Appendices

Appendix A Sample Ethical Decision-Making Model

This appendix outlines a step-by-step procedure for ethical decision-making by the responsible business enterprise. It is based on a number of approaches that are detailed in the works cited at the end of this appendix.

Preliminary Considerations

There are at least five matters that a decision-maker must be clear about in his or her own mind when beginning the formal process of ethics and policy decision-making:

1. What motivated the need for choice?
2. Is the decision-maker framing a question, developing an argument, or deciding how to act?
3. For purposes of this choice only, what can be reasonably assumed to be true?
4. What are the applicable enterprise core beliefs, standards, procedures, and expectations?
5. What will constitute a quality judgment or quality action under those circumstances?

Outcomes-Based Decision-Making

Step 1: Identify the desired result.

- A vision of a desired future?
- A question to pursue?
- An argument to support a position?
- A resolution of a dilemma?
- A solution to a problem?

Describe the desired result clearly. If it is to solve a problem, be sure there is a problem, not just a symptom.

Step 2: Describe the conditions or criteria that the result must meet to be satisfactory. List the essential criteria for a successful outcome, as well as the other conditions that it would be desirable for a result to meet:

- Minimum essential criteria include that the result be a quality judgment or quality action that is feasible, suitable, and cost-acceptable, specifically taking into account opportunity cost.
- An organizational essential requirement is that the result be consistent with the enterprise's core beliefs: its purpose, values, and envisioned future.

Include the specific enterprise standards, procedures, and expectations that might apply at all four levels of identity: compliance, risk management, reputation enhancement, and value added.

Step 3: Identify all stakeholders—that is, those who are involved in, affected by, or in a position to influence the decision-making process or the result.

- Determine their relationships.
- Analyze cultural differences, using Hofstede or another approach.
- Analyze organizational culture differences.
- If the decision is an organizational or community decision, categorize the stakeholders as either internal or external.
- Prioritize among the stakeholders.

Step 4: Search for all reasonably promising results and list them:

- Use brainstorming.
- Consider the points of view of as many stakeholders as possible.
- Use different frames of reference to develop new and better ways of looking at the decision.
- Ask, "What else is possible?"

Step 5: Obtain all the relevant facts concerning the extent to which each of the proposed alternatives would or would not meet the criteria for an acceptable result—or be likely to do so. Consider stakeholders' viewpoints:

- What are the stakeholders' perspectives?
- How do they understand the facts of the matter?
- What do they value concretely and in the abstract?
- What do they understand the key concepts to mean?

Step 6: Evaluate all the alternatives by examining them in terms of the criteria or conditions that a result must meet *(essentials)* and also in terms of those that are considered desirable *(desirables)*:

- What alternatives best meet the criteria of the desired result?
- What are the numbers behind the alternatives? What will they cost? How probable are they? How long will they take? How long will they last?
- Are they feasible, suitable, and cost-acceptable?

After evaluating each alternative, ask, "And then what?" Expect there to be at least one unwanted consequence. Be prepared to support your evaluations with reasons and justifications.

Step 7: Compare the alternatives, and choose the one that best meets the essential and desired criteria:

- First, eliminate all the alternatives that do not meet the essential conditions.
- Then eliminate, progressively, those alternatives that meet the desirable conditions least satisfactorily.
- Remember that the object is to make a good choice with the information available, not to make a perfect choice.

Step 8: Carry the choice forward:

- Share the vision.
- Pursue the question.
- Make the argument.
- Act on the resolution.
- Begin implementing the solution.

Ethics and policy choices presume action, though a decision to do nothing when one has the power to act is also action. Find the courage to act on the hard choices. Take responsibility for the choice, the action required to take it forward, and the consequences. Be willing to be held accountable—and to hold others accountable.

Step 9: Reflect on the consequences of the choice and the actions implementing it. Learn from both the processes and the consequences:

- What questions are raised?
- What arguments can be made for staying the course or changing?
- What could have been done better in arriving at the result?
- What could have been done better in implementing the result?
- What did you learn from the processes and the consequences?

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Appendix B Basic Guidelines for Codes of Business Conduct

This text, titled "Basic Guidelines for Codes of Business Conduct," was developed by the U.S. Department of Commerce in cooperation with the Russian Chamber of Commerce and Industry and the U.S.–Russia Business Development Committee. The guidelines are intended to assist organizations in developing their own codes of conduct. Questions may be addressed to Igor_Abramov@ita.doc.gov.

Basic Guidelines for Codes of Business Conduct

Introduction

In today's interconnected and interdependent world, where borders between states are becoming increasingly transparent, principles in business conduct are becoming criteria for building a good reputation in the international business community; they are the basis on which first impressions are formed and ongoing relationships maintained.

The purpose of this set of guidelines is to articulate general principles and standards that have been accepted in international business transactions. Although these principles apply generally, they are not intended to be an all-encompassing set of business practices and corporate principles. They must be adopted and implemented on a sector-by-sector and enterprise-by-enterprise[1] basis to take into account applicable laws, regulations, and other specific circumstances (such as the size of the enterprise).

Principles in Personal and Professional Relations

No laws or contracts can anticipate the possible vicissitudes of life. Very often an entrepreneur must make a decision based on the prompting of common sense and conscience. The key is to embody ethical and moral principles into personal and professional relations, and remember to:

- always do business within one's means;
- have respect for the partners and participants in a shared business venture;

[1] "Enterprise" as used in this document means both a legal entity such as an "enterprise," "company," "firm," or "organization," and an individual or small entrepreneur.

- refrain from violence or the threat of violence as methods of achieving business success;
- resist crime and corruption, and do one's part to see that crime and corruption become unprofitable for everyone; and
- live up to the trust placed in you; trust is the foundation of entrepreneurship and a key to success;
- endeavor to earn a reputation for integrity, competency, and excellence.

Corporate Governance: Relationships with Shareholders

A trusting relationship between management and shareholders is critical. Investors and lenders must be satisfied with the manner in which shareholders oversee the performance of management and participate in key decisions.

Sound principles of corporate governance include the following:

- delineating in the company charter the respective roles and responsibilities of both management and shareholders;
- transparency of voting rules;
- respect for the rights of minority shareholders;
- open communications with shareholders through the provision of audited accounts, and information about the progress and operations of the company; and
- a well-functioning board of directors who have the skills, the time, and the access to information needed to discharge its responsibilities effectively. The board will act in a fiduciary capacity on behalf of all the shareholders.

Relationship with Employees

Enterprises have an important responsibility towards their employees. A number of basic principles typically guide the attitudes of successful enterprises toward their employees:

- due regard for labor laws;
- commitment to adequate standards of worker health and safety;
- non-discrimination in the recruitment, compensation, and promotion of employees;
- respect for the rights of workers to engage in union activity;
- effective systems for consultation with employees on employment conditions and other issues that affect the employees;
- clearly stated and transparent policies relating to compensation, benefits, promotions, and other employment conditions; and

- commitments by the enterprise for contributions to pension plans; and strict protection of the integrity of company-sponsored pension plans.

These principles do not limit the right of an enterprise to enforce discipline on its labor force or to terminate workers in accordance with applicable law.

Relationship with Other Enterprises

A relationship of mutual trust in which all parties benefit is the most significant aspect of relations between partners in joint ventures, contractual arrangements, or business relations with other enterprises. The reputation of a company is its most valuable asset. Once the reputation of an enterprise is tarnished, it is very difficult to gain trust with the same or other business relations. A number of basic principles that typically promote mutual trust in business relations include:

- commitment to excellence in products and services;
- commitment to gain respect and trust in all business relations;
- respect for the sanctity of contracts and business relations;
- in case of a commercial dispute, a willingness to negotiate and compromise in order to reach an amicable solution; and
- respect for the sanctity of rule of law, including abiding in a timely manner with decisions of any court, arbitral panels, or other administrative bodies.

Relationship with the Global Community

As a company is an integral part of the community in which it operates, a sound relationship with the community is essential. Caring for the environment is a responsibility of the enterprise towards the immediate community, but it also extends to all communities and areas whose environment may be affected by the enterprise's activities. Enterprises must:

- be sensitive to concerns of the local population;
- communicate with the local population;
- abide by all applicable environmental laws and regulations; and
- show tolerance for people of other cultures, races, beliefs, and countries.

Relationship with Government Authorities

Well-managed enterprises are law abiding enterprises. To maintain a sound relationship with governmental authorities, enterprises must:

- pay all taxes that are owed and due;
- abide by all mandatory government and local regulations;

- obtain all governmental permits, licenses, and approvals required to do business;
- deal with government authorities on an arm's length basis, and make no attempts to improperly influence governmental decisions;
- establish transparent procedures regarding transactions engaged in by enterprises with any government agency or official or in dealings with any enterprise owned or controlled by a government agency or official; and
- in transactions with any government agency or officials or with any enterprise owned or controlled by a government or government official, include appropriate provisions to ensure compliance with international or national codes against extortion and bribery.

Proper Checks and Balances

A proper system of checks and balances is necessary to ensure the ongoing integrity of the enterprise and of its relationship with its constituencies. Such a system must be based on the general principles of full disclosure, management accountability, separation of responsibility, and sound internal controls.

An enterprise should have a full disclosure policy concerning:

- statements of the enterprise's strategic aims and policies, how these have been achieved in the past reporting period, and how the enterprise will act in the future;
- prompt reports to the enterprise's constituencies on events that could have a material effect on the enterprise; and
- prompt disclosure of all important relationships between officials of the enterprise and other parties.

The key element of a system of checks and balances is that the shareholders are able to monitor management's performance and to condemn poor performance, including through the removal of management.

Prevention of Extortion and Bribery

Principles concerning prevention of extortion and bribery are intended as a method of self-regulation by businesses. The voluntary acceptance of these principles by 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 protect enterprises that are subject to attempts at extortion.

The business community objects to all forms of extortion and bribery. The highest priority should be directed to ending extortion and bribery involving

politicians and senior officials. Bribery and extortion threaten democratic institutions and cause grave economic distortions.

All enterprises should observe both the letter and spirit of the following rules:

- no one may, directly or indirectly, demand or accept a bribe;
- no enterprise may, directly or indirectly, offer or give a bribe, and any demands for such a bribe must be rejected;
- enterprises should take measures reasonably within their power to ensure that any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered by the agent; that no part of any such payment is passed on by the agent as a bribe or otherwise in contravention of these principles;
- all financial transactions must be properly, accurately, and fairly recorded in appropriate books of account available for inspection by the board of directors as well as by auditors. Enterprises must take all necessary measures to establish independent systems of auditing in order to bring to light any transactions that contravene these principles. The enterprise must then take appropriate corrective action;
- the board of directors of the enterprise should periodically review compliance with these principles, and take appropriate action against any director or employee who acts in a manner inconsistent with these principles; and
- contributions to political parties or to individual politicians may be made only in accordance with applicable law, and in accordance with all applicable requirements for public disclosure of such contributions.

Creation of a Culture That Fosters Sound Business Standards and Corporate Practices

Ultimately, for an enterprise to live by sound business standards and ethical practices it must develop a culture that fosters such standards of integrity. This effort must be led by management and key shareholders. Steps that management and key shareholders may take to promote this positive attitude throughout the company include:

- the preparation and dissemination within the company of a code of conduct for employees;
- employee training;
- encourage proper conduct and sanctions against misconduct; and
- creation of an ethics office and ethics officers to advise and educate employees, and provide guarantees for confidential counseling.

Recommendations for Implementation of These Guidelines

All enterprises that wish to become part of the international business community are recommended to:

- draft their own codes of business conduct consistent with these principles and apply them to the particular circumstances in which their business is carried out; and
- develop clear policies, guidelines, and training programs for implementing and enforcing the provisions of their codes.

The extent to which enterprises decide to incorporate the above listed guidelines may depend on the size, specific circumstances, and the business of the company.

APPENDIX C SAMPLE INTEGRITY PACT

This appendix contains the text of an integrity pact that was written with the help of Transparency International and subsequently signed with the government of Colombia in June 2000. Its purpose was to strengthen transparency in the bidding process for government-financed projects.

Integrity Pact for Strengthening Transparency in the Procurement Process No. 02/01 MDN–ARC for the Acquisition of Two Sea Bound Patrol Aircraft for the Ministry of Defense—National Navy of Colombia

Before domestic and international public opinion, we the undersigned, on one side, THE LEGAL REPRESNTATIVES AND MANAGING OFFICERS OF THE OFFERORS PARTICIPATING IN THE SUBJECT PROCUREMENT PROCESS acting on our own behalf and in representation of the legal entities that we represent as offerors, as well as in the name of all the officers and advisors who have either (1) directly, indirectly, formally or accidentally determined our participation in procurement process No. 02/01 MDN-ARC for the acquisition of two sea bound patrol aircrafts for the Ministry of National Defense—National Navy of Colombia (herein referred to as the "Subject Procurement"); (2) intervened in the preparation of our proposals to participate in the Subject Procurement; or (3) assessed our officers or companies in the Subject Procurement (hereinafter referred to individually or collectively as the "Participating Entities") and, on the other side, the OFFICERS AND ADVISORS OF THE COLOMBIAN MINISTRY OF DEFENSE, OF THE COLOMBIAN NAVY AND OF THE COLOMBIAN AIR FORCE, who directly, indirectly, formally or accidentally have participated in the technical, economical and legal structuring of the Subject Procurement or in its procedures, promotion, revision and definition, have together agreed to subscribe to this INTEGRITY PACT, upon having considered that in Colombia any and all corruption forms are illegal and that the Colombian Government prosecutes and will continue prosecuting transgressors.

Notwithstanding due compliance with Colombian laws, this Pact focuses upon a *non-bribery commitment for purposes of obtaining or retaining a contract or any other improper advantage. This includes the commitment not to collude with third parties for purposes of limiting competition in the award of this contract, as well as the obligation not to engage in unfair practices and acts contrary to free competition and an objective award within the procurement process* (hereinafter referred to as the "Non-bribery Commitment").

The Non-bribery Commitment includes any type of *payment, gift or other favor, whether offered or granted and whether, in a direct or indirect manner or through third parties, to officials or advisors of the* Colombian Ministry of Defense, the Colombian Navy and the Colombian Air Force, for purposes of:

1. Attempting to have the project, or segments of it, structured in such a way as to advantage one or more Participating Entity;
2. Securing any undue advantage to any Participating Entity in the evaluation and selection process leading to the award of the contract;
3. Being awarded the contract;
4. Achieving substantial changes in the contract through adjustment of its specifications, terms or any other material component thereof;
5. Having public officials, advisors or the receiver or supervisor of the contract (or their personnel, advisors and subcontractors) approve proposals for (or otherwise accept) substandard performance of parameters, which have been proposed by a Participating Entity and accepted by the Colombian Ministry of Defense
6. Having public officials, advisors or the receiver or supervisor of the contract (or their personnel, advisors and subcontractors) refrain from a) duly monitoring project implementation, b) reporting violations of contract specifications or other forms of non-compliance in a timely fashion, or c) holding contractors fully accountable for compliance with their legal obligations;
7. Evading taxes, duties, levies, rights, licenses or any other legal obligation;
8. Inducing any public officer to breach his official duties in any manner.

Within the above framework and in full compliance with Colombian laws, the undersigned fully commit to the following:

1. The Participating Entities and The Colombian Minstry of Defense place importance on the submission of proposals within a free, impartial, competitive and abuse-free environment. Within this scope, the Participating Entities are pleased to confirm that:
   a. They have neither offered to grant, granted or facilitated any improper inducement or reward nor attempted to offer, grant or facilitate any inducement or improper reward, nor will they offer, grant, or facilitate any inducement or improper reward, whether directly or indirectly through agents or third parties, to any official or advisor of the Colombian Ministry of Defense, the Colombian Navy or the Colombian Air Force, including their relatives or business associates, for purposes of being awarded this contract, or retaining it or any other undue advantage, and
   b. They have neither colluded with others, nor will so collude, for the undue limiting of competition for the award of this contract.

c. The Participating Entities understand the material relevance of the foregoing commitments for the Colombian Ministry of Defense and their consequent seriousness.

On their own behalf, the Officials and Advisors of the Colombian Ministry of Defense—Colombian Navy and Air Force confirm that they have neither requested nor accepted, nor shall they request or accept, whether directly or indirectly through third parties, any payment or favor from the Participating Entities in exchange for favoring them in the award of the contract or its retention. In this same sense, the abovementioned officers declare that the service has a present and actual need for goods meeting the precise technical specifications described in the Subject Procurement.

2. The Participating Entities hereby commit to performing their activities within a framework of principles for ethical behavior and to taking all necessary measures to ensure that this Non-bribery Commitment be observed by all their managers and employees as well as by all third parties working with the company on this project, including their agents, consultants and subcontractors. This framework shall be recorded in each Participating Entity's ethical code, which should demonstrate that each corresponding entity will perform under internal compliance systems capable of detecting corruption risks and preventing the payment of bribes. As a condition of participation, each Participating Entity shall file their corresponding ethics code with the Colombian Ministry of Defense.

3. This commitment is submitted in the name and on behalf of the Presidents and/or General Managers of each Participating Entity. All those participating as a Consortium ("consorcio" as defined in article 7 of the Law 80 of 1993) or temporary union ("unión temporal" as defined in article 7 of the Law 80 of 1993) do also subscribe to this Pact in their own name and on behalf of each and all the Presidents and/or General Managers of the associated companies.

4. Each international company participating in the Subject Procurement hereby assumes this commitment in the name and on behalf of the President and / or General Managers of the company's parent companies, and this commitment shall include all managers and personnel of their Colombian subsidiaries, should the latter exist.

5. Regarding the submission of bids, Participating Entities hereby commit to presenting a serious tender, including reliable information, and not to present an artificially low price seeking to compensate such price during the execution of the contract by claiming additional payments. This commitment is understood as not limiting the possibility that additions to the contracts for other items may be accepted, whenever they are fair and duly supported.

6. Regarding business-related payments, the Participating Entities agree that:

a. Payments to agents and other third parties will be limited to reasonable compensation for clearly business-related services.

b. In the event of a claim related to non-compliance of the Non-bribery Commitment made in this Pact and the existence of serious evidence of such non-compliance assessed for this purpose by the Arbitrator designated under number 10 herein, the involved or successful Participating Entities hereby commit to furnishing to the Arbitrator, if so demanded, all information under their control, directly or indirectly, on (1) payments relating to the preparation of the tender and/or contract, (2) contract beneficiaries, and (3) all other the contract-related documentation.

c. Upon the completion of the performance of the contract, the legal representative of the successful Participating Entity will formally certify that no bribes or other illegal fees have been paid in order to obtain or retain this contract. The final accounting shall include brief details of the goods and services provided sufficient to establish the legitimacy of the payments made.

7. In the event of non-compliance with the ethical commitments made herein by officials and Participating Entities, a decision shall be issued by an Arbitrator, called the "Tender's Transparency Defender," in order to achieve the purposes of this Pact. His or her decisions shall be fair pursuant to Law 446 of 1998.

The Arbitrator shall hear the above-mentioned matters upon request of the Government, Transparency International, or any of the Participating Entities.

The above-mentioned Arbitrator shall have the qualifications provided for in the National Constitution to hold the position of Supreme Court or Constitutional Court Justice and shall be selected from the list of arbitrators of the Chamber of Commerce of Bogotá, through the public impaneling system.

8. Should a declaration of guilt be issued by the Arbitrator for the default of any Participating Entity's under its Non-bribery Commitment, the following legal effects will be triggered, in addition to all other processes contemplated under Colombian legislation and under any legislation corresponding to the jurisdiction of the contractual process:

a. Should the defaulting Participating Entity be the party to whom the contract was awarded ("Defaulting Contractor"), any of the remaining parties to this Pact shall be entitled to request, before a competent Judge, total nullity of the underlying contract on the basis that it lacks licit cause;

b. Where the party involved is a Defaulting Contractor, the underlying contract will be terminated immediately for due cause attributable to that party. The Defaulting Contractor is hereby obligated to unconditionally and irrevocably accept termination of the contract for due cause

immediately upon the declaration of default issued by the Arbitrators. The Defaulting Contractor will assume the contractual consequences derived from such termination.

c. Any defaulting Participating Entity shall be required to pay economic satisfaction equivalent to ten percent (10.00%) of the value of the contract, as an estimation of damages inflicted on the Participating Entities who have not defaulted under their Non-bribery Commitments. Should there be more than one complying Participating Entity, the resulting amount shall be distributed equally among them.

d. Any defaulting Participating Entity will abstain from participating in contracting processes of any nature with public entities of the Republic of Colombia for a period of five (5) years.

In order to ensure the effectiveness of the above-stated provisions, this Pact shall be included as an integral part of the contract to be signed by the chosen Participating Entity. The legal effects contemplated in letters a) and b) of this numeral shall solely be applicable to the Participating Entity awarded with the contract. The legal effects provided for in letters c) and d) shall be applicable to the awarded party or to any other Participating Entity.

9. All chiefs at the Colombian Ministry of Defense, the Colombian Navy and the Air Force, shall be obliged to undertake each and every action required to ensure that the competent entities promote and perform such investigations as may be required into the conduct of officers of any Participating Entity, or of their external advisors, who could have acted in default of the provisions of this Pact and of any applicable law.

10. In event of proven default to the Non-bribery Commitment, as established in numeral 8 of this Integrity Pact, the Colombian Ministry of Defense should exclude the defaulting Participating Entity from future eligibility for participation in direct contracting processes.

11. The Participating Entities hereby declare publicly that they know and accept the conditions of total transparency and equity, as established in the Documents of the Subject Procurement process and all their amendments. Thus, they commit not to seek to disqualify other Participating Entities using any argument concerning default of conditions not specifically included herein, throughout the period of evaluation of the proposals.

12. The Participating Entities do hereby accept that, throughout the period of evaluation of proposals, the criteria used will favor substantive aspects over formal ones, always seeking to favor free competition and the participation of the largest possible number of bids in the Subject Procurement process.

13. Additionally, the Colombian Government has established the Presidency's Program Against Corruption, with the purpose to serve as a channel for processing any investigation on any possible form of extortion or bribery

through public contracting. Participating Entities shall voluntarily report before this Program any information on irregular doings of which they have knowledge, which bears relation to the Subject Procurement process.

As evidence of acceptance of the foregoing, the officials of the Colombian Ministry of Defense, the Colombian Navy and the Colombian Air Force sign the present document on the _____

Officials and Advisors of the Colombian Ministry of Defense

Colombian Minister of Defense and other senior officer's signatures appear.

Officers and Advisors of the Colombian Navy

Names and functional position of additional signing officer follow.

Air Force Officers Participant in Technical Advisory of the Project

Names and functional position of several Air Force officers follow.

Legal Representatives and Officers of Particpitating Entities signing the present document on the date of submission of their respective proposals.

Witnesses

Names and position of several senior government officials, the Executive Director of Transparencia por Colombia and the Director of the Presidency's Program Against Corruption.

APPENDIX D SAMPLE DECLARATION OF INTEGRITY IN BUSINESS CONDUCT

This appendix reproduces the text of the Declaration of Integrity in Business Conduct in St. Petersburg, Russia. The Declaration was developed by the Center for Business Ethics and Corporate Governance with financial support from the U.S. Agency for International Development through the Eurasia Foundation. For more information about the declaration, see www.ethicsrussia.org/declaration.html.

Declaration of Integrity in Business Conduct in St. Petersburg, Russia

PRINCIPLES

The undersigned representative of the St. Petersburg business community ("Party to the Declaration") recognizes the following international principles of business conduct as the basis of this Declaration of Integrity in Business Conduct ("Declaration"):

Transparency. The functioning of a market economy presumes that each market participant conducts business with transparency, exchanging accurate information with other market participants on an efficient basis while respecting norms of confidentiality.

Sanctity of Contract. Respect for the sanctity of contract and the honoring of oral commitments lead to commercial ties built on goodwill, trust, and reputation for honesty.

Competition. A competitive economy provides transparent rules and opportunities for market participants, rewards quality of performance, and deters reproachable methods of obtaining advantages over other market participants.

Repudiation of Corrupt Practices. Corruption inflicts damage on market relations and on economy as a whole. Repudiation of corruption as a method of business facilitates the process of stabilizing the market.

Legal Settlement of Disputes. A civil market presumes the rejection of illegal and dangerous methods to defend economic interests. Any use of violence against a person in a business dispute, including the use of physical or psychological coercion, is impermissible.

Declaration

NOW, THEREFORE, in order to integrate the Declaration's principles fully into the business culture of St. Petersburg, by applying the principles consistently in concert with other members of the business community, each Party to the Declaration declares that:

Article I. Code of Business Conduct

A. The Party to the Declaration has adopted or shall adopt a Code of Business Conduct based upon the principles set forth in this Declaration ("Code").

B. The Party to the Declaration, which has adopted a Code, shall present the Secretary of the Governor of St. Petersburg's Council on Investment ("Depository") with a copy of the Code at the time of signing this Declaration.

C. The Party to the Declaration, which shall adopt a Code, shall present the Depository with a copy of the Code as soon as practicable but no later than ninety (90) days after signing this Declaration. In order to ensure that the Code conforms with the principles set forth in this Declaration, each Party to this Declaration which shall adopt a Code can utilize the Model Code of Ethics in Business Conduct attached to this Declaration.

D. The Party to the Declaration shall ensure that the Party's employees are familiar with the provisions of the Party's Code and systems of control that prevent actions by employees that are contrary to the provisions of the Party's Code.

E. The Party to the Declaration shall present the Depository a letter affirming that the Party has faithfully conducted business in accordance with the Party's Code on an annual basis.

Article II. Publication

A. By signing the Declaration, the Party to this Declaration hereby agrees to be included on a Register of Parties to the Declaration ("Register"), which shall be maintained and publicized by the Depository. The Register shall include the name of the Party to the Declaration and the dates the Party's representatives signed this Declaration.

B. The Depository shall update the Register regularly to include each new Party to the new Declaration.

Article III. Miscellaneous

A. The Party to the Declaration is signing and executing the Declaration voluntarily.

B. Two duly authorized representatives of the Party to the Declaration shall sign and seal two (2) copies of this Declaration. One (1) copy shall remain with the Party to this Declaration and the second shall be submitted to the Depository.

APPENDIX E SAMPLE SUPPLY CHAIN MANAGEMENT QUESTIONNAIRE

The U.S. company Hewlett-Packard requires its suppliers to answer the questions posed in this questionnaire regarding their compliance with the company's Supplier Code of Conduct. The company also requires its suppliers to complete three other self-assessment questionnaires: an environmental questionnaire, an occupational safety and health questionnaire, and a labor and employment questionnaire. (Text reproduced courtesy of Hewlett-Packard Company Supply Chain Operations. For more information, go to the Hewlett-Packard Web site, www.hp.com/hpinfo/globalcitizenship/environment/supplychain/index.html.)

HP Supplier Code of Conduct Questionnaire

Suppliers are requested to provide candid answers to the following questions. HP encourages its suppliers to accurately identify any areas in which their operations do not conform to the requirements of the HP Supplier Code of Conduct. As indicated in HP's Supplier Code of Conduct, HP expects to work collaboratively with its suppliers to achieve these standards.

Date:	
HP Contract Number(s), if applicable:	
Company Name:	Contact Name:
Address:	Position:
Telephone Number:	
Fax:	
E-mail:	

Purpose of the Questionnaire
This questionnaire is part of the annual performance report for HP suppliers under HP's Supplier Code of Conduct and Supplier Social and Environmental Responsibility Agreement. It provides a mechanism for HP to gather information about the environmental, occupational health and safety, and labor and employment practices and performance of its suppliers.

Scope of Questionnaire
Questions that ask for information about the "company" should be answered for the company as a whole.

Questions that ask for information about the "facility" should be answered for each company facility at which products supplied to HP are manufactured.

1. Does your company have a company representative for Corporate Social and Environmental Responsibility, or someone who otherwise has responsibility for addressing in your company the requirements set out in HP's Supplier Code of Conduct?

❒ Yes ❒ No If "yes," please provide contact information below.

Name: Position:

Address: Telephone Number:

Fax:

E-mail:

2. Does your company have procedures in place designed to ensure that the requirements set out in HP's Supplier Code of Conduct are met in your company?

❒ Yes ❒ No

2.1 If yes, please attach copy of procedures or provide URL. Attachment Title:
URL:

3. Does your company have procedures for internal reporting of any non-conformances with these requirements that may occur within your company? For correcting any non-conformances as they are identified by your company?

❒ Yes ❒ No

3.1 If yes, please attach copy of procedures or provide URL. Attachment Title:
URL:

4. Does your company have a code of conduct or similar standards to which you expect your suppliers to adhere? ❒ Yes ❒ No
4.1 If yes, please attach copy of procedures or provide URL. Attachment Title: URL:
5. Is your company currently subject to any enforcement action by any governmental authority for non-compliance with environmental, safety, or labor requirements at any facility at which products supplied to HP are manufactured? ❒ Yes ❒ No
5.1 If yes, please describe briefly the nature of the action and what steps your company is taking to resolve it.

APPENDIX F BASIC INFORMATION ON THE U.S. FOREIGN CORRUPT PRACTICES ACT

This material appeared as Appendix A of Fighting Global Corruption: Business Risk Management, *a booklet published in May 2001 by the U.S. Department of State's Bureau for International Narcotics and Law Enforcement Affairs. (The full text of the booklet is available at* www.state.gov/g/inl/rls/rpt/fgcrpt/2001.*) For further information about the Foreign Corrupt Practices Act, see the US Department of Commerce and US Department of Justice websites:* www.ita.doc.gov/legal; www.usdoj.gov/criminal/fraud.html.

Appendix A: Foreign Corrupt Practices Act—Antibribery Provisions (U.S. Department of Justice and U.S. Department of Commerce)

The following information is intended to provide a general description of the FCPA and is not intended to substitute for the advice of private counsel on specific issues related to the FCPA. Moreover, this information is not intended to set forth the present enforcement intentions of the U.S. Department of Justice, the U.S. Securities and Exchange Commission (SEC), or any other U.S. government agency with respect to particular fact situations.

INTRODUCTION

The 1988 Trade Act directed the Attorney General to provide guidance concerning the Department of Justice's enforcement policy with respect to the Foreign Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, et seq., to potential exporters and small businesses that are unable to obtain specialized counsel on issues related to the FCPA. The guidance is limited to responses to requests under the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure (described below) and to general explanations of compliance responsibilities and potential liabilities under the FCPA. The following information constitutes the Department of Justice's general explanation of the FCPA.

U.S. firms seeking to do business in foreign markets must be familiar with the FCPA. In general, the FCPA prohibits corrupt payments to foreign officials for the purpose of obtaining or keeping business. The Department of Justice is the chief enforcement agency, with a coordinate role played by the Securities and Exchange Commission (SEC). The Office of General Counsel of the

Department of Commerce also answers general questions from U.S. exporters concerning the FCPA's basic requirements and constraints.

Background

As a result of SEC investigations in the mid-1970s, over 400 U.S. companies admitted making questionable or illegal payment in excess of $300 million to foreign government officials, politicians, and political parties. The abuses ran the gamut from bribery of high foreign officials to secure some type of favorable action by a foreign government to so-called facilitating payments that allegedly were made to ensure that government functionaries discharged certain ministerial or clerical duties. Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system.

The FCPA was intended to have and has had an enormous impact on the way American firms do business. Several firms that paid bribes to foreign officials have been the subject of criminal and civil enforcement actions, resulting in large fines and suspension and debarment from federal procurement contracting, and their employees and officers have gone to jail. To avoid such consequences, many firms have implemented detailed compliance programs intended to prevent and to detect any improper payments by employees and agents.

Following the passage of the FCPA, the Congress became concerned that American companies were operating at a disadvantage compared to foreign companies who routinely paid bribes and, in some countries, were permitted to deduct the cost of such bribes as business expenses on their taxes. Accordingly, in 1988, the Congress directed the Executive Branch to commence negotiations in the Organization of Economic Cooperation and Development (OECD) to obtain the agreement of the United States' major trading partners to enact legislation similar to the FCPA. In 1997, almost ten years later, the United States and thirty-three other countries signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The United States ratified this Convention and enacted implementing legislation in 1998.

The antibribery provisions of the FCPA make it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. Since 1998, they also apply to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States.

The FCPA also requires companies whose securities are listed in the United States to meet its accounting provisions. See 15 U.S.C. § 78m. These accounting provisions, which were designed to operate in tandem with the antibribery provisions of the FCPA, require corporations covered by the provisions to make and keep books and records that accurately and fairly reflect the transactions of the

corporation and to devise and maintain an adequate system of internal accounting controls. The information below discusses only the antibribery provisions.

Enforcement

The Department of Justice is responsible for all criminal enforcement and for civil enforcement of the antibribery provisions with respect to domestic concerns and foreign companies and nationals. The SEC is responsible for civil enforcement of the antibribery provisions with respect to issuers.

Antibribery Provisions

Basic Prohibitions

The FCPA makes it unlawful to bribe foreign government officials to obtain or retain business. With respect to the basic prohibition, there are five elements which must be met to constitute a violation of the Act:

A. Who—The FCPA potentially applies to *any* individual, firm, officer, director, employee, or agent of a firm and any stockholder acting on behalf of a firm. Individuals and firms may also be penalized if they order, authorize, or assist someone else to violate the antibribery provisions or if they conspire to violate those provisions.

Under the FCPA, U.S. jurisdiction over corrupt payments to foreign officials depends upon whether the violator is an "issuer," a "domestic concern," or a foreign national or business.

An "issuer" is a corporation that has issued securities that have been registered in the United States or who is required to file periodic reports with the SEC.

A "domestic concern" is any individual who is a citizen, national, or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States, or a territory, possession, or commonwealth of the United States.

Issuers and domestic concerns may be held liable under the FCPA under either territorial or nationality jurisdiction principles. For acts taken within the territory of the United States, issuers and domestic concerns are liable if they take an act in furtherance of a corrupt payment to a foreign official using the U.S. mails or other means or instrumentalities of interstate commerce. Such means of instrumentalities include telephone calls, facsimile transmissions, wire transfers, and interstate or international travel. In addition, issuers and domestic concerns may be held liable for any act in furtherance of a corrupt payment taken *outside* the United States. Thus, a U.S. company or national may be held liable for a corrupt payment authorized by employees or agents operating entirely outside

the United States, using money from foreign bank accounts, and without any involvement by personnel located within the United States.

Prior to 1998, foreign companies, with the exception of those who qualified as "issuers," and foreign nationals were not covered by the FCPA. The 1998 amendments expanded the FCPA to assert territorial jurisdiction over foreign companies and nationals. A foreign company or person is now subject to the FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payment to take place within the territory of the United States. There is, however, no requirement that such act make use of the U.S. mails or other means or instrumentalities of interstate commerce.

Finally, U.S. parent corporations may be held liable for the acts of foreign subsidiaries where they authorized, directed, or controlled the activity in question, as can U.S. citizens or residents, themselves "domestic concerns," who were employed by or acting on behalf of such foreign-incorporated subsidiaries.

B. Corrupt Intent—The person making or authorizing the payment must have a corrupt intent, and the payment must be intended to induce the recipient to misuse his official position to direct business wrongfully to the payer or to any other person. You should note that the FCPA does not require that a corrupt act *succeed* in its purpose. The *offer or promise* of a corrupt payment can constitute a violation of the statute. The FCPA prohibits any corrupt payment intended to *influence* any act or decision of a foreign official in his or her official capacity, to *induce* the official to do or omit to do any act in violation of his or her lawful duty, to *obtain* any improper advantage, or to *induce* a foreign official to use his or her influence improperly to affect or influence any act or decision.

C. Payment—The FCPA prohibits paying, offering, promising to pay (or authorizing to pay or offer) money or anything of value.

D. Recipient—The prohibition extends only to corrupt payments to a *foreign official*, a *foreign political party* or *party official*, or any *candidate* for foreign political office. A "foreign official" means any officer or employee of a foreign government, a public international organization, or any department or agency thereof, or any person acting in an official capacity.

You should consider utilizing the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure for particular questions as to the definition of a "foreign official," such as whether a member of a royal family, a member of a legislative body, or an official of a state-owned business enterprise would be considered a "foreign official." In addition, you should consult the list of public international organizations covered under the FCPA that is available on the Department of Justice's FCPA website.

The FCPA applies to payments to *any* public official, regardless of rank or position. The FCPA focuses on the *purpose* of the payment instead of the particular duties of the official receiving the payment, offer, or promise of payment, and

there are exceptions to the antibribery provision for "facilitating payments for routine governmental action" (see below).

E. **Business Purpose Test**—The FCPA prohibits payments made in order to assist the firm in *obtaining* or *retaining business* for or with, or *directing business* to, any person. The Department of Justice interprets "obtaining or retaining business" broadly, such that the term encompasses more than the mere award or renewal of a contract. It should be noted that the business to be obtained or retained does not need to be with a foreign government or foreign government instrumentality.

Third-Party Payments

The FCPA prohibits corrupt payments through intermediaries. It is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. The *term "knowing" includes conscious disregard and deliberative ignorance.* The elements of an offense are essentially the same as described above, except that in this case the "recipient" is the intermediary who is making the payment to the requisite "foreign official."

Intermediaries may include joint venture partners or agents. To avoid being liable for corrupt third-party payments, U.S. companies are encouraged to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives. Such due diligence may include investigating potential foreign representatives and joint venture partners to determine if they are in fact qualified for the position, whether they have personal or professional ties to the government, the number and reputation of their clientele, and their reputation with the U.S. Embassy or Consulate and with local bankers, clients, and other business associates.

In addition, in negotiating a business relationship, the U.S. firm should be aware of so-called "red flags," i.e., unusual payment patterns or financial arrangements, a history of corruption in the country, a refusal by the foreign joint venture partner or representative to provide a certification that it will not take any action in furtherance of an unlawful offer, promise, or payment to a foreign public official and not take any act that would cause the U.S. firm to be in violation of the FCPA, unusually high commissions, lack of transparency in expenses and accounting records, apparent lack of qualifications or resources on the part of the joint venture partner or representative to perform the services offered, and whether the joint venture partner or representative has been recommended by an official of the potential governmental customer.

You should seek the advice of counsel and consider utilizing the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure for particular questions relating to third-party payments.

Permissible Payments and Affirmative Defenses

The FCPA contains an explicit exception to the bribery prohibition for "facilitating payments" for "routine governmental action" and provides affirmative defenses which can be used to defend against alleged violations of the FCPA.

Facilitating Payments for Routine Governmental Actions

There is an exception to the antibribery prohibition for payments to facilitate or expedite performance of a "routine governmental action." The statute lists the following examples: obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products; and scheduling inspections associated with contract performance or transit of goods across country.

Actions "similar" to these are also covered by this exception. If you have a question about whether a payment falls within the exception, you should consult with counsel. You should also consider whether to utilize the Justice Department's Foreign Corrupt Practices Opinion Procedure, described below.

"Routine governmental action" does not include any decision by a foreign official to award new business or to continue business with a particular party.

Affirmative Defenses

A person charged with a violation of the FCPA's antibribery provisions may assert as a defense that the payment was lawful under the written laws of the foreign country or that the money was spent as part of demonstrating a product or performing a contractual obligation.

Whether a payment was lawful under the written laws of the foreign country may be difficult to determine. You should consider seeking the advice of counsel or utilizing the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure when faced with an issue of the legality of such a payment.

Moreover, because these defenses are "affirmative defenses," the defendant is required to show in the first instance that the payment met these requirements. The prosecution does not bear the burden of demonstrating in the first instance that the payments did not constitute this type of payment.

Sanctions against Bribery

Criminal

The following criminal penalties may be imposed for violations of the FCPA's antibribery provisions: corporations and other business entities are subject to a fine of up to $2,000,000; officers, directors, stockholders, employees, and agents

are subject to a fine of up to $100,000 and imprisonment for up to five years. Moreover, under the Alternative Fines Act, these fines may be actually quite higher—the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment. You should also be aware that fines imposed on individuals may not be paid by their employer or principal.

Civil

The Attorney General or the SEC, as appropriate, may bring a civil action for a fine of up to $10,000 against any firm *as well* as any officer, director, employee, or agent of a firm, or stockholder acting on behalf of the firm, who violates the antibribery provisions. In addition, in an SEC enforcement action, the court may impose an additional fine not to exceed the greater of (i) the gross amount of the pecuniary gain to the defendant as a result of the violation, or (ii) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from $5,000 to $100,000 for a natural person and $50,000 to $500,000 for any other person.

The Attorney General or the SEC, as appropriate, may also bring a civil action to enjoin any act or practice of a firm whenever it appears that the firm (or an officer, director, employee, agent, or stockholder acting on behalf of the firm) is in violation (or about to be) of the antibribery provisions.

Other Governmental Action

Under guidelines issued by the Office of Management and Budget, a person or firm found in violation of the FCPA may be barred from doing business with the Federal government. *Indictment alone can lead to suspension of the right to do business with the government.* The President has directed that no executive agency shall allow any party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded that party from participation in a procurement or nonprocurement activity.

In addition, a person or firm found guilty of violating the FCPA may be ruled ineligible to receive export licenses; the SEC may suspend or bar persons from the securities business and impose civil penalties on persons in the securities business for violations of the FCPA; the Commodity Futures Trading Commission and the Overseas Private Investment Corporation both provide for possible suspension or debarment from agency programs for violation of the FCPA; and a payment made to a foreign government official that is unlawful under the FCPA cannot be deducted under the tax laws as a business expense.

Private Cause of Action

Conduct that violates the antibribery provisions of the FCPA may also give rise to a private cause of action for treble damages under the Racketeer Influenced and Corrupt Organizations Act (RICO), or to actions under other federal or

state laws. For example, an action might be brought under RICO by a competitor who alleges that the bribery caused the defendant to win a foreign contract.

Guidance from the Government

The Department of Justice has established a Foreign Corrupt Practices Act Opinion Procedure by which any U.S. company or national may request a statement of the Justice Department's present enforcement intentions under the antibribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure may be found at 28 CFR Part 80. Under this procedure, the Attorney General will issue an opinion in response to a specific inquiry from a person or firm within thirty days of the request. (The thirty-day period does not run until the Department of Justice has received all the information it requires to issue the opinion.) Conduct for which the Department of Justice has issued an opinion stating that the conduct conforms with current enforcement policy will be entitled to a presumption, in any subsequent enforcement action, of conformity with the FCPA.

APPENDIX G FIGHTING CORRUPTION AND SAFEGUARDING INTEGRITY

This material appeared as Appendix C of Fighting Global Corruption: Business Risk Management, *a guide published in May 2001 by the U.S. Department of State's Bureau for International Narcotics and Law Enforcement Affairs. (The full text of the booklet is available at* www.state.gov/g/inl/rls/rpt/fgcrpt/2001.*)*

Appendix C: Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials

The following Anticorruption Principles were developed and approved by the United States Government in the preparation of the First Global Forum on Fighting Corruption and Safeguarding Integrity among Justice and Security Officials, held in Washington, D.C., in February 1999. Discussion at this Conference, among the many participants from around the world, addressed most of these principles. Today they continue to serve as an effective checklist in the fight against corruption and safeguarding integrity among government officials.

NOTE: Annotated Version. In this document, each of the practices is followed by a parenthetical letter or letters indicating from which source or sources the statement of the practice was derived, including agreements, documents, and other sources in existing international literature or experience regarding corruption, public integrity, or related matters of crime. Sources including those from the UN, OECD, OAS, GCA, EU, and CoE are identified in the listing at the end of this document.

Corruption, dishonesty, and unethical behavior among public officials represent serious threats to the basic principles and values of government, undermining public confidence in democracy and threatening to erode the rule of law. The aim of these Guiding Principles is to promote public trust in the integrity of officials within the public sector by preventing, detecting, and prosecuting or sanctioning official corruption and unlawful, dishonest, or unethical behavior.

It is anticipated that these guiding principles will be implemented by each government in a manner appropriately tailored to the political, legal, economic, and cultural circumstances of the country. Due to the different functions and missions of different judicial, justice, and security officials, not all practices are applicable in all categories. This document does not prescribe a specific solution to corruption among justice and security officials, but rather offers a list of potentially effective corruption-fighting practices for consideration.

The list of practices, which may apply to other sectors of government in addition to justice and security officials, is intended to help guide and assist governments in developing effective and appropriate means to best achieve their specific public integrity ends.

1. **Establish and maintain systems of government hiring of justice and security officials that assure openness, equity, and efficiency and promote hiring of individuals of the highest levels of competence and integrity.**

   Effective practices include:

   - Systems for equitable compensation adequate to sustain appropriate livelihood without corruption (I, K, O);
   - Systems for open and merit based hiring and promotion with objective standards (C, I, J);
   - Systems which provide assurance of a dignified retirement without recourse to corruption (I, K, O);
   - Systems for thorough screening of all employees for sensitive positions (M);
   - Systems for probationary periods after initial hiring (M);
   - Systems which integrate principles of human rights with effective measures for preventing and detecting corruption (M).

2. **Adopt public management measures that affirmatively promote and uphold the integrity of justice and security officials.**

   Effective practices include:

   - An impartial and specialized institution of government to administer ethical codes of conduct (C, D, I, J, K);
   - Training and counseling of officials to ensure proper understanding of their responsibilities and the ethical rules governing their activities as well as their own professionalism and competence (C);
   - Training addressed to issues of brutality and other civil rights violations that often correlate with corrupt activity among justice and security officials (O, substantial international literature relating to human rights issues);
   - Managerial mechanisms that enforce ethical and administrative standards of conduct (B, D, H, I, J, K);
   - Systems for recognizing employees who exhibit high personal integrity or contribute to the anti-corruption objectives of their institution (O);
   - Personnel systems that include regular rotation of assignments to reduce insularity that fosters corruption (B, D, J, K, O);
   - Systems to provide appropriate oversight of discretionary decisions and of personnel with authority to make discretionary decisions (B, D, J, K, O);

- Systems that hold supervisors accountable for corruption control (B, D, J, K, O);
- Positive leadership which actively practices and promotes the highest standards of integrity and demonstrates a commitment to prevent and detect corruption, dishonesty, and unethical behavior (I, O);
- Systems for promoting the understanding and application of ethical values and the standards of conduct required (I, O);
- Mechanisms to support officials in the public sector where there is evidence that they have been unfairly or falsely accused (O).

3. **Establish ethical and administrative codes of conduct that proscribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity.**

   Effective practices include:

   - Prohibitions or restrictions governing officials participating in official matters in which they have a substantial direct or indirect financial interest (I, J, O);
   - Prohibitions or restrictions against officials participating in matters in which persons or entities with whom they are negotiating for employment have a financial interest (I, J, O);
   - Limitations on activities of former officials in representing private or personal interests before their former governmental agency or department, such as prohibiting the involvement of such officials in cases for which former officials were personally responsible, representing private interests by their improper use of influence upon their former governmental agency or department, or using confidential knowledge or information gained during their previous employment as an official in the public sector (O);
   - Prohibitions and limitations on the receipt of gifts or other advantages (F, I, J, O);
   - Prohibitions on improper personal use of government property and resources (C, F, O).

4. **Establish criminal laws and sanctions effectively prohibiting bribery, misuse of public property, and other improper uses of public office for private gain.**

   Effective practices include:

   - Laws criminalizing the giving, offer, or promise by any party ("active") and the receipt or solicitation by any official ("passive") of a bribe, and criminalizing or sanctioning the giving or receiving of an improper gratuity or improper gift (A, C, E, F, G, J, others);
   - Laws criminalizing or sanctioning the illegal use by officials of government information (C, F);

- Laws affirming that all justice and security officials have a duty to provide honest services to the public and criminalizing or sanctioning breaches of that duty (J);
- Laws criminalizing improper use of official power or position, either to the detriment of the government or for personal enrichment.

5. **Adopt laws, management practices and auditing procedures that make corruption more visible and thereby promote the detection and reporting of corrupt activity.**

   Effective practices include:

   - Systems to promote transparency, such as through disclosing the financial circumstances of senior officials (C, I, J, K).
   - Measures and systems to ensure that officials report acts of corruption, and to protect the safety, livelihood, and professional situation of those who do, including protection of their identities to the extent possible under the law (F, I, J);
   - Measures and systems that protect private citizens who, in good faith, report acts of official corruption (C, D, E, F, I, J, M);
   - Government revenue collection systems that deter corruption, in particular by denying tax deductibility for bribes or other expenses linked to corruption offenses (B, C, D, K);
   - Bodies responsible for preventing, detecting, and eradicating corruption, and for punishing or disciplining corrupt officials, such as independent ombudsmen, inspectors general, or other bodies responsible for receiving and investigating allegations of corruption (B, D, I, J);
   - Appropriate auditing procedures applicable to public administration and the public sector (D, I, J, K);
   - Appropriately transparent procedures for public procurement that promote fair competition and deter corrupt activity (B, C, D, F, I, K);
   - Systems for conducting regular threat assessments on corrupt activity (O).

6. **Provide criminal investigators and prosecutors sufficient and appropriate powers and resources to effectively uncover and prosecute corruption crimes.**

   Effective practices include:

   - Empowering courts or other competent authorities to order that bank, financial, or commercial records be made available or be seized, and that bank secrecy not prevent such availability or seizure (C, E, K, L, M);
   - Authorizing use under accountable legal supervision of wiretaps or other interception of electronic communication, or recording devices, in investigation of corruption offenses (E, F, K, M);

- Authorizing, where appropriate, the admissibility of electronic or other recorded evidence in criminal proceedings relating to corruption offenses (E, F, K, M);
- Employing where appropriate systems whereby persons charged with corruption or other corruption-related criminal offenses may secure more advantageous treatment in recognition of assisting in the disclosure and prosecution of corruption offenses (E, F, L, M);
- The development of appropriate information gathering mechanisms to prevent, detect, and deter official corruption and dishonesty (O).

7. **Ensure that investigators, prosecutors, and judicial personnel are sufficiently impartial to fairly and effectively enforce laws against corruption.**

   Effective practices include:

   - Personnel systems to attract and retain high-quality corruption investigators (O);
   - Systems to promote the specialization and professionalization of persons and organizations in charge of fighting corruption (D, E, K);
   - Establishment of an independent mechanism within judicial and security agencies with the duty to investigate corruption allegations, and with the power to compel statements and obtain documents from all agency personnel (I, O);
   - Codes of conduct or other measures that require corruption investigators, prosecutors, and judges to recuse themselves from any case in which their political, financial, or personal interests might reasonably raise questions about their ability to be impartial (O);
   - Systems that allow for the appointment, where appropriate, of special authorities or commissions to handle or oversee corruption investigations and prosecutions (O);
   - Standards governing the initiation of corruption investigations to ensure that public officials are not targeted for investigation for political reasons (O).

8. **Ensure that criminal and civil law provide for sanctions and remedies that are sufficient to effectively and appropriately deter corrupt activity.**

   Effective practices include:

   - Laws providing substantial criminal penalties for the laundering of the proceeds of public corruption violations (A, C, E, K, M);
   - Laws providing for substantial incarceration and appropriate forfeiture of assets as a potential penalty for serious corruption offenses (A, C, E, G, others);

- Provisions to support and protect whistleblowers and aggrieved private parties (B, D, I, K).

9. **Ensure that the general public and the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society.**

   Effective practices include:

   - Establishing public reporting requirements for justice and security agencies that include disclosure about efforts to promote integrity and combat corruption (D, H, J, K);
   - Enacting laws or other measures providing a meaningful public right of access to information about corrupt activity and corruption control activities (D, H, I, J, K).

10. **Develop to the widest extent possible international cooperation in all areas of the fight against corruption.**

    Effective practices include:

    - Systems for swift and effective extradition so that corrupt public officials can face judicial process (A, C, E, G, I, M, others);
    - Systems to enhance international legal assistance to governments seeking to investigate and prosecute corruption violations (A, C, E, G, I, M, others);
    - Systems to facilitate and accelerate international seizure and repatriation of forfeitable assets associated with corruption violations (A, C, E, F, G, I, M, others);
    - Inclusion of provisions on combating corruption in appropriate bilateral and multilateral instruments (I, O).

11. **Promote, encourage, and support continued research and public discussion in all aspects of the issue of upholding integrity and preventing corruption among justice and security officials and other public officials whose responsibilities relate to upholding the rule of law.**

    Effective practices include:

    - Appointment of independent commissions or other bodies to study and report on the effectiveness of efforts to combat corruption in particular agencies involved in justice and security matters (O);
    - Supporting the efforts of multilateral and non-governmental organizations to promote public integrity and prevent corruption (O);
    - Promoting efforts to educate the public about the dangers of corruption and the importance of general public involvement in government efforts to control corrupt activity (C, I, J, K, O).

12. **Encourage activities of regional and other multilateral organizations in anti-corruption efforts.**

    Effective practices include:

    - Becoming parties, as appropriate, to applicable multilateral legal instruments containing provisions to address corruption (I);
    - Cooperating in carrying out programs of systematic follow-up to monitor and promote the full implementation of appropriate measures to combat corruption, through mutual assessment by governments of their legal and practical measures to combat corruption, as established by pertinent international agreements (A, E, L, I, O);
    - Participating actively in future international conferences on promoting integrity and combating corruption among justice and security officials.

Listing of Sources for Guiding Principles

A. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

B. OECD Council Recommendations against Corruption, May 1997.

C. OAS Inter-American Convention against Corruption.

D. Council of Europe Committee of Ministers 20 Recommendations against Corruption, November 1997.

E. Council of Europe Criminal Law Convention on Corruption.

F. Council of Europe Conclusions of the Second European Conference of Specialized Services in the Fight against Corruption, October 1997.

G. European Union Convention on Corruption of EU or Member Officials, May 1997.

H. European Parliament Resolution on Combating Corruption in Europe, 1995.

I. Global Coalition for Africa, Principles to Combat Corruption in African Countries, February 1999.

J. United Nations Secretariat Manual: Practical Measures against Corruption, July 1990.

K. United Nations Commission on Crime Prevention and Criminal Justice: Report of Expert Group on Action against Corruption and Bribery, March 1997.

L. United Nations Convention against Illicit Trafficking in Narcotic Drugs or Psychotropic Substances.

M. United Nations Convention against Transnational Organized Crime, 2000.

N. Financial Action Task Force, 40 Recommendations.

O. Observed experience of governments ("common sense").

APPENDIX H EXTRACTS FROM THE U.S. FEDERAL SENTENCING GUIDELINES FOR ORGANIZATIONS

These sentencing guidelines for organizational defendants were published as Chapter 8, "Sentencing of Organizations," in United States Sentencing Commission, Guidelines Manual *(Washington, D.C.: U.S. Sentencing Commission, November 2002). The full text of the manual can be found at* www.ussc.gov/2002guid/TABCON02.htm.

Chapter 8: Sentencing of Organizations

INTRODUCTORY COMMENTARY

The guidelines and policy statements in this chapter apply when the convicted defendant is an organization. Organizations can act only through agents and, under federal criminal law, generally are vicariously liable for offenses committed by their agents. At the same time, individual agents are responsible for their own criminal conduct. Federal prosecutions of organizations therefore frequently involve individual and organizational co-defendants. Convicted individual agents of organizations are sentenced in accordance with the guidelines and policy statements in the preceding chapters. This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment, adequate deterrence, and incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct.

This chapter reflects the following general principles: First, the court must, whenever practicable, order the organization to remedy any harm caused by the offense. The resources expended to remedy the harm should not be viewed as punishment, but rather as a means of making victims whole for the harm caused. Second, if the organization operated primarily for a criminal purpose or primarily by criminal means, the fine should be set sufficiently high to divest the organization of all its assets. Third, the fine range for any other organization should be based on the seriousness of the offense and the culpability of the organization. The seriousness of the offense generally will be reflected by the highest of the pecuniary gain, the pecuniary loss, or the amount in a guideline offense level fine table. Culpability generally will be determined by the steps taken by the organization prior to the offense to prevent and detect criminal

conduct, the level and extent of involvement in or tolerance of the offense by certain personnel, and the organization's actions after an offense has been committed. Fourth, probation is an appropriate sentence for an organizational defendant when needed to ensure that another sanction will be fully implemented, or to ensure that steps will be taken within the organization to reduce the likelihood of future criminal conduct.

Section 8A1.2 Application Instructions—Organizations

Commentary

Application Notes:

3. The following are definitions of terms used frequently in this chapter:

. . .

(b) "High-level personnel of the organization" means individuals who have substantial control over the organization or who have a substantial role in the making of policy within the organization. The term includes: a director; an executive officer; an individual in charge of a major business or functional unit of the organization, such as sales, administration, or finance; and an individual with a substantial ownership interest.

(c) "Substantial authority personnel" means individuals who within the scope of their authority exercise a substantial measure of discretion in acting on behalf of an organization. The term includes high-level personnel, individuals who exercise substantial supervisory authority (e.g., a plant manager, a sales manager), and any other individuals who, although not a part of an organization's management, nevertheless exercise substantial discretion when acting within the scope of their authority (e.g., an individual with authority in an organization to negotiate or set price levels or an individual authorized to negotiate or approve significant contracts). Whether an individual falls within this category must be determined on a case-by-case basis.

(d) "Agent" means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

(e) An individual "condoned" an offense if the individual knew of the offense and did not take reasonable steps to prevent or terminate the offense.

(f) "Similar misconduct" means prior conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, prior Medicare fraud would be misconduct similar to an instant offense involving another type of fraud.

. . .

(k) An "effective program to prevent and detect violations of law" means a program that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct. Failure to prevent or detect the instant offense, by itself, does not mean that the program was not effective. The hallmark of an effective program to prevent and detect violations of law is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. Due diligence requires at a minimum that the organization must have taken the following types of steps:

(1) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.

(2) Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.

(3) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.

(4) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, e.g., by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.

(5) The organization must have taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.

(6) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

(7) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses—including any necessary modifications to its program to prevent and detect violations of law.

The precise actions necessary for an effective program to prevent and detect violations of law will depend upon a number of factors. Among the relevant factors are:

(i) **Size of the organization**—The requisite degree of formality of a program to prevent and detect violations of law will vary with the size of the organization: the larger the organization, the more formal the program typically should be. A larger organization generally should have established written policies defining the standards and procedures to be followed by its employees and other agents.

(ii) **Likelihood that certain offenses may occur because of the nature of its business**—If because of the nature of an organization's business there is a substantial risk that certain types of offenses may occur, management must have taken steps to prevent and detect those types of offenses. For example, if an organization handles toxic substances, it must have established standards and procedures designed to ensure that those substances are properly handled at all times. If an organization employs sales personnel who have flexibility in setting prices, it must have established standards and procedures designed to prevent and detect price-fixing. If an organization employs sales personnel who have flexibility to represent the material characteristics of a product, it must have established standards and procedures designed to prevent fraud.

(iii) **Prior history of the organization**—An organization's prior history may indicate types of offenses that it should have taken actions to prevent. Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct.

An organization's failure to incorporate and follow applicable industry practice or the standards called for by any applicable governmental regulation weighs against a finding of an effective program to prevent and detect violations of law.

Section 8C2.5 Culpability Score

(a) Start with 5 points and apply subsections (b) through (g) below.

(b) Involvement in or Tolerance of Criminal Activity

If more than one applies, use the greatest:

(1) If —

(A) the organization had 5,000 or more employees and

(i) an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) the unit of the organization within which the offense was committed had 5,000 or more employees and

(i) an individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) tolerance of the offense by substantial authority personnel was pervasive throughout such unit, add 5 points; or

. . .

(f) Effective Program to Prevent and Detect Violations of Law

If the offense occurred despite an effective program to prevent and detect violations of law, subtract 3 points.

Provided, that this subsection does not apply if an individual within high-level personnel of the organization, a person within high-level personnel of the unit of the organization within which the offense was committed where the unit had 200 or more employees, or an individual responsible for the administration or enforcement of a program to prevent and detect violations of law participated in, condoned, or was willfully ignorant of the offense. Participation of an individual within substantial authority personnel in an offense results in a rebuttable presumption that the organization did not have an effective program to prevent and detect violations of law.

Provided, *further*, that this subsection does not apply if, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate governmental authorities.

APPENDIX 1 EXTRACTS FROM THE AUSTRALIAN CRIMINAL CODE

Reproduced here are sections of the Australian Criminal Code relating to corporate criminal responsibility. The full text, prepared by the Office of Legislative Drafting, Attorney-General's Department, Canberra, is available at www.ausimm.com/ohs/crimcode.pdf.

Part 2.5 Corporate criminal responsibility: Division 12

12.1 General Principles

(1) This Code applies to bodies corporate in the same way as it applies to individuals. It so applies with such modifications as are set forth in this Part, and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.

(2) A body corporate may be found guilty of any offence, including one punishable by imprisonment.

12.2 Physical elements

If a physical element of an offence is committed by an employee, agent, or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.

12.3 Fault elements other than negligence

(1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly, or impliedly authorised or permitted the commission of the offence.

(2) The means by which such authorisation or permission may be established include:

(a) proving that the body corporate's board of directors intentionally, knowingly, or recklessly carried out the relevant conduct, or expressly, tacitly, or impliedly authorised or permitted the commission of the offence; or

(b) proving that a high managerial agent of the body corporate intentionally, knowingly, or recklessly engaged in the relevant conduct, or expressly, tacitly, or impliedly authorised or permitted the commission of the offence; or

(c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated, or led to non-compliance with the relevant provision; or

(d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

(3) Paragraph (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.

(4) Factors relevant to the application of paragraph (2)(c) or (d) include:

(a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and

(b) whether the employee, agent, or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the act.

(5) If recklessness is not a fault element in relation to a physical element of an offence, subsection (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section:

board of directors means the body (by whatever named called) exercising the executive authority of the body corporate.

corporate culture means an attitude, policy, rule, course of conduct, or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes [sic] place.

high managerial agent means an employee, agent, or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy.

12.4 Negligence

(1) The test of negligence for a body corporate is that set out in section 5.5.

(2) If:

(a) negligence is a fault element in relation to a physical element of an offence, and

(b) no individual employee, agent, or officer of the body politic has that fault element;

that fault element may exist on the part of the body corporate if the body corporate's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents, or officers).

(3) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control, or supervision of the conduct of one or more of its employees, agents, or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.5 Mistake of fact (strict liability)

(1) A body corporate can only rely on section 9.2 (mistake of fact [strict liability] in respect of conduct that would, apart from this section, constitute an offence on its part if:

(a) the employee, agent, or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and

(b) the body corporate proves that it exercised due diligence to prevent the conduct.

(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:

(a) inadequate corporate management, control, or supervision of the conduct of one or more of its employees, agents, or officers; or

(b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

12.6 Intervening conduct or event

A body corporate cannot rely on section 10.1 (intervening conduct or event) in respect of the physical element of an offence brought about by another person if the other person is an employee, agent, or officer of the body corporate.