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AFA
Agence Française Anticorruption



**ANTI-CORRUPTION
GUIDE FOR SMEs
AND SMALLER INTERMEDIATE-
SIZED ENTERPRISES**



YOU ARE AN SME ARE YOU WONDERING WHETHER YOUR COMPANY NEEDS ANTI-CORRUPTION MEASURES?

- Am I required to put in place anti-corruption measures?
- It's expensive and time-consuming.
- What's the point? Corruption isn't an issue at our company.

- My major customers have asked about our anti-corruption policy.
- I've had similar questions from our bank.
- My competitor has a widely publicised policy.



**THIS AFA GUIDE WILL ANSWER
YOUR QUESTIONS**





AS AN SME, YOU AREN'T **LEGALLY REQUIRED** TO PUT ANTI-CORRUPTION MEASURES IN PLACE. BUT IT'S IN YOUR **INTEREST** TO DO SO.



By law, large companies and public contractors must ask all their business partners, regardless of size, whether they have anti-corruption measures in place.

- ☑ SMEs that have anti-corruption measures in place are **positioning themselves favourably with their customers.**

Banks and investors conduct due diligence on their customers.

- ☑ You stand a better chance of **securing a loan or raising funds** if you have anti-corruption measures in place.

Are you sure that corruption isn't an issue at your company?

If corrupt practices or bribery come to light, your reputation could be severely tarnished and the senior manager could even face prosecution.

- ☑ Anti-corruption measures **protect your reputation.**

Putting these measures in place gives you the opportunity to review some of your working methods and to make sure that your rules are being followed across your organisation.

- ☑ This can **improve your business management.**

**IS IT HARD TO DO?
WHERE DO I START?**



TO GET STARTED, HERE ARE NINE BASIC MEASURES:



As **senior management, lead by example** and **make clear** that your company takes a zero-tolerance approach to corruption (such as in your rules of procedure and on your website).



Identify any practices or situations that could expose your organisation to corruption risks, such as export, business with large third parties, commercial intermediaries, submission for public contracts, or application for official permits, licences or other authorisations.



Draw up a set of **rules** governing relations with your partners, including on gifts and hospitality (giving and receiving), conflicts of interest and sponsorship.



Provide your staff with regular **information and training** on anti-corruption measures and **raise awareness** about preventing conflicts of interest.



Conduct due diligence on your key partners, especially if you use external sales agents.



Inform your employees that they can **report** any suspicious situations to you in strict confidence.



Regularly **check** that your rules are being followed, especially for operations that you consider to be especially risky.



Keep detailed and comprehensive **accounts** in accordance with applicable rules and principles and **check** that every record is accompanied by supporting documentation.



Take disciplinary action against any staff who breach the rules.







FOREWORD



The Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016¹ requires companies with more than 500 employees and turnover in excess of €100 million to implement a programme for preventing and detecting corruption.

This legal requirement does not apply to small and medium-sized enterprises (SMEs) or smaller intermediate-sized enterprises² that fall below one or both of these thresholds. But these companies stand to benefit from developing an anti-corruption programme voluntarily, for two key reasons.

First, if they want their business relationships to prosper, they have to show their integrity to their major customers, suppliers and financial service providers, which are required by this same law to conduct third-party due diligence.

Second, anti-corruption measures significantly lower the risk of offences, which can leave the senior manager facing criminal prosecution and cause immense damage to a company's finances and reputation.

In 2020, the French Anti-Corruption Agency (AFA) conducted a nationwide survey to assess the maturity of anti-corruption programmes. It found that 50% of companies that are not subject to the requirements of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 had put anti-corruption measures in place. While this finding is encouraging, we believe that more work needs to be done on this front.

In January 2021, the AFA published new guidelines to help public and private sector entities prevent and detect corruption. The first section of the guide applies to all organisations, regardless of whether they are required by law to put in place an anti-corruption programme.

The AFA recognizes that not all SMEs and smaller intermediate-sized enterprises have the financial resources, staffing levels and expertise needed to deploy anti-corruption measures within their organisation. This guide is intended to help such companies comply with the agency's guidelines.

This practical guide was developed in conjunction with the French Confederation of Small and Medium-Sized Enterprises (CPME) and the French Federation of Intermediate-Sized Enterprises (METI). Its instructive, user-friendly format, including illustrated examples and practical solutions, is designed to help smaller companies – i.e. organisations that are not subject to the requirements of the Sapin II Act – protect themselves against the risks to which they are exposed.

Charles Duchaine

Director, French Anti-Corruption Agency

¹ Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 (also known as the Sapin II Act).

² Decree 2008-1354 of 18 December 2008 sets out the classification criteria for different types of company:

– A microenterprise is a company that has fewer than 10 employees, and annual turnover or a balance sheet total of up to €2 million

– An SME is a company that has fewer than 250 employees, and annual turnover of up to €50 million or a balance sheet total of no more than €43 million

– A mid-sized firm is a company that has fewer than 5,000 employees, and annual turnover of up to €1.5 billion or a balance sheet total of no more than €2 billion





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SECTION 1 BRIBERY AND INFLUENCE PEDDLING

Bribery and influence peddling are two offences laid down in the French Criminal Code. They may be committed by any individual or legal entity, regardless of size, business sector or location.



What are bribery and influence peddling?

• Bribery

The offence of **active bribery**³ is committed when a person (i.e. the bribe-giver) offers or agrees to give, at any time, directly or indirectly,⁴ any offer, promise, donation, gift or advantage for themselves or others, in order to induce a public official⁵ to carry out or abstain from carrying out an act pertaining to their office, duty or mandate (i.e. what the bribe-giver expects in return).

The offence of **passive bribery**⁶ is committed when a public official (i.e. the bribe-taker) unlawfully requests or accepts, at any time, directly or indirectly, any offer, promise, donation, gift or advantage for themselves or others, in order to carry out or abstain from carrying out an act pertaining to their office, duty or mandate, or facilitated by their office, duty or mandate (i.e. what the bribe-taker expects in return).

The offence of **private-sector bribery**⁷ (active or passive) or is defined in similar terms, except that the bribe-taker is not a public official but a person holding private office.



3 Article 433-1(1) of the French Criminal Code.

4 Indirect bribery can occur, for instance, when a bribe-giver confers an undue advantage on a bribe-taker via an agent, a financial institution or a company, as long as the facts of the case do not meet the description of the offence of influence peddling.

5 A public official is defined as any person holding public authority, discharging a public service mission or holding a public electoral mandate.

6 Article 432-1(1) of the French Criminal Code.

7 Articles 445-1 to 445-2(1) of the French Criminal Code.



SECTION 1
BRIBERY AND INFLUENCE PEDDLING

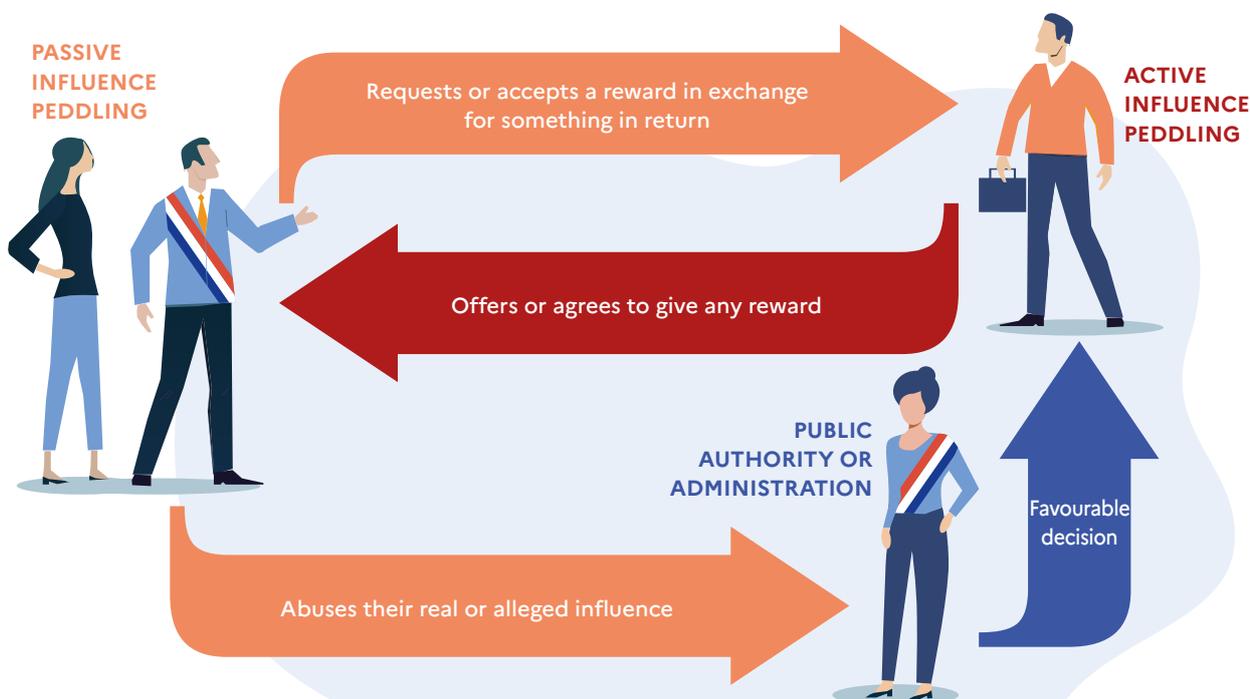
EXAMPLES OF REAL-LIFE CASES

- A firm paid secret commissions worth hundreds of thousands of euros to an employee in the purchasing department of an electricity supplier in order to win and retain contracts to maintain the supplier’s power stations. The company was penalised for committing the offence of private bribery.⁸
- The senior manager of an SME was convicted of active bribery for paying €90,000 in bribes to foreign public officials to help the company win environmental remediation contracts.⁹

Influence peddling

The offence of **active influence peddling**¹⁰ is committed when a person unlawfully offers or agrees to give, at any time, directly or indirectly, any offer, promise, donation, gift or advantage to another person, for themselves or others, in order to induce them to abuse, or for having abused, their real or alleged influence to obtain any distinction, employment, contract or other favourable decision from a public authority or administration.

The offence of **passive influence peddling**¹¹ is committed when a person unlawfully requests or accepts, at any time, directly or indirectly, any offer, promise, donation, gift or reward, for themselves or others, in order to abuse their real or alleged influence to obtain, on behalf of another person, any distinction, employment, contract or other favourable decision from a public authority or administration.



⚠ Offering an advantage with the expectation of someone abusing their influence (i.e. as an active influence peddler) or taking an advantage in return for abusing one’s influence (i.e. as a passive influence peddler) is an offence in its own right, regardless of the conduct of the other party in the transaction.

8 Deferred prosecution agreement, 14 February 2018.
 9 Criminal Court of Paris, 29 September 2009.
 10 Articles 433-1(2) and 433-2(2) of the French Criminal Code.
 11 Articles 432-11(2) and 433-2(1) of the French Criminal Code (the applicable article depends on who commits the offence).

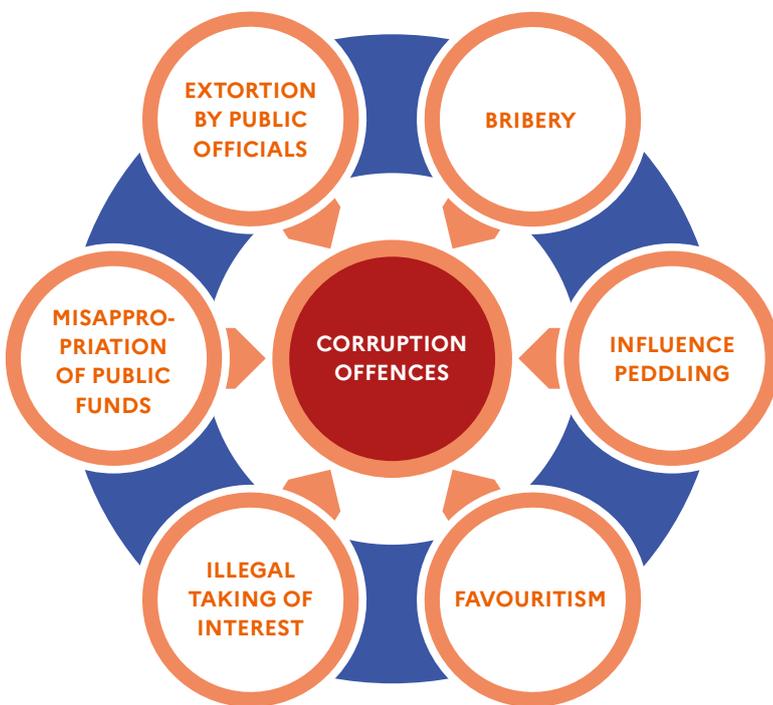
🔗 For further information about the offences of bribery and influence peddling, refer to the summary published on the AFA website (in French only).



SECTION 1
CORRUPTION AND INFLUENCE PEDDLING

EXAMPLES OF REAL-LIFE CASES

- A company’s senior manager was found to have agreed, in return for payment, to use his influence in order to obtain confidential information from a public official who was authorised to access the database containing the documents. He was convicted of influence peddling.¹²
- A company’s senior managers were convicted of influence peddling after using their influence to secure favourable treatment for certain bidders for public contracts. The executives of the bidding companies agreed to pay them fees worth between 1% and 5% of the value of the contract in return for “commercial and administrative support”.¹³



What are other corruption offences?¹⁴

Extortion by public officials,¹⁵ favouritism,¹⁶ illegal taking of interest¹⁷ and misappropriation of public funds¹⁸ are offences that can only be committed by public officials.

Yet private-sector entities and individuals can face prosecution for concealment of these offences or for laundering their proceeds, as well as for complicity in such offences.

In the remainder of this guide, the term “corruption” is used to refer to the offences of bribery and influence peddling.

EXAMPLES OF REAL-LIFE CASES

- An SME was awarded a contract by a biased tender committee that failed to adhere to the statutory time scales. The company was convicted of complicity in unlawful taking of interest, and of concealment of the same offence.¹⁹
- An SME was convicted of concealment of the proceeds of favouritism after it was found to have taken payment for services provided to a state-owned company that had not put the work out to tender.²⁰



For further information about these offences, refer to the detailed presentation on the AFA website (in French only).

12 French Court of Cassation, Criminal Chamber, 25 October 2017 (ruling no. 16-83.724).
 13 French Court of Cassation, Criminal Chamber, 15 March 2000 (ruling no. 99-81.084).
 14 The term “corruption offences” is shorthand for the six offences laid down in Article 1 of the Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016 (bribery, influence peddling, extortion by public officials, illegal taking of interest, misappropriation of public funds and favouritism).
 15 Article 432-10 of the French Criminal Code.
 16 Article 432-14 of the French Criminal Code.
 17 Articles 432-12 and 432-13 of the French Criminal Code.
 18 Articles 432-15 and 433-4 of the French Criminal Code.
 19 French Court of Cassation, 20 March 2019 (ruling no. 17-81.975).
 20 Court of Justice of Paris, 10 January 2017.



SECTION 2

THE ISSUES AND RISKS OF CORRUPTION

No company is immune to corruption. Risks can come both from within the organisation and from outside (such as via requests from a business partner).

Companies can protect against these risks by putting in place measures to prevent and detect corruption – known collectively as an “anti-corruption programme”.



What are the benefits of an anti-corruption programme?

- An anti-corruption programme is important for companies that **want their business relationships to prosper**. By law, large companies²¹ are required to carry out third-party due diligence. As part of these checks, major purchasers ask their partners questions about their business practices, including whether they have anti-corruption measures in place. Some even require an anti-corruption clause to be written into the contract, introducing an automatic obligation for their partners to put such measures in place. It therefore makes good business sense for companies to implement an anti-corruption programme that is tailored to their risk profile.
- An anti-corruption programme **increases a company’s chances of obtaining financing**. Banks, private and public investors and investment funds also carry out due diligence. A company that has anti-corruption measures in place therefore stands a better chance of securing a loan or raising funds.
- An anti-corruption programme **protects a company’s reputation**. Corrupt practices can leave a business’ reputation severely tarnished and erode its value.
- An anti-corruption programme **has competitiveness and governance benefits**. Putting anti-corruption measures in place gives businesses the opportunity to review and strengthen their working methods and practices and to introduce additional safeguards. These measures can also contribute to fraud prevention.

If corrupt practices come to light, how will a business be affected?

Allegations of corruption against a company, or against one of its employees or officers, can have:

- **Legal and criminal implications** (risk of prosecution, penalties or exclusion from public procurement)
- **Human-resource implications** (risk of employees resigning, being dismissed or being convicted of an offence)
- **Business and financial implications** (risk of loss of income, fines, worsening credit rating or loss of financial value)
- **Reputational implications** (risk of harm to the company’s image among its customers, partners, shareholders and employees).

²¹ This requirement, under Article 17 of Sapin II Act, applies to companies and groups of companies with more than 500 employees and annual turnover of €100 million or more.



SECTION 2
THE DANGERS AND RISKS OF CORRUPTION

What penalties apply?

Under French law, companies and individuals who commit the offence of bribery or influence peddling face the following penalties:²²

COMPANIES		INDIVIDUALS	
Main penalties	Additional penalties	Main penalties	Additional penalties
<p>Fine of up to €5 million OR double the process of the offence</p>	<p>Confiscation Ban on undertaking certain activities Business closure Dissolution Exclusion from public procurement Exclusion from concession contracts Compliance remediation plan Publication of the decision</p>	<p>Up to 10 years' imprisonment and a fine of up to €1 million</p>	<p>Confiscation Ban on undertaking certain activities</p>

EXAMPLES OF PENALTIES HANDED DOWN

- An SME (with 125 employees and annual turnover of €18 million) was fined €800,000, ordered to pay €30,000 in compensation and given a deadline for bringing its practices into compliance after being convicted of bribery for making undue commission payments.²³
- The senior manager of a microenterprise was sentenced to one year's imprisonment, fined €20,000 and banned from running a business after being convicted of complicity in bribery for issuing fake invoices.²⁴



CAN A FRENCH SME BE PROSECUTED BY A FOREIGN COURT?

Yes, a French SME can be prosecuted by a court outside France. Some anti-corruption laws (especially in the United States and the United Kingdom)²⁵ have an extremely broad scope of application. For instance, under US anti-corruption law, the US courts have jurisdiction over any transaction made in dollars, as well as over any offence involving data stored on servers in the United States, meaning that these courts can prosecute French companies even if they are not established in the United States. Importantly, the courts may consider the existence of an anti-corruption programme as a mitigating factor to reduce the sentence.



²² For further information about the offences of bribery and influence peddling, refer to the summary published on the AFA website (in French only).

²³ Deferred prosecution agreement, 14 February 2018.

²⁴ French Court of Cassation, Criminal Chamber, 3 April 2019 (ruling no. 17-87209).

²⁵ The US Foreign Corrupt Practices Act (FCPA) of 1977, and the UK Bribery Act of 2010.



SECTION 3

PROTECTING YOUR ORGANISATION AGAINST CORRUPTION RISK



Corruption is not inevitable. Although SMEs and smaller intermediate-sized enterprises are not required to put in place an anti-corruption programme by law, it is in their interest to do so. The various aspects of this programme are outlined below (each with its own section).

→ The senior manager’s commitment – an essential prerequisite (Section 4)

The senior manager leads by example and clearly communicates the company’s zero-tolerance approach to corruption. The senior manager initiates and oversees anti-corruption measures within the organisation.

→ Know its risks (Section 6)

The company identifies the corruption risks to which it is exposed through its business activities, assesses these risks in light of existing mitigation measures and develops an action plan to address any residual risks.

→ Manage its risks

- **Write a code of conduct for staff (Section 7)**

The code of conduct details risky situations and sets out rules on staff conduct. It is shared with everyone within the organisation.

- **Raise awareness and train staff (Section 8)**

The company provides awareness and training to familiarise its employees with corruption risks and appropriate behaviours.

- **Assess the integrity of partners (Section 9)**

The company gathers and reviews information about its partners in order to ensure that it only does business with partners that operate with integrity, and to prevent unethical conduct from creeping into its own practices.

- **Implement a whistleblowing system (Section 10)**

The company sets up a system that allows employees and other individuals working for the organisation to report breaches of its code of conduct in strict confidence.

- **Check that the measures are actually being applied (Section 11)**

The company has procedures in place for checking that anti-corruption measures are being implemented, reviewing their effectiveness and making improvements as required.

- **Enhance accounting controls (Section 12)**

The company introduces enhanced accounting controls in high-risk areas, as identified in its “know its risks” measure.

- **Apply sanctions if necessary (Section 13)**

The company takes disciplinary action against anyone who breaches its code of conduct, in line with the procedures set out in its employee regulations (if any).



SECTION 3

PROTECTING YOUR ORGANISATION AGAINST CORRUPTION RISK

THE PRINCIPLE OF PROPORTIONALITY

The company should adapt these measures to its individual circumstances and the risks to which it is exposed, such as its business activities, size, business sector and location.

If the company has subsidiaries, it should ensure that they also put in place anti-corruption measures. Again, these should be tailored to each subsidiary's circumstances, including local law.

Anti-corruption measures are not static. On the contrary, they should evolve as the company develops. For instance, the company will need to update its risk mapping following a major development, such as if it merges with a competitor, or if it branches out into a new line of business that could expose it to new risks.

Moreover, these measures do not exist in isolation. For example, if a risky situation comes to light through the internal whistleblowing system, the company may need to enhance its accounting controls. It may also wish to use this situation as an example in its anti-corruption training programme.

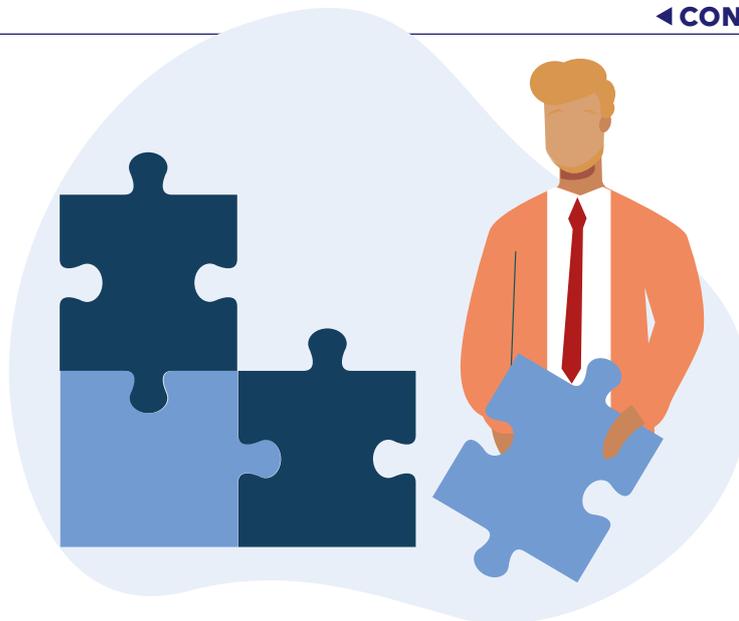
 For further information about these measures, refer to the AFA guidelines, which are available on the agency's website.



SECTION 4

THE ROLE OF THE SENIOR MANAGER

In any company, the senior manager is the major operator in preventing and detecting acts of corruption. They initiate and oversee anti-corruption measures and ensure that all rules and procedures are followed.



Senior managers who fail take preventing corruption seriously leave themselves and their organisation exposed to serious consequences.



PRACTICAL ILLUSTRATION

A sales representative working for a private limited company that sells eco-friendly office furniture is trying to win a major local government contract. The public-sector buyer in charge of the tender procedure implies that she will stand a good chance of winning the contract if she sends him a few boxes of high-end champagne. To be on the safe side, the sales representative decides to send the gift, reasoning that it makes sense to stay on good terms with the buyer and that her manager would not object to the idea in principle. A competitor becomes aware of the gift and reports it. The company is found guilty of corruption and banned from bidding for public contracts, which account for a large portion of its income. When the bank hears about the conviction, it refuses to renew the company's borrowing facility.

The senior manager could have avoided this situation by:

- informing employees that the company does not tolerate bribery
- introducing a gifts policy, and
- providing training for sales representatives on the policy and different forms of corruption

Who is the senior manager?

The senior manager is the individual at the top of the organisation, who is responsible for managing the businesses in accordance with its articles of incorporation and with applicable rules and standards. The senior manager represents the company.

In some types of company, the senior manager may report to a non-executive board or other supervisory body. Even in these cases, they remain personally responsible for implementing the anti-corruption programme.

What are the senior manager's responsibilities?

The senior manager is responsible for implementing anti-corruption measures in order to protect the company. Specifically, the senior manager should:

- lead by example and follow all anti-corruption rules and procedures that apply within the company
- make clear, to employees and partners, that they take a zero-tolerance approach to corruption
- allocate appropriate resources to internal corruption prevention measures
- personally oversee the proper implementation and updating of the anti-corruption programme
- ensure that any employee who breaches the anti-corruption code of conduct is appropriately disciplined (see Section 7)



SECTION 4 THE ROLE OF THE SENIOR MANAGER

In its supervisory capacity, the non-executive body, if any, is responsible for ensuring that corruption risks are managed within the company. It delegates responsibility for designing an appropriate, effective anti-corruption programme to the senior manager.

GOOD PRACTICES

- Make clear their zero-tolerance approach to corruption through regular communications both within and outside the company.
- Write the forward to the code of conduct.
- Hold regular meetings with employees to discuss the code of conduct and to talk about corruption issues they have faced or about known cases within the sector or industry.
- Encourage employees to report potentially problematic outside requests (such as high-value hospitality offers from suppliers) so that the associated corruption risk can be assessed, and promote the use of the internal whistleblowing system more generally.
- Hold exit interviews to gather the views of departing employees about the company's anti-corruption measures.
- Talk about the company's anti-corruption culture in all relevant documents (such as its CSR report and code of ethics, if any) in order to reach the widest possible audience.
- Set out the directors' responsibilities for monitoring the anti-corruption programme in the rules of procedure for the non-executive body (such as the board of directors or the supervisory board).
- Reward managers who actively promote anti-corruption measures in their teams by including this aspect in performance reviews.

TO AVOID

- Think that corruption is not an issue for their organisation because it only affects large companies.
- Offer customers gifts that violate the company-wide gifts policy.
- Fail to inform middle managers about anti-corruption measures (since these managers work closely with front-line staff).
- Treat the anti-corruption programme as a "window-dressing" exercise and ignore the rules and measures in the day-to-day course of business (such as by encouraging sales representatives to win contracts "at any cost" and reward them for doing so even if they violate the code of conduct).
- Keep conversations about anti-corruption measures limited to dedicated meetings, and miss the opportunity to talk about the subject on other occasions when risky situations are being discussed (such as at meetings on business prospects or sales representatives' pay).

 For further information about senior management's commitment, refer to the relevant chapter in the AFA guidelines.



SECTION 5

THE PERSON IN CHARGE OF ANTI-CORRUPTION MEASURES



The senior manager can take personal charge of the operational implementation of the company's anti-corruption measures, or they can delegate this responsibility to another person. In either case, the senior manager must maintain a personal interest in the programme's operation and effectiveness.

Who can be in charge of anti-corruption measures?

Larger companies may appoint someone with full-time responsibility for leading the anti-corruption programme. In other cases, this task may be assigned to an employee who also has other duties, while the senior manager may take personal charge of anti-corruption measures in the smallest organisations.

Companies that use outside consultants or service providers to help them implement anti-corruption measures retain overall responsibility for the programme and remain accountable for its performance.

If, by virtue of its size and corruption risk profile, a company needs a dedicated resource to manage its anti-corruption programme, it may wish to appoint someone to this role who is:

- familiar with the company and its business activities
- able to interact with colleagues from all sections of the organisation because addressing the subjects of corruption may be tricky
- legal-minded or interested in process-related activities (such as finance or quality)
- proficient at maintaining the confidentiality of data and information
- trained in the company's anti-corruption measures or willing to learn about them (e.g. by reading available documentation)

RESOURCES

If you have any questions, you can visit the AFA website or write to us at: afa@afa.gouv.fr.

How can the senior manager support the person in charge of anti-corruption measures?

➔ Make an official statement about the appointment

A statement of this kind, which could be made in an email to all employees or through a presentation at a company-wide meeting or event, will also help to underscore the senior manager's support for the anti-corruption programme.



SECTION 5

THE PERSON IN CHARGE OF ANTI-CORRUPTION MEASURES

The statement or presentation should explain why the measures are important and how they will help to protect the company and its employees, as well as making clear the senior manager's support for the appointee in fulfilling their duties.

The person in charge of anti-corruption measures will work with every department across the organisation, including coordinating work on defining and implementing the measures. When this person approaches other staff, they will be more likely to make time for their request if they know that the senior manager is the driving force behind the process.

IN FOCUS

The anti-corruption measures apply to all of the company's staff, regardless of their role or duties. If they have any questions or concerns, they will turn to the person in charge of anti-corruption measures for advice. Some staff will even be involved in implementing the measures. For instance, they may be called into meetings with the person in charge of anti-corruption measures in order to discuss potentially risky situations that fall within their area of expertise.

When issuing the statement about the appointment, the senior manager may wish to make clear that staff members are permitted to share whatever information is necessary with the person in charge of anti-corruption measures.

The statement may also clarify who is responsible for other aspects of compliance as applicable in the organisation (such as anti-money laundering and counter-terrorist financing, or data protection).

→ **Provide the person in charge of anti-corruption measures with a direct line of communication with the senior manager and the non-executive body**

The person in charge of anti-corruption measures must have a direct line of communication with the senior manager, so that they can report risky situations and provide regular updates about the programme. For instance, the appointee could report directly to the senior manager. This arrangement would ensure that the individual in question is functionally independent from other areas of the business, enabling them to fulfil their duties unimpeded.

The company may also wish to empower the person in charge of anti-corruption measures to communicate directly with the non-executive body. This formal power, which could be set out in a clause in their employment contract, could be exercised in exceptional circumstances (such as when the senior manager is implicated in a risky situation).

→ **Ensure that the person in charge of anti-corruption measures is properly equipped and resourced to fulfil their duties**

For instance, the appointee may require:

- specific training
- specialist software and applications
- support from external advisers or consultants



SECTION 5 THE PERSON IN CHARGE OF ANTI-CORRUPTION MEASURES

✓ GOOD PRACTICES

- Have a job description drawn up for the person in charge of anti-corruption measures, and have it shared with all staff.
- Schedule regular meetings with the person in charge of anti-corruption measures in order to discuss matters of concern and appropriate courses of action.
- Schedule non-executive body meetings to review the performance of the programme at least once a year.
- Ensure that all anti-corruption tasks and activities are documented and monitored and that proper records are kept, in line with applicable data collection and retention rules.
- Designate someone to take over responsibility for anti-corruption measures in the event that the person in charge of anti-corruption measures has a conflict of interest stemming from their other duties within the company.
- Appoint local coordinators within subsidiaries or at geographically remote sites (if any) to liaise with the person in charge of anti-corruption measures.

✗ TO AVOID

- Take the misguided view that appointing a person in charge of anti-corruption measures relieves the senior manager of their responsibility for implementing, monitoring and evaluating the programme.
- Assign responsibility for implementing anti-corruption measures to someone who lacks the time to do the job properly.
- Appoint someone to serve as the person in charge of anti-corruption measures alongside their other duties without including this new role in their performance review process and without ensuring they are properly compensated for the additional responsibility.
- Delay stepping in if the person in charge of anti-corruption measures faces push-back when trying to obtain information, or if their other duties raise questions about their independence.

 For further information about the corporate anti-corruption compliance function, refer to the dedicated guide on the AFA website.



SECTION 6

RISK MAPPING: ASSESSING CORRUPTION RISK



Even long-standing practices can sometimes cross the line into unlawful conduct. It is therefore in the company's interest to understand and assess corruption risk exposures coming from both inside and outside the organisation. This assessment exercise is known as risk mapping.

Without a risk map, the senior manager may not be aware of every situation within the business that could present corruption risk.



PRACTICAL ILLUSTRATION

A company designs and manufactures technical products. The composition of these products is subject to independent, external approval.

Towards the end of one particular year, the external expert refuses to approve a batch of products. The production manager, fearing that he may lose his annual bonus, pays the expert a bribe to approve the batch anyway.

The senior manager is surprised when the case comes to light. He never imagined that this kind of practice could occur, having wrongly assumed that corruption only happened in sales and procurement. A corruption risk map would have alerted him to this possibility.

Why is corruption risk mapping important?

Corruption risk mapping is an exercise in which an organisation identifies and assesses the corruption risks to which it could be exposed. The risk map is one of the pillars of an anti-corruption programme, since it informs the company's decision-making on appropriate and proportionate risk-mitigation measures.

Because every company is different (in terms of size, business activities, location and more), there is no one-size-fits-all approach to corruption risk mapping. A company can use another organisation's risk map as inspiration, but it will need to adapt the map to its individual circumstances.



SECTION 6
RISK MAPPING: ASSESSING CORRUPTION RISK

Who prepares the corruption risk map?

The corruption risk map is prepared by the person in charge of anti-corruption measures (see Section 5).

The senior manager plays a key role in this process, by:

- demonstrating their support for the mapping exercise (e.g. by writing to all employees to inform them about the exercise and to invite them to contribute)
- obtaining appropriate advice and guidance (see Section 5)
- approving the resulting action plan after presenting it to the non-executive body, if any (e.g. the board of directors)
- helping to identify risk exposures if required

It is important for staff members to be able to set aside time to participate in the exercise.

When is the corruption risk map prepared?

Corruption risk mapping happens before the anti-corruption programme is implemented.

The company can, however, take some interim risk-mitigation measures pending the completion of this exercise, such as:

- drawing up a code of conduct and other relevant policies (including a gifts and hospitality policy and a conflict-of-interest prevention policy)
- holding staff awareness sessions
- setting up an internal whistleblowing system (companies that are required by law to implement a procedure for receiving whistleblower reports because they have 50 or more employees can easily expand this existing system to capture corruption-related disclosures)

Importantly, these interim measures will need to be reviewed and updated to take account of the risks identified in the mapping process.

How are corruption risks identified?

The first process step is to list all corruption risks to which the company is exposed by speaking with employees who are familiar with its processes.

Because every company is different (in terms of business sector, history, size, legal structure and other characteristics), these processes will naturally differ from one organisation to the next. Some examples of common processes and sub-processes are outlined in the table below.

PROCESS	SUB-PROCESSES
Sales	Onboarding of new customers Quotes Order placement Negotiation of annual terms
Procurement	Onboarding of new suppliers Tenders Selection of suppliers following tenders Negotiation of annual terms
Human resource management	Recruitment Payroll Performance review Talent management Training
Finance	Preparation of annual accounts Accounts payable Accounts receivable Annual budget-setting and monitoring
Production	Sourcing of raw materials Inventory management Production planning Quality, accreditation and certification Application for permits and official authorisations
Executive functions	Strategy-setting Design of the decision-making system Reporting to the non-executive body Involvement in professional organisations, and in sponsorship and patronage activities



SECTION 6 RISK MAPPING: ASSESSING CORRUPTION RISK

The aim of these discussions is to answer the following questions:

- With which individuals and organisations does the company maintain relationships (such as customers, suppliers, intermediaries and agents), and which departments or functions deal with these third parties?
- What risky situations that could arise in dealings with these individuals or organisations? Here, the company should cast a wide net, exploring all possible corruption risk exposures for each process. For instance, the company could consider the following additional questions to identify potential sources of corruption:
 - Could a supplier win a contract by offering the buyer hospitality despite having submitted a sub-standard bid?
 - Does the company deal with public officials or politically exposed persons (PEPs)?²⁶
 - Does the company win any of its business through intermediaries?
 - Does the company operate in high-risk countries?
- What measures are already in place to prevent these risky situations from materialising? For instance, the company may:
 - have a policy that prohibits gifts and hospitality above a certain value
 - carry out third-party due diligence checks and have a policy of only working with low-risk partners
 - have an employee awareness and training programme
 - have processes in place to check that its procedures are being followed (such as applying the “four-eyes principle”, whereby any operation or transaction is systematically reviewed by a second person)

If, for staffing or budget reasons, the company cannot complete this entire exercise at once, it can opt for a two-stage approach:

✓ STAGE ONE

Hold risk-mapping interviews with:

- sales representatives
- buyers
- members of the communications team
- staff who deal with business intermediaries
- staff who deal with public bodies (for authorisation or opinion requests)
- members of the internal audit team, if any
- members of the finance team

Focus initially on the highest-risk countries (these can be identified, for example, using Transparency International’s Corruption Perceptions Index).

✓ STAGE TWO

Hold risk-mapping interviews with other internal teams, based on a review of the company’s processes, and expand the scope of the exercise to include other countries.



²⁶ Article L. 561-10 of the French Monetary and Financial Code defines a politically exposed person as “an individual exposed to particular risks on account of the political, jurisdictional or administrative functions he/she performs or has performed or of those that immediate family members or individuals known to be closely associated with him/her or who become closely associated during the business relationship perform or have performed”.



SECTION 6 RISK MAPPING: ASSESSING CORRUPTION RISK

The **second process step** is to identify those risks that are not adequately mitigated through existing measures, and then to identify what further measures are required (such as having supplier selection decisions approved by two different people).

If two or more people are responsible for preparing the risk map, it will be helpful for everyone involved to agree on a risk scoring scale in advance.

EXAMPLE

The mapping interviews reveal the risk that a sales representative could artificially lower prices for a particular customer in return for a bribe.

How should the company approach this risk?

1. WHAT IS THE LIKELIHOOD OF THIS RISK MATERIALISING AND, IF IT DOES, WHAT IMPACT WILL IT HAVE?

→ A competitor has already fallen foul of these kinds of practices. The company could suffer heavy financial losses as a result. The risk is therefore considered **HIGH**.

2. WHAT MITIGATING MEASURES ARE ALREADY IN PLACE IN THE ORGANISATION?

- Integrity checks are included in the recruitment process for sales representatives.
- Sales representatives receive special training on corruption risks and on the company's corruption-prevention measures.
- The order processing team checks the prices each time a customer places an order. But if they notice a discrepancy, they only ask the sales representative whether a mistake has been made.
- In light of the existing measures, the company takes the view that the risk is **NOT ADEQUATELY MITIGATED**.

3. WHAT FURTHER MEASURES NEED TO BE INCLUDED IN THE ACTION PLAN?

- Have any price discrepancies noticed by the order processing team referred to the sales manager for approval. If the discrepancy is significant, have the matter referred to the senior manager.
- If possible, configure the order processing software in such a way that the team cannot input an order if the prices do not match.
- Set a deadline for the person in charge of anti-corruption measures to implement these procedural changes, subject to the senior manager's approval and with the support of the company's IT service provider (where applicable).



Any further measures are set out in an action plan. The senior management team should approve the plan and monitor its implementation.

Moreover, if the company already has other corruption prevention and detection measures in place (such as a code of conduct or third-party due diligence procedures), the person in charge of anti-corruption measures should review these existing measures to make sure they are appropriate in light of the identified risks.



SECTION 6
RISK MAPPING: ASSESSING CORRUPTION RISK

 **GOOD PRACTICES**

- Include all business processes in its risk-mapping exercise (procurement, recruitment, payroll, sales, billing, inventory management, quality, etc.) in order to ensure that the exercise captures the widest possible range of risks.
- Start by mapping its processes based on existing job descriptions, organisational charts and the tasks and duties of its staff members (if it does not already have process maps in place). Standard process definitions are available for some sectors and industries.
- Gather information from employees with first-hand experience of its business processes as they are actually applied (senior managers, middle managers and/or front-line staff, as relevant).

 **TO AVOID**

- Base its mapping exercise on a predefined list of risks.
- Overlook the importance of keeping documented records of the mapping exercise. It is a good idea to keep written summaries of interviews and documents explaining how the risks were assessed, as well as evidence of how the action plan was drawn up and how it will be monitored.
- Treat risk mapping as a one-off exercise. The company will need to update its risk map on a regular basis, especially following a major development (such as if it takes over a competitor, launches a new product or restructures its business).
- Rely on contributions from people who may lack a clear and precise understanding of the business and its operations.

 For further information about corruption risk mapping, refer to the relevant chapter in the AFA guidelines.



SECTION 6

RISK MAPPING: ASSESSING CORRUPTION RISK

Corruption risk map for company X: Risky situation 1

PROCESS	DESCRIPTION OF THE RISKY SITUATION	SCORE WITHOUT MITIGATING MEASURES	EXISTING MITIGATING MEASURES	SCORE WITH MITIGATING MEASURES	SENIOR MANAGEMENT'S ASSESSMENT
SALES Sub-process: Contract renewal	A sales representative from company X offers a gift to a customer's head of procurement in order to secure the renewal of a major contract.	Impact if this risk materialises: High Likelihood of this risk materialising: Likely RISK SCORE = High	1. Sales representatives' expenses are only refunded if they provide supporting evidence (invoices).	This is the only measure currently in place. It does not go anywhere near far enough to mitigate the risk. RISK SCORE= Still high	Urgent mitigation action required



FURTHER MITIGATING MEASURES	TO BE IMPLEMENTED BY WHOM?	TO BE IMPLEMENTED WHEN?
2. Draw up official rules on offering gifts to customers.	Finance manager/anti-corruption compliance officer	Within one month
3. Deliver corruption risk training to sales representatives.	Sales manager (in conjunction with the human resources manager)	Within six months All new sales representatives to complete the training within two months of joining the company



SECTION 6

RISK MAPPING: ASSESSING CORRUPTION RISK

Corruption risk map for company X: Risky situation 2

PROCESS	DESCRIPTION OF THE RISKY SITUATION	SCORE WITHOUT MITIGATING MEASURES	EXISTING MITIGATING MEASURES	SCORE WITH MITIGATING MEASURES	SENIOR MANAGEMENT'S ASSESSMENT
PROCUREMENT Sub-process: Order placement	A buyer responsible for sourcing raw materials at company X receives a personal advantage from a supplier in return from placing orders with the supplier at above-market prices.	Impact if this risk materialises: High Likelihood of this risk materialising: Likely RISK SCORE = High	<ol style="list-style-type: none"> Company X has a procurement procedure. The procedure requires all purchases to be signed off by senior management. As part of this process, senior management checks that the prices are consistent with market averages. Invoices can only be paid once these checks have been completed and documented. Buyers have completed specialist anti-corruption training. 	There are several measures in place to prevent this situation from occurring. Are the measures properly applied? RISK SCORE = Downgraded to moderate	Introduce further measures within 12 months
		FURTHER MITIGATING MEASURES	TO BE IMPLEMENTED BY WHOM?	TO BE IMPLEMENTED WHEN?	
		5. Ask the external auditors to review the application of this procedure for their next report, and then regularly thereafter.	Senior manager	Within 12 months	





SECTION 6
RISK MAPPING: ASSESSING CORRUPTION RISK

Corruption risk map for company X: Risky situation 3

PROCESS	DESCRIPTION OF THE RISKY SITUATION	SCORE WITHOUT MITIGATING MEASURES	EXISTING MITIGATING MEASURES	SCORE WITH MITIGATING MEASURES	SENIOR MANAGEMENT'S ASSESSMENT
HUMAN RESOURCE MANAGEMENT Sub-process: Post-filing inspection	During a labour inspectorate investigation, it emerges that the HR manager at company X has failed to file several returns on time. The HR manager suggests that company X should offer the inspector two tickets to the final of a major sporting tournament in return for him overlooking these omissions in his report. The HR manager secures the tickets from a sales representative, who requested them for the benefit of a customer.	Impact if this risk materialises: High Likelihood: Unlikely because these types of inspections are few and far between RISK SCORE = Moderate	1. Company X has a documented and approved policy on purchasing tickets to major sporting events for its customers, provided they are accompanied by its sales representatives.	The existing measure does not mitigate the risk. RISK SCORE = Moderate	Introduce further measures within 12 months



FURTHER MITIGATING MEASURES	TO BE IMPLEMENTED BY WHOM?	TO BE IMPLEMENTED WHEN?
2. Draw up a procedure under which tickets to major sporting events can only be allocated to approved customers.	Sales director	Within one month
3. Provide training for sales representatives on this procedure.	Sales director/person in charge of anti-corruption measures (in conjunction with the external HR consulting firm)	Within three months, and for all new hires
4. Provide corruption risk training to all employees.	Senior manager/person in charge of anti-corruption measures	Within three months
5. Include this as an example of prohibited behaviour in the company's code of conduct and in its training programmes.	Person in charge of anti-corruption measures	Code of conduct: the next time the code is updated Training: within one month



SECTION 7

THE ANTI-CORRUPTION CODE OF CONDUCT

The anti-corruption code of conduct is a document which sets out the company’s zero-tolerance approach to corruption and illustrates the various types of misconduct that could constitute corruption, based on the exposures identified in the risk map.



By clearly explaining how the organisation expects its employees to behave, the anti-corruption code of conduct is designed to protect the company from harmful situations.

PRACTICAL ILLUSTRATION

For a number of years, a toy manufacturer has been listed as a preferred supplier by the central purchasing team at a major retail group.

Following an internal investigation, the retailer discovers that one of the toy manufacturer’s employees has given numerous gifts to one of its supplier selection managers, including a luxury leather bag, a box of high-end wine and a trip to the island of Réunion.

These gifts are prohibited under the retail group’s code of conduct, which all its suppliers are required to sign. After uncovering these practices, the retail group decides to terminate its business relationship with the company.

The toy manufacturer’s senior manager is dismayed at the loss of one of her biggest customers. This situation could have been avoided if the company had drawn up a code of conduct explaining why gifts and invitations carry risk, and what employees can and cannot do in terms of offering gifts to customers.

What is its purpose?

An anti-corruption code of conduct:

- **formally documents the senior manager’s commitment** to adopting a zero-tolerance approach to corruption
- **describes the company’s anti-corruption policy**, including how employees should conduct themselves and what behaviours are prohibited

The code of conduct clearly states that employees who breach the rules will face disciplinary action.

The code of conduct **applies to everyone working for the organisation**, including interns, temporary staff and seconded personnel.

Because the code of conduct is **binding on all staff** and forms part of the rules of procedure, it must be formally presented to the company’s employee representative bodies.

Companies that do not have employee regulations²⁷ are advised to draw up a code of conduct and take steps to make it binding on all staff.

²⁷ See Article L. 1311-2 of the French Labour Code.



SECTION 7 THE ANTI-CORRUPTION CODE OF CONDUCT

If the company has subsidiaries in other countries, the code of conduct will apply subject to the provisions of local law.

The company may find it useful to **share its anti-corruption code of conduct with its partners** (customers, intermediaries, suppliers, etc.). When doing so, the company should take appropriate steps to protect any confidential information the code may contain.

When should it be drawn up?

Ideally, the code of conduct should be drawn up **once the corruption risk mapping exercise is completed**, so that practical, context-specific examples of risky situations can be included.

The code of conduct should be updated regularly in line with adjustments to the organisation's risk mapping, especially following a major development such as the takeover of another company or the launch of a new product.

Who draws it up?

The code of conduct may be drawn up by the person in charge of anti-corruption measures or by any other person who is familiar with the company and its corruption risk exposures.

Alternatively, a committee comprising representatives of different corporate functions (human resources, legal affairs and front-line business functions) could be convened to draft the code of conduct.

Ideally, the anti-corruption code of conduct should include a foreword by the senior manager, in which they reiterate the company's zero-tolerance approach to corruption and make clear their support for this stance.

What format should it take?

The code of conduct should be clear and accessible to all staff regardless of their role or duties. In practice, this means that the code should be:

- drafted in French and, where the company has subsidiaries in other countries, translated into the relevant local language(s)
- written in clear, plain, straightforward language that everyone can understand

For the sake of clarity, each prohibited behaviour should be illustrated using an example relevant to the company's business activities and in an appropriate format (text, illustration, diagram, etc.).

Some companies may wish to include the anti-corruption code of conduct in a broader document that also deals with other aspects of professional conduct (such as a charter of ethics). In such cases, the anti-corruption code of conduct must be a separate and separable part of this document.

What does it contain?

The code of conduct explains what corruption is (see Section 1), how staff members are expected to conduct themselves, and what behaviours are prohibited (with reference to the corruption risks identified in the company's risk map).

Traditionally, the risky situations covered by a code of conduct will include:

- gifts and hospitality
- conflict-of-interest situations
- facilitation payments²⁸ (especially for companies with foreign operations)

²⁸ A facilitation payment is an undue payment made directly or indirectly to a public official in order to induce the official to complete or expedite an otherwise routine administrative process. Note that facilitation payments are illegal in France, where they are treated as a corrupt practice (for further information, refer to the AFA primer on facilitation payments, which is available, in French only, on the agency's website).



SECTION 7 THE ANTI-CORRUPTION CODE OF CONDUCT

- sponsorship and patronage activities
- political party funding

It also describes the company's internal whistleblowing system and explains how to use it.

The code of conduct includes easy-to-understand, practical examples of the various prohibited behaviours, using illustrations from the company's business activities.

In order to keep the code of conduct short and easy to update, the company may wish to include brief statements referring to other policies and procedures. For instance, the code could state that staff members must seek permission before offering gifts to business partners, and that this permission depends on the gift's value and the circumstances of the case, then include a link to the company's gifts and hospitality policy.

GOOD PRACTICES

- Make sure all staff receive a copy of the code of conduct, such as by including it in the onboarding pack for new hires.
- Keep documented records of who has received a copy of the code of conduct and other internal compliance procedures. For instance, employees could be asked to sign a document, one week after receiving the code of conduct, confirming that they have read and understood it. Keeping records of this kind is essential, since employees can only be disciplined for breaching the code of conduct or other procedures if the company can prove that they are aware of the rules.
- Include, in the code of conduct, the job title of the person staff can contact if they have any questions or concerns.
- Publish the code of conduct on its website (after removing any sensitive or confidential information).
- Share the code of conduct with its business partners (after removing any sensitive or confidential information).
- Write a clause into its contracts with its partners requiring them to adhere to the code of conduct.
- Have the draft code of conduct reviewed or approved by the various in-house functions and units that will be responsible for implementing it. It may also prove helpful to have the draft code reviewed by staff who are not directly responsible for implementing it (for instance, the company could set up a working group) to check that the code is easy for non-specialist readers to understand.
- Display a copy of the code of conduct in its premises.

TO AVOID

- Copy and paste the content from another organisation's code of conduct, because staff will not understand how they are expected to behave if the code is not relevant to the company's business activities.
- Draw up the code of conduct before completing its corruption risk mapping exercise.
- Omit risk exposures inherent to the company's business activities from its gifts and hospitality policy, such as not addressing dealings with public officials when the company regularly bids for public contracts.
- Cite an employee's otherwise impressive performance as a reason not to discipline them for breaching the code of conduct.

 For further information about the anti-corruption code of conduct, refer to the relevant chapter in the AFA guidelines. The AFA has also published a practical guide on corporate gifts and hospitality policy.



SECTION 8

AWARENESS AND TRAINING

An awareness and training programme will equip the company’s employees with the knowledge and skills to identify risky situations, to assess the dangers these situations pose to themselves and to the company, and to react accordingly.



Conversely, staff who lack awareness and training could end up committing offences through inappropriate behaviour.



PRACTICAL ILLUSTRATION

Engrains, a French company that makes agricultural fertiliser, is forcing its customers to wait longer than usual for deliveries because high demand for certain ingredients is causing supply-chain bottlenecks. The company often sells its products to customers outside France.

Mr Nitrogen, an employee of Engrains, travels to another country to finalise the terms of a new fertiliser sales contract with a local company. During the trip, Mr Phosphate, the local company’s senior manager, offers to hire Mr Nitrogen’s son (who is eager to work abroad) in return for a promise that Engrains will prioritise deliveries to his company over its other customers.

Mr Nitrogen is unsure what to do. He knows he cannot accept any money. But he is unclear whether an exchange of favours between two well-meaning people would fall foul of the rules. Should he refuse the offer and risk losing the contract?

Had he completed an awareness and training programme, Mr Nitrogen would have had no hesitation about the right course of action.

Who should complete an awareness or training programme?

When designing an awareness and training programme, the company should adopt a two-tier approach.

Priority should be given to managers and staff most exposed to corruption risk, who should complete comprehensive training that is adapted to their role and equips them with the knowledge and skills to perform their day-to-day duties without risk. Managers can easily be identified by virtue of their grade or seniority. Conversely, staff most exposed to corruption risk are identified using the risk map. These usually include individuals in sales, procurement and accounting roles.

The company may also develop a more general awareness programme for all staff, covering corruption risk and the organisation’s anti-corruption policy. The aim of this programme is to ensure that everyone working for the company understands the risks and thinks twice when certain situations arise.



SECTION 8 AWARENESS AND TRAINING

When should training or awareness sessions take place?

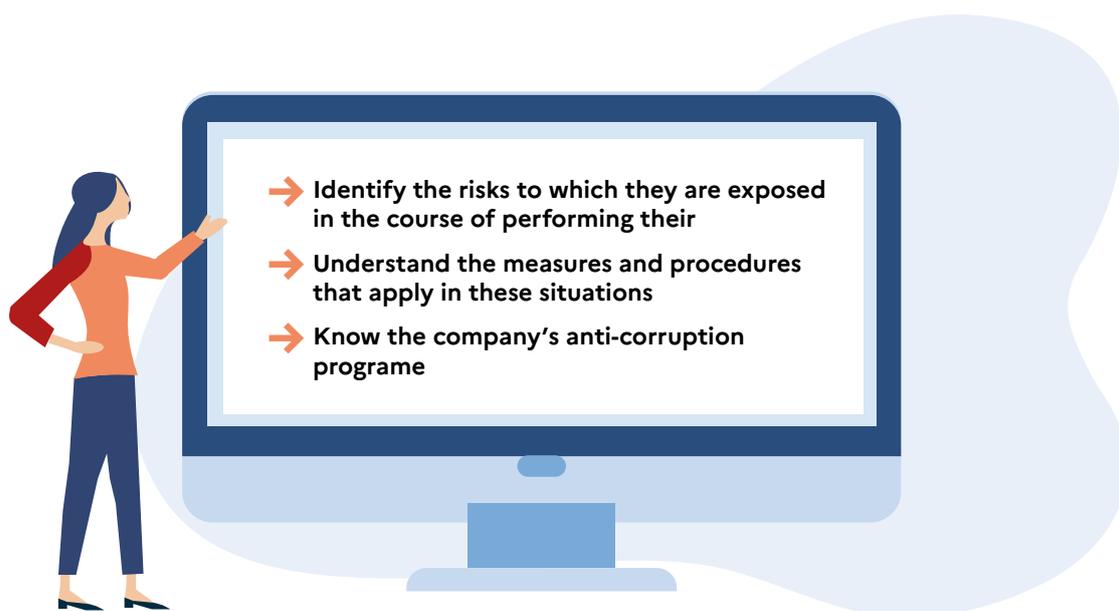
The company can hold training or awareness sessions (as applicable) once its anti-corruption programme is in place.

Ideally, all new arrivals should complete training or awareness (as applicable) shortly after joining the company. The company could also hold further sessions or campaigns following a change in personnel at the top of the organisation, in the aftermath of a particular event or when a new risky situation comes to light.

What content should the training or awareness programme cover?

The awareness side of the programme should cover general concepts, such as what corruption is and why it is an issue, what the code of conduct says and what examples it contains, and how the company's internal whistleblowing system works.

The training side of the programme, meanwhile, provides more in-depth content for managers and staff most exposed to corruption risk. It should cover the following topics:



The training programme could be developed in-house or by an outside provider. If the design of the programme is outsourced, it will need to be tailored to the company's specific needs and requirements and include practical illustrations relevant to its business activities.

It may prove helpful to complete the risk mapping exercise and draw up the code of conduct before designing the company-specific content (such as examples and illustrations). If the company has yet to finalise its risk map, it can still press ahead with developing the generic parts of the programme and add more content later.



SECTION 8 AWARENESS AND TRAINING

EXAMPLE

A training programme for staff, especially for those who deal with customers outside France, could include content explaining how to respond to inappropriate requests from these customers, their employees or other individuals acting on their behalf (such as intermediaries):

- Indicate who a staff member should contact if they receive such a request
- Explain how to refuse the request by stating that it breaches the company's code of conduct
- Stress the importance of keeping records of the incident (meeting dates, people present, internal and external written correspondence, etc.) and, where relevant, of writing a special report
- Explain that the company may follow up on the incident by:
 - officially notifying the company that one of its representatives made such a request (via a letter from senior management)
 - reporting the matter to the local authorities, to the French authorities in the country in question (such as the local consulate, the local economic department, the French foreign trade advisers or the local Business France office) or to the judicial authorities in France (which may have extraterritorial jurisdiction over the matter)
 - reporting the matter to the relevant industry federation, to the bilateral chamber of commerce (if any) and to other French companies operating in the local market (for information and joint response purposes)

The person in charge of anti-corruption measures (if any) could design the training programme or support the outside provider tasked with designing it. The human resources department could also fulfil a similar role.

What format should it take?

The format of the training programme will depend on the identified risks, the resources available to the company and the number of trainees.

For instance, the training could be delivered:

- in person (through lectures, classes, workshops, simulation/role-playing exercises, etc.)
- online

Importantly, the programme should include questionnaires or tests to check that trainees have fully understood the content.

Smaller companies could raise awareness among less-exposed employees through open discussions and specially scheduled meetings with managers.



SECTION 8
AWARENESS AND TRAINING

 **GOOD PRACTICES**

- Use every available company-wide communication channel to recap the principles set out in the code of conduct and to answer questions from staff.
- Provide regular training to managers and most-exposed staff and check that they know how to conduct themselves appropriately.
- Make sure the training programme includes practical illustrations and contains examples of all risky situations identified in its risk map.
- Incorporate anti-corruption training into its training plan (which is written into the employment contract) if it wants to make this training a binding requirement.
- Remind trainees, at every session, of the name and contact details of the person in charge of anti-corruption measures, and stress that they can contact this person for information and guidance.
- Monitor training-related metrics, such as the target population coverage rate and the number of hours of training delivered.
- Fully involve the human resources department in the training process.
- Publish all training materials on its intranet site (if it has one), along with any other resources relevant to internal corruption prevention efforts (such as statements by the senior manager, updates to the anti-corruption programme and press articles about risks in the wider business sector).

 **TO AVOID**

- Publish an online training programme but pay no attention to whether staff have understood and absorbed the content.
- Design a programme that is not differentiated by target audience (such as a training programme for buyers that focuses on risky situations in dealings with customers, which are irrelevant to their role).
- Deliver training sessions without keeping documented records of who attended.

 For further information about awareness and training for managers and staff, refer to the relevant chapter in the AFA guidelines.

SECTION 9

THIRD-PARTY DUE DILIGENCE



In order to protect itself against corruption risk, the company needs to know its customers, suppliers and intermediaries – especially their business practices. This knowledge is gained through a process known as third-party due diligence, in which the company assesses the companies, outside individuals and public organisations with which it intends to enter into or continue a business relationship.

A company can be exposed to risks presented by the practices of its partners. Third-party due diligence can shield the company against these risks.



PRACTICAL ILLUSTRATION

A company that manufactures shelving equipment for supermarkets has an established presence in southern France. It has fewer customers in northern France, where it uses intermediaries to win new business. A new business intermediary contacts the company’s sales director, explaining that her brother-in-law works as the procurement manager for a major food retailer. The sales director agrees to pay her a large amount of commission in return for her using her personal influence to win the shelving equipment supply contract from the retailer.

The company’s senior manager is dismayed when the facts come to light. He has never met the new intermediary, whose unscrupulous practices have infiltrated his company. He could have avoided this situation by conducting due diligence checks on the intermediary.

Why is third-party due diligence important?

A company can be exposed to corruption risk through its business partners. In order to shield itself against this risk, the company needs a detailed understanding of its partners – including whether they operate with integrity. It can gain this knowledge by conducting third-party due diligence, which is an integral part of an anti-corruption programme. The company will then decide, based on its appraisal of the corruption risk, whether to enter into a relationship with a partner, to continue an existing relationship or to terminate a relationship.

Who designs the third-party due diligence procedure?

The third-party due diligence procedure is designed by the person in charge of anti-corruption measures, in conjunction with other departments as relevant²⁹ (see Section 5). But staff who deal directly with partners (such as those working in sales and procurement roles) also have day-to-day responsibility for conducting these checks, and must be trained accordingly.

29 The OECD definition of intermediaries includes “agents, sales representatives, consultants or consulting firms, suppliers, distributors, resellers, subcontractors, joint venture partners and other business partners”.



SECTION 9 THIRD-PARTY DUE DILIGENCE

The senior manager plays a key role in this process, by:

- supporting the due diligence process
- allocating appropriate resources to setting up the procedures (such as bringing in outside providers to create a partner database, which the company will then manage in-house)
- deciding what action to take in the highest-risk cases

Which third parties should the process cover?

Ideally, the company should carry out due diligence checks on all individuals and organisations with which it has a relationship, and which could expose it to corruption risks.

Examples: Aside from customers, suppliers and intermediaries, the process could also cover recipients of corporate sponsorship and patronage, potential acquisition targets and business partners (such as joint venture and consortium partners).

How is the third-party due diligence procedure deployed?

1 DRAW UP A LIST OF THIRD PARTIES

Ideally, the company should draw up a list of all current and potential future partners. This list can be compiled by asking sales representatives for the names of their prospects and staff working in procurement for details of potential suppliers. Information could also be drawn from an existing database (such as the accounting database), then cross-checked against the names mentioned during the risk-mapping interviews.

2 ASSIGN THIRD PARTIES TO GROUPS WITH COMPARABLE RISK PROFILES TO DETERMINE THE DUE DILIGENCE APPROACH

The company is advised to assign its partners to groups with comparable risk profiles (risk-free or low-risk, medium-risk and high-risk), as identified by its risk map. When assigning third parties to these groups, the company could consider:

- **sector-specific risk:** here, the company could refer to the 2014 *OECD Foreign Bribery Report*³⁰, which contains a list of high-risk business sectors that are over-represented in foreign bribery cases
- **the type of third party:** for instance, the company may attribute a higher risk profile to third parties through which it obtains contracts, permits or licences, or to which it pays performance-based commissions (such as business intermediaries or distributors)
- **the country in which the third party is located (where applicable):** given that some jurisdictions are tougher on corruption than others, the company may wish to refer to NGO-published rankings such as Transparency International's Corruption Perceptions Index.

The nature and thoroughness of due diligence will depend on each group's estimated risk profile:

- **For risk-free or low-risk groups,** the company may opt not to conduct specific checks or to undertake simplified due diligence
- **For medium-risk groups,** the company may decide to proceed with standard due diligence
- **For high-risk groups,** the company is advised to carry out enhanced due diligence

³⁰ The 2014 *OECD Foreign Bribery Report* shows that economic operators in some business sectors are more likely to be implicated in bribery cases than others: some 59% of the cases covered in the report involve entities in the extractive industries, construction, transport and warehousing, and information and communication sectors.

SECTION 9
THIRD-PARTY DUE DILIGENCE

 **EXAMPLE OF A RISK PROFILING MATRIX**

Corruption risk factors are shown in **red** in the table below.

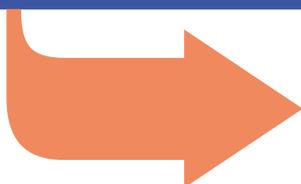
TYPE OF THIRD PARTY	COUNTRY	BUSINESS	ESTIMATED RISK	DUE DILIGENCE APPROACH TO THIRD PARTIES IN THIS GROUP
Business intermediaries	Not relevant	Not relevant	High	Enhanced due diligence
Suppliers	Denmark	Supply of office furniture	Low	No checks
Suppliers	Russia	Supply of office furniture	Medium	Standard due diligence
Suppliers	India	Extractive industries	High	Enhanced due diligence
Customers	Germany	Construction	Medium	Standard due diligence
Customers	Colombia	Transport	High	Enhanced due diligence

If, for staffing or budget reasons, the company cannot conduct due diligence on all its partners at once, it can opt for a two-stage approach:

 **STAGE ONE**

In order to spread the initial due diligence workload for existing partners over time, the company could start by reviewing its major customers and partners (such as key accounts and mission-critical suppliers that cannot easily be replaced).

It should also complete due diligence on all its business intermediaries (which can pose a high degree of risk) in this first wave.



 **STAGE TWO**

In this second wave, the company should complete checks on other customers and suppliers considered to pose a risk, as well as other third parties with which the company has a relationship.



SECTION 9
THIRD-PARTY DUE DILIGENCE

3 GATHER RELEVANT INFORMATION TO ASSESS

The next step in the process is to gather information about third parties in those groups that the company has singled out for due diligence, in order to assess the degree of risk they pose.

The company should gather a range of information, including:

- the name of the company and its shareholders
- any corruption-related proceedings or convictions involving the third party
- information about the third party's anti-corruption programme
- details of any dealings between the third party and the public sector, as well as the names of any PEPs (or close relatives of PEPs) involved in the organisation

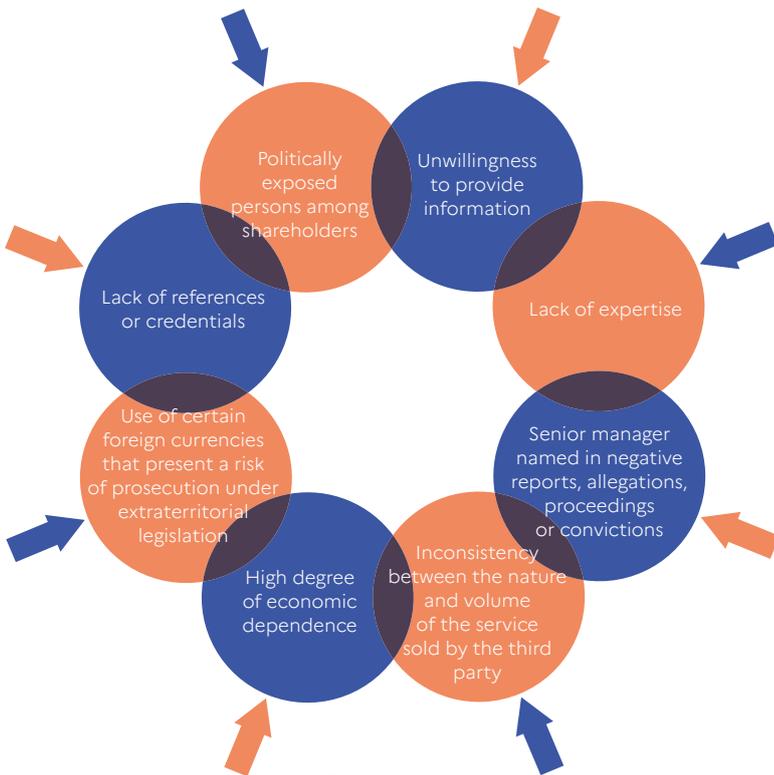
The company may gather this information from:

- statements made by the third party in response to a questionnaire sent by the company
- open-source documents and resources (such as websites, press articles and publicly available records)
- data purchased from specialist service providers

4 ASSESS THE THIRD PARTY'S RISK LEVEL

The company assesses the third party's risk level based on the information it has gathered, the third party's cooperation in providing this information and the nature of its relationship with the third party.

The examples shown in the figure opposite, which relate to the nature and purpose of the company's relationship with the third party, could, if uncovered during due diligence checks, lead the company to consider the third party as presenting a high degree of corruption risk.



5 DRAW CONCLUSIONS FROM THE THIRD-PARTY DUE DILIGENCE EXERCISE

Following its assessment of the risk level, the company may decide to:

- approve the relationship – with or without enhanced due diligence measures
- terminate or refrain from proceeding with the relationship
- postpone the decision (pending further assessments, for example)

The company should repeat the due diligence process at regular intervals to account for changes in the relationship and the third party's situation. It is useful to set a review date when entering into a relationship, based on the partner's risk profile.

SECTION 9
THIRD-PARTY DUE DILIGENCE

IN FOCUS

The person or people responsible for deciding whether to enter into a relationship with a third party, and the corresponding decision-making procedures, should be clearly identified. If no warning signals come to light in the assessment of a risk-free or low-risk group of third parties, front-line staff (such as buyers or sales representatives) may be authorised to approve the relationship. In higher-risk cases, the company is advised to involve the person in charge of anti-corruption measures (if any) in the decision, or even to refer the matter to senior management for opinion.

The absence of risk factors following an assessment does not guarantee that the relationship with the third party is absolutely devoid of risk.

Conversely, the identification of risk factors does not rule out the relationship, but must lead the company to exercise appropriate due diligence during the relationship.

If the company decides to continue working with a customer assessed as "high-risk", it is advised to introduce enhanced measures for this particular relationship, such as:

- requiring at least two sales representatives to attend negotiation meetings with the customer
- requiring the contract to be signed by two people
- implementing enhanced checks between the quote and invoice stages (including hospitality expenses)

 **GOOD PRACTICES**

- Draw up a flow chart for its third party due diligence process, describing who does what at each step in this process so that everyone is clear about their roles and responsibilities.
- Include, in its contracts, clauses providing for termination or non-renewal if corrupt practices come to light or in the event that the third party breaches the company's policies, principles and/or values (which should be shared with the third party, as relevant).
- Introduce measures to confirm that suppliers have actually provided the agreed goods or services before payment is released, and assign these two roles (confirming provision of goods or services and authorising payment) to two different people (according to the segregation-of-duties principle).
- Share its code of conduct (see Section 7) with third parties, after taking appropriate steps to protect any confidential information it may contain.
- Assess new third parties as far ahead of the intended start date of the relationship as possible.

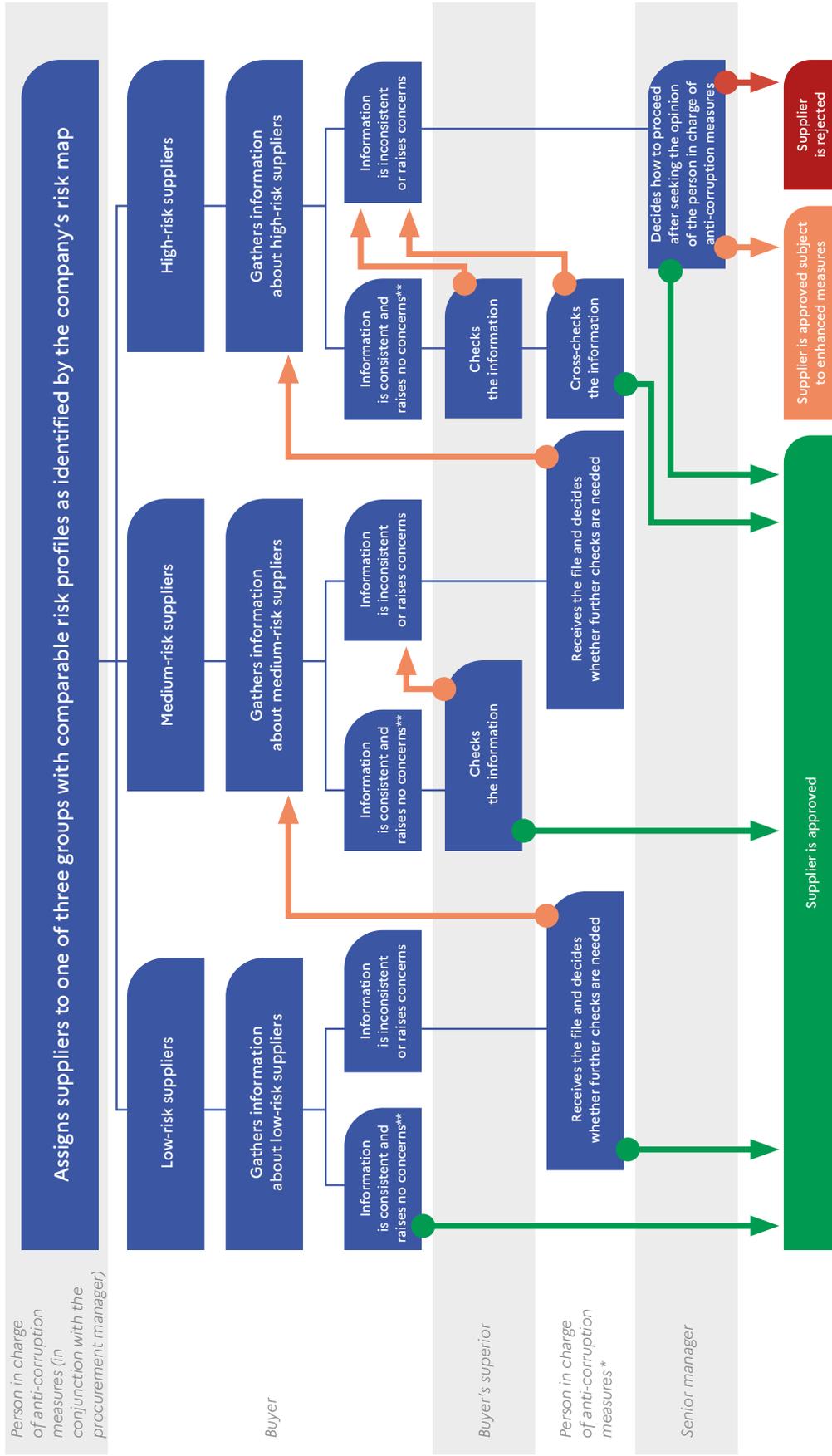
 **TO AVOID**

- Only conduct due diligence on new third parties. Instead, once its due diligence process is in place, the company should also assess its ongoing relationships – especially long-standing partnerships, which can present risks.
- Destroy due diligence records once its relationship with a third party comes to an end. Instead, it should keep these documents on file for five years from the date on which the relationship ends as evidence that it has taken the relevant precautions should the relationship be subject to an investigation by a judicial authority in France or another jurisdiction.
- Exclude from its due diligence process customers with which it has a long-standing relationship and that represent a significant share of its turnover.
- Overlook data protection concerns when conducting third-party due diligence: the company must comply with the General Data Protection Regulation (GDPR) when collecting this data.

 For further information about third-party due diligence, refer to the relevant chapter in the AFA guidelines.

SECTION 9
THIRD-PARTY DUE DILIGENCE

Example of a third-party due diligence flow chart



* In smaller companies, the senior manager may also act as the person in charge of anti-corruption measures.
 ** The company may need to go back to the third party (possibly involving contact between the buyer and the supplier) in order to obtain all the requested information.
 Example of "consistent" information: the senior manager's name (as shown on their passport or other form of ID) matches the name listed in the trade and company register. Example of information that "raises no concerns": the supplier's bank account is not located in a tax haven (in accordance with the company's procedures).

SECTION 10

INTERNAL WHISTLEBLOWING SYSTEM



The internal whistleblowing system³¹ is a procedure that enables staff to report breaches of the anti-corruption code of conduct that could constitute corrupt practices. This system is a source of valuable information about risky situations, allowing the senior manager to put a stop to such situations and to improve the company’s anti-corruption measures.

The internal whistleblowing system should allow staff to report, safely and in confidence, conduct or situations that may pose a risk to the company.



PRACTICAL ILLUSTRATION

Mr X works as a procurement manager for an energy producer and supplier, which has put a contract to maintain its power stations out to tender.

The senior manager of one of the companies bidding for the contract, who is eager to win the business, invites Mr X to meet him over lunch at a gourmet restaurant and gives him a luxury watch.

Ms Y, an assistant in the energy firm’s procurement department, finds out about the gift and hospitality that Mr X accepted. Concerned that he may have breached the firm’s anti-corruption code of conduct, she wants to report the matter but is unclear how to proceed. She knows that she can report violations of the law, but she is uncertain whether this particular conduct meets that definition. Moreover, because Mr X is her superior, she is also unsure whom to talk to – and she fears she could lose her job if she takes the matter further.

If her company had set up an internal anti-corruption whistleblowing system, Ms Y would have known how to proceed. She could have reported Mr X’s conduct, which breached the code of conduct and likely constituted a corrupt practice, safely and in confidence. The senior manager and the anti-corruption compliance officer could then have moved to bring this risky situation to an end and protected the company.

Is an internal whistleblowing system compulsory?

There is no legal requirement for SMEs and smaller intermediate-sized enterprises to set up an internal whistleblowing system for reporting breaches of their anti-corruption code of conduct. But this kind of system is a key tool in preventing corruption.

Article 8 of the Sapin II Act requires companies with 50 or more employees to implement a procedure for receiving whistleblower reports. Companies that fall into this category can build on their existing procedure to develop a corruption-specific whistleblowing system.

Companies with fewer than 50 employees are not required to implement such a procedure, but will nevertheless benefit from doing so.

³¹ Directive (EU) 2019/1937 of 23 October 2019 was transposed into French law by law n°2022-401 of March 22, 2022.



SECTION 10 INTERNAL WHISTLEBLOWING SYSTEM

Who can use the internal whistleblowing system?

The internal whistleblowing system should be open to all employees, as well as to external and occasional staff (such as temporary staff, interns, service providers and employees of subcontractors).

If the company also wishes to open its internal whistleblowing system to third parties, it should inform them of this possibility and explain how to use the system.

How is an internal whistleblowing system implemented?

The company will need to draw up a formal internal whistleblowing procedure, which explains and outlines:

- the steps involved in filing a whistleblowing report
- the channels for filing reports (dedicated email address, postal address, etc.), which must be easily accessible for staff, as well as the procedure for the whistleblower to provide documents to back up their report
- the contact person designated to receive reports within the company
- the arrangements in place for notifying the whistleblower that their report has been received, and the time needed to determine the admissibility of the report (acknowledgement of receipt does not necessarily mean that the report is serious enough to be admissible)
- the arrangements in place for notifying the whistleblower – and, where necessary, the individual(s) named in the report – that the procedure is closed
- the provisions in place to protect the confidentiality of the whistleblower, the individual(s) named in the report and the subject-matter of the report
- the criteria that the person making the report must meet in order to enjoy the special protections afforded to whistleblowers, along with the nature of these protections
- the data protection measures in place

Whistleblowers must be able to make reports anonymously. Consequently, the system must be designed in a way that allows the company can follow up on a report without revealing the whistleblower's identity (such as by asking the person making the report to provide an anonymous email address or a PO box address).

Who does what?

An effective whistleblowing system relies on confidentiality. For this reason, anyone involved in processing reports must be bound by enhanced confidentiality requirements (covering the identity of the whistleblower and the individual(s) named in the report, as well as all information received in connection with the report).

Under Article 9 of the Sapin II Act, breaching the confidentiality of whistleblowing reports carries a penalty of two years' imprisonment and a fine of €30,000.

The contact person designated to receive reports may be known as the "whistleblowing officer". The procedure may set out alternative arrangements in cases where the whistleblowing officer is implicated in the report.

The senior manager is kept informed about investigations opened into the most serious reports.

The company may manage its internal whistleblowing system in-house or outsource this task to an external provider with the requisite capability and expertise to process reports and protect the confidentiality of all parties involved.

SECTION 10 INTERNAL WHISTLEBLOWING SYSTEM

How are whistleblowers protected?

Article 6 of the Sapin II Act sets out the special protections that may be afforded to whistleblowers. For further information about the criteria that the person making the report must meet in order to enjoy these protections, refer to the Act itself and to **Ori-entation and protection of whistleblowers**, an accompanying guide with commentary published by the French Defender of Rights. The senior manager is advised to issue a specific statement about the special protections afforded to whistleblowers in order to encourage people to use the system.

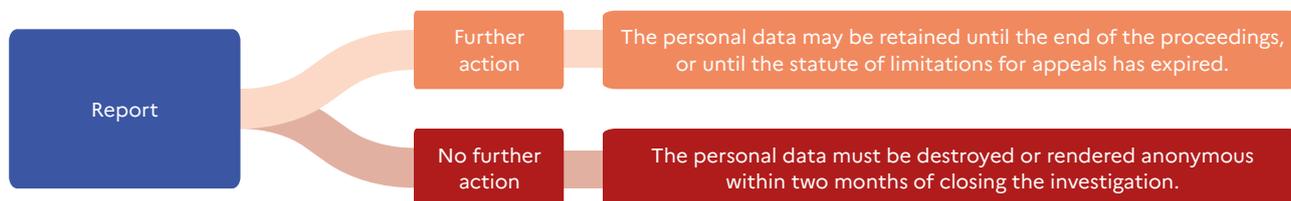
What data protection measures are required?

By its very nature, an internal whistleblowing system involves the collection and processing of personal data. Companies that implement such a system must ensure that it complies with the General Data Protection Regulation (GDPR) and with the French Data Protection Act 78-17 of 6 January 1978.

The company will therefore need to carry out a data protection impact assessment under the GDPR.

How long is personal data relating to whistleblowing reports retained?

The retention periods for such data are governed by the GDPR. Unless the law provides otherwise, the retention and archiving periods for personal data relating to whistleblowing reports differ depending on whether further action³² is taken:



🎯 FURTHER READING

For further information, refer to the following publications (available in French only) by the French Data Protection Authority (CNIL):

- ➔ a set of guidelines on the processing of personal data in the context of whistleblowing systems
- ➔ a privacy and data protection check-list for very small enterprises (VSEs) and SMEs
- ➔ a practical guide to the GDPR for SMEs

➔ Processing and investigating whistleblower reports

Any internal investigation initiated following a whistleblower report must be conducted by one or more qualified persons (from within the company or an appropriate outside provider). The investigation must comply with employment law and the rights of the individuals involved (including privacy law).

32 "Further action" means any decision made by the organisation to act on the whistleblower report. This may involve new or amended internal rules (rules of procedure, ethics charter, etc.), reorganisation of the company's operations and departments, sanctions or legal proceedings (source: AFA guidelines, footnote 4).



SECTION 10 INTERNAL WHISTLEBLOWING SYSTEM

→ Communicating about the whistleblowing system

It is important that staff members are aware that the whistleblowing system exists and know how to use it. To this end, the company should:

- present the whistleblowing system in its code of conduct
- share the internal whistleblowing procedure with all staff and via all available channels (appended to a letter from senior management, posted on display, published on its website, delivered by hand, etc.), to ensure that everyone has read and understood its contents
- include a presentation on the whistleblowing system in awareness sessions for all staff and in the training programme for managers and staff most exposed to corruption risk (the company may wish to arrange specific training for managers, who can then advise and guide their team members)
- ensure that staff involved in receiving, managing and processing reports are properly trained, including on confidentiality requirements



GOOD PRACTICES

- Have all staff who will be involved in processing reports sign a formal, strict confidentiality agreement.
- Include the whistleblowing procedure in its onboarding pack for new hires.
- Consult the social and economic committee before introducing its internal whistleblowing system.



TO AVOID

- Overlook data protection and confidentiality concerns, especially as they apply to its computer systems.



For further information about the internal whistleblowing system, refer to the relevant chapter in the AFA guidelines.



SECTION 11

INTERNAL CONTROL AND ANTI-CORRUPTION MEASURES



The term “internal control” refers to all internal mechanisms used to verify that tasks in support of operational objectives (as set by the senior manager) are performed in accordance with the company’s procedures.

If internal control measures are not sufficiently robust, the company could be exposed to corruption and other risks.



PRACTICAL ILLUSTRATION

The personal assistant to the senior manager of a logistics company is responsible for ordering supplies and taking delivery of these supplies. He forwards the invoices to the senior manager, who is too busy dealing with the company’s warehouses and customers to check them over and simply returns them with a signed cheque.

The PA’s sister is the senior manager of a company that supplies shrink wrap for pallets. In the invoices she issues to the PA’s company, she charges for twice the amount of shrink wrap that she actually delivers, then shares the undue proceeds with her brother.

The senior manager is unaware that his company is losing a significant amount of money. If he had introduced more robust internal control measures, including applying the segregation-of-duties principles (to inventory management in particular), these artificially inflated invoices would have come to light.

What are the key components of an effective internal control system?

An effective internal control system is based on the following principles:

→ Segregation of duties

In the above example, the situation could have been avoided by assigning responsibility for placing orders, taking delivery of incoming goods and releasing payment to three different people. For instance:

- The PA to the senior manager places orders
- The warehouse clerk takes delivery of incoming goods
- The accountant releases payment

As a more general rule, in sales and procurement processes, each of the following tasks should be assigned to a different person:

- Inputting and updating customer or supplier details in the company’s database
- Placing/taking orders
- Receiving incoming goods/dispatching outgoing goods
- Maintaining accounting records
- Paying suppliers/taking payment from customers
- Managing inventory records (issuing credit notes, writing off unrecoverable losses, manually adjusting receivables and debts)



SECTION 11

INTERNAL CONTROL AND ANTI-CORRUPTION MEASURES

- Documented procedures that are shared with all relevant staff
- Internal control checks that are documented in procedures and robust enough to provide assurance that a given internal process is being performed correctly

In the above example, the company could have cross-checked its purchase orders, goods receipt slips and supplier invoices before releasing payment.

- Routine checks to ensure that procedures are actually being applied, typically involving three “lines of defence”:

- The first (permanent) line of defence ensures that the company’s procedures are being applied. These preventive checks are performed before a decision or transaction is implemented.

In the above example, the warehouse clerk is tasked with reconciling the volume of incoming goods against the order placed by the company. Once he has completed these checks, he signs the goods receipt slip, which is kept in a dedicated folder. The warehouse manager reviews 10% of these slips and signs them before returning them to the supplier. These spot checks ensure that the warehouse clerk is following the reconciliation procedure.

- The second (regular) line of defence ensures that the first-line-of-defence controls are properly executed. These detective checks, which are conducted after decisions and transactions have been implemented, must be performed by someone other than the person who conducted the first-line-of-defence checks.

In the above example, the warehouse manager carries out weekly checks on a sample of incoming deliveries to make sure that the warehouse clerks have retained and signed the goods receipt slips.

- The third (general-purpose) line of defence, which also involves checks conducted after decisions and transactions have been implemented, ensures that the checks required under the first two lines of defence have been properly executed, and that the associated procedures are fit for purpose (i.e. that the rules set by the senior manager are adhered to and that the company’s assets are protected). These checks are conducted by an independent in-house team or unit (the internal control department, if the company has one) or by an external provider (such as a chartered accountant or an external auditor).

In the above example, the company’s accounting firm could review its procurement procedure to check that sufficiently robust safeguards are in place.

- Systematic updating of procedures and/or organisational arrangements to correct any irregularities or weaknesses

IN FOCUS

Smaller companies may find it hard to apply the segregation-of-duties principle or to set up an internal control system with three lines of defence. In such cases, the senior manager could offset these problems by:

- carrying out internal control checks personally
- bringing in outside providers (such as a chartered accountant or an external auditor) from time to time to review the internal control system and recommend improvements



SECTION 11 INTERNAL CONTROL AND ANTI-CORRUPTION MEASURES

Who does what?

The senior manager:

- personally ensures that the company has documented procedures in place (even if they are not disposed to applying formal procedures or if they feel that they are too busy to concern themselves with administrative tasks)
- sets an example for staff by following all rules, procedures and standards of conduct
- strengthens the internal control system in line with recommendations made by the company’s chartered accountant or external auditor
- ensures that, if irregularities occur, the procedures are updated so that they will not happen again

Staff apply the procedures, including conducting the internal control checks outlined in these procedures. Over time, the system is strengthened through the introduction of automated, computerised checks.

The chartered accountant or external auditor assesses the company’s risk exposures, reviews its internal control procedures to ensure they are suitably robust to mitigate these risks, and makes recommendations to improve these procedures.

Internal control and anti-corruption measures

The company should subject its anti-corruption measures to internal control checks – just as it does for its other internal procedures – using the same three-lines-of-defence model.

The example below shows how the three lines of defence might apply to the company’s anti-corruption code of conduct:

PROCEDURE	The HR manager provides all new hires with a copy of the code of conduct and has them sign a statement confirming that they have read and understood it.
FIRST LINE OF DEFENCE	When a new hire joins a team, their superior checks that they have received a copy of the code of conduct and signed the confirmation statement.
SECOND LINE OF DEFENCE	Each quarter, the person in charge of anti-corruption measures checks the archived confirmation statements against the list of new hires and makes sure they have all been signed.
THIRD LINE OF DEFENCE	The company’s internal audit department (or, failing that, its external auditor) reviews the code of conduct to make sure that it covers all risky situations identified in the corruption risk map.

To help it monitor its anti-corruption programme, the company could keep track of basic metrics such as the dates on which the senior manager approves successive updates of the risk map, the number of third parties assessed each year, the number of corruption-related whistleblowing reports processed and the number of staff who have completed anti-corruption training.



SECTION 11

INTERNAL CONTROL AND ANTI-CORRUPTION MEASURES

 **GOOD PRACTICES**

- Share its anti-corruption code of conduct (or an amended version of the code) with third parties (including suppliers), have them sign it and check that they have done so.
- Explain the importance of internal control to staff in order to dispel the myth that it is nothing more than pointless administrative tasks and to secure buy-in to the process.
- Draw up a documented internal control procedure indicating how and how often the checks should be conducted, who is responsible for conducting them and how the results of these checks are shared with the senior manager.
- Involve staff in designing internal control checks so that they feel fully invested in the process from start to finish.
- Keep records of all checks performed.
- Recognise that an effective information system is vital to a properly functioning and robust internal control system. For instance, the company could introduce password-protected access to its software and databases, assign permissions only to those staff who need to access the system to perform their duties, and carry out routine checks on new and edited records of third parties who receive payments from the company.

 **TO AVOID**

- Take the misguided view that only large organisations need an internal control system because smaller companies are less exposed to corruption risk.
- View drawing up documented procedures as a waste of the senior manager's time, or discredit its internal procedures through its messaging or actions.



For further information about internal control, refer to the relevant chapter in the AFA guidelines.

SECTION 12

ANTI-CORRUPTION ACCOUNTING CONTROLS



Keeping detailed and comprehensive accounting records is vital to preventing corruption. The senior manager can also introduce additional accounting controls, focusing on the risky situations identified in the company's risk map.

If necessary, the company can supplement its existing accounting controls with specific anti-corruption checks designed to prevent corrupt practices within the organisation.

PRACTICAL ILLUSTRATION

Company X is a well-established business. It has documented accounting procedures and prepares its financial statements in line with applicable rules and standards.

One January, the company launches a successful new product and hires new sales representatives to join its team. One of the new hires repeatedly asks for cash advances to cover his prospecting costs. The company's accountant has no issue granting the request: under the company's normal procedure, advances are reviewed twice a year, on 30 June and 31 December. Over the course of several months, the sales representative uses the advances to bribe a major customer in return for awarding him high-value contracts. As a result, he meets his target and qualifies for a substantial bonus.

The senior manager could have protected his company against these practices by identifying a new product launch as a potentially risky situation in the risk map and by bringing in enhanced accounting controls for a set period following any new launch. For instance, the company could have updated its anti-corruption accounting control procedure so that cash advances were reviewed more frequently and only granted with the senior manager's express permission.

Why is it important to keep thorough accounting records?

A company's financial statements (especially its balance sheet, income statement and explanatory notes) must be prepared in accordance with French generally accepted accounting principles. These principles are outlined below:

- **True and fair view:** the financial statements must provide a true and fair view of the entity's assets, financial situation and earnings at the end of the financial year
- **Comparability and going concern:** the financial statements must be comparable from one period to the next and support an assessment of the entity's ability to continue as a going concern
- **Regularity and faithful representation:** the financial statements must give a true reflection of the reality and relative importance of the events they record, to the best of the senior manager's knowledge
- **Prudence:** the financial statements must be prepared on the basis of prudent judgements and estimates, in order to avoid the risk of uncertainties that could harm the company's assets and earnings being carried forward to subsequent reporting periods



SECTION 12 ANTI-CORRUPTION ACCOUNTING CONTROLS

- **Consistency in accounting methods:** the company’s accounting methods, and the structure of its balance sheet and income statement, must be consistent from one period to the next for reasons of comparability

The internal control principles discussed in Section 11 also apply to the company’s book-keeping and accounting processes:

- There should be a strict segregation of duties, with separate individuals responsible for checking that services have been delivered, requesting payment, authorising payment and remitting payment
- Regular checks should be carried out to ensure that book-keeping and accounting tasks are performed in compliance with the company’s procedures

Ideally, the company should follow the same “three-lines-of-defence” model it uses for its internal control system: first-line and second-line accounting controls, plus accounting audits (which act as the third line of defence).

Anti-corruption accounting controls

Anti-corruption accounting controls should be designed with the aim of mitigating the corruption risks identified in the company’s risk map. To this end, the company may need to strengthen its existing accounting controls or introduce new ones.

For instance, the company may wish to introduce enhanced accounting controls for:

- transactions such as donations and bequests, and sponsorship and patronage payments
- one-off or high-risk transactions (such as acquisitions or new product launches)
- transactions involving third parties from high-risk groups (as identified in the risk map), such as intermediaries, consultants and public bodies
- transactions involving services that are intangible (such as technical design or IT maintenance services) or time-limited (such as equipment rental services), which complicate the process of reconciling accounting records with inventory records and conducting subsequent checks, and are more prone to the practice of issuing fake invoices
- transactions involving high-risk countries – note that facilitation payments are illegal in France, where they are treated as a corrupt practice (for further information, refer to the AFA primer on facilitation payments, which is available on the Agency’s website)

Example of an anti-corruption accounting control procedure:

RISKY SITUATION IDENTIFIED IN THE COMPANY’S RISK MAP	EXISTING ACCOUNTING CONTROLS	ANTI-CORRUPTION ACCOUNTING CONTROLS
Distributors are identified as high-risk third parties.	<p>The accounting department pays suppliers on the basis of a payment authorisation form received from the head of the department that placed the order.</p> <p>Each week, the chief financial officer reviews a random sample of payments and checks that the payment authorisation form is present and correct.</p>	<p><i>In addition to existing accounting controls:</i></p> <p>Where the total amount paid to a distributor exceeds €XX per month, the sales director must provide evidence to support the payment authorisation form (confirmation that the service has been delivered, compliance with the terms of the contract, etc.), which must be signed by the senior manager before payment is released.</p> <p>Each month, the chief financial officer checks that these payments have been authorised by the senior manager.</p>

SECTION 12 ANTI-CORRUPTION ACCOUNTING CONTROLS

The company may also wish to introduce enhanced controls for certain high-risk account items, such as:

- suspense, advance, and accruals and deferrals accounts
- accounts receivable with a credit balance or accounts payable with a debit balance
- discounts and rebates
- cash floats
- fee and commission accounts, marketing expense accounts, and gifts and hospitality accounts

Anti-corruption accounting controls may be performed by the company's accounting and finance departments or by a suitably qualified and experienced external auditor. If the company is required to have its financial statements externally audited, the auditor will contribute to corruption prevention and detection when carrying out the checks and verifications it has been instructed to complete. Note that the external auditor must report any suspected criminal offences – including corrupt practices – that it uncovers in the course of its audit to the public prosecutor.

GOOD PRACTICES

- Keep an audit trail of all accounting records.
- Introduce password-protected access to its information systems and records, and in particular to its customer and supplier database and its bank accounts.
- Carry out regular checks to ensure that any changes to its databases are appropriate and justified.
- Opt for controls that reconcile accounting records with physical assets and supporting evidence (such as goods delivered, services provided or invoices issued).
- Avoiding using cash where possible, and have a documented cash management policy if required.

TO AVOID

- Believe that existing accounting controls are sufficient, and fail to design controls that relate to the risky situations identified in its risk map.
- Assign unqualified staff to accounting and book-keeping tasks.

 For further information about accounting controls, refer to the relevant chapter in the AFA guidelines.



SECTION 13

DISCIPLINARY SYSTEM



The senior manager may decide to take appropriate and proportionate disciplinary action against staff members who breach the company's anti-corruption code of conduct.

What is a disciplinary system?

A disciplinary system is a set of measures that a company reserves the right to impose for what it deems to be misconduct.

Misconduct that can warrant action includes failure to comply with the disciplinary rules set out in the rules of procedure and in the anti-corruption code of conduct (which forms a part of these regulations).

Companies with 50 or more employees are required to have rules of procedure. Disciplinary action cannot be taken against staff members unless the penalties are stipulated in these regulations.

What disciplinary action can staff face?

Any disciplinary action must be proportionate to the misconduct. A scale of penalties may be stipulated in the rules of procedure (if the company has such rules) so that these are known to staff. For illustrative purposes, the following penalties are permitted under French labour law and frequently imposed on staff: official warning, suspension, demotion, and dismissal on real and serious grounds or for serious or gross misconduct.

Companies that do not have rules of procedure will instead base their disciplinary system on applicable employment law, and in particular on the duty to act on good faith that is enshrined in the employment contract.

How does a disciplinary system work?

A disciplinary procedure may be initiated against staff who breach the company's code of conduct (which forms an integral part of the rules of procedure – see Section 7).

This disciplinary procedure is entirely separate from any criminal prosecution, and the senior manager can impose disciplinary penalties even if no legal action is taken against the staff member. Disciplinary penalties may be imposed on the basis of the findings of a detailed internal investigation that proves that the alleged misconduct did indeed take place and was severe enough to warrant punishment.

The senior manager may use any and all channels of communication at their disposal to highlight the company's zero-tolerance approach to corruption and to remind staff that they will face disciplinary action if they break the rules.



For further information about the disciplinary system and associated penalties, refer to the relevant chapter in the AFA guidelines.

FURTHER READING

For further information about implementing an anti-corruption programme, refer to the full text of the Sapin II Act (in French only) and to the guidelines and other documents published on the AFA website:

- The Sapin II Act
- The AFA guidelines
- Other AFA guides:
 - *The corporate anti-corruption compliance function*
 - *Preventing conflicts of interest in the private sector*
 - *Anti-corruption due diligence for mergers and acquisitions*
 - *Gifts and hospitality policy in private and public sector corporations and non-profits*
 - *Managing corruption risk in the public procurement cycle*
- The following AFA primers (available in French only):
 - AFA guidelines for companies subject to Article 17 of the Sapin II Act
 - Facilitation payments

Economic operators are welcome to send questions to the AFA at the following address: afa@afa.gouv.fr. On request, the agency can also provide targeted support with any aspect of an organisation's anti-corruption programme, at any stage in the process. For further information about accessing this support, refer to the AFA's [charter for supporting economic operators](#) (available in French only).

Companies looking to implement anti-corruption measures may also find it helpful to refer to guides and documents published by other public-sector bodies (all available in French only):

- The French Defender of Rights' Orientation and protection of whistleblowers guide
- The French Data Protection Authority's (CNIL) guidelines on the processing of personal data on the context of whistleblowing systems
- The CNIL's practical guide to the GDPR for SMEs
- The CNIL's privacy and data protection check-list for VSEs and SMEs.





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