or not perform such actions, or refrain from such actions.

Legal actions – actions to which the offender is obliged and authorized by the law, resolutions of the Government, organisation's internal rules of procedure, organisation's approved rules of conduct, job description, and so on.

Illegal actions / inaction – actions, by which the requirements of the above-mentioned laws are violated or the authorisations are exceeded:

- **illegal actions** are associated with actions that a civil servant or another equivalent person may not and should not perform while exercising his or her powers;
- **illegal inaction** means lack of actions that the person should perform while exercising his or her powers.

Regardless of whether the person performs legal or illegal actions, if he or she receives a reward, agrees upon a reward or accepts a promise of reward in the future, or such reward is demanded or provoked, such actions shall be deemed bribery.

The classification of legal and illegal actions aims to differentiate criminal liability, with illegal actions as a qualifying characteristics (aggravating circumstance) stressing the hazards of *illegal actions*. For example, bribery, being a negative social phenomenon in itself, becomes even more harmful if a person accepts a bribe in exchange for performing illegal actions.

Therefore, the actions of, for example, a civil servant of the Gaming Control Authority in case of accepting a bribe from a gambling agent in return for permission to open a new slot hall, shall be viewed as less dangerous and, accordingly, punished less severely if the newly opened slot hall shall comply with the requirements defined by the legal acts, than in case, when such permission is issued for a slot hall without proper equipment, where visitors may be exposed to the gambling agent's possible fraud.

The subject of bribery

The bribe includes any kind of illegal benefits:

- e.g., material valuables such as money, securities, shares, jewels, antiques, works of art, furniture, clothes, food, expensive drinks, throwing a feast, etc.;
- material services such as free medical treatment, interest-free loan, selection of a better land parcel for the construction of a house, free car or apartment repair, free house or villa construction, free rent, or disclosure of trade secrets.
- The bribe may be accepted for one's own advantage or for the advantage of other natural or legal persons;
- The bribe may be open (direct) or masked (indirect). For example, a bribe may be gifted, purposefully lost out to a person, lent without intent to repay, paid as bonuses not earned or payment for work not performed, paid for the alleged "consultations", gifted to the offender's relatives in the form of valuables or free services.



- The bribe may be given before or after certain actions have been performed for the benefit of the briber. The fact that a person satisfied another person's interest simply by fulfilling his or her obligations, without any prior intentions of receiving a bribe, but after that did accept an undue reward, does not exclude the signs of bribery and incurs criminal liability.

Example of bribery between the representatives of the public and private sectors

When conducting technical maintenance of an object under construction, the authorized construction technical supervisor discovered serious technical and safety deficiencies of the building. He notified the contractor, but also pointed out that for a bribe of EUR 2,000 he may be willing to overlook the deficiencies, not demand to eliminate them, and allow the contractor to conceal these deficiencies.

Example of bribery between the representatives of the private sector

Due to the company's weak internal control and a wide range of discretion granted to him/her, the manager under the instruction by the Director of the company to select best possible suppliers for the company¹⁵⁷ chooses not the supplier that would be most beneficial to the company, but the supplier that offers and pays him the highest bribe.

Three private companies (suppliers) participate in a public procurement tender organized by the municipality, but one of them, in exchange for a certain undue benefit (bribe), agrees with the other two companies that they will withdraw their proposals or submit proposals failing to meet the public procurement requirements.

GRAFT

Graft means a direct or indirect bribe offer, promise or giving to a civil servant or another equivalent person in return for a desired legal action or inaction in the course of conduct of the civil servant's or another equivalent person's powers, or to an intermediary to achieve the same results.

The graft may occur in four forms:

- *offering a bribe;*
- *promise to give a bribe;*
- *giving a bribe;*
- *offering a bribe, promise to give a bribe, or giving a bribe to an intermediary.*

Offering bribe¹⁵⁸

Offering a bribe means informing a civil servant or another equivalent person that he or she will receive a bribe after agreeing to satisfy the grafter's interest. The bribe may be offered verbally or in writing, as well as by action, from which one may understand that a bribe is being offered to him or her.

¹⁵⁷ The term "discretion" (in Lithuanian: "diskrecija") means the right to act, behave, make decisions as one sees fit.

¹⁵⁸ The term "to offer" (in Lithuanian: "siūlyti") means to flog, recommend something.

For example, in order to avoid the issuance of a protocol of a violation of administrative law, a person caught in the act of committing an administrative offence offers the officer authorized to impose the penalty “to agree” and, after the latter warns the offender that such offer incurs criminal liability, puts EUR 200 into the officer’s pocket.

In this case, the illegal offer is verbal at first; however, after the authorized person refuses, the same illegal offer is expressed through the action, i.e. by putting the money into the authorized person’s pocket.

It should be noted that offering a bribe is deemed a complete offence immediately after notification (i.e. after introducing information), regardless of whether or not it is followed by the bribe, also regardless of whether or not the person has agreed to take the bribe.

Promise¹⁵⁹ to give bribe

Promise to give a bribe means a consent to give a bribe to an authorized person with a condition that the briber’s interest will be satisfied.

The grafter’s promise may be given without specifying the nature and size of the bribe, or indicating activities, for which the bribe will be given. For example, making an abstract promise of generous reward to an investigation officer for discontinuing the initiated preliminary investigation. Thus, the concept of promise, unlike that of offer or agreement, allows to believe in a lesser level of compatibility of wills of persons involved in a corruption-related offence.

Giving bribe¹⁶⁰

Giving a bribe means unlawfully granting material benefits to an authorized person. It may occur as both action or inaction resulting in material benefits for other person.

The bribe giving may occur as transfer of money or items, signing of an agreement or contract, transfer of money to a bank account, refraining from certain material actions unfavourable to the person bribed, and so on.

In some cases, the bribe is given before performing certain actions beneficial to the briber, while in others, after performing such actions. *When the bribe is given after performing the briber’s desired actions or refraining from actions, it is often referred to as a gift bribe or a gratitude bribe.* On the other hand, in accordance with the Lithuanian Criminal Code the bribe-giving moment does not affect the emergence of criminal liability and both activities are equally punishable.

Example of graft between the representatives of the public and private sectors

The environmental inspector discovered within the company’s territory a large amount of inappropriately stored dangerous waste subject to a substantial administrative penalty. In order to avoid the impending heavy fines, the Director of the company paid the inspector a bribe of EUR 200 for naming the discovered waste non-hazardous in a protocol of a violation of administrative law, thus incurring a significantly smaller criminal liability.

Example of graft between the representatives of the private sector

A company’s manager, being aware that the information technology employee of the competing company, which also prepares the tender proposal documents for the public procurement tender, was planning to change his workplace soon, agreed to pay that employee a bribe of EUR 1,000 for a copy of the public procurement proposal prepared by him for the competing company.

¹⁵⁹ The term “to promise” (in Lithuanian: “žadėti”) means to consider or prepare to do something; to intend, want, inform about one’s future action; to talk about giving or doing something, or making something happen; to provide hope through promises; to let someone believe that he or she will receive something.

¹⁶⁰ The term “to give” (in Lithuanian: “duoti”) means making that someone could receive, take, hand in; making that someone could have, possess.



TRADING IN INFLUENCE

Often persons seeking favourable decisions for themselves do not have direct access to officials authorized to perform the desired actions. Therefore, they invoke the help of third parties (also known as intermediaries) who might influence such officials. Bribing and grafting such intermediaries should also be treated as independent corruption offences.

Trading in influence is defined as intentional actions if:

- any undue reward is directly or indirectly promised, given or offered to any person who asserts or confirms that he or she could, in exchange for an undue reward, wrongly influence decisions of certain persons or entities, regardless of whether the undue reward is intended for him- or herself or any another person or entity;
- an offer or promise of such reward is sought, received or accepted in exchange for the influence, regardless of whether or not the effect occurs and whether the desired result is achieved through the alleged effect.

The essence of trading in influence is that it focuses on the person's specific situation (e.g., *social status, office or powers*) or connections (e.g., *family relations or acquaintances*), which give the said person a real opportunity to unlawfully influence certain authorized persons, and the said person declares such opportunity to gain illegal benefits for him or herself or others.

Thus, trading in influence consists of two elements:

- a promise to a certain person to influence a certain institution, facility, organisation, civil servant or another equivalent person in exchange for a bribe, so that the said institution, facility, organisation, civil servant or another equivalent person would serve the briber's interests (i.e. lawfully or unlawfully act for the briber's benefit, or refrain from actions);
- the promise is given by means of one's likely influence on the institution, facility, organisation, or a person holding an official office. Social status, office, powers, family relations, acquaintances, etc. may serve as the basis for the influence.

When incriminating, it does not matter whether the offender promises to pass the bribe to the appropriate official or collect all of it him or herself.

The promise itself may be categorical (promising success) or cautious (promising only to try to do it).

Trading in influence may be incriminated if the offender him or herself sought out the potential briber with an offer, or the potential briber him or herself sought out the intermediary.

Here we should note that trading in influence as criminal offence should be separated from lobbying that is legal from a legal perspective, but is also aimed at influencing the decisions of the Government representatives (i.e. *changing, amending or invalidating legal acts, passing or rejecting new legal acts*), and is carried out by legal means established by the Lobbying Law¹⁶¹, by getting listed as a lobbyist and submitting lobbying reports.

As in cases concerning bribery and graft, criminal liability for trading in influence effects is differentiated depending on the bribe value.

¹⁶¹ For more information about lobbying, see Chapter 6.11 of the Handbook.

Example of trading in influence between the representatives of the public and private sectors

A company financed the organisation of the rally of one political party, thus, in return, the Chairman of the party would influence a minister delegated by this party to create favourable conditions for the company to win the public procurement tender organized by a ministry.

Example of trading in influence between the representatives of the private sector

The Director of the company that buys-up forests and produces raw wood granted as a gift to his former classmate a free visit for two persons to Druskininkai SPA-Centre for the latter persuaded his son-in-law, who is the biofuel boiler house manager (i.e. produces heat for residential buildings), to extend the biomass fuel supply contract signed with the Director's company for one more year.

ABUSE OF OFFICE

Abuse of office is using one's official position for the benefit contrary to one's office or related business.

The abuse of office manifests through an authorised person outwardly performing his or her assigned duties and exercising his or her rights and obligations, but, in fact, violating by his or her action or lack thereof the principles and objectives of his or her office as well as the principles and objectives of conduct established by the employer, the person's activities being dominated by a personal or selfish interest instead of that of the public or represented organisation.

The abuse of office occurs through active actions (*i.e. not using property valuables according to their purpose; entering into illegal, unjustified and restrictive transactions; exploiting work of one's subordinates for one's own benefits; using property of other persons and entities for one's purposes; illegally granting oneself or other persons and entities benefits or privileges, and so on*) or lack thereof, i.e. through non-performance of actions that are necessary to adequately perform one's duties and obligations.

The necessary characteristics of abuse of office is **significant damage**. Without it, this offence may only be punished as **the disciplinary offence**.

The damage covers both damage to property and personal injury:

- The damage to property is the loss or injury, incurred costs (direct losses) as well as the loss of benefits or revenue, which would be received in the absence of illegal actions (or lack of action);
- Other kinds of damage include physical, organisational, or personal injury or damage to immaterial valuables (such as person's health, honour or dignity, reputation of a legal entity's reputation, authority of the civil service, etc.) defended and protected by law.

The sign of significant injury, necessary to give rise to criminal liability, is **the assessee**. Therefore, in each case the significant injury is determined by taking into account the specific circumstances of the case, that is: the nature of the injury, interests protected by what laws are violated, number of victims, time and duration of the offence, importance of the offender's office, and so on.

When deciding whether the damage to property is significant, both the size of monetary value and the damage significance to the victim (for example, if the victim experiences financial hardships, even the damage with low monetary value will be deemed significant) are taken into consideration.

Example of abuse of office in the public sector

The Director of the public institution founded by the municipality entitled his good friend, without tendering or notifying of that the aforementioned municipality, to use free of charge and be engaged in commercial activities in the premises that the municipality provided to the public institution on the lending rights. Thus a significant damage was caused to the municipality, as the municipality lost the funds that it might have received if the premises were leased in accordance with the procedure prescribed by laws.



Example of abuse of office in the private sector

To expand the business and build a new waste disposal and recycling plant, the Director of the company, who has shareholders' confidence, purchased a plot of land sold by a relative at a price higher than the average market price, thus causing damage both to the company and its shareholders.

FAILURE TO PERFORM OFFICIAL DUTIES

This offence occurs in two forms:

- *Failure to perform duties*, when a person fails to perform his or her duties that fall within his or her field of competence and are necessary to ensure the interests of the person's office or employer;
- *Inappropriate performance of duties*, when a person performs his or her duties negligently, carelessly, offhandedly, poorly, or insufficiently.

The failure to perform official duties or inappropriate performance of official duties usually manifests in the long-term, systematic failure to perform official duties or inappropriate performance of official duties, in a single event.

If a civil servant or another equivalent person fails to perform his or her official duties or inappropriately performs his or her official duties due to objective reasons beyond his or her control (for example, no adequate funding is provided, required to fulfil the task, an unreasonably short term is set, necessary means and tools are not secured, and so on), Article 229 of the Criminal Code does not apply.

*As in the case of abuse of office, criminal liability for failure to perform duties only arises if such failure causes **significant damage** to the State, the European Union, public organisation, natural legal person.*

Example of failure to perform official duties in the public sector

The police officer, after the receipt of information on the imminent danger to a person's health, delayed taking necessary actions to prevent the crime. This resulted in a significant damage (severe bodily injury) to the person who applied for help.

Example of failure to perform official duties in the private sector

The company's lawyer responsible for the company's representation in courts and the preparation of all necessary procedural documents, having regard to an informal request of the Director of the debtor company, failed to prepare and submit to the court in due terms the action of substantial debt and interest against the debtor company. As a result, the deadline limit for filing a statement of claim passed, and the company lost its opportunity for debt repayment.

QUESTIONNAIRE FOR DETERMINING STAFF TOLERANCE FOR CORRUPTION

1. Do you think that a situation is common in the organisation, when the staff is offered additional rewards? *
 - a. Yes;
 - b. No;
 - c. I cannot say (I do not know).
2. Have you ever been in a situation when you were offered a bribe? **
 - a. Yes;
 - b. No.
3. *If the answer is **yes**:*
4. Have you informed the management (or law enforcement authorities) about the bribe you have been offered?
 - a. Yes;
 - b. No.
5. *If the answer is **no**:*
6. Would you inform the management (or law enforcement authorities) about cases of corruption?
 - a. Yes;
 - b. No;
 - c. I cannot say (I do not know).

* Question 1 of the Questionnaire may be intended not only for the staff of an organisation, but also for business partners, clients, and it reflects the prevalence of corruption within the organisation concerned.

** Question 2 reflects the experience of the staff of an organisation, when they are offered an illegal reward.

Questions 3 and 4 reflect the staff tolerance for corruption. By adding up to a total all **"NO"** answers of respondents who answered Questions 3 and 4, and estimating its percentage of the total number of respondents, we would obtain the percentage score reflecting the degree of tolerance for corruption in the organisation.

*For example, a total of 200 completed questionnaires was received; 22 employees answered **"NO"** to Question 3, 28 employees answered **"NO"** to Question 4. It means that a total of 50 respondents, without reporting on corruption, tolerates this phenomenon; and this accounts for 25% of total number of respondents and makes up 25 points in a 100-point scoring system, where the higher the score, the higher level of tolerance for corruption.*

COMPANY'S CODE OF CONDUCT EXAMPLE

The Code of Conduct example – the example of Code of Behavioural standards and regulations was developed by the Lithuanian Association of Responsible Business (LARB) on the basis of "Interlux" document¹⁶².

Example of Introduction:

*Progress, quality, efficiency and safety are the key **values** of the company. Being reliable and sustainable our company is developing good relationship with its **employees, business partners, customers, state regulatory bodies and the public**.*

*The Company relates the success of its activities with trust of interested persons. To achieve its goals the Company has gathered the team of qualified experts who are constantly improving their skills, and for whom **ethical conduct** with colleagues, clients and partners is fundamental in their daily performance.*

The Code of Ethics / Conduct describes the standards which employees of the Company adhere to. Ethical and legal conduct is the basis for the behavioural standards.

Our Code of Conduct is the commitment of the Company and the document summarising our propagated values and business principles. This is the expression of professionalism which the employees enshrine in their activities and which is expected from their partners. The commitment to follow the Code of Conduct and the rules therein is one of the key conditions for cooperation and labour relations.

The aims of our Code of Conduct are:

To reveal and consolidate the values, business principles and behavioural standards of the Company.

To define the fundamental principles for relations with customers, business partners, state, public and municipal institutions (their representatives), competitors, shareholders and employees of the Company.

Each our employee, having received the information about the non-compliance (violation of) with any rules, obligations or commitments of the Company as well as about any circumstances that would evidence that there exists a real threat for the interests of the Company, its employees, clients, business partners or shareholders, must report that to the head of the Company.

We respect each our client, colleague, business partner, we commit ourselves to behave respectfully and fairly to the extent that he/she has no doubts over the reliability of cooperation.

We pursue the principles of fair business. We act transparently, reliably and fairly by separating the public and private interests.

We avoid conflicts of interests i.e. situations, where an employee has to choose between the interests of the Company, its customers or private). The direct supervisor (the head of the Company) shall be always informed in the event of conflict. The pursuit of private financial interests in performance of official functions at the expense of the Company, its customers, partners or public finances is not tolerated at the Company.

Environmental Protection

The Company, as a stakeholder of the responsible business, undertakes to actively reduce its environmental impact, including regular measuring and evaluation of the impact on the environment.

We endeavour that all the employees are adequately informed and trained on the issues related to the environmental requirements. Each our employee must make all possible efforts to reduce the amount of waste and any other impact on the environment.

¹⁶² Link to the original document: <http://www.interlux.lt/uploads/downloads/Elgesio%20kodeksas.pdf>

In our activities we endeavour to save natural resources, raw materials and energy, choose our products properly and to purchase and use them in a responsible manner, manage waste and reduce its amount responsibly, support and contribute to the national initiatives on environmental protection.

Compliance with Legal Acts

Compliance with the legal acts is an absolute requirement applied to the Company and its employees.

Each employee must be thoroughly aware of the legal acts regulating the performance of his/her working functions. The heads must provide their subordinates with all necessary explanations and advice in the field of application of the legal acts in performance of their working functions.

The Company is strictly committed to act in compliance with non-discriminatory and fair operational standards, protect environment and ensure safety and health of its employees.

The Company believes that the employees follow all the laws and regulations for health-care, safety and environment; obtain all necessary permits and perform their works strictly in compliance with the requirements of appropriate legal acts.

Working relations and personal commitments

The relations between the Company and its employees are based on the long-lasting cooperation, mutual respect, openness and fulfilment of commitments.

The Company creates the working conditions that meet work safety requirements for each employee, puts all efforts depending on its opportunities that employees would avoid stress and feel safe with regard to their professional position in future.

At work the employees must behave business like: to behave correct, polite, comply with the rules of communication ethics and behave the way that their actions would not be detrimental to the business reputation of their Company.

During non-working hours the employees shall also avoid any such situations, where their misbehaviour might not be associated with the Company and its reputation.

Politeness and helpfulness are the key principles of collegial communication. Demonstration of negative emotions, voice rise up in speaking or acts of violence against other employee (both psychological and physical) shall never be tolerated. Any type of harassment towards other person shall be strictly prohibited. Unethical, malevolent or other adverse behaviour shall not remain unnoticed or unconsidered.

Loyalty of employees

The loyalty of employees towards the Company shall be expressed through:

- The perception of the goals and commitments of the Company by the shareholders and their proper implementation;
- Fair execution of lawful instructions by the heads, proper performance of duties;
- Clear limits of acceptable and encouraged conduct of employees dealing with customers, partners, state, public and local municipal institutions (their representatives) and shareholders of the Company;
- Protection of interests of customers, employees, business partners, society and shareholders;
- Reporting all the noticed cases of corruption or other criminal activities.

Discrimination

Each employee has the right to be treated fairly, collegially and respectfully by his heads, subordinates and other employees performing the same or similar duties. The members of our Company shall not tolerate any kind of discrimination and harassment (on the basis of race, religion, beliefs, ethnic origin, gender, disability, age, marital status, etc.). All the employees of the Company shall act in accordance with the Code of Conduct.



The Company shall not tolerate discrimination on political grounds, religion, sexual and private opinions as well as on marital / health situation or condition. Personal qualities (honesty, decency, etc.) and competence of the employee are the key criteria based on which the Company makes a decision on his/her employment.

Conflict of interest

Business transactions should be implemented to comply with interests of the Company in the best possible manner. Neither natural, nor legal person, in any relationship with the employee, may not gain benefits from the Company in the dishonest manner, using his/her connections with the employee or his/her position held.

It is necessary to avoid the situations, where the conflict of interest between the employee's liability against the Company and his/her private interests occurs. The employee must avoid any circumstances which might cause damage to the reputation of the Company or other material and immaterial interests of the Company.

Participation in the activities of other entity, which competes with the Company, in any legal form (including investment in such entity or having any financial interest from this entity) without a written consent by the Company shall be incompatible with labour relations in the Company.

All conflict situations related to labour relations within the Company shall be resolved immediately and firmly. The Company shall not prohibit its employees to be engaged in the activities which neither has, nor might have a negative impact on the interests of the Company and proper performance of the working functions of the employee. Still, the employee must inform about them in writing prior to the start of such activities in order to avoid the conflict of interests.

Relations with customers, partners, representatives of public institutions

Our relations with customers, partners and representatives of other institutions are based on respect, integrity, professionalism, mutual trust, justice, priority of customer interests, compliance with commitments, information sharing and the priority of negotiations against legal actions.

The employees of the Company must make every possible effort to prevent any manifestations of corruption.

Relations with competitors

Our relations with competitors shall be based on the principles of honesty and mutual respect.

In case of any disagreement or conflicts in entering into competitive actions, the negotiation and compromise are always a priority.

Fair competition is the fundamental principle in the performance of the Company. Information on the activities of the competitors shall be collected only by lawful and publicly available information collection means.

Information and Communication with the Public

All the information on its activities the Company shall disclose strictly in accordance with the requirements of legal acts of the Republic of Lithuania and following such principles as: authenticity, regularity, operability, balance between the private and public interest.

The employees of the Company must refrain from disclosure of any information to the mass media representatives, except for such cases, where the appropriate written instruction is obtained from the head of the Company.

Information on behalf of the Company both to the mass media and any third parties that are not the customers or partners of the Company shall be provided only by the authorised person or the head of the Company.

Confidential information related to the activities of the Company and its partners shall be kept in strict secret by each employee of the Company. The employees of the Company declare their participation in political or trade, branch associations, communities and other non-governmental organisations in accordance with the procedure established in the Company.

Bribery, facilitation payments, business lunches and gifts

The Company shall never aim to gain business advantage by unlawful means. It shall be strictly prohibited to offer or give bribes to the third parties in the activities of the Company.

None of the employees may make any payments, give bribes, and offer unfair financial benefits to the customers or other persons implementing public functions, thus endeavouring to maintain commercial relations in providing services or obtaining other benefits.

In performance of their functions, it shall be strictly prohibited for the employees of the Company to accept any gifts, and for the customers, business partners or their representatives to give them as well as to accept money or conclude contracts for privately received reward from the latter.

The employees of the Company must not grant any hidden privileges to the customers, business partners, representatives of state or municipal, or public institutions.

The repayment with expensive gifts and all other forms of illegal payments, services or other remuneration by the employees to the customers, representatives of state, municipal or public institutions, or other third persons, which are in business relations with the Company, for the taken or non-taken decisions in favour of the Company is strictly prohibited.

An employee of the Company who suspects that any third party (customer, colleague, etc.) is trying to involve or use him/her in conclusion of unlawful transaction, must report that to the head of the Company. In case of doubts, the beneficiary should apply to (the title of an appropriate authorised person) for the advice and instructions.

Business lunches and business gifts to the employees should comply with the general policy for business expenditure and the rules and requirements of the government institution concerned or those of a legal person. The third parties shall not be involved in order to circumvent the attitudes of the aforementioned politicians.

Benefit provocation

The term "benefit" includes: gifts, loans, tax benefit, reward, position, employment, transaction, services, support, etc.

The Company shall prohibit for both the heads or employees to provoke any benefit from the customers, suppliers or any person related to the business of the Company.

Benefit acceptance

The heads and employees must refuse to accept a benefit offered on account of their position held, if the acceptance of the benefit might affect their objectivity or force them to act against the interests of the Company, or if that might result in partiality complaints.

The heads or employees (by immediately informing their head on this case) may consider and voluntarily accept the benefit provided only if:

- The benefit accepted has no impact on the performance results of the beneficiary;
- The beneficiary does not feel obliged to repay the giver by doing something for him;
- The beneficiary may openly discuss the received benefit without any reservations;
- The type (for example, promotional or agitation gift, on the occasions of holidays/celebrations) and the value of the benefit received are such that refusal to accept it is considered as non-amicable or impolite behaviour.

Gifts should be of low value and granted not often.



Benefit offer

Any payments, agreed favourable conditions or other advantages provided by the heads or employees in performing the Company's activities, shall comply with the Company's prevalent practice in dealing with such issues, and they shall receive the prior written approval of the director.

Entertainment

Although entertainment is an acceptable form of business and public conduct, the heads or employees should refuse invitations to catering institutions or entertainments that are too often in order to avoid discomfort or loss of objectivity in performance of the Company activities. If the refusal of invitation is discourtesy, the head or employee may accept the invitation upon agreement that he/she would be allowed to respond the same way.

PROTECTION of interests of the Company, its shareholders, customers, business partners and employees

The Company makes all the possible efforts to protect and defend the rights and lawful interests of its shareholders, customers, business partners and employees.

The employees of the Company should take all possible reasonable actions dependant on their will in order to prevent any unlawful actions of any employee, customer, business partner or any third party, which would cause damage to the State and the public in general as well as to the Company, its customer, employee or business partner individually.

The employee of the Company must refrain from any action which would breach good character or the security of legal norms. The Company shall preserve the full confidentiality of the persons who reported the non-compliance to the norms of this Code of Conduct and ensure their protection as provided by laws.

Use of Information Technologies

The Company shall not tolerate the use and storage of any information humiliating the honour and dignity of the person as well as any other illegal information in the in IT systems or data storage carriers of the Company.

The Company encourages the employees to use information technologies (computers, IT networks, mobile phones, e-mails and the Internet) responsibly. The employees must not forget that by using information technologies they are responsible for our information security, loss, impairment or damage of technologies.

The computer hardware located in the premises of the Company may not be used for writing of comments in the Internet (including blogs and social networks) or answering the comments of other persons.

Control

Where the employees fail to comply with the provisions of the Code of Conduct, the Company may apply disciplinary measures, including dismissal from the office. Each employee shall receive a copy of this Code of Conduct. The obligation of the management is to ensure that the Code of Conduct is included into the employee training programmes.

The management shall regularly monitor whether the Code of Conduct is pursued, and, if necessary, implement specific monitoring programmes. The direct supervisor or the appointed authorised person shall be addressed with regard to the violations of the Code of Conduct observed. The observed violations of the Code of Conduct shall also be reported by e-mail: *ethics@nameofcompany.com*.

Implementation

The Code of Conduct shall be implemented by all companies of our group.

We pursue that our suppliers, partners and their supply chain would also implement the provisions of our ethical conduct.

THE ROLE OF LITHUANIAN DIPLOMATIC MISSIONS IN LIMITING BRIBERY ABROAD

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SPECIAL INVESTIGATION SERVICE
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TRANSPARENT BUSINESS IS
RESPONSIBLE BUSINESS

BRIBERY OF A FOREIGN OFFICIAL IS
A CRIME

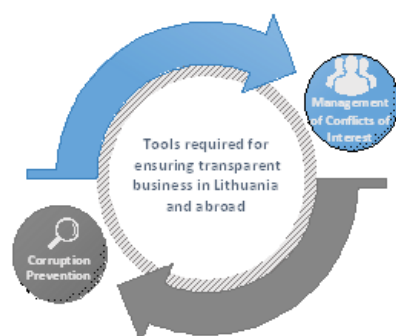
The members of the OECD (the Organisation for Economic Co-operation and Development) Working Group on Bribery in International Business Transactions: Ireland, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Czech Republic, Chile, Denmark, United Kingdom, Estonia, Greece, Iceland, Spain, Italy, Israel, Japan, United States, Canada, Colombia, Latvia, Poland, Luxembourg, Mexico, New Zealand, Norway, Netherlands, Republic of South Africa, South Korea, Portugal, France, Russia, Slovak Republic, Slovenia, Finland, Sweden, Switzerland, Turkey, Hungary, Germany.

IDENTIFY AND MANAGE RISKS OF CORRUPTION

How to assess risks?



- ✓ Will the reputation of the company not be damaged by a transaction?
- ✓ Does the transaction not violate the public interest?
- ✓ Is the transaction in compliance with the values of the company?
- ✓ Is the transaction transparent and lawful?
- ✓ Is the company ready to assume liability for its actions?
- ✓ Am I ready to assume liability for my actions?



BRIBERY OF FOREIGN OFFICIALS

IT IS PROHIBITED TO OFFER BRIBES IN FOREIGN BUSINESS TRANSACTIONS IN ORDER TO ENTER FOREIGN MARKETS AND IN THE CONDUCT OF INTERNATIONAL BUSINESS.

PURSUANT TO THE OECD (THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT) CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS:

"It is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business."



THE CONVENTION ESTABLISHES:

- ✓ A DUTY OF THE MEMBER STATES TO COMBAT THE BRIBERY OF FOREIGN PUBLIC OFFICIALS;
- ✓ APPLICATION OF SANCTIONS TO NATURAL AND LEGAL PERSONS FOR BRIBERY OF FOREIGN PUBLIC OFFICIALS;
- ✓ INTERNATIONAL COOPERATION IN COMBATING CORRUPTION.

READ MORE: <http://www.oecd.org/corruption/>

THE ROLE OF LITHUANIAN DIPLOMATIC MISSIONS IN LIMITING BRIBERY ABROAD



THE SPECIAL INVESTIGATION SERVICE OF THE REPUBLIC OF LITHUANIA (SIT) INVESTIGATES WITHIN THE REMIT THE CASES OF BRIBERY OF FOREIGN PUBLIC OFFICIALS



DIPLOMATIC MISSIONS REPORT ON POSSIBLE BRIBERY CASES THEY ARE AWARE OF:
THE DIPLOMATIC MISSIONS REPORT ON INFORMATION IN THE MEDIA OR OTHER SOURCES, WHICH DISCLOSES THE POSSIBLE BRIBERY OF THE LITHUANIAN ENTERPRISES (INCLUDING PARENT COMPANIES AND SUBSIDIARIES) OR THEIR REPRESENTATIVES, OR FOREIGN PUBLIC OFFICIALS, OR THEIR INVOLVEMENT IN SUSPECTED TRANSACTIONS TO THE COMPETENT AUTHORITY OF THE REPUBLIC OF LITHUANIA DIRECTLY.



DIPLOMATIC MISSIONS REGULARLY INFORM THE REPRESENTATIVES OF LITHUANIAN ENTERPRISES CONDUCTING INTERNATIONAL BUSINESS OR INVESTING ABROAD THAT:

1. OFFERING A BRIBE TO THE FOREIGN NATURAL OR LEGAL PERSON INCURS THE SAME LIABILITY AS THAT FOR ANALOGOUS OFFENCE IN LITHUANIA.
2. THE LEGAL PERSON IS ALSO SUBJECT TO THE CRIMINAL LIABILITY FOR THE CRIMINAL OFFENCE COMMITTED BY THE NATURAL PERSON.
3. UPON REQUEST BY BUSINESS ENTERPRISES AND ORGANISATIONS, DIPLOMATIC MISSIONS SHARE INFORMATION/REFERENCES ON THE REGULATION OF CORRUPTION IN THEIR CURRENT COUNTRY OF RESIDENCE.

APPROVAL OF STANDARD CONTRACTS WITH SUBCONTRACTORS, SUPPLIERS PROVIDING FOR BRIBERY PROHIBITION / DECLARATIONS OF TRANSPARENCY IN IMPLEMENTATION OF A CONTRACT

A company may choose one or several of several methods on how to include bribery prohibition provisions into contracts with subcontractors or suppliers:

- To include the provisions into a contract with subcontractors/ suppliers;
- To enclose an annex to a contract, which shall describe the ethics provisions of the company, and this annex shall be an integral part of the contract to be signed together with the contract.

Template – AB „Telia Lietuva“, Supplier Code of Conduct¹⁶³

I. GENERAL PROVISIONS

1. AB „Telia Lietuva“, (hereinafter – „Telia“, Company) is a leading provider of telecommunication services and a vital part of the social and economic infrastructure in the markets where the Company operates. We provide services that help people and companies communicate in a simple and effective way, when and where needed. Our values: “Dare, Care and Simplify” form the foundation of our everyday work.

2. Our aim is to become a world-class service company that provides high quality networks and services. Whereas “Telia” is a signatory member of the United Nations Global compactb and committed to the OECD Guidelines for Multinational Enterprises. Therefore, we have adopted this Supplier Code of Conduct in order to ensure that we and our suppliers are aware of our expectations and approach to sustainability.

3. The provisions of this Supplier Code of Conduct are in line with the provisions of the Code of Ethics and Conduct of “Telia” Group of Companies that are based on international agreements (the UN Universal Declaration of Human Rights, International Labour Organisation Conventions, UN Convention against Corruption and the Rio Declaration on Environment and Development).

4. All companies of Telia Group and their employees must follow the Group Code of Ethics and Conduct. Similarly, all Telia Suppliers must follow the requirements of the Supplier Code of Conduct even in such cases, where the latter establish higher requirements than those set by national laws or regulations.

5. This Supplier Code of Conduct applies to all companies providing products and/or services to any Telia Group company. The Code applies to all the employees and consultants of Suppliers and sub-contractors, regardless whether they are permanently employed, temporarily contracted, directly employed or supervised from other where.

6. Where appropriate or if necessary, Telia may conclude individual contracts with suppliers and to establish additional special requirements therein. In contracting with subcontractors, it should always be established that the Supplier Code of Conduct will apply.

7. The Suppliers should have such a process in place in their company, which would allow to verify the compliance with the requirements of the Supplier Code of Conduct. Upon request, they should participate in a self-assessment process organized by Telia. Telia has the right to audit

¹⁶³ „Telia LT“, AB Supplier Code of Conduct. Link: https://www.telia.lt/documents/20184/34947/Telia_Lietuva_suppliers_code_of_conduct.pdf/cdba0204-59f6-45ec-99bd-9dcc6ff71efb.

how the Suppliers and sub-contractors fulfil the requirements laid down in the Supplier Code of Conduct or those equal to them. Having identified any non-compliance with the Supplier Code of Conduct, in all cases, the Suppliers must submit a corrective action plan to be approved by Telia.

8. The Suppliers must follow the amendments, modifications and updates to the Supplier Code of Conduct, which Telia will publish on the website: <http://www.Telia.lt/node/5146>.

II. SOCIAL REQUIREMENTS

9. Human Rights

9.1. All employees hired by a Supplier or its sub-contractors, regardless whether they are employed under permanent or temporary employment contracts, must be treated with respect, without prejudice to their dignity and be all guaranteed the fundamental human rights. The Supplier shall ensure that all employees working for it directly or indirectly know and understand these rights.

9.2. The freedom of expression and the privacy of employees, clients and other stakeholders must be particularly respected by the Supplier.

9.3. The Supplier must promote diversity. Any form of discrimination is prohibited, and, in particular, on the grounds of ethnicity, gender, sexual orientation, marital or social status, paternity or maternity, religion, political attitudes, nationality, disability, age or union affiliation.

9.4. No person shall be employed by the Supplier who is younger than the minimum legal working age. It is strictly prohibited both for suppliers themselves and their sub-contractors directly and in cases, where they use the services of temporary staffing agencies, to use children or juveniles who are under the minimum legal working age or those who are under fifteen (15) years old, i.e. in all cases the higher minimum age limit shall apply. Employees under eighteen (18) years of age shall not be assigned to work neither in night shifts, or to do dangerous or hard work.

9.5. The Suppliers that provide Telia with products, which contain tin, tungsten, tantalite and/or gold, must have a clear policy for the use of all contentious minerals and ensuring their traceability in place.

10. Rights at Work

10.1. All employees hired by a Supplier or its sub-contractors, regardless whether they are employed under permanent or temporary employment contracts, must have written contracts made in the language understandable to them, which would contain: the working hours (per day and week), conditions of overtime compensation, duration of a notice period, salary and frequency of its payment.

10.2. A normal working week shall not exceed 48 hours. The overtime shall be organised only upon consent of employees and it may not exceed 12 hours per week, unless otherwise provided in collective agreements. The employees shall be entitled to at least one day off in every seven-day period.

10.3. The salary and its payment conditions must be fair and must meet the basic requirements, the expression of which might be equal to a minimum wage established by national laws, including premiums and allowances. Overtime pay rates shall be premium to regular wages.

10.4. The employees must be informed about their employment conditions in their own language. It is necessary to ensure that they fully understand these conditions. The Suppliers must encourage the employees to use grievance mechanisms, i.e. to have an opportunity to voice their concerns without fear of punishment or retribution.

10.5. The Suppliers and subcontractors must have job descriptions, including documented dangerous works. Such descriptions must be updated on a regular basis, and all employees and consultants should be familiarised with them. All employees should have access to basic amenities such as, for example, drinking water, toilets and adequate rest facilities or dorms that should be clean, safe and fit for purpose.

10.6. Any forms of forced labour are strictly prohibited. The employees shall also not be required to lodge deposits or original identity papers or their equivalent documents. The employees must be allowed to move freely and have the possibility to leave the working premises after the working hours.

10.7. Nobody shall be subject to physical punishment, unlawful detentions, physical, sexual, psychological or verbal harassment or abuse. Deductions from wages as a disciplinary measure are prohibited.

10.8. All employees shall be free to form and to join (or not to join) trade unions or similar employee representative organisations and to negotiate on the conclusion of the collective agreement.

11. Occupational Health and Safety at Work

11.1. Construction, technical maintenance, repair and network roll-out services, which include works in enclosed or confined spaces, overhead works/ lifting operations, ground and civil construction works, works with radio frequencies; electrical assembly works; works at height; driving (where it is an integral part of the work), must comply with the OHSAS 18001 or equivalent standard requirements. If that is not the case, the Suppliers must provide Telia with a plan for the implementation of an appropriate standard.

11.2. The Supplier's working environment must have acceptable working conditions, which would be safe and healthy, both in terms of physical and psychosocial health. Training and appropriate health and safety information on occupational health and safety at work should be provided to employees, including but not limited to, fire safety, proper handling of chemicals and use of equipment, standby for emergency and first aid situations.

11.3. In order to limit the built-in causes of hazards in working environment, the Suppliers must take adequate actions, which would allow not only reduction of the number of accidents and injuries as well as psychosocial illnesses, but also prevention against them. The Suppliers must free of charge provide their employees with the proper personal safety devices. Incidents, which affect physical health of the person, accidents at work and psychosocial illnesses must be documented and reported to the Supplier's top management.

III. ANTI-CORRUPTION REQUIREMENTS

12. All forms of corruption, including but not limited to, extortion, bribery, facilitation payments, favouritism, fraud and money laundering, are strictly prohibited.

13. Nobody may, ask for, give or accept, directly or indirectly, any personal payment, gift¹ or gain benefit in exchange for favourable treatment intended to influence a business transaction or to obtain a business or personal advantage. This provision applies both to Telia employees and their families, and to the Suppliers and their sub-contractors.

14. Telia employees are strictly prohibited to accept or give any types of gifts during the procurement process or during communication with civil servants. Moreover, it is also strictly prohibited for Telia employees to publicise themselves in any advertising or promotional materials of the Supplier products or services.

15. Employees of Telia Procurement Unit may accept and give gifts only on behalf of Telia and only in such cases, where the gifts are given and accepted for the clear business purpose, are suitable in terms of the nature of the business relationship, and where their value does not exceed the limit of the established value. All events must be directly related to business. All gifts must be registered with the gift register and they are the ownership of Telia.

16. Fair competition and open market principles must be respected. The business decisions shall not be motivated or affected by any personal relations or interests.

17. An anti-corruption programme in compliance with internationally recognized standards must be adopted and implemented, which shall be transparent and effectively supported by arranging adequate training and providing relevant information for the above purposes. .

IV. ENVIRONMENTAL REQUIREMENTS

18. The Supplier shall have a system for environmental management, including environmental objectives and their evaluation, which would meet the requirements of, for example, ISO14001 standard or equivalent to it. The Supplier must reduce the negative impact of its economic activities on the environment. Moreover, the Supplier must apply a precautionary approach and strive for maintaining and increasing biodiversity.

19. The Supplier must prioritize energy generated from renewable energy sources and limit water consumption, in particular, in poor regions.

20. The Supplier should have monitoring processes of emissions, effluents, pollutions and waste management, including electronic waste, in place. All waste should be properly managed or recycled in a traceable manner.

21. The Supplier must strive for reduction of the environmental impact of road, sea or railway transportation, whenever possible. Fuel-efficient vehicles shall be prioritized when transporting goods and providing services to Telia.

22. The Supplier must evaluate any cases of use of chemicals and substances on a regular basis and investigate whether there is a possibility to replace them with less hazardous alternatives. Chemicals should be handled and disposed in a safe and adequate manner, thus ensuring that the environmental negative consequences are minimized. The chemicals used by the Supplier must be documented.

23. Neither the Suppliers, nor their sub-contractors may use hazardous substances on Telia's Black List (Appendix No. 1). The Suppliers and their sub-contractors should seek to avoid all substances on Telia's Grey List (Appendix No. 2). If currently the use of such substances is necessary, a written plan for their replacement with alternatives should be adopted.

24. Suppliers' innovative developments of products and services that offer environmental and public benefits, for example, eco-design, are strongly promoted.

25. In the architecture and location of antennas, towers and masts, electromagnetic waves, noise, view disturbances, ownership rights, accessibility, environmental impact and public health and safety should be taken into consideration.

V. COMPLIANCE REQUIREMENTS

26. In conclusion of contracts with subcontractors, the requirement to comply with the Supplier Code of Conduct must be stipulated. Upon request, the Supplier must participate in a self-assessment process organized by Telia. Telia has the right to check how the Suppliers and their sub-contractors comply with the Supplier Code of Conduct and the requirements related to it in the current, planned and former places of economic activities.

27. The Supplier shall, upon request, provide data and information required for the preparation of Telia's annual report and other reports.

28. Any material breach of the requirements set out in this Supplier Code of Conduct gives Telia the right to immediately terminate any or all agreements with the Supplier.

29. The Supplier shall inform Telia if it discovers a breach, or a suspected breach of the Supplier Code of Conduct. This will not be used against the Supplier or sub-contractor if the notification on the breach was provided acting in good faith. If the employees themselves observe the activities, which would mean the breach of the Supplier Code of Conduct, and they would be notified of such activities or if they suspect the existence of such activities, they should report the information by e-mailing: pirkimai@Telia.lt.

Footnotes, explanations:

[1] A gift means any valuable thing, including but not limited to, events, products, services, meals, lodging, cash, discounts, prizes, transport, holidays and membership.

USEFUL REFERENCES

No.	Website	Essentials
Programmes, articles, publications, corruption reports, corruption prevention reports.		
1.	https://www.e-tar.lt/portal/lt/legalAct/25c529d0cb-cd11e4aaa0e90fce879681	National Anti-corruption Programme of the Republic of Lithuania for 2015-2025.
2.	https://www.e-tar.lt/portal/lt/legalAct/13fd20601e6e11e586708c6593c243ce/MKQLUxNIbT	Inter-institutional Action Plan for 2015-2019 for the Implementation of the National Anti-Corruption Programme of the Republic of Lithuania for 2015-2025.
3.	http://www.track.unodc.org/LegalLibrary/Pages/home.aspx	National anti-corruption laws, anti-corruption policy and practices of countries.
4.	http://www.advokatura.lt/lt/teisine-informacija/kod-eksai-istatymai.html	Lithuanian Bar Association topicalities, legal information.
5.	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf	UK Anti-Corruption Plan.
6.	http://blogs.worldbank.org/futuredevelopment/six-strategies-fight-corruption	Article describing six anti-corruption strategies.
7.	http://www.eesc.europa.eu/?i=portal.en.ccmi-opinions.34276	Proposals to fight corruption in the European Union.
8.	http://www.independent.co.uk/news/world/europe/corrupt-european-countries-costing-eu-nearly-800bn-a-year-says-study-a6944436.html	Article about the fact the corrupt European countries costing EU nearly £800bn a year.
9.	http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm	Anti-corruption Report of the European Commission 2014.
10.	http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_lithuania_chapter_lt.pdf	Anti-corruption Report of the European Commission 2014 – Lithuania.
11.	http://www.transparency.org/news/feature/finding_the_right_measurement_for_corruption	Article about finding the right measurement for corruption.
12.	http://www.bbc.com/news/business-35977883	Article about the Panama Papers.
13.	http://www.transparency.org/news/feature/3_steps_to_stop_secret_companies	Three steps to stop secret companies.

No.	Website	Essentials
14.	http://www.visionofhumanity.org/#/page/news/1300	Article about the link between conflicts and corruption.
15.	https://www.unodc.org/unodc/en/treaties/CAC/working-group4.html	Report of the meeting of the Open-ended Intergovernmental Working Group on Prevention.
16.	https://www.ted.com/playlists/148/depths_of_corruption	Different talks of specialists about corruption.
17.	http://ftp.iza.org/dp2315.pdf http://link.springer.com/journal/11127 http://www.economics-ejournal.org/economics/journalarticles/2007-9/version_1	Corruption and shadow economy.
Information on democracy and corruption indexes, other researches		
18.	https://freedomhouse.org/report/freedom-world/freedom-world-2017	I the map information on democracy indexes of all countries of the world.
19.	https://freedomhouse.org/report/nations-transit/2016/lithuania	Lithuanian democracy points.
20.	http://www.skaidrumolinija.lt	<i>Transparency International Lithuania</i> website, where one may find information about corruption crimes all over Lithuania.
21.	http://jurgiokepure.lt/2015-2019/vilniaus-miesto	Municipal transparency assessment and relevant information about municipal council members.
22.	http://manoseimas.lt	Information on voting of the members of the Seimas (Parliament), activity level of participation in discussions, success in draft submission.
23.	http://atvirasteismas.lt	Information on the activities of Lithuanian courts.
24.	http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/yearFrom/1973/surveyKy/2084	Public opinion data on the work of the European Commission.
25.	http://www.heritage.org/index/ranking	Index of Economic Freedom in all countries of the world.
26.	http://www.heritage.org/index/explore	Country Rating in all countries of the world.
27.	http://www.transparency.org/research/cpi/overview	Corruption Perceptions Index 1995/2015.

No.	Website	Essentials
28.	http://www.transparency.org/research/gcb/overview	Global Corruption Barometer 2003/2013.
29.	http://www.u4.no	Information about corruption.
Websites for reporting corruption, illegal trade		
30.	https://golearn.unodc.org/olat/dmz/goLEARN%20-by%20UNODC	System for the fight against drugs, crime and all forms of terrorism.
31.	http://bribespot.com/en/	The web page of an anonymous service for reporting bribery cases and providing reports on bribery.
32.	http://www.beseselio.lt/seselio-zemelapis	Provides information on illegal trade as well as provides a possibility to report it.
Anti-corruption schools		
33.	https://szkolenia-antykorupcyjne.edu.pl	Online training platform for anti-corruption.
34.	http://transparencyschool.org	Anti-corruption training school.
Information on taxes, public procurement		
35.	https://www.facebook.com/photo.php?fbid=1323096937715802&set=pcb.1323099481048881&type=3&theater	Information on spending tax revenue of residents in 2014-2015.
36.	http://www.freedata.lt/vpt/	Public procurement information provided by Contracting Authorities (CAs) to the Public Procurement Office (PPO) and published in the Central Public Procurement Information System (CPP IS).
37.	http://www.cvpp.lt/index.php?option=com_vptpublic&task=sutartys&Itemid=109	Information on procurement contracts.
38.	http://www.vmi.lt/cms/juridinio-asmens-sumoketa-moke-sciu-suma	The State Tax Inspectorate web page information on tax amounts paid by a legal entity.
The best practice documents, recommendations		
39.	https://www.vkontrole.lt/failas.aspx?id=2006	National Audit Office Report No VA-P2-20-13-24 "State Enterprise Management" of 23 December 2009.
40.	http://www.oecd-ilibrary.org/docserver/download/2615021e.pdf?expires=1464293837&id=id&ac-cname=guest&checksum=DF1E08DF-261420BEE60A60276798FD8C	G20/OECD Principles of Corporate Governance 2015.

No.	Website	Essentials
41.	http://www.oecd.org/daf/ca/soemarket.htm ; http://www.oecd-ilibrary.org/governance/oecd-guidelines-on-corporate-governance-of-state-owned-enterprises-2015_9789264244160-en	OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition.
42.	https://www.unodc.org/pdf/crime/corruption/Handbook.pdf	United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators.
43.	https://www.transparency.org/_view/publication/8077	Ten anti-corruption principles for state-owned enterprises.
44.	https://diplomatie.belgium.be/sites/default/files/downloads/anti-corruption-guide.pdf	Belgian guide for a foreign business.
45.	http://www.c-detector.eu/	Here's the ultimate free tool to test your own business and to find out how to avoid any risks.

Prepared by Special Investigation Service of the Republic of Lithuania and partners
Lithuanian to English translation made by UAB „Dokana“,
Lithuanian to English translation of the supplemented parts of text made by
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Layout of the text and design made by Mr. Arūnas Kryževičius
28-09-2018 Order No. 3607 Numbers of Publications 20
Printed by AB „Titnagas“
Vasario 16-osios str. 52, Šiauliai
www.titnagas.lt