



INTERNATIONAL

BUSINESS TRANSACTIONS

ICC Rules of Conduct

Extortion and Bribery in International Business Transactions

1999 revised version



International Chamber of Commerce

The world business organization

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Preface

ICC is extremely pleased to note that since the “1996 Revisions to the ICC Rules” were published, substantial progress has been made in addressing extortion and bribery in international business transactions. Most importantly, the OECD “Convention on Combating Bribery of Foreign Public Officials” (hereafter called the OECD Convention) was signed by 34 countries in Paris on 17 December 1997 and entered into force in 15 February 1999. The OECD has established a monitoring programme to assure effective and consistent implementation and enforcement of the Convention. The monitoring programme also concerns compliance with the “Revised OECD Recommendations”, which among other subjects, urges OECD member countries to disallow tax deductibility of bribes to foreign public officials. An effective monitoring process is of critical importance to the success of the Convention.

Other important anti-bribery initiatives have been launched by the World Bank, the International Monetary Fund, the European Union, the Council of Europe, the Organization of American States, the Pacific Basin Economic Council, the Global Coalition for Africa and the United Nations. Thus, much of what was proposed by the ICC’s 1996 “Recommendations to Governments and International Organizations” is now under way. However, much remains to be done.

Additional efforts are required to deal more effectively with the demand side of corruption: extortion by foreign public officials. To that end, national governments must strengthen their enforcement of laws prohibiting the solicitation and receipt of bribes, as well as the payment of bribes. ICC also renews its 1996 recommendation that the WTO take an active role, because bribery and extortion are clearly important factors distorting international trade.

Another area demanding additional attention is bribery within the private sector. The ICC Rules of Conduct clearly prohibit such bribery, as well as bribery of public

officials. The OECD Convention focuses exclusively on bribery of public officials. In view of the large role played by the private sector in the global economy and the continuing privatization of governmental enterprises and activities, the time has come to make sure that effective measures are taken to control corruption within the private sector. This is an issue to which the ICC Standing Committee on Extortion and Bribery will devote substantial effort. The Council of Europe and the European Union have also recognized the need to address private sector corruption.

No changes are required in the "Rules of Conduct to Combat Extortion and Bribery", adopted by the ICC's Executive Board on 26 March 1996. ICC is publishing in the Spring of 1999 a manual of best corporate practices to accompany the Rules of Conduct, and to provide guidance for compliance with the OECD Convention.

Foreword

In 1977, ICC issued a Report on Extortion and Bribery in business transactions. This broke new ground in calling for complementary and mutually supportive action by governments, intergovernmental bodies, and the business community to combat extortion and bribery in international trade.

The Report aroused interest in intergovernmental fora, such as the OECD and the UN Commission on Transnational Corporations. Moreover, corporations in a number of countries were prompted to establish or strengthen their internal rules of fair practices, taking as a model the Rules of Conduct for enterprises which were set forth in Part III of the 1977 Report.

Today, the importance of effectively combating extortion and bribery is greater than ever. In the early 1990s, scandals involving extortion and bribery were a significant factor in toppling governments in many parts of the world. This situation, if allowed to continue, could undermine the most promising development of the post Cold-war era, i.e., the spread of democratic governments and of market economies worldwide. It is all the more unacceptable in view of the liberalisation of world trade in goods and services achieved through the Uruguay Round: freer trade must be matched by fair competition, failing which trading relations will be increasingly strained to the common detriment of governments and enterprises. In addition to being a crime, offering or giving bribes may constitute acts of unfair competition, which could give rise to actions for damages.

Against this background, ICC, as the leading world business organization, decided in 1994 to review its 1977 Report and set up for this purpose an Ad Hoc Committee under the chairmanship of Mr. François Vincke (Belgium), Secretary General of Petrofina.

The updated Report, which ICC now presents, confirms the basic approach recommended initially, i.e., the need for action by international organizations,

governments and by enterprises, nationally and internationally, to meet the challenging goal of greater transparency in international trade.

Major responsibility in this area undoubtedly rests with governments, as has been **recognised** by the OECD, the Council of Europe, the Organization of American States and the United Nations. Part II of the Report accordingly urges all governments to demonstrate their political will to implement promptly the OECD Convention to Combat Bribery of Foreign Public Officials and the Revised OECD Recommendation. ICC considers it particularly important that the OECD Convention and Recommendation be implemented by all countries, including the developing countries. To that effect, ICC recommends that the OECD establish close liaison with the World Trade Organization (WTO), in order to further the understanding of problems associated with extortion and bribery and encourages countries that are not OECD members to participate in the **OECD's** outreach program.

For its part, the international business community has the corresponding responsibility to strengthen its own efforts to combat extortion and bribery. Part II of the Report thus sets forth the Rules of Conduct recommended by ICC for voluntary application by enterprises. These are in many respects more stringent than those issued in 1977. The 1977 Rules only prohibited extortion and bribery in connection with obtaining or retaining business; the new Rules prohibit extortion and bribery for any purpose. Thus, extortion and bribery in judicial proceedings, in tax matters, in environmental and other regulatory cases or in legislative proceedings are now covered by the Rules. Governments are urged to regulate political contributions by enterprises and to ensure that they are publicly recorded. New emphasis is placed on implementing mechanisms within companies to enforce corporate codes of conduct.

Finally, ICC itself is alive to its own responsibility to promote and monitor the acceptance and application of the Rules of Conduct. Part III of the Report therefore sets out the priorities of the Standing Committee which ICC is establishing. Its principal purpose will be to

stimulate action by enterprises and business organizations in support of self-regulation, as an important factor in effectively combating extortion and bribery. This approach is more promising and more in line with the responsibilities of a non-governmental organization than the establishment of a Panel to investigate alleged infringements of the Rules, as envisaged in 1977.



Part I: Recommendations to Governments and International Organizations

Recommendations for international cooperation

Basic criminal statutes of virtually all countries clearly prohibit extortion and bribery. In the interest of developing consistent standards of criminal legislation in this field, each government should review its statutes to ensure that they effectively prohibit, in conformity with its jurisdictional and other basic legal principles, all aspects of both the giving and the taking of bribes including promises and solicitation of bribes. Where no such legislation exists, the governments concerned should introduce it; in those countries where extortion and bribery are already clearly prohibited, the relevant legislation should be perfected.

Each government should take concrete and meaningful steps to enforce vigorously its legislation in this area. ICC also notes with approval that the OECD has urged governments to re-examine their legislation against extortion and bribery; action relating to the tax deductibility of bribes is of particular urgency. The WTO should involve itself with these issues to support the OECD in the implementation of its Convention and Recommendation.

NATIONAL MEASURES

In order to deal with the problem of extortion and bribery, governments should, in conformity with their jurisdictional and other basic legal principles, take the following measures, if they have not already done so.

Preventive measures

- Disclosure procedures

For the sake of transparency, procedures should be established providing for periodic reports to an authorised government body of measures taken to supervise government officials involved directly or indirectly in commercial transactions. Such reports should be open to public scrutiny.

For enterprises engaged in transactions with any government or with any enterprise owned or controlled by government, disclosure procedures should provide for access, upon specific request, by the appropriate government authorities to information as to agents dealing directly with public bodies or officials in connection with any particular transaction, and as to the payments to which such agents are entitled. Governments should ensure the confidentiality of any such information received from enterprises and safeguard the trade secrets incorporated therein.

- Economic regulations

When laying down any economic regulations or legislation, governments should, as far as possible, minimise the use of systems under which the carrying out of business requires the issuance of individual authorisations, permits, etc. Experience shows that such systems offer scope for extortion and bribery. This is because decisions involving the issue of permits or authorisations are frequently taken in ways which make it almost impossible to ensure effective control and supervision. Where individual permits and authorisations remain in place, governments should take appropriate measures to prevent their abuse.

- **Transactions** with governments and international organizations

Such transactions should be subject to special safeguards to minimise the opportunities for their being influenced by extortion and bribery. The system for awarding government contracts might include disclosure, to an appropriate government

entity independent of the one directly concerned in the transaction, as well as increased public disclosure, whenever feasible, of the criteria and conclusions upon which the award is based. ICC supports the growing practice of making government contracts dependent on undertakings to refrain from bribery, and recommends that such contracts should include appropriate provisions to ensure compliance with international, national or enterprise codes against extortion and bribery.

- Political contributions

Undisclosed political contributions can be a source of abuse. Governments should regulate the conditions under which political contributions can be made. Where payments by enterprises to political parties, political committees or individual politicians are permitted by the applicable legislation, governments should enact legislation which ensures that such payments are publicly recorded by the payors and accounted for by the recipients.

Enforcement measures

Governments, in conformity with their jurisdictional and other basic legal principles, should ensure:

- i) that adequate mechanisms exist for surveillance and investigation, and
- ii) that those who offer, demand, solicit or receive bribes in violation of their laws are subject to prosecution with appropriate penalties.

Governments should periodically publish statistical or other information in respect of such prosecutions.

Auditing

Governments, if they have not already done so, should enact appropriate legislation providing for auditing by independent professional auditors of the accounts of economically significant enterprises.

INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Implementation of the OECD Convention and Recommendation

ICC believes that the OECD Convention and Recommendation on Bribery in International Business Transactions provide a useful framework for government action. All governments, including non-OECD governments, should promptly take action to adhere to the Convention and to implement the steps set forth in the Recommendation.

Cooperation in law enforcement

Governments should agree, under appropriate provisions for confidentiality, and in conformity with the OECD Convention, to exchange through law enforcement agencies relevant and material information for the purpose of criminal investigation and prosecution of cases of extortion and bribery. They should also continue to cooperate bilaterally on matters involving extortion and bribery, on the basis of treaties providing for assistance in judicial and penal prosecution matters.

Role of international financial institutions

International financial institutions, e.g., the World Bank, the European Bank for Reconstruction and Development, should aim to make a significant contribution to the reduction of extortion and bribery in international business transactions. They should take all reasonable steps to ensure that corrupt practices do not occur in connection with projects which they are financing. Similarly, in negotiating cooperation agreements with non-member countries, whether countries with economies in transition or developing nations, the governing or coordinating bodies of the European Union, NAFTA, ASEAN and other regional institutions, should seek to satisfy themselves that appropriate legislation and administrative machinery to combat extortion and bribery exists in the countries concerned.

Part II: Rules of Conduct to Combat Extortion and Bribery

Introduction

These Rules of Conduct are intended as a method of self-regulation by international business, and they should also be supported by governments. Their voluntary acceptance by business enterprises will not only promote high standards of integrity in business transactions, whether between enterprises and public bodies or between enterprises themselves, but will also form a valuable defensive protection to those enterprises which are subjected to attempts at extortion.

These Rules of Conduct are of a general nature constituting what is considered good commercial practice in the matters to which they relate but are without direct legal effect. They do not derogate from applicable local laws, and since national legal systems are by no means uniform, they must be read *mutatis mutandis* subject to such systems.

The business community objects to all forms of extortion and bribery. It is recognised, however, that under current conditions in some parts of the world, an effective programme against extortion and bribery may have to be implemented in stages. The highest priority should be directed to ending large-scale extortion and bribery involving politicians and senior officials. These represent the greatest threat to democratic institutions and cause the gravest economic distortions. Small payments to low-level officials to expedite routine approvals are not condoned. However, they represent a lesser problem. When extortion and bribery at the top levels is curbed, government leaders can be expected to take steps to clean up petty corruption.

Basic principle

All enterprises should conform to the relevant laws and regulations of the countries in which they are established and in which they operate, and should observe both the letter and the spirit of these Rules of Conduct.

For the purposes of these Rules of Conduct, the term “enterprise” refers to any person or entity engaged in business, whether or not organized for profit, including any entity controlled by a State or a territorial subdivision thereof; it includes, where the context so indicates, a parent or a subsidiary.

Basic Rules

Article 1 : Extortion

No one may, directly or indirectly, demand or accept a bribe.

Article 2 : Bribery and **“Kickbacks”**

- a) No enterprise may, directly or indirectly, offer or give a bribe and any demands for such a bribe must be rejected.
- b) Enterprises should not (i) kick back any portion of a contract payment to employees of the other contracting party, or (ii) utilise other techniques, such as subcontracts, purchase orders or consulting agreements, to channel payments to government officials, to employees of the other contracting party, their relatives or business associates.

Article 3 : Agents

Enterprises should take measures reasonably within their power to ensure:

- a) that any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered by such agent;
- b) that no part of any such payment is passed on by the agent as a bribe or otherwise in contravention of these Rules of Conduct; and

- c) that they maintain a record of the names and terms of employment of all agents who are retained by them in connection with transactions with public bodies or State enterprises. This record should be available for inspection by auditors and, upon specific request, by appropriate, duly-authorised governmental authorities under conditions of confidentiality.

Article 4 : Financial Recording and Auditing

- a) All financial transactions must be properly and fairly recorded in appropriate books of account available for inspection by boards of directors, if applicable, or a corresponding body, as well as auditors.
- b) There must be no "off the books" or secret accounts, nor may any documents be issued which do not properly and fairly record the transactions to which they relate.
- c) Enterprises should take all necessary measures to establish independent systems of auditing in order to bring to light any transactions which contravene the present Rules of Conduct. Appropriate corrective action must then be taken.

Article 5 : Responsibilities of Enterprises

The board of directors or other body with ultimate responsibility for the enterprise should:

- a) take reasonable steps, including the establishment and maintenance of proper systems of control aimed at preventing any payments being made by or on behalf of the enterprise which contravene these Rules of Conduct;
- b) periodically review compliance with these Rules of Conduct and establish procedures for obtaining appropriate reports for the purposes of such review; and
- c) take appropriate action against any director or employee contravening these Rules of Conduct.

Article 6 : Political Contributions

Contributions to political parties or committees or to individual politicians may only be made in accordance

with the applicable law, and all requirements for public disclosure of such contributions shall be fully complied with. All such contributions must be reported to senior corporate management.

Article 7 : Company Codes

These Rules of Conduct being of a general nature, enterprises should, where appropriate, draw up their own codes consistent with the ICC Rules and apply them to the particular circumstances in which their business is carried out. Such codes may usefully include examples and should enjoin employees or agents who find themselves subjected to any form of extortion or bribery immediately to report the same to senior corporate management. Companies should develop clear policies, guidelines, and training programmes for implementing and enforcing the provisions of their codes.

Part III: ICC Follow-up and Promotion of the Rules

To promote the widest possible use of the Rules set forth in Part II and to stimulate cooperation between governments and world business, ICC is establishing a Standing Committee on Extortion and Bribery. The Chairman of that body shall be nominated by the President of the ICC and the Secretary General shall be responsible for ensuring, in conjunction with ICC National Committees, that members of the Committee are representative of both developed and developing countries and that businessmen are adequately represented in the membership.

Among its primary tasks, the Standing Committee shall:

1. Urge ICC National Committees promptly to take all appropriate measures to ensure that enterprises and business organizations in their country — whether multi-disciplinary or sectoral- give strong support to these Rules of Conduct. In particular, international business groups shall be encouraged to ensure that their subsidiaries endorse the Rules, or other corporate rules having similar effect, and **publicise** them in their local environment;
2. Collect through National Committees a wide range of company codes of conduct on ethical issues, including extortion and bribery, and serve as an information clearing house for businesses seeking to develop their own codes and requiring advice on the problems involved;
3. Promote the organization, both by ICC International Headquarters and by National Committees, of seminars designed to stimulate interest in, and **discussion** of, the Rules among ~~the~~ business community;
4. Encourage National Committees to impress upon their governments the need to include, from the initial stages, the business community through its representative organizations — in discussions aimed at enacting or strengthening legislation against extortion and bribery;

5. Ensure liaison with the OECD, the WTO and other international organizations to provide the ICC point of view concerning progress at the international level in combating extortion and bribery;
6. Conduct a study within two years on the most appropriate policies and procedures practiced by top management of companies to minimise risks of exposure to extortion of, and bribery by, personnel dealing with sensitive issues (participation in public tenders, privatisations, etc.);
7. Issue at least every two years a report to the ICC's Executive Board and Council on results achieved concerning worldwide recognition of the Rules of Conduct and of progress otherwise made by business in combating extortion and bribery. Decisions concerning the dissemination of the Report shall rest with the Executive Board and the Council;
8. Review these Rules in the light of experience and recommend amendments, as necessary, to the Executive Board and the Council.

ICC serving world business

The International Chamber Commerce is the world business organization, the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

ICC promotes an open international trade and investment system and the market economy. It makes rules that govern the conduct of business across borders. It provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading institution of its kind.

Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies. Today ICC is the preferred partner of international and regional organizations whenever decisions have to be made on global issues of importance to business.

Business leaders and experts drawn from ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical or **sectoral** subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC was founded in 1919 by a handful of far-sighted business leaders. Today it groups thousands of member companies and associations from over 130 countries. National committees coordinate with their membership to address the concerns of the business community and to put across to their governments the business views formulated by ICC.

Selected ICC Publications

Measures Against Counterfeiting and Piracy

by ICC Counterfeiting Intelligence Bureau, London

This book is an overview of the legal remedies and enforcement machinery available to fight counterfeiting and piracy in 31 key countries. Presented in the form of a survey with carefully designed questions covering all the important aspects of enforcement of intellectual property rights, this survey provides a sound platform for the choice of the appropriate procedure in different countries. It includes an explanation of the TRIPS Agreement and information on the enforcement of anti-counterfeiting and anti-piracy measures in different jurisdictions.

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by ICC International Crime Bureau, London

This guide explains how criminal revenue is made to appear legitimate and highlights the advantages of effective anti-money laundering administration procedures. It explains a framework for self-protection and provides case studies which illustrate the subject while the appendices outline business procedures, suspicious activity indicators, electronic cash (e-cash) considerations, the Group of Seven Financial Action Task Force, financial institutions as defined by the US Bank Secrecy Act, the Bank Secrecy Act regulations.

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By Michael Rowe. Published by Euromoney Books, distributed by ICC Publishing.

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