TOWARDS BUILDING A ROAD OF INTEGRITY

PERSPECTIVES OF BUSINESS INTEGRITY AND COMPLIANCE
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CONTENTS

Acknowledgements .................................................................................................................. 3
Executive Summary .................................................................................................................. 6
Introduction ............................................................................................................................... 9

Chapter 1
Importance of Business Integrity and Compliance in International Investment Projects 15

1.1 Legal impact of corruption on businesses ................................................................. 16
1.2 Financial and reputational consequences ............................................................... 21
1.3 Social consequences ................................................................................................. 22
1.4 Conclusion ................................................................................................................... 23

Chapter 2
Regulatory Framework Applicable to Business Integrity and Compliance in the BRI 25

2.1 Global instruments ..................................................................................................... 26
2.2 Regional instruments ................................................................................................ 30
2.3 National laws .............................................................................................................. 34
2.4 Anti-corruption regimes of MDBs ....................................................................... 37
2.5 Voluntary standards ................................................................................................ 38

Chapter 3
Designing an Effective Business Integrity and Compliance Programme in the BRI Context 43

3.1 Compliance risk assessment ..................................................................................... 46
3.2 Support and commitment from senior management for the prohibition of misconduct... 54
3.3 Importance of independent and adequately resourced compliance functions .......... 56
3.4 Employees’ code of conduct and compliance guideline ........................................... 61
3.5 Business partners’ compliance management ......................................................... 64
3.6 Adequate policies for high-risk areas .................................................................... 70
3.7 Internal control and record keeping ....................................................................... 76
3.8 Communication and training .................................................................................. 77
3.9 Detection, investigating and handling violations ...................................................... 81
3.10 Internal rules for monitoring and continuously enhancing the effectiveness of the compliance programme ............................................................................. 85

Conclusion ............................................................................................................................ 89
Annexes ................................................................................................................................. 93
EXECUTIVE SUMMARY

Risks and uncertainties always accompany business operations. Whether a small corner store, a large national chain or an international mega-conglomerate, they are constantly confronted with potential corruption risks that may significantly damage their commercial value and reputation. In this context, business integrity and compliance should be placed at the core of the operations and ideals of any business. Yet, uncertainties and challenges in this area, particularly for those engaging in international investment projects, loom large throughout the project cycle, ranging from the initiation of investment, conclusion of each transaction, to the completion of construction and maintenance.

This project handbook was developed by UNODC under the project ‘Fostering sustainable development by supporting the implementation of the United Nations Convention against Corruption in countries along the Silk Road Economic Belt’. It aims to provide guidance in strengthening integrity and compliance for businesses participating in the Belt and Road Initiative (BRI)-one of the major international cooperation platforms for economic development and international investment initiated by China in 2013.

Having recognized the detrimental effect of unethical and illegal business practices in foreign investment, many multilateral instruments, particularly the United Nations Convention against Corruption, have dedicated specific provisions to deterring such practices and promoting business integrity. To satisfy the obligations provided by these instruments, BRI participating States have either incorporated such instruments into their domestic law or have chosen to directly apply them in the domestic context. The national anti-corruption laws that have implications on the business integrity and compliance of 16 countries participating in the UNODC project are also examined in the handbook.
To help the BRI participating business entities better tackle the risks and challenges to business integrity and compliance for their international investment projects, guidelines on the establishment of an effective compliance programme are introduced, with ten key constitutive elements, accompanied by corresponding examples of promising practices or efforts initiated primarily by BRI participating businesses. These practical examples echo the recommendations for establishing business integrity and compliance management systems and cover a wide range of sectors such as construction, transportation, electricity and clean energy, gas and petroleum, mining and manufacturing.

BRI business entities may wish to formulate their tailored compliance programme based on their own characteristics, including but not limited to geographical locations, sizes, industries, types of business, roles in the transactions, applicable laws and regulations, etc. They are strongly encouraged to refer to these examples not only as recommendations written on paper but also to follow and integrate these practices comprehensively into each aspect of their business operations.

Building and promoting a culture of business integrity in any business, and especially in an undertaking as vast as the BRI, does not happen overnight but requires each and every participating business entity’s constant effort. This project handbook aims at being a valuable resource towards achieving that objective.
Introduction
The BRI, which includes the Silk Road Economic Belt (Belt) and the 21st Century Maritime Silk Road (Road), was launched by the Government of the People’s Republic of China in 2013, with a view to providing an international cooperation platform for economic development and international investment. Covering many parts of the world, the BRI has extended beyond the traditional geographical coverage of countries along the Belt and Road in recent years. As of July 2023, more than 150 countries and 30 international organizations have signed cooperation agreements with the Government of China under the BRI framework.

The vast scale of the BRI investment projects creates huge potential for promoting international investment. In the past decade, investment has flowed to countries across the globe and spanned various sectors, including energy, transport, metals, real estate, finance, health and agriculture.

International investment projects are generally vulnerable to higher corruption risks due to their vast scale, complex delivery requirements, central role of government agencies and involvement of international players. Corruption may in turn destroy livelihoods, undermine the social fabric of societies, and discourage investment. Given their size and complexity, the BRI projects cannot realistically be immune to corruption risks, including those involving the business sector.

To address such risks, the 2nd Belt and Road Forum for International Cooperation held in Beijing in 2019 adopted the “Beijing Initiative for the Clean Silk Road”, calling for a clean Silk Road through consultation, contribution and shared benefits, and safeguarding the development of the Belt and Road Initiative in the spirit of the United Nations Convention Against Corruption. In this context, strengthening business integrity and compliance has become one of the top priorities.

In support of these efforts, UNODC launched a project entitled “Fostering sustainable development by supporting the implementation of the United Nations Convention against Corruption in countries along the Silk Road Economic Belt” (UNODC project) in 2020, which established an Anti-Corruption Practitioners Network which included 16 countries along the Silk Road Economic Belt. In addition, on 25 November 2020, UNODC cohosted the 3rd annual Seminar on Business Integrity and Compliance for Belt and Road with the National Commission of Supervision of China, the International Anti-Corruption Academy, and the Asian Infrastructure Investment Bank. The seminar was attended by 63 enterprises participating in BRI investment projects and adopted the Compliance Initiative (see annex I). The participating enterprises affirmed their commitment to raising awareness of compliance issues, establishing

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1 Henceforth referred to as China.
2 See Green Finance & Development Center, "About Belt and Road Initiative (BRI)". https://greenfdc.org/belt-and-road-initiative-about/
3 See Countries that have signed cooperation documents with China for jointly building the BRI. https://www.yidaiyilu.gov.cn/xwzx/roll/77298.htm
5 16 countries along the Silk Road Economic Belt, including Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, China, Georgia, Greece, Iran (Islamic Republic of), Kazakhstan, Kyrgyzstan, Mongolia, Montenegro, Serbia, Tajikistan, Türkiye and Uzbekistan.
compliance programmes, strictly adhering to relevant laws and regulations, and strengthening corporate social responsibility to promote the high-quality development of the BRI.

The current handbook developed under this UNODC project complements these commitments. Directed at corporate executives and compliance officers, its principal aim is to help companies implementing international investment projects under the BRI or possibly beyond to enhance their compliance and risk management structures in order to create a culture of integrity amongst their own employees and, more broadly, within their supply chains.

By actively promoting integrity and accountability in their operations, companies participating in the BRI’s international investment projects and operating in the BRI countries will make a significant contribution to bringing corruption under control.

Structure

This handbook is divided into three chapters, which aim to provide a holistic picture of issues related to business integrity and compliance to business entities participating in the BRI and may be used for a similar purpose in other international investment projects and circumstances where applicable.

- **Introduction** provides an overview of the handbook, including its background, structure, and methodology.

- **Chapter 1** elaborates on the importance of business integrity and compliance in preventing corruption in international investment projects.

- **Chapter 2** presents the regulatory framework, including various international, regional and national legal instruments, as well as relevant international standards that affect the integrity and compliance of business entities participating in BRI investment projects. With regard to the national instruments, the handbook focuses on the 16 countries along the Silk Road Economic Belt participating in the UNODC project and includes more specific information on their national legislation in Annex III.

- **Chapter 3** provides specific guidance on building adequate business integrity and compliance management systems in the context of the BRI and international investment projects per se, including providing corporate executives and those responsible for compliance with practical recommendations. Concrete examples of promising practices, particularly in the context of the BRI, are presented.
Methodology

Business integrity, as used in this handbook, implies operating a business in accordance with a strong set of moral values in a manner that avoids corruption throughout its operation and supply chain. Businesses that act with integrity follow the law and ethical norms, treat their employees, customers and business partners fairly and respectfully, abide by their ethical commitments, and generally conduct their affairs in a socially responsible manner.7 Compliance in this guide denotes the observance of laws as the minimum requirement for businesses in preventing corrupt conduct and mitigating corruption risks. The combination of business integrity and compliance thus includes a wide range of measures that not only aim to help corporates comply with applicable laws but also set high moral standards for their business operations.

Strengthening business integrity and compliance is an essential factor of the effective implementation of the United Nations Convention against Corruption, in particular its article 12 on the private sector. However, article 12 does not provide comprehensive standards on specific components of adequate business integrity and compliance management systems, and leaves many aspects to the discretion of States parties. This project handbook proposes ten concrete elements that can help build an effective compliance programme to advance objectives of the Convention. These elements are based on various knowledge resources developed by UNODC and other stakeholders on the theme of business integrity and compliance.

Each element contains examples of promising practices of BRI participating business entities to facilitate readers’ understanding of various measures to promote business integrity and compliance in the BRI context and beyond. These examples were collected from public sources or provided by BRI participating countries under the UNODC project, with the names of companies anonymized.

These practices have been proven to be generally effective in terms of enhancing business integrity and compliance and therefore would be promising in BRI business practices. Though it is difficult to fully evaluate the extent of their effectiveness due to the limitation of the information available, these promising examples correspond to the requirements of the suggested elements for establishing effective business integrity and compliance programme. As real-life examples, they provide realistic and practical guidance for business entities engaged in the BRI.

Businesses represented in this project handbook come from various sectors and industries in which international investment projects under BRI are implemented. The majority of these projects are public in nature as they are implemented through State or local governments, and are structured through formal arrangements or agreements involving States and/or their publicly owned institutions, with investments often being considered as public spending in the host countries. Alongside, BRI also encourages private companies to engage in foreign investments.

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8 In this publication, an international investment project is understood to involve project finance, funding and/or lending from one or more governments, multilateral development banks or other financial institutions. The governments, together with private financiers, companies, and development banks, from a single or several countries, may also be involved in implementing the projects.
Importance of Business Integrity and Compliance in International Investment Projects
Business integrity in transactions and business practices is key in ensuring integrity in international investment projects. Companies with an excellent proven record of compliance and integrity may have a stronger likelihood of winning tenders in international investment projects and obtaining financial support from public or private financial institutions. Underhanded deals, bribes, and other forms of corruption can have a far-reaching, sometimes profound and unprecedented negative impact. To illustrate, a foreign construction company bribed local procurement personnel to win a tender for a bridge construction project in the host country financed by a multilateral development bank (MDB). To offset the expense of bribery, the contractor used substandard materials for the construction. Unsurprisingly, the bridge collapsed and caused massive casualties. When investigations uncovered its corrupt practices, the contractor had to face penalties imposed by the host country and its home State. The MDB also debarred this company from participating in other projects financed by the bank. Furthermore, the company suffered severe damage to its commercial value and business reputation due to the antagonism from the local community.

This chapter closely examines the adverse impact of lack of integrity and compliance on business entities in various spheres, be it legal, financial, reputational or social. In practice, corrupt business conduct could lead to investigations and remedial actions, dissolution, loss of reputation and business values, loss of confidence amongst shareholders and investors, as well as missed business opportunities. With the introduction of more anti-corruption regulations and policies by national governments and financial institutions, as well as more enforcement efforts, the awareness and importance of business integrity and corruption-associated negative consequences have been heightened. This chapter will examine these and highlight the importance of business integrity and compliance in the context of international investment projects.

1.1 Legal impact of corruption on businesses

International investment projects have unique characteristics with regard to their legal status and applicable rules. In practice, three sets of legal rules might apply to international investment projects. The first set is international law, including anti-corruption treaties, trade and investment-related treaties and agreements that are binding on involved States. This set may also include rules relating to the investigations and sanctions regimes of MDBs or other international financial institutions if the investment projects are financed or supported by these entities. The second set refers to those domestic laws of the investor’s home State that have extraterritorial application. Although an enterprise investor operates beyond the boundary of its home State, it may still be bound by certain domestic laws. With regard to the last set, as the host State has territorial jurisdiction, a foreign investor would have to follow the domestic laws of the host State. In case of corrupt practices by a company involved in international investment projects, all three sets of legal rules may apply and carry different legal implications.
In general, corruption might result in various forms of litigation and legal impacts, such as civil liabilities and administrative or even criminal penalties. Civil liabilities may take different forms, such as damages claimed by stakeholders, contractual damage, etc. In the context of mergers and acquisitions (M&A), this could pose a risk to buyers who could end up inheriting liabilities and also to sellers as corruption scandals may significantly reduce the asset value and even impede the transaction. With regard to administrative and criminal penalties, business entities could, at the very least, incur fines or even be compulsorily dissolved for corrupt conduct. Moreover, businesses might be banned from participating in the tender processes for public contracts or projects funded by MDBs or other financial institutions. At the individual level, corrupt personnel may also be held accountable and face various sanctions.

1.1.1 Civil liabilities and collateral consequences

Corrupt practices are detrimental to all business entities, large and small. Corporate scandals might rock financial markets and lead to significant civil liabilities.

Compensation for damages

As corrupt practices might cause losses to various stakeholders, a number of States provide legal avenues for shareholders, business partners and competitors to claim damages for losses due to wrongful actions. In this sense, shareholders can bring derivative suits against directors for breaching their fiduciary duty by not providing adequate oversight over the business operations. National courts might support such claims and oblige the directors to compensate shareholders. For instance, in Caremark International Inc. Derivative Litigation, the court held that directors could not escape oversight liability if they have not implemented a compliance programme to detect violations, and they must put adequate procedures in place to not only address actual violations but also identify compliance risks. Otherwise, the directors may be subject to the liability of monetary damages.

Besides shareholders, even competitors might claim compensation from businesses that have committed corrupt practices. In NewMarket Corporation v. Innospec, the respondent admitted that it had bribed foreign officials to ensure that its products were favoured over the plaintiff’s products. As a result, the plaintiff successfully obtained US$45 million for damages.

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Unenforceable contracts

Parties of international investment contracts often choose English law as the governing law,⁴ which follows the principle that contracts obtained through bribery are voidable at the election of the innocent party. Notably, some jurisdictions do not enforce contracts tainted by bribery based on public policy grounds.⁵ Article 34 of the United Nations Convention against Corruption requires that States parties take measures to address the consequences of corruption and may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession, or take any other remedial action. Furthermore, in international arbitration, if corruption is established, tribunals often tend to decide the invalidity of the contract. In this context, contracts procured through bribery may face the risk of being void and not enforceable.

Successor liability and losses: M&A

Mergers and acquisitions (M&A), as a common part of foreign investment deals, refer to business transactions involving purchasing and/or joining with other companies. Corruption could have potential negative consequences for the buyers during the M&A process. Firstly, if the target company committed corrupt practices, the buyer would have to assume civil liabilities for these practices after acquisition. Secondly, if a target company’s financial performance was unrealistically distorted due to advantages gained through bribery, the buyer may end up paying an inflated price. On the seller’s side, if the buyer identifies corrupt practices of the seller during pre-transaction due diligence, the buyer may significantly reduce the value of its offer, and even terminate the transaction, incurring substantial economic losses to the seller.

1.1.2 Administrative and criminal liabilities

Countries and international institutions have put a variety of penalties in place to deter corrupt practices and punish corrupt business entities. Such penalties can be either administrative or criminal, and their scope and nature may differ, depending on the specific national legal systems.

1.1.3 Penalties at the corporate level

In order to deter corruption, States have stipulated that corrupt conduct of companies would lead to fines imposed on business entities. Box 1 provides an illustrative example.

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Chapter 1: Importance of Business Integrity and Compliance in International Investment Projects

Box 1

**Corruption in an international investment group**

Beginning in 2012, former senior employees of an international investment group used a third-party intermediary to bribe high-ranking public officials in two States. These bribes enabled the group to obtain lucrative business from a government-owned investment fund, including underwriting approximately US$6.5 billion in bond offerings. The State authority found that the group had violated laws in relation to anti-bribery, internal accounting controls, and books and record keeping. In 2020, the group agreed to pay more than US$2.9 billion to settle the charges.

Besides paying a large settlement, corrupt business entities might be fined further if convicted, as described in the case study in box 2.

Box 2

**Corruption in an international investment group**

A company’s branch in an Asian country was discovered to have used a network of travel agencies to bribe health officials, medical associations, hospitals and doctors as part of a widespread scheme designed to raise drug prices. After being convicted of bribery, the company had to pay a fine of around US$489 million to local authorities.

In addition, legal persons might be stripped of their legal status as ordered by domestic courts. For instance, pursuant to Article 11 of the Mexican Federal Penal Code, if the representative of a legal entity uses the entity for the purpose of committing a crime, the court has the authority to order the suspension or dissolution of the legal entity. Similar articles can be found in domestic laws of other States, such as Nicaragua and Panama.6

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Penalties at the managerial level

The management of a business entity can also be held accountable for corruption. Domestic courts are often enabled to pierce the corporate veil, and assess whether the corporate structure has been used as a vehicle for perpetrating corruption. In such a case, managers and directors can no longer hide behind the corporate shield. In the case referred to in box 2, the company’s then country manager was convicted and sentenced to prison for three years with a four-year suspension. Fines and other penalties may also be imposed on corporate managers and directors. In a case in the United Kingdom, two former company directors were imprisoned and fined as a result of an earlier conviction of the company for a corruption offence. These directors were also disqualified from holding director-level positions.

Disqualification/Debarment

In some countries, corrupt business entities are excluded from public contracts. For instance, the UK Public Contracts Regulations 2006 provides that a business entity is ineligible to tender for any public contract if it has actual knowledge of criminal offences including corruption, bribery and fraud committed by itself or its directors. Germany also follows the same practice. In Canada, each contractor and bidder must declare their non-commission of corruption offences, for federal government bid solicitation and contracts. If a contractor makes a false declaration, it is obliged to return any advance payment and may face the risk of contract cancellation. In light of these stringent legal requirements, corrupt business entities might lose out on lucrative public contracts.

A similar approach is taken by MDBs that finance international development projects, including the World Bank Group (WBG), the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the Asian Infrastructure Investment Bank. These MDBs have created independent investigation offices and sanction bodies to investigate and prevent corrupt practices. They can impose sanctions on business entities and individuals engaged in corruption and fraud in MDB-financed projects, such as debarment from MDB-financed projects across all States, referring these cases to domestic authorities for further enforcement actions and financial restitution. Debarment may also have a domino effect – other business entities might refuse to make deals with a debarred company. In some cases, conditions imposed by MDBs for the release from a sanction often include the development and demonstrated implementation of a compliance programme.

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7 “Piercing the corporate veil” refers to a situation in which courts put aside limited liability and hold a corporation’s shareholders or directors personally liable for the corporation’s actions or debts, see Piercing the Corporate Veil from Cornell Law School Legal Information Institute. https://www.law.cornell.edu/wex/piercing_the_veil.

1.2 Financial and reputational consequences

Financial loss and reputational damage

Reputational damage can be a major consequence of corruption. Scandals affect the confidence of both consumers and investors. For instance, in 2012, the New York Times reported that a retail giant bribed officials in a Latin American country to accelerate its growth there. The market reacted to the news, and the company’s shares fell by 4.7 per cent, costing it nearly US$10 billion in market value.\(^9\) Through an analysis of 134 publicly traded business entities investigated for corrupt practices, researchers have found that corruption scandals may significantly weaken corporate reputation and result in poorer market performance.\(^10\)

Loss of business opportunities

Apart from losses in the stock market and share value, institutional investors are increasingly aware of the profile and behaviours of companies in their portfolio, and are looking more closely at compliance-related violations.\(^11\) Some actively avoid investing in business entities with corrupt track records. For instance, the Norwegian Government Pension Fund, one of the world’s largest institutional investors, has chosen to exclude corrupt business entities from its investment scheme.\(^12\) This can provide a major incentive for businesses to stay clean, as a dirty track record would lead to a loss of investor interest.

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1.3 Social consequences

Investments often focus on the development of natural resources and infrastructure projects. The sheer size of these projects and the vulnerability of ecosystems can sometimes damage the environment. This happens when business entities bribe public officials to obtain concessions and permits for access to land and natural resources without adequate environmental impact assessments and effective protective measures. Bribes are also paid by some business entities to law enforcement to avoid environmental monitoring and compliance requirements. For instance, in an Asian country, business entities bribed officials to undertake large-scale deforestation for logging and palm oil industries. Even though these business entities might be held accountable afterwards, the damage to the environment would have already taken place and cannot be remediated just by economic compensation.

In addition to the impact of corruption on the environment, the impact of corruption on the healthcare sector should not be overlooked. The COVID-19 pandemic has highlighted the importance of healthcare systems yet again and also revealed how the healthcare sector is vulnerable to corruption. Corruption committed by business entities can have a domino effect. It would start by increasing the cost of health care, draining public funds, depriving the poor and vulnerable of access to health care, and contributing to ill health and human suffering. Furthermore, corruption in the procurement of drugs and medical equipment can lead to sub-standard or harmful products being used. The human costs of counterfeit drugs and vaccinations on health outcomes far exceeds the financial costs.

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1.4 Conclusion

While it is as likely that these legal, financial, and reputational and social consequences arising from non-compliance may also happen in the context of domestic investment projects, the cross-border nature of international investment projects makes business integrity and compliance even more critical. As the domestic laws of the host State and investor’s home State, as well as international law, might be simultaneously applicable in international investment projects, business entities might be exposed to cumulative legal penalties and economic losses. Furthermore, scandals related to compliance violations by business entities – especially those relating to health and environment – might result in feelings of hostility among local communities towards foreign investors. Under extreme circumstances, public outcry could even cause severe damage to diplomatic relations between the host State and the investor’s home State, hindering further bilateral trade and investments.

Taking into account these dramatic adverse consequences, ensuring business integrity and compliance becomes particularly important. With enhanced measures in this regard, businesses are likely to attract more talents, enhance market opportunities, maintain stronger partnership, and improve corporate governance. These benefits may further contribute to the establishment of a sound and healthy business environment for international investment.
Regulatory Framework Applicable to Business Integrity and Compliance in the BRI
The former President of the World Bank, James Wolfensohn held that corruption is a cancer to good governance, and may divert resources from the poor to the rich, increase business costs and distort public expenditures. The cross-border nature of corruption has contributed to increasing the scope and impact of this malady. Invariably, it also leads to a rise in organized crime and money-laundering. As international investments under the BRI framework have grown exponentially in the past few years, business integrity and compliance have become ever more important. Against this backdrop, this chapter aims to provide an overview of the regulatory framework, including international or regional instruments and standards and national legislation that business entities involved with the BRI need to adhere to.

Although the international or regional treaties referred to in this chapter do not apply directly to business entities participating in the BRI, these instruments impose various obligations on States regarding business integrity and compliance. Due to their obligations emanating from international or regional legal instruments, States have either incorporated relevant provisions into their domestic laws or could directly apply them in the domestic context. As business entities have been registered or operated in these countries, the provisions of relevant instruments may be directly or indirectly germane through domestic application.

2.1 Global instruments

The past two decades have seen increasing concern over the negative impact of corrupt practices on global trade, investment, sustainable development and governance. Governments, international organizations, civil society and business entities have worked together to develop global rules against corruption. This section focuses on two global instruments, the application of which offers valuable insights into the nature and scope of the efforts of the global community to combat corruption, including fostering business integrity and compliance.

2.1.1 United Nations Convention against Corruption

The United Nations Convention against Corruption (the ‘Convention’) is the only legally binding universal anti-corruption instrument. It was adopted by the UN General Assembly in October 2003 and entered into force on 14 December 2005. As of July 2023, it has 189 Parties (including the EU), and nearly all States along the Belt and Road have ratified it.

The Convention consists of 8 chapters and 71 articles, covering topics ranging from preventive measures, criminalization and law enforcement to international cooperation and asset recovery. The following paragraphs take a closer look at those parts of the Convention that are relevant to the private sector.

16 United Nations Convention against Corruption, UNTC 2349.
Private sector

Chapter II of the Convention prescribes general preventive measures that States Parties can take in accordance with the fundamental principles of their legal systems. As States Parties are required to implement preventive measures, business entities participating in BRI investment projects operate in a legal environment replete with anti-corruption measures.

Article 12 of the Convention deals specifically with measures to prevent corruption involving the private sector. States Parties are committed to:

- Promoting cooperation between law enforcement agencies and relevant business entities;
- Promoting the development of standards and procedures designed to safeguard the integrity of relevant business entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
- Promoting transparency among business entities (such as identification of individuals or legal persons behind the incorporation and management of business entities);
- Preventing the misuse of procedures regulating business entities (such as governmental licenses or subsidies provided for business entities’ commercial activities);
- Preventing conflicts of interest (such as restricting the employment of former public officials in business entities);
- Ensuring that business entities have sufficient internal auditing controls to prevent and detect corruption in proportion to their structure and size and that the accounts and required financial statements of business entities are subject to auditing and certification procedures (art. 12).

In addition to the above, article 12 provides the flexibility for each State to design specific preventive measures in line with its legal system and domestic situation.
Corruption offences

The Convention requires States Parties to criminalize a wide range of corrupt practices, subject to different levels of obligation. The offences that must be criminalized under the Convention that are most relevant to the private sector are:

- Bribery of national public officials by business entities (art. 15);
- Bribery of foreign public officials and officials of public international organizations by business entities (art. 16);
- Bribery in the private sector (art. 21);
- Trading in influence (art. 18);
- Embezzlement of property in the private sector (art. 22);
- Laundering of proceeds of crime (art. 23);
- Concealment (art. 24);
- Obstruction of justice (art. 25).

Prosecution and liability of legal persons

The Convention prescribes a series of rules on prosecution, adjudication and sanctions in article 30. It also establishes measures to address the consequences of corruption and the protection of witnesses, experts, victims and reporting persons.

States Parties to the Convention are required to establish the liability of individuals in business entities who have committed the offences stipulated by the Convention. Further, pursuant to article 26, States Parties are required to establish the liability of legal persons for participation in the offences under the condition that the liability of legal persons is not contrary to their domestic legal principles. Entities and persons who have suffered damage as a result of an act of corruption should also be entitled to sue those responsible for the damage in order to obtain compensation (article 35).

Jurisdiction over corruption offences

Article 42 requires States Parties to establish their jurisdiction over the criminal offences established by the Convention. The jurisdiction provisions include:

- **Territorial jurisdiction**
  States Parties are required to establish their jurisdiction when an offence is committed in their territory.

- **Personal and protective jurisdiction**
  When the perpetrator or target is related to a State party, no matter where the offence occurred, the State party may establish its jurisdiction over the offence.
Mandatory extradition or prosecution
When an alleged offender is present in the territory of a State party, the State party shall establish its jurisdiction over the offence if it does not extradite such person solely on the ground that he or she is its national.

Optional extradition or prosecution
Each State party may establish its jurisdiction over an offence, when the alleged offender is present in its territory and is not extradited (art. 42).

These jurisdiction principles derive from and conform to general international law. If implemented through domestic legal instruments, the far-reaching jurisdiction clauses allow multiple States parties to exercise their jurisdictions over a corruption offence. This can act as a solid deterrent to perpetrators who otherwise act with impunity.

Cooperation between national authorities and the private sector
Chapter III of the Convention also requires States Parties to establish extensive domestic cooperation arrangements, including cooperation between participants of the offences and law enforcement authorities, between different national authorities and between national authorities and the private sector.

Measures should be taken to encourage cooperation between the national investigating and prosecuting authorities and the private sector with regard to the offences stipulated in the Convention. Such cooperation would facilitate the investigation and prosecution of offences involving business entities, including financial institutions, which may have access to evidence or data essential to prove corrupt offences. Moreover, States parties are recommended to take actions to encourage individuals to report instances of corruption to national authorities (art. 39).

2.1.2 The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (The OECD Anti-Bribery Convention)

The OECD Anti-Bribery Convention opened for signature on 17 December 1997 and came into force on 15 February 1999. All 36 OECD States Parties and six other States have ratified this Convention. The OECD Anti-Bribery Convention establishes legally binding standards to criminalize bribery of foreign public officials in international business transactions. The broad definition of a foreign public official includes “any person holding a legislative, administrative or judicial office of a foreign country,” “exercising a public function for a foreign country,” and “any official or agent of a public international organization” (art. 1(4)(a)).

17 Available at: https://www.oecd.org/corruption/oecdantibriberyconvention.htm.
18 See the ratification status at: https://www.oecd.org/daf/anti-bribery/wgb-ratification-status.pdf.
States parties are obliged to prescribe the criminal liability of any person for the bribery of a foreign public official under its domestic law (art. 2). In the event that criminal responsibility is not applicable to legal persons under a State party’s legal system, the State party shall stipulate effective, proportionate and dissuasive non-criminal sanctions for legal persons, including monetary sanctions (art. 3(2)).

Each State party’s jurisdiction over the offences stipulated in this Convention is a combination of territorial and personal jurisdiction. Every State party shall ensure that it has jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory (art. 4(1)). Moreover, every State party shall ensure that it has jurisdiction over the bribery of a foreign public official committed by its nationals abroad (art. 4(2)).

Foreign investors might bribe local public officials to obtain business opportunities. Subsequently, the foreign investors may flee the country, and their home jurisdiction may not surrender them, or the local law enforcement might be lacking the resources to pursue legal action against such investors. The OECD Anti-Bribery Convention closes this loophole by obliging home States of foreign investors to sanction them for bribery of foreign public officials. Although 21 States Parties of the OECD Anti-Bribery Convention have not formally joined the BRI, business entities from these States participating in the BRI investment projects can be held accountable for overseas bribery.

2.2 Regional instruments

In addition to global instruments, many regional instruments also focus on anti-corruption.

2.2.1 The Criminal Law Convention on Corruption and Civil Law Convention on Corruption of the Council of Europe

The Council of Europe adopted the Criminal Law Convention on Corruption on 27 January 1999 and it came into force on 7 January 2002. The Convention has a relatively broad scope of application. Every State party shall take necessary actions to establish active and passive bribery of domestic and foreign public officials as criminal offences at the national level. Similarly, active and passive bribery in the private sector shall be made punishable. Also, trading in influence and money-laundering shall be prescribed as criminal offences.

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20 Articles 2-6 and 9-11, Criminal Law Convention on Corruption.
21 Articles 7-8, Criminal Law Convention on Corruption.
22 Articles 12-13, Criminal Law Convention on Corruption.
States parties should have territorial and personal jurisdiction for the offences described above. For example, every State party has jurisdiction over any offence committed in whole or part in its territory, and cannot make reservations over territorial jurisdiction. Personal jurisdiction refers to situations where the offender is, or the offence involves a national of a State party. State parties are allowed to make reservations to the personal jurisdiction requirement. The Convention also addresses the issue of corporate liability.

The Civil Law Convention on Corruption was adopted by the Council of Europe on 11 April 1999 and came into force on 11 January 2003. In parallel with the Criminal Law Convention on Corruption, the Civil Law Convention aims at providing effective remedies for persons who have suffered damage as a result of corruption.

Pursuant to article 3, every State party is obliged to ensure that in its domestic law, there are legal avenues for victims who have suffered damage as a result of corruption to “obtain full compensation for such damage”. To award the full compensation, three conditions need to be met:

- The defendant has committed or authorized the act of corruption, or failed to take reasonable steps to prevent acts of corruption;
- The plaintiff has suffered damage;
- There is a causal link between the act of corruption and the damage.

Besides the right to claim compensation, pursuant to article 8, States Parties shall provide the possibility for any party to a contract whose consent has been undermined by corruption to apply to a domestic court for the contract to be declared void.

The Council of Europe consists of 46 Member States. Among them are 25 States that have joined the BRI and are thus subject to legal obligations under these two Conventions.

2.2.2 Inter-American Convention Against Corruption, African Union Convention on Preventing and Combating Corruption and the Arab Convention to Fight Corruption

Other regional organizations have also adopted anti-corruption instruments. Examples include the Inter-American Convention Against Corruption (the Inter-American Convention), the African Union Convention on Preventing and Combating Corruption (the African Union Convention) and the Arab Convention to Fight Corruption (the Arab Convention).

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23 Article 17(1), Criminal Law Convention on Corruption.
24 Ibid.
25 Article 17(2), Criminal Law Convention on Corruption.
27 Article 1, Civil Law Convention on Corruption.
28 Article 3(1), Civil Law Convention on Corruption.
29 Article 4(1), Civil Law Convention on Corruption.
In 1996, the Organization of American States adopted the Inter-American Convention, and 34 States have acceded at the time of publication. This Convention identifies a series of measures to prevent and criminalize corruption and requires States Parties to implement them in their domestic legislation. The Inter-American Convention defines corruption as acts of public officials or persons exercising public sector functions to secure unlawful advantage for themselves or third parties, or acts of malfeasance, concealment or concealment of assets derived from corruption or malfeasance. However, it does not provide an exhaustive list of all forms of corruption. Instead, it emphasizes that corruption can be applied to acts as defined in other agreements between States parties.

The Assembly of the African Union adopted the African Union Convention in July 2003. It stipulates that its States Parties must establish mechanisms required to prevent, detect, punish and eradicate corruption and related offences in public and private sectors in Africa and adopt the principle of condemnation and rejection of acts of corruption, related offences and impunity. The Convention also requires its States Parties to implement, among others, measures to establish offences such as active and passive bribery, illicit enrichment, and abuse of office; to strengthen measures to ensure that foreign businesses operating in jurisdictions of Member States comply with relevant national laws, as well as measures to create, maintain and enhance internal accounting and auditing systems for businesses.

The Arab Convention was signed by 21 Arab countries on 21 December 2010 and has been ratified by 12 countries at the time of publication. The preamble of the Arab Convention reaffirms that while official authorities of the State bear the responsibility to fight corruption, individuals and civil society organizations also play a role. The Arab Convention provides for a comprehensive set of anti-corruption measures, including the prevention and criminalization of corruption offences, extradition, mutual legal assistance and recovery of assets, as well as the liability of business entities.

The Inter-American Convention has been ratified by 33 Member States of the Organization of American States, of which 18 Member States have formally joined the BRI. In addition, 19 of 22 States Parties to the Arab Convention have formally joined the BRI Initiative. According to the data released by the African Union, as of 6 September 2021, 45 out of 49 Member States ratified the African Union Convention, and 41 States Parties to the African Union Convention have formally joined the BRI Initiative.

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31 Full text available: https://papsrepository.africa-union.org/handle/123456789/544.
Preventive measures

Both African Union Convention and the Arab Convention have provisions pertaining to preventing corruption in the private sector. Article 11 of the African Union Convention stipulates that States Parties are required to:

- Adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector.
- Establish mechanisms to encourage participation by the private sector in the fight against unfair competition for tender procedures and property rights.
- Adopt other measures as may be necessary to prevent business entities from paying bribes to win tenders.

Under the Arab Convention, States Parties are required to take the following actions:

- Criminalize bribery and misappropriation of properties in the private sector.
- Promote transparency and prevent conflicts of interest in the private sector.
- Prevent the misconduct of the private sector concerning record-keeping, disclosure of financial data, audit standards and review of accounts.
- Promote cooperation between national investigative and prosecutorial authorities and the private sector.  

Offences

The following table compares the offences prescribed by the United Nations Convention against Corruption with those included in some regional instruments. It is essential for business entities to understand the different requirements they may be subject to when engaging in international investment projects. As there is no one-size-fits-all approach, business entities need to develop tailored business integrity and compliance strategies commensurate with the requirements of the targeted jurisdictions.

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33 Article 10, Arab Convention.
Table 1
Comparison of offences defined in the UN Convention and some regional conventions

<table>
<thead>
<tr>
<th>UN Convention against Corruption</th>
<th>Inter-American Convention</th>
<th>African Union Convention</th>
<th>Arab Convention</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bribery of national public officials</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Bribery of foreign public officials and officials of public international organizations</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Embezzlement, misappropriation or other diversion of property by a public official</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Trading in influence</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Abuse of functions</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Illicit enrichment</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Bribery in the private sector</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Embezzlement of property in the private sector</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Laundering of proceeds of crime</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Concealment</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Obstruction of justice</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

2.3 National laws

Importance of national laws

Anti-corruption legislation and regulations vary among countries, and what is illegal in one country might be legal in another. Therefore, any compliance programme should consider applicable national anti-corruption laws and jurisprudence. For example, golfing and horse racing are common methods of entertainment in certain countries, and business entities operating in these countries tend to organize such activities as entertainment for their business partners. However, other countries may deem such practices inappropriate from a judicial perspective. It would thus be important and helpful for businesses to fully understand the nature and implications of local laws.
This is particularly relevant for business entities participating in international investment projects under the BRI framework where cross-border transactions are involved, and the national laws of both host and home countries may be applicable.

As the initiator of the BRI, China has been playing an active role in promoting this initiative in the international arena, including by encouraging its companies to participate in relevant investment projects. From the perspective of the applicable home State laws, it would be essential for Chinese business entities implementing BRI projects to be informed of their domestic legislation. The same applies to companies from other countries. This handbook provides a brief introduction to the anti-corruption laws of China, and an overview of anti-bribery regulations in the other 15 countries participating in this project has been provided in Annex III.

**Territorial jurisdiction of host state laws in criminal matters**

Territorial jurisdiction, a widely acknowledged standard derived from State sovereignty, refers to the authority of the State over persons, property and events in its territory, including the application of criminal laws to any person who commits crimes in its territory.

For BRI-related business entities operating in foreign countries, the national laws of the host country would apply to potential violations and crimes committed in its territory. Hence, business entities need to understand the national laws of the host country before starting a business. These laws are also important indicators for evaluating compliance risks related to geographic locations.

Although the Convention has been signed and ratified by almost all countries involved with the BRI, many aspects of national anti-corruption laws (e.g., criminalization of corruption) have distinct features. These legislative divergences should be noted by business entities, along with the differences in legal practices. Having proper knowledge of procedural laws of the host country is equally important in case there is a need to cooperate in investigations.

**Extraterritorial jurisdiction of home State laws in criminal matters**

The laws of the home State may also apply to corrupt conduct committed beyond that State’s territorial boundaries. Such jurisdiction would typically derive from: (a) nationality jurisdiction, which allows a State to exercise criminal jurisdiction over its nationals accused of criminal offenses committed outside of its territory; (b) a State’s jurisdiction over extra-territorial activities of business domiciled in its territory, including but not limited to requirements on parent companies to report the global business of the entire company; (c) protective principle, which allows States to adopt laws that apply to the conduct of foreign nationals and persons, committed outside their jurisdictions against their national interest and/or nationals, and (d) principle of universal jurisdiction according to which domestic courts of a State have the ability to prosecute and investigate certain crimes stipulated in international agreements even if they were not committed in its territory, by its nationals, or against its nationals.
As stipulated under article 16 of the Convention, States Parties shall adopt legislative and other measures that criminalize active bribery of foreign public officials and officials of public international organizations, i.e., the promise, offering or giving, directly or indirectly, of an undue advantage to the officials in this category. Pursuant to article 42 of the Convention, States Parties are obliged to establish their jurisdiction over such offences. Since the home States of business entities involved in BRI-related projects are States parties to the Convention, active bribery committed in the host State could trigger criminal sanctions under the national laws of both the home and host States.

Other national legislation, regulations and rules

In addition to criminal laws which provide for different manifestations of corruption offences that may involve business entities, attention should also be paid to other aspects, including but not limited to:

- **Administrative regulations and standards**
  Complex administrative rules and regulatory and technical standards adopted by different government agencies and regulators apply to various administrative processes and procedures in which businesses are involved. If not carefully observed, the misuse and/or violation of such regulations and standards may trigger severe forms of corruption.

- **Domestic procurement rules**
  Such rules may prescribe specific sanctions on business entities involved in corrupt conduct, such as the annulment of public contracts and withdrawal of concessions. In addition, domestic procurement rules may contain specific requirements for compliance management systems and other functions for businesses involved in procurement processes.

- **Reporting and oversight obligations**
  Such obligations are regulated under anti-corruption laws and regulations of many countries, requiring business entities to proactively disclose and report potential corruption.

- **Corporate and governance structure**
  Special requirements may be created to help establish a compliance programme, for example, business entities may need to provide sufficient protections for whistle-blowers.
Special pilot programme to promote corporate compliance

In some countries, pilot programmes are introduced to encourage business entities to establish or enhance their compliance programmes. For example, business entities could obtain exemption or lenience while facing criminal liabilities if they complete their compliance programme under the guidance and direction of the judicial/law enforcement department. This would serve as a strong learning incentive for business entities participating in the BRI.

2.4 Anti-corruption regimes of MDBs

Each year MDBs finance a large number of investment projects. Recognizing corruption as one of the biggest obstacles for economic development and good governance, the MDBs have developed and utilized legal and regulatory tools to combat corruption. In this section, the practice of the WBG will be used as an example.

The WBG has identified corrupt, fraudulent, collusive, coercive, and obstructive practices as sanctionable practices. A corrupt practice is defined as the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party, namely public officials acting in relation to the selection process or contract execution, including WBG staff and employees of other organizations taking or reviewing selection decisions. The WBG's Integrity Vice Presidency (“INT”) has been entrusted with the duty to investigate corrupt practices in connection with projects financed by the WBG.

The INT has established channels for submission of complaints regarding corrupt practices, which could trigger investigations as appropriate. If the INT believes that there is sufficient evidence that a firm or individual engaged in a corrupt practice, a Statement of Accusations and Evidence (“Statement”) will be prepared for submission to the Evaluation and Suspension Officer (“EO”).

After reviewing the Statement, if the EO believes that sufficient evidence supports the accusations of corruption to a preponderance-of-evidence (or “more likely than not”) standard, the EO will issue a Notice of Sanctions Proceedings (“Notice”) to the respondent with a recommendation of an appropriate sanction. The respondent can appeal the determination by the EO to the Sanction Board, which makes the final decision on the sanction. If the respondent does not appeal the EO's determination, the EO's recommended sanction takes effect.

A range of sanctions can be imposed in a case. Most frequently, a firm or an individual will be debarred from participating in future WBG-financed projects and must meet certain specified conditions to be released from that debarment, such as developing and implementing

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a compliance programme that reflects the principles set out in the WBG Integrity Compliance Guidelines to the satisfaction of the WBG Integrity Compliance Officer. If the debarment is over one year, the WBG will inform other MDBs. Pursuant to the Agreement for Mutual Enforcement of Debarment Decisions, the other MDBs will also enforce the debarment, thereby preventing the firm or individual from accessing these MDBs-financed projects. 36

These potential sanctions deter business entities from acting in contravention of business integrity and emphasize rehabilitation through their conditional release requirements.

2.5 Voluntary standards

ISO 37301:2021 Compliance management systems

In November 2018, the International Standard Organization ("ISO") started drafting ISO 37301 in order to meet the rapid development and urgent needs of global compliance, improve the compliance management capabilities of different business entities and promote international trade, communications and cooperation. On 13 April 2021, ISO 37301:2021 Compliance management systems – Requirements with guidance for use was officially released and implemented. The new standard was based on the latest compliance management practices and replaced ISO 19600:2014 Guidelines for Compliance Management Systems. The reason behind most compliance violations committed by business entities is the lack of effective management and procedures of internal control and reporting. Therefore, it is vital for business entities to establish an effective and efficient compliance management system. ISO 37301 provides business entities with comprehensive guidance in this respect. 37

ISO 37301 follows a progressive improvement model, i.e., Develop-Implement-Evaluate-Maintain, also named as “PDCA cycle” – plan, do, check, act). It helps business entities establish a complete and effective compliance management system to cover all aspects of their operations.

Table 2
Overview of steps to build a compliance programme in ISO 37301

<table>
<thead>
<tr>
<th>Basis of compliance management system: understanding the context of the business entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Understanding the business entity and its context.</td>
</tr>
<tr>
<td>▪ Understanding the needs and expectations of interested parties.</td>
</tr>
<tr>
<td>▪ Determining the scope of the compliance management system.</td>
</tr>
<tr>
<td>▪ Understanding compliance obligations.</td>
</tr>
<tr>
<td>▪ Understanding compliance risk through compliance risk assessment.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Leadership</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Top management and governing bodies uphold the values of the organization</td>
</tr>
<tr>
<td>and support all policies, processes and procedures that are essential to</td>
</tr>
<tr>
<td>achieve compliance objectives.</td>
</tr>
<tr>
<td>▪ Set up an independent compliance department with direct reporting channels</td>
</tr>
<tr>
<td>to the top management.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 1: Planning</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Formulate compliance objectives.</td>
<td></td>
</tr>
<tr>
<td>▪ Design actions to address compliance risks.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 2: Operation</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>▪ Ensure effective controls over the compliance management system through</td>
<td></td>
</tr>
<tr>
<td>the allocation of responsibilities, formulation of an annual compliance</td>
<td></td>
</tr>
<tr>
<td>plan and communication with employees.</td>
<td></td>
</tr>
<tr>
<td>▪ Whistle-blowing system to all staff and relevant parties.</td>
<td></td>
</tr>
<tr>
<td>▪ Monitoring and investigating cases of non-compliance on a regular and</td>
<td></td>
</tr>
<tr>
<td>consistent basis.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 3: Performance evaluation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Monitor, measure, analyse and</td>
<td>monitor, measure, analyse and evaluate the operation of the</td>
</tr>
<tr>
<td>evaluate the operation of the</td>
<td>compliance management system.</td>
</tr>
<tr>
<td>compliance management system</td>
<td>Publish the comprehensive or special compliance report.</td>
</tr>
<tr>
<td>system.</td>
<td>Keep the records for reference and review.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 4: Improvement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Make improvements</td>
<td>Make improvements to the compliance management system according</td>
</tr>
<tr>
<td>to the evaluation</td>
<td>and the development of the business entity.</td>
</tr>
<tr>
<td>and the development</td>
<td></td>
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<tr>
<td>of the business entity.</td>
<td></td>
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</tbody>
</table>
ISO 37001: Anti-bribery management systems

In October 2016, ISO issued ISO 37001, an anti-bribery management system, aiming to incentivize various organizations, including governmental authorities and business entities, to formulate corresponding anti-bribery policies and objectives and ensure the implementation of effective anti-bribery measures. ISO 37001 is flexible and can be adapted to a wide range of organizations in the public and private sectors, regardless of size, type, structure, geography and jurisdiction. Whereas ISO 37301 takes a holistic approach to compliance management, ISO 37001 focuses on one aspect: anti-bribery management. It provides specific requirements and operational guidelines for developing, implementing, maintaining, evaluating, and improving anti-bribery management systems. It prevents corruption through five steps: (1) Understand the organization and its context, determine the scope of the anti-bribery management system and assess the bribery risk; (2) Ensure leadership commitment and responsibility, especially in the top management; (3) Provide necessary support for the establishment and operation of the anti-bribery management system, including human resources, finance and materials; (4) Strengthen implementation of anti-bribery management system; (5) Conduct a regular bribery risk assessment, risk control and effect evaluation based on problems existing in the operation process, internal audit and management review results.

ISO 37002: Whistle-blowing management systems

Compliance risk monitoring and compliance inspection are important aspects of the compliance management system and play an essential role in identifying, assessing, and preventing compliance risks. However, there are always people, tempted by the profits, trying every possible way to implement unlawful acts in hard-to-detect ways. Therefore, it is vital to establish a reporting system that can obtain relevant information from a broader and more profound level and reveal potential or hidden compliance risks.

For this purpose, the ISO issued ISO 37002: Whistleblowing management systems in July 2021. ISO 37002 provides guidance regarding the setup, implementation and maintenance of an effective Reporting Management System in four steps, based on the principles of trust, impartiality and protection. These are: (1) Receiving reports of wrongdoing; (2) Assessing how best to deal with reports of wrongdoing, and protect and support the whistle-blower; (3) Addressing the reports of wrongdoing, and the protection and support needs of persons involved; (4) Concluding whistle-blowing cases. ISO 37002 also highlights the protection and support of the whistle-blower and dissemination of the reporting system, ensuring employees are aware of access to reasonable ways of reporting and could use them effectively.

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United Nations Global Compact Principles and Reporting Standards

The Global Compact is a framework for business entities that have committed to operating according to ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. It was introduced by the United Nations Secretary-General in the 1990s and officially launched in 2000. With 179 countries and 20,769 companies participating, it is the world’s largest corporate sustainability initiative.

The tenth principle against corruption was adopted in 2004, with the Convention as the underlying legal instrument. The UN Global Compact suggests that companies consider the following three elements when fighting corruption and implementing the tenth principle: (i) internal (introduce anti-corruption policies and programmes within their organizations and business operations); (ii) external (report on the progress made and share experiences and best practices); and (iii) collective action (join forces with industry peers and other stakeholders to scale up anti-corruption efforts).

Business participants in the Global Compact have committed to integrating these ten principles into their strategies and operations. The progress achieved in the integration of the principles is monitored through an annual disclosure mechanism – Communication On Progress. This mechanism informs company stakeholders (e.g., investors, consumers, civil society, governments, etc.) of progress made in implementing the ten principles.

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41 Ibid.
Chapter 3
Designing an Effective Business Integrity and Compliance Programme in the BRI Context
Having integrity in business means operating a business consistently in accordance with a strong set of moral values while following applicable ethical guidelines. In a business context, this means operating with consistency in interactions at all levels and representing the organization in an honest and consistent way to all stakeholders.

What are the factors that a business entity should keep in mind when operating abroad or setting up its offices and partnerships across countries and borders? Should the guidelines be uniform and aligned with home country principles? How should they deal with differences in business cultures and perceptions as to what is considered misconduct or harms the integrity of the business?

This chapter takes a macro view of how an effective business integrity and compliance programme can be designed in the context of the BRI. It addresses issues such as the importance of developing a compliance risk assessment, the role of senior management in setting up a zero-tolerance environment, how employees and partners can be included in this process, the significance of transparent financial statements, the role of communication and training, and several other aspects that ultimately work together to create a system that can educate, avert and when necessary, handle issues related to corruption.

Each section includes a number of real-life examples of practices adopted by business entities, particularly those participating in the BRI projects in establishing effective compliance programmes. These examples illustrate how certain elements for strengthening business integrity and compliance in the BRI context can be implemented.

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<table>
<thead>
<tr>
<th>No.</th>
<th>Elements</th>
<th>Sub-Elements</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compliance risk assessment</td>
<td>Full preparation before establishing the risk assessment system</td>
<td>3.1.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Comprehensive risk assessment procedures</td>
<td>3.1.3</td>
</tr>
<tr>
<td>2</td>
<td>Support and commitment from senior management for the prohibition of</td>
<td>Support and commitment from senior management to establish an atmosphere of zero-tolerance on corruption</td>
<td>3.2.2</td>
</tr>
<tr>
<td></td>
<td>misconduct</td>
<td>Involvement and engagement of senior management in the establishment of business integrity</td>
<td>3.2.3</td>
</tr>
<tr>
<td>3</td>
<td>Independent and adequately funded compliance functions</td>
<td>Clear regulations on roles and responsibilities of the compliance function</td>
<td>3.3.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Allocation of adequate resources to the compliance function</td>
<td>3.3.3</td>
</tr>
<tr>
<td>4</td>
<td>Employees’ Code of Conduct and compliance guidelines</td>
<td>Clear code of conduct on daily operation and any potential compliance issues</td>
<td>3.4.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Special compliance guidelines on common business scenarios</td>
<td>3.4.3</td>
</tr>
<tr>
<td>5</td>
<td>Business partners compliance management</td>
<td>Detailed list of red flags of business partners</td>
<td>3.5.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Effective due diligence on business partners</td>
<td>3.5.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Long-term monitoring and communication with business partners</td>
<td>3.5.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Written business integrity commitment and contractual protections</td>
<td>3.5.3</td>
</tr>
<tr>
<td>6</td>
<td>Specific compliance policies for particular areas</td>
<td>Specific compliance policies on special types of expenditures</td>
<td>3.6.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Specific compliance policies on conflicts of interests</td>
<td>3.6.3</td>
</tr>
<tr>
<td>7</td>
<td>Financial records and bookkeeping</td>
<td>Requirement of accurate accounts</td>
<td>3.7.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>System of internal control and report</td>
<td>3.7.3</td>
</tr>
<tr>
<td>8</td>
<td>Communication and training</td>
<td>Effective internal and external communication</td>
<td>3.8.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Targeted communication for different audiences</td>
<td>3.8.2</td>
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<td></td>
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<td>Comprehensive training</td>
<td>3.8.3</td>
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<tr>
<td>9</td>
<td>Detection, investigating and handling violations</td>
<td>Multiple channels to report violations</td>
<td>3.9.2</td>
</tr>
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<td></td>
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<td>Effective response to violations</td>
<td>3.9.3</td>
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<td></td>
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<td>Cooperation with authorities on violations</td>
<td>3.9.3</td>
</tr>
<tr>
<td>10</td>
<td>Internal rules for monitoring and continuously enhancing effectiveness</td>
<td>Review on compliance programme based on the information from various resources</td>
<td>3.10.2</td>
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<tr>
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<td>of the compliance programme</td>
<td>Evaluation of compliance programme and implementation of follow-up activities</td>
<td>3.10.3</td>
</tr>
</tbody>
</table>
3.1 Compliance risk assessment

Operating in an increasingly complex business environment across borders and work cultures while remaining immune to corruption risks can be challenging for most businesses. A diagnostic tool such as a risk assessment can help identify weaknesses and potential risks businesses may face. Since the business operations for different enterprises vary widely, based on the industry, size, location and other factors, companies engaged in BRI-related projects may choose to adopt appropriate risk assessment approaches following the basic principles laid out in this section.


3.1.1 Establish the process

The first step towards initiating a risk assessment process for any business is to engage in collective brainstorming to identify the risks it may face and possible approaches to address them. Senior managers, stakeholders, and key members should bring their experience and expertise together and identify possible threats and solutions. The person(s) in charge of developing and implementing the risk assessment should be fully aware of the importance of anti-corruption practices and procedures and direct the assessment accordingly. The following questions could be considered while establishing the process:

- What kind of external risks would the business face in the operating environment?
- What kind of internal risks exist in the business operations?
- What is the scope of the risk assessment? Is it comprehensive or target-specific?
- What is the motivation behind the risk assessment? Are there any specific reasons/problems which compel it?
- What internal procedures (e.g., approval of the assessment results) should be established for the risk assessment exercise? What kind of resources are needed?
- What data should be collected (and how) in order to fulfill the requirements of the risk assessment?

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Is it necessary to classify the risk assessment at different levels based on the severity of the potential risks? Are there any particular circumstances where an enhanced risk assessment should be conducted?

Who will conduct and manage the risk assessment? Who will be responsible for the effective completion?

What specific methodology would be used in each procedure?

The answers and information gained during this brainstorming process will invariably bring forth other questions and issues, which should be addressed collectively. While establishing a compliance programme, business entities are encouraged to conduct a comprehensive risk assessment to cover all integrity risks it seeks to address, such as risks that may arise across its business lines, branch offices, subsidiaries, etc., and also any other legal/regulatory risks that may be relevant under the circumstances (e.g., fraud, bid-rigging, collusion, etc.).

The following sections break down this process in detail.

### 3.1.2 Risk assessment process

**Identify the risks**

In order to be effective, the risk assessment process should be concise, efficient, and focused. It should assess internal factors (areas in the business that could be vulnerable to corruption), as well as external ones (important in international investment, as the partner countries and companies have different standards). The first step is to identify the risk factors, i.e., the areas where business integrity may face challenges in the external operation and internal control, including but not limited to:

**External factors**

- What are the laws governing the business entity's operations, and what powers do they grant to the business entity?
- What government bodies oversee the business entity? Do the parliament, an over-arching audit institution, or the courts participate in the overseeing?
- Are there any quasi-governmental, non-governmental, or self-regulatory bodies governing the business entity?
- How do these bodies react to reports of corruption?
- Is corruption a prevalent or unavoidable means to achieve business goals in the partner country?
- Who investigates the corruption allegations? Does the internal inspector, the police, or an anti-corruption body take charge of it?
- Who are the business entity's stakeholders?
- Are the interests of the stakeholders aligned with those of the business entity?

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48 Ibid., Chapter 3.2.
- Which civil society groups monitor the behaviour of the business entity?
- How much media coverage does the business entity receive?
- To what extent are formal rules and institutions adhered to in a business entity’s operations or the behaviour of its stakeholders?
- Do informal institutions influence the business entity’s operations or the behaviour of its stakeholders?

**Internal factors**

- How is the personal and professional integrity of the personnel, including support for internal controls?
- How are the skills and competence of the personnel?
- What is the attitude of the senior management towards corruption?
- Do the company’s management philosophy and atmosphere emphasize zero-tolerance to corruption?
- Does the organizational structure of the business entity enable the compliance programme to plan, execute and monitor its activities?
- Do the human resource policies and procedures provide sufficient support for establishing business integrity? Do the policies specify prohibited misconduct related to corruption and provide appropriate procedures to handle the disciplinary violations?
- Are employees required to disclose their conflicts of interest?
- Are there any channels for reporting potential corruption, and do they work effectively? Are whistle-blowers protected?
- What rules govern the management of public finances and internal and external audits?
- Does the internal function have any touchpoints with government counterparts?
- Does the business entity have an effective internal control system and relevant compliance policies?

A comprehensive assessment of the intended partner country’s social, economic, judicial and political environment is a must to fully understand which parts of the business process may be vulnerable to corruption.

Based on the risk factors, the business could further design schemes to identify risk, and the commonly used approaches would include:
Chapter 3: Designing an Effective Business Integrity and Compliance Programme in the BRI Context

External factors
- Review of governing laws and research on enforcement trends
- Assessment of the perception of corruption and integrity of local government
- Studying local business practices
- Conducting third-party due diligence
- Examining potential conflicts of interest employees may have in relation to third parties

Internal factors
- Internal audit and investigation
- Procedural check of different parts of business processes, procedures and standards
- Interviews with stakeholders
- Desk research based on internal and external resources
- Reports received from relevant parties
- Monitoring and review of compliance programmes and activities

Analyse and evaluate the risks

A risk assessment should be able to reasonably classify the level and impact of a risk to a business entity and recommend a course of action. The following questions are recommended during the process:

- How complex is the potential corruption scheme, and how many people are required to perpetrate it?
- Have similar forms of corruption occurred in the business entity or relevant government organizations?
- How much might those involved in such a scheme profit from it?
- How many other employees or officials in other organizations would have to look the other way for the scheme to succeed?
- Do internal procedures raise sufficient safeguards to deter those who would want to commit corrupt acts?
- What are the potential impacts on the business entity if the corruption indeed happens?
- Do the internal policies and procedures provide sufficient support to handle the possible corruption or other misconducts against integrity, including but not limited to fraudulent and collusive practices?

The risks could be rated based on the probability of occurrence and potential impact of occurrence, i.e., the risks with a higher possibility of occurrence and more severe impact should be assigned a higher priority. A simple qualitative rating method to rate the risks is to score the risks as follows:

Ibid., Chapter 3.4.
Table 4
Rating method to score risks

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<thead>
<tr>
<th>Score</th>
<th>Probability</th>
<th>Impact</th>
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<tbody>
<tr>
<td>1</td>
<td>Minimal</td>
<td>Insignificant</td>
</tr>
<tr>
<td>2</td>
<td>Little</td>
<td>Minor</td>
</tr>
<tr>
<td>3</td>
<td>Some</td>
<td>Moderate</td>
</tr>
<tr>
<td>4</td>
<td>High</td>
<td>Major</td>
</tr>
<tr>
<td>5</td>
<td>Considerable</td>
<td>Catastrophic impact</td>
</tr>
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</table>

This method is simple and effective and would be able to provide an easy-to-understand assessment. By adding up the scores for probability and impact, a clear indication of risk areas (i.e., those with high scores) would become apparent. The process could be refined further to obtain a more sensitive assessment by: (1) setting a more comprehensive range of benchmarks, e.g., from one to ten; and (2) elaborating “probability” and “impact” further with examples. For instance, “impact” could be further classified as “government sanction”, “loss of business opportunity”, “damage to goodwill”, etc.

A risk rating is never static, nor can it be applied universally. For instance, a business entity may view something as low risk in a domestic context, but the same could be high risk in another country. It is important to remember that when doing business internationally, an assessment may be more complex as the uncertainty related to certain factors, such as those linked to cross-cultural challenges, is greater, and different standards may need to be applied.

Mitigate the risks

After identifying and evaluating the risks, the next step would be mitigation. In practical terms, mitigation implies managing the identified risks to prevent, deter and/or detect improper actions, thereby reducing the overall risks. It does not necessarily mean the elimination of the risks. Thus, the compliance programme itself is a comprehensive mitigation plan.

While designing the mitigation plan, multiple factors should be considered, both positive and negative. For example, a leading market supplier refused to conduct or accept the due diligence that Company A requires of its suppliers. As a mitigation strategy, Company A decided not to do business with this supplier. The impact of such a mitigation plan may lead to significant economic losses for Company A due to the difficulties in procuring an alternative product in lieu of the supplier’s product at a competitive price.

First, the business entity should assess and evaluate the effectiveness of its current measures and then decide whether a mitigation plan is needed. If yes, the following questions could be considered:
What are the specific actions the plan needs to contain?
Who is responsible for managing the plan, and who will participate in its implementation?
What resources does the plan need, including but not limited to personnel, time, and financial resources?
What is the timeline of the mitigation plan?
Is it possible that the plan impacts the business negatively, and how can that be mitigated?

Once the mitigation plan is in place, it should be assessed for its effectiveness and rationality and be accordingly either adjusted or implemented.

To illustrate: Gifts to customers are identified as a risk of corruption. After rating the risk level, the business entity may choose to design mitigation plans to decrease exposure to such risk by implementing measures including: (i) prohibiting the employees from giving any gifts to customers; (ii) setting a limit on gift value (for example under $100) or, (iii) requiring that every gift to the client be declared and cleared by the compliance department.

These are just examples of mitigation measures that can be adapted to the business entities’ policies. In some cases, explicit bans on gifts or exchanges are made, while in other situations, gifts of a value up to a pre-defined limit are allowed and have to be declared. And in other businesses, token exchanges of native specialties (for instance, sweets or handicrafts of a defined modest value) are expected. There is no “best choice” but only what is applicable to a specific enterprise.

Assess the residual risks and establish response plans

The risk assessment and enhancement of a compliance programme should be long-term and subject to periodic review and improvement. A feasible approach is to assess the residual risks and ensure that they remain below the risk tolerance level of the business entity. If necessary, specific response measures should be taken to mitigate the residual risks.

In addition, the risk assessment should be regularly updated as new factors influencing risk management may occur, e.g., in case of substantial changes in the operating environment and institutional and legal framework that impact the operation of the business, the previous compliance programme may not satisfy new risks emerging from those risks.
3.1.3 Examples of promising practices

Example I: Risk identification, assessment, and monitoring

The following example illustrates how a transnational power grid company used a risk assessment system when developing and operating an international project under the BRI framework.  

- **Risk identification**
  The company closely followed international political, economic, and market developments, to detect and deter potential risks related to local society, safety, culture, laws, and policies, among others. It also studied local politics and business landscape, legal regime, standard practices and rules for business exchanges etc., with a view to handling potential issues in a proper manner and sustaining safe and stable operations.

- **Risk assessment**
  The company regularly performed a risk assessment to enhance its capacity to prevent risk. It developed early warning red flags to effectively monitor the dynamics of its overseas business. Focusing on significant issues, it continuously improved corresponding precautionary measures to explicitly define the key points for risk control and approaches for managing crises. All those efforts contributed to the sound operations of its overseas affiliates. For in-depth studies into potential projects, the company established a system that covered the entire life-cycle of overseas investment. Hence, it could fully identify and guard against potential legal, financial, and regulatory risks, among others, in expanding its business overseas.

- **Risk monitoring**
  The company intensified efforts to monitor and analyse the core business, essential resources and key processes of its overseas affiliates. It built up the capability to detect and react to early warnings in a coordinated and timely manner to have a real-time perspective of how its overseas affiliates operated and how staff worked. All these efforts helped to enhance the overall capacity of the company in overseeing its foreign affiliates effectively.

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50 Information provided by a business entity participating in the BRI.
Example II: Risk rating

A transnational oil company\textsuperscript{51} established a variety of internal as well as independent assessment processes to evaluate the effectiveness of its risk management plan. As a complement, it created the capacity to plan assurance activities to ensure relevant risks were covered efficiently and effectively.

<table>
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<th>Box 3</th>
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**Risk ratings**

The company’s Anti-Bribery and Corruption Manual requires Integrity Due Diligence (IDD) screening to be risk-based. The IDD screenings classify risk ratings as Red, Amber or Green. Apart from flagging compliance risks related to government officials/intermediaries or corruption risks, the screenings extend to screening against restricted or denied party lists, anti-money laundering screening, and adverse media screening. A Red or Amber risk rating requires follow-up but does not necessarily flag a corruption risk. Risk-based IDD is required in the following activities: appointing government intermediaries, awarding contracts to contractors or suppliers, funding directed to Corporate Social Responsibility (CSR) initiatives and sponsorships, engaging in mergers and acquisitions, and setting up new joint ventures.

Example III: Risk-assessment tool based on key risk indicators

A transnational clean energy company\textsuperscript{52} created a risk assessment tool based on key risk indicators to assess the risk of corruption related to an individual business associate or group of business associates subject to the due diligence process. These indicators include: geographic location; background and identity of the third party; connection with public officials or entities; compensation structure of the proposed arrangement; the manner in which a third party was selected; the value of the contract; and the nature of the work/services to be performed.

\textsuperscript{51} Ibid.
\textsuperscript{52} Ibid.
3.2 Support and commitment from senior management for the prohibition of misconduct

It is vital to the success of a compliance programme that it has a strong, visible commitment and support from senior management. The anti-corruption culture has to start from the top, and it is up to senior management to lead by example and further adopt and uphold the culture of zero-tolerance on corruption.53

Given business entities participating in the BRI often operate in foreign countries with unfamiliar laws, business cultures and practices, and daily interaction between their headquarters and subsidiaries is limited, it is crucial for senior management to foster an atmosphere of compliance and convey the zero-tolerance approach to all offices worldwide.

3.2.1 Tone from the top

The “tone from the top” should be crystal clear and unambiguous. It falls on leadership and senior management to ensure that the tenets of the compliance programme are made clear to their subordinates and effectively conveyed along the chain so that all staff has, at the very least, basic information about its criteria. Apart from senior management, local leaders, such as the managers of local subsidiaries, must maintain the tone consistently and echo it in their sub-entities. In addition, middle management also plays an essential role in the compliance programme since the tone from the top sometimes cannot be conveyed directly to all the employees. The middle management needs to follow and deliver the voice from the senior management accurately and effectively.

Effective methods to set the “tone from the top” include:

- Open commitment to carry out business fairly, honestly and openly.
- Emphasis on the consequences of breaching the policy for senior management and employees.
- Communication with employees about the culture of zero tolerance for corruption.
- Promotion of the compliance policies throughout the company across all locations.
- Introduction to the key individuals and departments for the implementation of the compliance programme.
- Raising awareness of the business benefits of rejecting bribery.

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3.2.2 Role of senior management in establishing business integrity

Senior management should also put the “tone from the top” into action. The engagement of senior management may include:

- Speaking at employee meetings about the compliance culture and compliance programme of the enterprise.
- Publicly praising those employees who exemplify business integrity.
- Informing on those employees who breach the compliance policies and the corresponding sanctions against them.
- Participating actively in training and communication activities.
- Publicly endorsing policies to improve business integrity.
- Establishing an effective compliance unit.
- Creating an environment where employees feel comfortable and safe to speak up without fear of retaliation.
- And, most importantly, acting as a role model.

3.2.3 Examples of promising practices

Example I: Communicating management message to employees

An effective practice is for top-level executives and managers to inform employees, including through open letters, of the company’s codes of conduct or anti-corruption guidelines. These messages clearly illustrate the position of the top-level executives and managers towards misconduct and corruption and contribute to the establishment of a culture of integrity.
3.3 Importance of independent and adequately resourced compliance functions

The main goal of a compliance function in any business is to develop and implement an effective system of internal control to ensure the implementation of compliance policies, backstop the implementation of the compliance programme, and manage the compliance risks of violation of internal and external regulations. For BRI-related international investment projects, business entities may establish separate compliance functions in the host countries, which directly report to senior management or to the compliance department at headquarters to avoid undue interference from local managers.

54 Information provided by a business entity participating in the BRI.
55 Ibid.
### 3.3.1 Roles and responsibilities of the compliance function

The compliance function can be divided into three main parts:

1. **Implementation and backstopping of the compliance programme**
   - Formulating compliance policies based on the needs of business operations.
   - Updating and adjusting the compliance programme, including policies, codes of conduct, standards of procedure, standardized commitment of third parties on business integrity, etc., to be responsive to a change in risk exposures.
   - Fostering a culture of zero-tolerance towards corruption.
   - Providing training to and communication with employees.
   - Following the latest developments in the laws, regulations, and government policies and assessing whether the current compliance programme is adequate.

2. **Identification and management of compliance risks**
   - Implementing risk assessment as per need.
   - Identifying appropriate risks and risks factors.
   - Conducting due diligence on third parties and specific transactions that have high compliance risks.
   - Rating the compliance risks and assessing whether a specific response plan should be implemented.
   - Reviewing the approval of specific matters with certain risk exposures, e.g., gifts and business entertainment to third parties.

3. **Oversight over violations and assurance of compliance**
   - Handling whistle-blowing and reports from different sources.
   - Cooperating with internal financial audits.
   - Conducting internal investigations and reporting results to senior management.
   - Providing suggestions and assisting with sanctions against internal violations.
   - Communicating and cooperating with external investigation, enforcement, and supervision.

### 3.3.2 What is needed?

**Independence of the compliance function**

The compliance function should be operated independently without interference from other business and/or functional departments. The unit size should be commensurate with the size of the business. It can range from a whole department to a single individual. In addition, senior
management can also set up a special compliance committee to deal with higher-level and higher-impact compliance matters.

Staff should be independent from the operational part of the department, under the supervision of the compliance unit/manager, with no conflict of interest. For example, the sales manager cannot concurrently oversee the compliance function of their department. The function itself can be supervised by a specific member of the board or senior management team, and compliance function staff should have a clear reporting line to their manager.

The compliance unit should have the requisite authority to ensure the implementation of the compliance programme, including but not limited to the following:\textsuperscript{56}

- Right to veto decisions of other departments if it is necessary for ensuring business integrity.
- Access to computer systems, transaction documents, internal records, etc.
- Authority to directly approach employees without the permission of their superior.
- Right to monitor activities of other departments to supervise compliance risks, for instance, by attending internal meetings.
- Direct reporting line to the specific member of senior management to ensure the independence of the compliance unit.

**Adequate resources allocated to the compliance function**

The unit that oversees the compliance function should be allocated adequate resources, including expenses for compliance works (e.g., seeking external support and attending external trainings for relevant knowledge and skill development), sufficient personnel, and other necessary resources. Large-scale business entities such as transnational corporations or conglomerates with multiple subsidiaries should allocate sufficient resources to establish the compliance function throughout the operations and business lines worldwide and also develop a coordination mechanism among subsidiaries to ensure its effectiveness. In addition, to guarantee the requisite authority, relevant regulations and agreements should be included in internal policies and labor contracts.

The remuneration model of staff in this function should be specially designed to maintain its independence.\textsuperscript{57} It should not be performance-based, otherwise, it may lead to a conflict of interests or influence the objectivity of the staff. For example, if the remuneration is determined primarily by the number of detected violations, imposed sanctions or the amount of compensation recovered from the non-compliance employees in a given period, there may be perverse incentives to focus too much on the results of sanctioning cases (e.g., making


\textsuperscript{57} Ibid.
up losses, retrieving illegal gains, etc.) at the expense of the justification of the process and whole compliance programme. This, in turn, may cause conflicts of interest and influence the objectivity of staff in the compliance function. Finally, competitive remuneration would attract the best talent and qualifications in the industry.

3.3.3 Examples of promising practices

Example I: Establishing a compliance committee or appointing a general counsel/compliance officer

Many businesses choose to establish a compliance committee or appoint a general counsel/compliance officer to oversee compliance at a corporate level. This includes developing, operating, and monitoring the compliance programme and a direct reporting line to the head of the organization, such as the president and/or the board.

While businesses may choose different structures depending on their size, geographical location and industrial sector, most structures cover two main functions: compliance operation and compliance governance. Under the compliance committee, commonly, there are business and/or regional compliance and ethics officers responsible for introducing and implementing the compliance programme into the daily operation of their business division or region. There are also legal counsels/compliance officers leading the work of monitoring, investigation, risk control, and sanctions to prevent and correct misconduct. The compliance committee also works closely with human resources, communications, audit, and other departments to deliver education, training, and communication channels for the compliance programme.

Box 5

Compliance policy of a transnational transportation company participating in the BRI investment projects

Compliance officers are appointed in the Group, its subsidiaries and any overseas branches and offices with three or more employees. The compliance officer conducts compliance checks on high-risk areas such as the recruitment of third parties, receives internal and external complaints and reports of violations, and organizes investigations into noncompliance incidents. The officer is authorized to report directly to their manager. The company also regularly designates officers to conduct cross examination in overseas subsidiaries and examines the implementation of compliance procedures and the performance of its compliance officers.58

58 Information provided by a business entity participating in the BRI.
Example II: Establishing specific supervisory committees

Some business entities have established a new mechanism to improve corporate governance and fulfill compliance mandates. In the past, these compliance functions were delegated to different bureaus and departments, such as the legal or audit department or supervision bureau, which operated independently. However, in recent years, many companies began establishing specific supervisory committees to 1) set the tone from the top, 2) coordinate various departments and bureaus to work collaboratively to promote business integrity, standardize procedures, and 3) monitor daily operations and prevent misconduct.

The supervisory committee can be composed of heads of various departments, including Human Resources, Safety, Quality and Environment, Auditing Bureau (including Board of Supervisors Office), Legal Affairs Department and/or Discipline Inspection, and the Supervision Bureau (including Inspection Office) if it is a SOE. The supervisory committee has the right to settle, sanction, or provide suggestions regarding various management problems or misconduct and report directly to the board and senior management. It is also responsible for sharing compliance experiences and examples of promising practices with other business entities.59

Box 6

Using daily supervision, video inspection and other tools to deter corruption

A transnational construction company involved in BRI investment projects constantly strengthens daily supervision and promotes the defence line through business supervision and functional supervision to form a strong deterrent.

Through strengthening the internal approval process, the company has built a grading examination and approval system for bidding documents and contracts, established different quotas and conditions to determine whether the Overseas Business Department or headquarter departments should be involved in compliance review and submitted significant compliance matters to the Overseas Business Management Committee for study and decision.

It uses video inspection to comprehensively supervise key issues in corporate management, targeting specific overseas establishments and projects.

59 Ibid.
3.4 Employees’ code of conduct and compliance guideline

Establishing and promoting a culture of integrity is not an isolated phenomenon and requires supporting mechanisms and guidelines. Corporate governance is an overarching subject, and the code of conduct, compliance guidelines, rules and standards for employees all complement the business entity’s anti-corruption policies. When these work in harmony, the compliance programme tends to be more effective. Also, it is essential for the code of conduct and compliance guidelines to specify the scope of application for all companies in the corporation, and in local languages for those units and subsidiaries operating globally.

3.4.1 Definition and function of a code of conduct

A code of conduct can be best defined as the primary performance standard for employees to conduct business operations in accordance with the norms and values of the business entity. The main message should be that integrity is indispensable in business operations and that all applicable laws should be strictly complied with. Also, the business entity should follow ethical standards and conduct business with integrity. Other underlying principles for drafting the code of conduct include:

- Compliance is of great importance and has business benefits.
- Challenges to business integrity and violations of policies should be reported as part of regular processes.
- Infringement of business integrity should be deemed a severe violation of both internal discipline and laws and face appropriate sanctions.
- No bribery should be used to obtain or retain business for the enterprise.
- Conflict of interests should be reported, assessed and addressed adequately.

The code of conduct should contain clear and concise language and be periodically reviewed and effectively delivered to all employees and relevant parties.

3.4.2 Definition and function of compliance guidelines

In addition to the normative framework, it is also suggested that companies provide clear compliance guidelines to help employees understand what they should do in real-life circumstances to mitigate the risks and fully comply with the business integrity requirements. The compliance guidelines could be presented with different scenarios and guidance on appropriate responses. Possible examples could be: how to deal with gifts from suppliers which could not be returned in a timely fashion; what to do if you discover a conflict of interest; how to report potential corruption issues etc. The guidelines can be provided together with the code of conduct.
For business entities participating in BRI-related projects, a specific compliance guideline on foreign investment and international transactions could be provided, including guidance on proper interaction with the local government and how to deal with different requirements from counterparts while making or receiving cross-border payments or preparing and submitting bids for cross-border contracts, etc.

### 3.4.3 Examples of promising practices

It is usual for most codes of conduct to include guidance on matters such as gifts and entertainment (what kinds of gifts and entertainment are acceptable), avoiding conflicts of interest, and the business entity’s policy on political donations. The overall requirement is a clear commitment to the prevention of all forms of corruption involving public or private office-holders, including bribes paid by third parties.\(^{60}\)

**Example I: Using practical scenarios as teaching points**

A transnational energy company\(^{61}\) participating in the BRI investment projects developed a clear and detailed code of conduct. Based on the visions and values of this company, the code of conduct explains in detail the ethical and compliance principles under which employees should operate when working with business partners, communities and governments.

For example, the code of conduct illustrates the concept of conflicts of interest with real-life scenarios to help employees identify and avoid them. Also, concerning gifts and entertainment, the code stipulates how and from whom to receive approvals for gifts worth different amounts. The business entity also established an online gift and entertainment registration and approval tool to avoid bribery risks. The code requires all activities to be open, transparent, and compliant with local laws and regulations. Further, employees are expected to keep accurate records so that payments are honestly recorded, and business funds are not misused.

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\(^{60}\) Ibid.

\(^{61}\) Ibid.
Box 7

**Identifying a conflict of interest**

A conflict of interest may occur when your interests or activities affect your ability to make objective decisions for the business entity.

Be aware of the many different ways in which conflicts of interest can occur. For example:

- Outside jobs and affiliations with competitors, customers or suppliers.
- Working with close relatives, especially those who are public officials.
- Having a close relationship with another employee who can influence decisions such as salary, performance rating or promotion.
- Serving as a board member of another organization.
- Investments, including those of close relatives, which might influence or appear to influence your judgement.

Excerpted from the Code of Conduct of the transnational energy company

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**Example II: Clearly prohibiting misconduct and prescribing consequences**

A transnational clean energy company participating in the BRI investment projects listed the minimum requirements for employees’ conduct in its anti-corruption policy. For example, employees are prohibited from offering, giving, or accepting a bribe or kickback in any form, direct or indirect, from or to any person or party, including customers, representatives, contractors, suppliers, and public officials. Employees must not offer, promise, or give money, services, gifts, or other items of value (including hospitality) to obtain or retain business or otherwise benefit the business entity; and must not receive money, services, gifts, or other items of value (including hospitality) for having given entity business to an individual or organization.

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62 Ibid.
Box 8

Travel-related anti-corruption measures

Travel expenses for public officials may be paid or reimbursed only if they have been cleared in advance with the relevant supervisor or manager of the responsible business unit and then with the Compliance Department. When arranging for travel or covering the travel expenses of a public official, keep in mind: The company cannot pay any travel expenses for spouses or other family members of public officials.

Payments to cover expenses of public officials must, whenever possible, be paid directly to vendors (e.g., hotels, airlines and restaurants). If direct payment is not possible, reimbursement may be made only against receipts.

When possible, reimbursement must be made to the public official’s employer rather than the individual; if this is not possible, the reimbursement request shall explain why.

The company can either cover meals and lodging expenses or provide a per diem for “incidentals”. Payments and reimbursements for a public official’s travel are permissible only for the period directly related to the company’s business.

Excerpted from the Anti-Corruption Policy63

3.5 Business partners’ compliance management

In addition to internal control, businesses should have effective management and control over corruption risks that can arise from their interactions with their business partners and their actions.64 Business partner is a broad concept that may include customers, suppliers, consultants, agents, and joint venture partners. Since, under certain circumstances, legal liabilities could also be triggered by violations on the part of business partners, specific controls should be put in place to govern these relationships.

For example, while negotiating with local governments, persons with a particular connection with public officials, such as lobbyists, are engaged to help facilitate communication on different occasions. Business entities need to pay attention to whether a ‘special relationship’ exists between such persons and the local government and how to deal with any special requirement of these persons (e.g., demand for extra commissions). This can take various forms, such as:

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63 Ibid.
3.5.1 Different types of business partners

Based on the relationships with business entities and the services provided, the following types of business partners can be identified:

- Contractors and suppliers
- Agents and intermediaries

Based on the specific types of business partners, business entities may choose to adopt a different level of compliance management. Business partners with higher risks typically should be managed with additional procedures. For example, for business partners with low risks, the due diligence could be conducted by employees of the business entities, but for those with potentially higher risks, such due diligence has to be conducted by an external consultant prior to entering into a business partnership.

3.5.2 Method to manage relationships with third parties and mitigate risks

Identifying red flags when dealing with business partners

Red flags refer to certain uncommon events or behaviours that act as an indicator to alert the business that there can be potential threats to business integrity and prompt mitigatory action on their part. For example, if red flags are discovered while conducting due diligence, business entities may consider adopting more comprehensive methods to investigate business partners. Initiating a special investigation into existing partners or even ceasing business cooperation could be considered.

To identify red flags when dealing with business partners, the following questions could be asked:

- What is the reputation of the business partner, particularly concerning business integrity?
- Does the business partner have family or business ties, or other close relationships with a former or present public official?
- Is an entity the business partner owned by a former or present public official, or relative(s) or people having close relationships with a said official?
- Is an individual business partner a former or present public official? Is the business partner currently, or has he/she ever been an official of a quasi-governmental body or self-regulatory organization?
- Was the business partner recommended by a former or present public official, or relative(s) or people having close relationships with said official?
- Does the business partner have adequate staff, expertise, facilities and other resources to perform the required service?
- Is the business partner’s fee, commission or other compensation reasonable and consistent with the market rate for similar services or arrangements in that location?
- Does the business partner request cash payments, unusual bonuses, substantial upfront payments, or any unusual payment process, such as offshore payments or off-the-books accounts?
- Does the business partner understand and agree to comply with enterprise policies on business integrity?
- Has the business partner been the subject of any government investigation, informal inquiry, or enforcement action related to business integrity?
- Has the business partner requested any special requirements for their payment?

Due diligence on business partners

Due diligence should be carried out on business partners before engaging with them and periodically during the course of interactions. The purpose of due diligence is to identify, to the extent possible, the potential uncertainties for business integrity and take possible mitigation actions to minimize the risks. Commonly used methods may include periodically:

- Checking the legal status of the business partners.
- Assessing the financial dependencies and ownership structure of the business partners.
- Interviewing the key individuals of the business.
- Evaluating the existing compliance programme of the business partners.
- Evaluating whether business partners have certain red flags (see below).
- Identifying the potential legal actions that the business partners may get involved in and assessing the impacts.

Monitor and communicate with the business partners

Following the initial due diligence process, it is important to regularly review or ‘audit’ the interactions and transactions with all business partners. The frequency can be based on multiple factors, such as the type of transactions that take place, the specific services provided, the overall risk exposure of business partners, etc. If necessary, external consultants can also be engaged to assist in these reviews.
By the same token, it is also important for business entities to effectively and regularly share their policies and practices with their partners. From briefing sessions and practical workshops to trainings and regular and transparent communication will all help enhance business integrity and promote the values and business practices of the business entity. Trainings for partners are also an effective way for business entities to emphasize zero-tolerance for corruption and to communicate their policies and standard procedures.

**Written commitments and contractual protections**

Apart from the practical measures suggested above, it is also recommended that entities obtain written commitments from their business partners before embarking on projects together. The partner can commit to maintaining the highest standards of business integrity and pledge that they will not use bribery or other forms of corruption during business cooperation.

In addition, terms of representation and warranties could be included in the contract with business partners. The contract could contain clauses that say the partners will pay compensation for any losses caused by their misconduct and corrupt practices.

### 3.5.3 Examples of promising practices

**Example I: Creating due diligence procedures for third parties**

A transnational clean energy company formalized a risk-based third-party due diligence procedure. It created a risk-assessment tool based on key risk indicators to assess the risk of corruption related to an individual business associate or a group of business associates subject to the due diligence process.

An initial screening is performed to identify business associates within the scope of the due diligence process. The screening factors may include (among others): geographic location, whether there will be contact with public officials, whether the third party will be authorized to represent the company and the monetary value of the contract.

An assessment follows to define the risk and find the appropriate level of due diligence for each individual/entity, which can include additional factors such as the compensation structure, how the candidate was selected etc. The overall corruption risk assessment outcome determines the extent of due diligence required, which is commensurate with the deemed risk of corruption.

In summary: in an ideal process – due diligence should be completed, documented, reviewed and approved by senior management before appointing business partners, and defined approval procedures should be in place to address the outcome based on the results of the process.

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65 Information provided by a business entity participating in the BRI.
Post-approval, written contracts should be in place between the business and all partners with which it has a relationship. All contracts should contain a clause prohibiting corruption and delineate the consequences of potential breaches. For partners assessed as posing a higher risk of corruption, specific wording around specific obligations and rights should be considered.

Partners should receive a copy of the Ethics Policy and/or Partner Conduct Principles, as appropriate. In some cases, it may be appropriate to require a business associate to undergo anti-corruption training. This decision is risk-based and depends on several factors, including whether the partner has been assessed as representing higher risks of corruption and whether they already received such training.

The business entity should regularly audit an appropriate sample of partners who have been assessed as representing higher risks of corruption. These audits include a review of, for example, anti-corruption policies and procedures, training given to employees and documentation relating to tenders (particularly when the partner interacts with public officials on the business’s behalf).

Example II: Introducing certification for business partners

A medical service company established strict requirements for business partners. Every vendor must sign an “Anti-Corruption Compliance Certification” offered by the company (table below). The certification is not a qualification in the conventional sense but a representation and warranty made by business partners with respect to their compliance with the Anti-Corruption Laws and Policy. Selected employees may be required to assist in ensuring that this Certification is signed by vendors or joint venture companies, and failure by any employee to carry out the required actions may result in disciplinary actions.

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66 Information provided by a business entity participating in the BRI.
Box 9

**Anti-Corruption certification for vendors, consultants and representatives (collectively “business partners”)**

I, a duly authorized representative of [agent name], confirm that I, my company, and employees or subcontractors retained by me or my company (i) understand and accept responsibility for complying with the Company Anti-Corruption Compliance Policy, (ii) understand the requirements and restrictions imposed by the Anti-Corruption Laws and that since the date of my last certification, I, my company, and employees or subcontractors retained by me or my company have not violated, or caused Company, any joint venture company of Company, or any officer, director or employee of Company, to violate the Company Anti-Corruption Compliance Policy or any Anti-Corruption Laws. Further, I hereby confirm that neither I nor my company, employees or subcontractors is a governmental entity or political party in the country in which I represent Company and that no officer, director, stockholder, employee, or agent of my company is a public official.

In connection with my representation of Company, neither I, nor my company, nor any of its officers, directors, stockholders, employees, agents or subcontractors have offered, paid, promised to pay, or authorized the payment of any money or any other thing of value to public official, (b) any other person while knowing or suspecting that all or a portion of such money or anything else of value would be offered or given directly or indirectly to any public official for any of the prohibited purposes listed below. These prohibited purposes are:

- to influence an act or decision of such official, political party, party official or candidate in his official capacity;
- to induce such official, political party, party official or candidate to do or omit to do any act in violation of the lawful duty of such party, official or candidate; or
- to induce such official, foreign political party, party official or candidate to use his or its influence with a government or government agency.

In addition, in connection with my representation of Company, neither I, nor my company, nor any of its officers, directors, stockholders, employees, agents or subcontractors have offered, paid, promised to pay, or authorized the payment or giving of, or will in the future offer, pay, promise to pay or authorize the payment or giving of, any bribe or improper payment or gift (with money or any other thing of value) to any other person.

**Example III: Compliance management of cash payments to business partners**

In order to reduce the compliance risk inherent in using cash payments and comply with relevant laws, regulations and supervisory provisions, a transnational construction company participating in BRI investment projects formulated 'Implementation rules for the compliance management of cash payments.67' According to the rules, all units of the company should avoid...
using cash payments as far as possible unless there are limitations in the operation of banks and financial institutions in the business location, in which case cash is allowed to be used to purchase local project equipment and materials, office supplies and pay local employees’ salaries, etc., but not to pay financing fees. In addition, all cash payments are approved by at least two employees (other than the party initiating the cash payment), and regular summary reports are made on cash payments.

### Box 10

**Implementation rules for the compliance management of cash payments**

- Cash payments referred to in these rules are payments made in the form of cash or cash equivalents, including anonymous, non-traceable preloaded credit cards, gift cards, fuel cards, checks or money orders.
- All units shall avoid using cash payment as far as possible. If there are limitations in the business development of banks and financial institutions in the business location, the use of cash is permitted for the purchase of local project equipment and materials, office supplies, and the payment of local employees’ salaries, etc., and shall not be used for the payment of financing fees. At the same time, cash payments by each unit shall not violate the company’s compliance systems.
- Each unit shall take thorough financial measures before making cash payments, control the approval of cash payments and keep documentary records, have all cash payments approved by at least two employees (except for the party initiating the cash payment), and make regular summary reports on cash payments.

### 3.6 Adequate policies for high-risk areas

Although bribery is illegal and criminalized in most BRI countries in accordance with the Convention, in practice, the line between legal and illegal activities is not always clear. For example, low-value gifts are a good way to maintain a cordial relationship with business partners, but lavish gifts in exchange for illegal benefits could be considered bribery and incur legal sanctions. In addition to the general provisions on the prohibition of bribery, such as the code of conduct and compliance guidelines mentioned in 3.4.3, it is necessary for business entities to formulate specific policies or guidance for particular areas. The policies should focus on specific topics and provide regulations and practical, real-life responses.

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3.6.1 Expenditure types with higher corruption risks

Overview

Several types of expenditures could be misused to disguise bribes, and normally the following expenditure categories should be carefully examined:

- Gifts, hospitality, travel and entertainment
- Reimbursement for employees and individuals of other parties
- Charitable and political donations and sponsorship

The expenditures above are not necessarily illegal and do not always constitute bribery. Yet, they are vulnerable to misuse and therefore, it is preferable to establish policies for review and approval. Questions to be asked could include:

- Are there any special regulations under local laws to prohibit such expenditures?
- What is the intent of the expenditures?
- Is the value of expenditures appropriate under local laws and customs as well as internal guidelines of the business entity?
- Who is the recipient of such payment(s)?
- Are the actual use and final recipient consistent with what was mentioned when the payment was approved and made?
- Is such payment made in accordance with the agreements and initial arrangements?
- Are there any special circumstances in the industry to restrict the expenditures (for example, special regulations on gifts and entertainment may be explicitly provided for the healthcare sector)?

A closer look at some payment types follows.

Fees and commissions to agents and intermediaries

As mentioned in 3.5, agents and intermediaries provide services based on their understanding and knowledge of local regulations and business practices. They are often recruited to help facilitate and advise on communication and cooperation with local government and other business entities. Their fees and commissions should be reviewed through internal approval carefully to prevent them from being used as bribes to other parties.

Contributions and sponsorships

Contributions and sponsorships mainly include: (i) charitable contributions and sponsorships for charity uses. Charitable contributions and sponsorships could sometimes mask corruption, for example, when the organizations receiving charitable sponsorships are owned by government
officials, such contribution and sponsorships could be used to deliver bribes; (ii) political contributions and sponsorships to political parties, party officials and candidates who are public officials or about to become elected officials. Political contributions should be made strictly in accordance with local laws and regulations and should not be made in exchange for undue advantages. In addition, in many countries, it is prohibited for foreign countries to make political contributions and sponsorships.

Facilitation payments

Facilitation payments are payments of small amounts made to secure or expedite the performance of routine non-discretionary government action by clerical-level government officials. The Convention prohibits the use of facilitation payments under any circumstances. The national legislation of many countries has prohibited facilitation payments, and it is suggested that business entities involved in BRI-related projects adopt clear policies to forbid such payments.

3.6.2 Other issues

Conflicts of interest

Conflicts of interest occur when an individual in the enterprise has personal interests which may contradict, interfere or influence the discharge of his/her professional duties against the interest of the business. For instance, former public officials may act as agents of business entities in matters involving their former mandates and functions. While this is helpful as they have institutional and procedural knowledge that may help streamline communication, it may also heighten bribery risks, as payments to them could also be channeled as bribes to the officials in power they deal with. Thus, engagement with former public officials requires additional control and management. An effective way to monitor conflicts of interest would be to institute a disclosure system whereby employees are required to report their conflicts of interest, which can be examined by the business entity to decide whether such a conflict exists and whether mitigation measures should be taken.

Resisting solicitation

In some situations, employees can be solicited or approached for bribes. It is thus important for business entities to have relevant procedures to deter or prevent adverse impacts from solicitation on the normal operation of the business. While it is understood that employees must refuse to pay in such situations, businesses can adopt clear internal policies to prohibit bribery. Also, effective channels to report and communicate such incidences of solicitation are necessary with a view to making a swift legal response and avoiding unnecessary legal exposures.

3.6.3 Examples of promising practices

Example I: Establishing compliance management of business hospitality

To further regulate the company’s business-related hospitality and ensure legal compliance, a transnational construction company participating in the BRI investment projects established ‘Implementation rules for compliance management of business hospitality.’ The rules clarify the conditions, standards and acceptable frequency for giving and receiving gifts/tokens.

Box 11

Implementation rules for risk management for business hospitality

I. Business units shall promote the following rules among staff in providing and accepting gifts/tokens.

- The gifts/tokens should be in accordance with the policies of the company and the Implementation Rules. If their value exceeds the limits set by local laws and regulations, the employee shall consult with the compliance authority of the business unit on how to handle them.
- The exchange of gifts/tokens should not be aimed at obtaining inappropriate benefits or advantages and be consistent with accepted local customs and business practices. The gift/token should not be in cash or the equivalent (vouchers).
- Gifts/tokens should be offered or accepted in an appropriate setting, in a transparent manner, and in a manner that does not create an improper or embarrassing impression. They should not be offered or accepted at critical moments in the conduct of business.

II. The standards for the provision of gifts/tokens by the company in the course of business hospitality are as follows.

- Foreign receptions and business receptions conducted by the head of the company shall not exceed a maximum of [600] RMB per person each time.
- Foreign affairs receptions and business receptions conducted by employees of the head office of the Company shall not exceed a maximum of [400] RMB per person each time.
- No employee shall provide gifts/tokens in other official receptions.
- Business units shall strictly control the number of times to give or take gifts/tokens in general, no more than four times a year to the same person or institution. Accepting gifts/tokens from the same person or institution should not be more than twice a year.

70 Information provided by a business entity participating in the BRI.
Example II: Donation and sponsorship compliance management

In order to ensure that the company’s donations and sponsorships are in compliance with the integrity and compliance system, a transnational construction company established “Implementation rules for compliance management on donation and sponsorship”. According to these rules, there is a blanket prohibition from giving any political donations. Other donations made in the company’s name must also be carefully reviewed. Personal donations and sponsorships are not prohibited, although recommendations govern them.

**Box 12**

**Implementation rules for risk management for donation and sponsorship**

Business units are prohibited from making political donations on anyone’s behalf, regardless of whether the donation is made in money or in-kind or whether it is made to a political organization, political party or individual politician.

- The compliance department of each business unit shall review the legality and purpose (including affiliation with the government or public officials) and the detailed use of funds before providing or promising to provide donation or sponsorship.
- Yet, these rules do not prohibit employees from making donations in their names or using a personal property. When employees make political donations, they may only do so in their own name, at their own expense, and in compliance with relevant laws and regulations, and may not mention their organization or their employment relationship with their organization. If the employee’s donation is for improper purposes or seeking improper benefits, the employee will bear legal responsibility and may also be subject to disciplinary action by the unit.
- Personal donation or sponsorship by employees do not need to be reviewed and approved by relevant business units, but should avoid:
  - Donation or sponsorship at the request or suggestion of public officials or private business partners.
  - Donation or sponsorship of the recipient for the public officials, government agencies, related entities or individuals, or for the existence of business transactions with their units of private business partners.
  - The endowment sponsorship affects the unit’s ability to obtain and maintain a business from public officials, government agencies, or private business partners.

71 Ibid.
Example III: Establishing gift and premium declaration systems

A clean energy company involved in the BRI established the “Integrity file binder” and “Gift and premium declaration system” to record and monitor employees’ integrity and discipline violations.72

Box 13

Gift and premium declaration system

All employees who receive gifts and gratuities during their business activities that cannot be refused or returned for various reasons shall declare them to the company within 15 days from the date of receipt.

Example IV: Prohibition policy of facilitation payments

An aerospace company requires employees to comply with its strict policy forbidding facilitation payments of any kind, including those made on behalf of the company.73

Box 14

Prohibition policy of facilitation payments

Facilitation payments are defined as a payment or gift given to a public official to facilitate their performance of a routine duty or function or to expedite the same. This is different from the payment of a lawful and official fee for such a duty or function. For example, a company has to pay a fee to submit a plan for approval and receive a receipt. A facilitation payment, in this case, would be defined as something extra that is paid, usually without a receipt, to expedite the approval process.

Facilitation payments policy requires that:

- Employees are prohibited from making facilitation payments (no matter how small such payments may be) of any kind or allowing others (including advisers, agents and consultants) to make them on behalf of the company.
- Any requests for facilitation payments must be declined and reported to the Legal Department.

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72 Ibid.
73 Ibid.
3.7 Internal control and record keeping

Honest and accurate financial records and bookkeeping are invaluable in assessing business integrity and ensuring that business activities are being conducted properly, especially in entities subject to a high risk of corruption.74

3.7.1 Truthful and accurate accounts

Books and accounts should be prepared to accurately and truthfully reflect transactions and/or disposal of assets. The relevant materials and records should be provided to ensure that the transactions or disposals have in fact happened. In addition, all transactions should only be recorded in the official books of the business, and no off-the-books accounts should be allowed.

3.7.2 Internal control and report

Based on the financial records and bookkeeping, internal control should be instituted to see if any risks remain under the cover of seemingly regular income and expenses. For example, sometimes corrupt payment can be hidden in legal forms of payment, like consulting fees or service fees. If it is discovered that large amounts were paid to certain entities at regular intervals, such transactions may need to be checked to ensure their probity. Were proportionate goods or services received? Ideally, financial records should be periodically checked for suspicious transactions that could involve corruption. Periodic reports should be made to reflect how the internal records are checked and reviewed, and anything flagged as suspicious should be audited further.

3.7.3 Example of promising practices

Example I: Financial control

A transnational clean energy company put in place financial controls to minimize the risk of paying or receiving a bribe.75

Those controls which mitigate an identified corruption risk are mapped to corruption risks as part of the annual risk assessment exercise. The compliance function maintains oversight of the effective operation of such financial controls.

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75 Information from the Anti-Corruption Compliance Programme provided by a transnational business entity.
Box 15

Example of an authority and signature matrix

This matrix describes signature and approval rights relating to the following activities/areas:

- Operating expenses
- General operating expenses
- Project development costs
- Marketing / corporate communication / IR
- Legal counsel
- Other signature & approval rights
- Personnel & appointment matters
- Acquisition of businesses (including acquisition of SPV/project rights for PV systems)
- Disposal of businesses – e.g., operating subsidiaries [excl. sale of SPVs/PV Plants]
- Equity investment in subsidiaries
- Litigation
- Financing
- Bank bonds (unconditional) or letters of credit
- Parent company guarantees
- Foreign exchange risk
- Security against assets

3.8 Communication and training

Targeted communication and training on anti-corruption themes, such as business integrity, compliance programmes etc., play an important role in raising awareness of its employees, business partners, and other relevant parties. When managed effectively, they can help increase employees’ buy-in to their integrity programme and enhance knowledge of the actions they must take to comply with the entity’s integrity programme.

Communication may cover a range of issues and take various forms including but not limited to:

- General introduction to the business integrity programme of the enterprise
- Training on the relevant laws and regulations
- Publication of updated or newly formulated internal policies
- FAQ platform for the questions on the compliance programme
- Information about violations on the part of employees or business partners
- Regular reports on the implementation of the compliance programme

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3.8.1 Communication

Effective communication is a two-way process. While previous sections have focused on messaging from the business and senior management, this section emphasizes the importance of internal communication. This implies listening to feedback from employees, providing clarifications and answering questions, and helping resolve doubts or clear up confusions. Proper interfaces and platforms need to be provided to enable such interaction, and a provision made to encourage the culture of “speak out”, wherein employees feel comfortable and able to discuss either publicly or privately questions about internal policies, the assistance they need, the circumstances or challenges they face with regard to business integrity, and the unusual situations they may face in discharging their professional duties etc.

To complement this, external communication is also necessary. Businesses should make their policies public – on their website, for instance – to make their approach to business transparent and also emphasize their zero-tolerance approach to external audiences, especially potential business partners. Such direct communication should also be had with existing business partners – this would help them manage corruption risks and encourage them to conduct their own business with high standards.

3.8.2 Training

Training is essential for business entities to ensure the proper implementation of their compliance programmes by highlighting the commitment of the business to zero tolerance for infringements on business integrity. The general policies and procedures of business integrity and compliance programmes should be communicated to all employees to enhance the culture of integrity and to promote a thorough understanding of policies and procedures. The consequences and impacts of breaches should also be communicated. Senior officials or employees working in departments especially vulnerable to corruption (such as procurement) could additionally receive specialized training.

For instance, a salesperson could be provided with tailored training on kickback issues, and distributors could be trained on proper behaviours while doing business with end customers.
A successful compliance training system should consider the following aspects:

- **Qualified trainers**
  An experienced and qualified trainer would have a significant impact on the quality of the training. For training on daily compliance issues, including internal policies, standards of procedure, etc., compliance officers, financial controllers and other management staff could be good resource persons. External expert consultants could also be engaged to provide training for other professional topics like training on the latest developments/changes in legislation.

- **Targeted trainings**
  Trainings should be designed and arranged based on the target audience. Senior management training should focus on preventing misconduct and enhancing the business integrity of the whole company and should ideally build on their own experience and take a workshop-based approach rather than a didactic one.

- **Content of the training**
  Typically, the training should be tailored based on the size, business, location and various factors of the business entities and be adaptable to provide for changes in the business operation and environment. For example, if a business entity forays into a new market, it is necessary to have timely training on local laws;

- **Test for the trainings**
  The business entities may also include tests for their employees after compliance trainings to assess their understanding of the contents and its effectiveness.

### 3.8.3 Examples of promising practices

**Example I: Role of training in increasing awareness of compliance among staff**

A transnational construction company participating in the BRI investment projects, which has extensive experience in overseas business development, shared how it constantly works on fostering a culture of integrity. It focuses on strengthening awareness of compliance and risk control, promoting compliance with international anti-bribery laws and standards, and learning from successful experiences of preventing and sanctioning corrupt practices. All of these contribute to the over-arching business integrity efforts.

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77 Information provided by a business entity participating in the BRI.
Box 16

**Practices to prevent corruption in host countries**

- Analysing cases of sanctions for violations and promoting successful practices in pilot compliance programmes, with a view to helping staff in overseas projects understand and fulfil their compliance obligations, and raising awareness of these issues.
- Inviting experts to give lectures on contract laws, finance and taxation.
- Committing to the continuing education of staff in overseas offices by: (i) sharing the latest information and updates on the rules of the home country with staff via e-classrooms and encouraging staff to participate; sharing common violations of rules and regulations; organizing a screening of films on anti-corruption;
- Circulating alerts for complying with gift regulations during festivals; and sending regular reminders via email and other means to enhance the awareness of the integrity of overseas staff.

Example II: Relevance of providing communication and feedback channels

A transnational electric company participating in the BRI investment projects developed and documented core ethical values for staff to follow. In accordance with these values, the company established an anti-corruption policy to provide a normative framework for all staff, helping them recognize and avoid potential violations of anti-corruption laws.

The policy provides a mechanism for communicating compliance policies. Employees can contact the compliance department through multiple channels.

**Anti-corruption policy**

**Article 36:** You are encouraged to contact your supervisors, managers and the Compliance Department about behaviour that potentially violates anti-corruption laws or policies, and guidance on the best course of action to take in a particular situation.

**Article 37:** You should be alert to situations that could result in violations of anti-corruption laws or this Policy. If you know or suspect a violation of applicable anti-corruption laws or this Policy has occurred, you must report it immediately to your supervisor or line manager. If you are not comfortable bringing up the matter with such a person, you must raise the matter directly to the Compliance Department or via the anonymous whistle-blower hotline or email.
3.9 Detection, investigating and handling violations

Even the most effective business integrity compliance programme cannot entirely eliminate integrity violations. In order to detect and address the violations promptly and minimize their impact, the business also needs an effective and efficient system of risk detection, mitigation measures and sanctions for infringement of integrity policies, rules and regulations.79

3.9.1 Detection of violations

Violations can be detected internally and externally. The first and perhaps most essential step would be to establish a hotline for both employees and partners to seek guidance or clarifications on guidelines and report any situations of concern, with or without concrete evidence, on a confidential basis. Ideally, the hotline should allow for anonymity so that people are willing to call without fear of repercussions. Prohibitions on retaliation for good faith reporting is also crucial for the operation of the hotline. It could be a practical resource for collecting information about challenges to business integrity and violations of policies and procedures. Furthermore, violations could also be detected through effective internal control, internal and external audits, complaints from other third parties, media reports, etc.80

A successful risk detection system generally includes the following elements:

- **Effective reporting channels**

  According to the Association of Certified Fraud Examiners (ACFE)'s statistics of international fraud cases in 2012, detection of over 42 per cent of the cases originally came from a tip-off (of which 55 per cent were received from employees and 18 per cent from customers). Organizations with reporting channels in place saw a much higher likelihood that fraud would be detected by a tip-off (47 per cent) than organizations without reporting channels (31 per cent). Also, training could increase the likelihood of detection by such means, which is 45 per cent for those with training compared with 37 per cent for those without training. This proves that maintaining a hotline or reporting mechanism increases the chances of earlier fraud detection and reduces losses, and fraud awareness training encourages tip-offs through reporting mechanisms.81

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80 See also UNODC (2021), Speak Up for Health! Guidelines to Enable Whistle-blower Protection in the Health-care Sector, https://www.unodc.org/documents/corruption/Publications/2021/Speak_up_for_Health_-_Guidelines_to_Enable_Whistle-Blower_Protection_in_the_Health-Care_Sector_EN.pdf.

- **Whistle-blower protection**
  It is crucial for businesses to protect whistle-blowers from retaliation or improper treatment of any sort. Ideally, confidentiality should be guaranteed for both the identity of the whistle-blower and the information they provide. Therefore, anonymous reporting channels, a special reporting email address etc., should be made available to internal and external parties. Businesses should also enhance training and information efforts on the same.

- **Identifying risks through an independent audit**
  Generally, it is more challenging to detect violations committed by third parties and business partners, especially when company employees collude with the offenders. Having independent and experienced teams to monitor business relationships is crucial to ensure the company grasps the actual situation. Companies should consider granting reasonable audit rights to third parties.

- **Regular risk assessment**
  Different types of third parties have diverse levels of risk. An individual agent’s risk level is substantially higher than that of a certified service company. Regular risk assessment of business partners based on their background, the nature of the services or goods, and the scale of transactions helps to identify high-risk third parties. This also allows for proper resource allocation and improvement of risk controls.

- **Identification of red flags**
  - Indirect or unusual payments
  - Unusual government or individual relationship
  - Uncooperative attitudes
  - Discrepancy of information

  Businesses should then consider taking measures based on the nature of the potential violations, possible impact, the validity of the information and evidence collected, etc. When there is clear evidence, an internal investigation is suggested. Otherwise, the compliance function team could confidentially collect further information via document reviews, interviews and other methods. If necessary, external assistance to audit or investigate the reported violations can be sought.
3.9.2 Handling violations

Respond to violations

Investigations should be conducted, with their results being analyzed based on appropriate protocols. If investigations establish that violations took place, it becomes incumbent on businesses to take further steps. These can vary depending on the perpetrator and the violation’s severity and impact. For employees, disciplinary sanctions outlined in internal policies or labour contracts would apply and could even end in termination of employment. For partners, measures could be decided based on the nature of the specific relationships, including but not limited to claims for compensation or termination of contracts. Sanctions should be applied based on company policies, following an objective and transparent process, and include opportunities to appeal.

After employees’ violations are discovered, and misconduct (if any) is confirmed by internal investigation or external administrative/criminal investigation, it should be communicated to relevant departments and, if possible, companywide, for transparency and to underscore a zero-tolerance policy. It is also recommended that senior management and compliance departments be made cognizant of the incidence and determine whether further training or enhancement of the compliance programme is needed to prevent a recurrence. The same applies to violations perpetrated by partners; functional departments should be informed so that they can take necessary action to mitigate the adverse impact on or risks to the business.

Cooperation with authorities

As mentioned earlier, under article 39 of the Convention, States parties should encourage companies to report corruption-related crimes to authorities with a view to initiating further legal actions. For example, if the violations are severe enough to be in breach of the law or even amount to a crime, enterprises should transfer them to competent authorities.

Business entities can cooperate with national authorities either before or after the authorities are made aware of the corrupt conduct. Before formal processes are initiated by the government, business entities can proactively disclose concerns to the authorities and seek guidance in handling them. Once proceedings have begun, entities must cooperate with the investigation by providing all relevant materials as evidence.

Sometimes, it emerges that the reports of violations were unfounded. Or, no evidence could be found to support a claim of misconduct. Or, the evidence found is not enough to incriminate but enough to indicate the possibility of future misconduct being planned. In such situations, the business can take these as a learning opportunity to identify risk factors. Reasonable measures could also be adopted for those circumstances where risks to business integrity may exist. Businesses should also communicate with the concerned employees or partners to re-emphasize the zero-tolerance of violations of business integrity and draw their attention to compliance issues. Tailored training could also be provided if necessary.
3.9.3 Examples of promising practices

Example I: Establishing robust prevention & detection systems

An electrics company established an extensive detection system that serves as a mechanism for individuals to ask questions and report integrity concerns without fear of retaliation. This detection system consists of four modules:

- Ombuds programme
- Open reporting
- Compliance health check
- Investigation and audit

An extensive global ombuds network provides coverage for every business and country in which the company operates. The company provides a variety of channels to facilitate reporting, including internal reporting (submitting reports on the company intranet), Employee Day (facilitating direct communication between the senior management and the grass-roots employees) and a hotline. The compliance health check includes active leadership engagement and immediate response to local issues. The company leaders act promptly when a concern arises and have it evaluated and investigated by counsel and other persons with the appropriate expertise. In addition, the company’s internal corporate audit staff conducts annual risk-based audits across all the company businesses to identify and address potential instances of non-compliance with laws, regulations and company policies.82

Example II: Establishing clear procedures for handling violations

A medical service company adopted clear rules regarding violations, which are also included in the employee code of conduct.83

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82 Information provided by a business entity participating in the BRI.
83 Ibid.
What can happen to individuals who violate the policy?

Upon receiving a report of a suspected or actual violation, the Compliance Committee will immediately document and investigate that report and take all remedial action(s) deemed appropriate in the circumstances, including, for example, terminating relationships with vendors, business partners or other persons or entities involved in the matter.

Employee or Vendor violation of the Anti-Corruption Compliance Policy or any Anti-Corruption Laws can lead to disciplinary action, including termination, suspension, restitution and reprimand. Violations (whether by employees, vendors or any other person or entity) that involve a criminal act could result in prosecution by appropriate government authorities. Employees will be subject to disciplinary sanctions for failure to cooperate in implementing the Anti-Corruption Compliance Policy.

3.10 Internal rules for monitoring and continuously enhancing the effectiveness of the compliance programme

As the business environment is dynamic, new challenges to business integrity may continue to arise. In order to face these, the compliance programme should also be regarded as a work in progress that is adaptable and can adjust to new threats and challenges. Businesses should keep an eye on the business environment from the perspective of identifying new challenges as they emerge and using this information to inform the compliance programme so that it can be modified as necessary.

3.10.1 Sources of information for reviews

Businesses should focus on the changes in the business environment and evaluate the existing policies and procedures, and such changes may include:

- New lines of business in different industries
- New relationships with different business partners
- Operations in different regions
- Changes in the marketing and business strategies
- New organizational structures
- New or updated legal requirements or industry standards
- Violations of business integrity in the industry or region

Internal control can also inform whether policies and procedures need revisions. Periodic internal and external audits or investigations can identify weak spots. Also, communication with employees and partners could shed light on the practical application of such policies and any difficulties encountered, which could be incorporated into future updates. Valuable insights can also be gained by comparison with peers in the same industry or region. Exchanging best practices, lessons learned etc., with peers and other businesses could help not only individual businesses but the industry as a whole to improve.

3.10.2 Evaluation and follow-up activities

Businesses need to evaluate their compliance programme to learn how they can be improved. A comprehensive evaluation could focus on the following primary criteria:

- **Effectiveness**
  
  The extent to which the business integrity and compliance programme have contributed to specific objects, i.e., whether the current compliance programme has decreased risks for business integrity, bringing them under the tolerance threshold of the enterprise, and whether it could provide adequate measures against particular circumstances (e.g., violations).

- **Efficiency**
  
  The monetary and non-monetary costs of the compliance programme. Compliance programmes need regular, sustained budgets, and if not designed practically and realistically, they can become a burden. At the outset, businesses are advised to adopt methods that optimize the use of funds, and human resources, without compromising on results.

3.10.3 Example of promising practices

A transnational company established a comprehensive system to maintain an overview of its internal mechanisms.

**Example I: Establishing robust internal reporting mechanisms**

In order to evaluate the effectiveness of its compliance programme, a transnational financial institution established an internal reporting system that collected relevant data to assist senior management in assessing its effectiveness. The reporting captured the following information:
- Status updates on programme implementation and operation, including key performance indicators/metrics.
- Significant deviations from internal policies and procedures by employees (e.g., on gifts and business hospitality).
- Engagements of Intermediaries identified as presenting increased risks;
- Relevant legal and regulatory developments.
- Updates on any internal reviews of the programme (e.g., audits, compliance testing).
- Any other significant issues such as regulatory reporting or filings in relation to bribery and corruption committed by officers, employees or third-party providers.

The status of major internal investigations into alleged corruption should also be reported to senior management in coordination with the company legal department, as appropriate.

Moreover, the company’s board of directors should receive periodic updates on the effectiveness of the system and any other matters requiring their attention.
Conclusion
Building a road of integrity and compliance to prevent associated risk is of great importance for business entities participating in BRI investment projects. Based on the requirements of the regulatory frameworks discussed in chapter II, this chapter provides an overview of key steps and actions in building effective business integrity and compliance systems supported by concrete real-life promising practices of BRI participating business entities.

In general, the critical steps in building effective business integrity and compliance systems are as follows:

- **Compliance risk assessment**
  This process should aim to comprehensively detect the risks associated with the international investment projects of the business entities.

- **Support and commitment from senior management for the prohibition of misconduct**
  Senior management ought to emphatically demonstrate zero-tolerance for corruption and emphasize business integrity.

- **Independent and adequately funded compliance functions**
  Clear and adequately funded roles and responsibilities for compliance functions are highly recommended to be established to ensure the independent operation of the compliance system.

- **Employees’ code of conduct and compliance guidelines**
  Codes of conduct and compliance guidelines are recommended to be elaborated for employees to follow.

- **Business partners’ compliance management**
  Due diligence and other measures to detect and mitigate potential compliance risks are suggested to be applied on the part of business partners.

- **Specific compliance policies for particular areas**
  Specific compliance policies for important compliance areas, such as reimbursement, entertainment, anti-money laundering, etc., need to be stipulated.

- **Financial record and bookkeeping**
  An accurate and authentic financial record and bookkeeping mechanism is indispensable to reduce the possibility of hidden compliance risks.

- **Communication and training**
  A positive compliance culture and atmosphere is encouraged to be fostered by awareness-raising and training activities targeted on employees.
- **Detection, investigating and handling of violations**
  Proper systems to detect, investigate and handle the violations of compliance policies should be instituted.

- **Internal rules for monitoring and continuously enhancing the effectiveness of compliance**
  Business entities’ compliance programmes need to be reviewed regularly to keep up with changing business and regulatory environments.
Annex I.

Summary of the third annual seminar on business integrity and compliance for belt and road

This annex highlights the commitments made by the enterprises participating in the Third Annual Seminar on Business Integrity and Compliance for Belt and Road held in Beijing.

The seminar was held on 25 November 2020. Heads of more than 60 centrally-administered and locally-administered state-owned and private enterprises that are deeply involved in developing the Belt and Road participated in this seminar. It focused on the latest requirements and practices of integrity and compliance, risk and responsibility, domestic and foreign experience and other topics for in-depth discussion.

Thus, in accordance with the spirit of the United Nations Convention against Corruption and the Beijing Initiative for the Clean Silk Road, the enterprises participating in the seminar proposed and committed to the following requirements:

- **Improving the awareness of corporate integrity**
  We should have a sense of integrity during the whole process of corporate management, foster a culture of integrity, prevent and control integrity risks, constantly improve the awareness of integrity among the managers and employees, and help all business sectors and society recognize the importance of integrity and compliance.

- **Improving corporate compliance**
  We should advocate the value of compliance, establish and improve the compliance management system, develop compliance management policies, foster a culture of compliance, and create a corporate culture in which compliance is a key component.

- **Abiding by laws and regulations strictly**
  We should continuously enhance enterprises’ awareness of the rule of law, strictly abide by laws and regulations of relevant countries in business operations, resolutely resist business bribery, and work to create a regulated and law-based business environment.

- **Promoting integrity and self-discipline of all sectors**
  We should work to develop standards of integrity and self-discipline, help enterprises to do business in an orderly and fair manner in every sector, and jointly create and maintain a close and clean government-businesses relationship.

- **Fulfilling corporate social responsibility**
  We should follow the good traditions and customs of the countries where our businesses operate, pay attention to environmental protection, maintain a good corporate reputation, establish a clean and compliant corporate image and promote the high-quality development of the Belt and Road.
Annex II.

List of useful resources

<table>
<thead>
<tr>
<th>Title</th>
<th>Institution/Publisher</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNODC Business Integrity Portal</td>
<td>UNODC</td>
</tr>
<tr>
<td>The Fight Against Corruption</td>
<td>UNODC / UN Global Compact</td>
</tr>
<tr>
<td>Knowledge Tools for Academics and Professionals. Business Integrity and Ethics</td>
<td>UNODC</td>
</tr>
<tr>
<td>Anti-Corruption Ethics and Compliance Handbook for Business: A Practical Guide</td>
<td>UNODC</td>
</tr>
<tr>
<td>Anti-Corruption Ethics and Compliance Handbook for Business</td>
<td>OECD / UNODC / World Bank</td>
</tr>
<tr>
<td>A Resource Guide on State Measures for Strengthening Corporate Integrity</td>
<td>UNODC</td>
</tr>
<tr>
<td>RESIST: Resisting Extortion and Solicitation in International Transactions</td>
<td>UN Global Compact, World Economic Forum, ICC, Transparency International</td>
</tr>
<tr>
<td>Overview of Anti-Corruption Compliance Standards and Guidelines</td>
<td>International Anti-Corruption Academy</td>
</tr>
<tr>
<td>A Guide for Anti-Corruption Risk Assessment</td>
<td>UN Global Compact</td>
</tr>
<tr>
<td>Summary of World Bank Group Integrity Compliance Guidelines</td>
<td>World Bank Group</td>
</tr>
<tr>
<td>Developing a Positive Climate for Business and Investment</td>
<td>OSCE</td>
</tr>
<tr>
<td>Anti-Corruption Toolkits for Business</td>
<td>Transparency International</td>
</tr>
<tr>
<td>Corporate Anti-corruption Compliance Drivers, Mechanisms and Ideas for Change</td>
<td>OECD</td>
</tr>
<tr>
<td>Business Principles for Countering Bribery</td>
<td>Transparency International</td>
</tr>
<tr>
<td>OECD Due Diligence Guidance for Responsible Business Conduct</td>
<td>OECD</td>
</tr>
<tr>
<td>State-Owned Enterprise Healthcheck</td>
<td>Transparency International</td>
</tr>
<tr>
<td>Anticorruption Guidance for Partners of State-Owned Enterprises</td>
<td>Natural Resource Governance Institute</td>
</tr>
<tr>
<td>Stories of Change: Better Business by Preventing Corruption</td>
<td>Transparency International</td>
</tr>
<tr>
<td>Promoting Integrity by Creating Opportunities for Responsible Businesses</td>
<td>B20</td>
</tr>
<tr>
<td>Global Anti-Bribery Guidance</td>
<td>Transparency International UK</td>
</tr>
</tbody>
</table>
Annex III.

Brief introduction to domestic anti-corruption legal frameworks of selected BRI-participating countries

This annex provides an overview of the various anti-corruption legal frameworks of the 16 countries participating in the UNODC project, with a particular focus on China’s anti-corruption legal framework.

1. Legal system of China

As China is the lead actor in the BRI, it has implemented a comprehensive programme to tackle the various aspects of corruption and has attempted to close all foreseeable loopholes. The Chinese legal framework imposes strict requirements in several areas in line with the UN Convention against Corruption, including criminalization of corruption, strengthening liabilities of legal persons, prohibition of active and passive bribery in the private sector and bribery to foreign public officials, etc. In recent years, the Government of China has also undertaken an array of measures to promote business integrity, including requiring Chinese companies to establish a compliance programme to prevent corruption from every corner of their business operations. For BRI-related projects, especially those involving Chinese enterprises, it is important to have a principal understanding and appreciation of the Chinese anti-corruption legal framework.

The business integrity in BRI is mainly related to the interactions between business entities and government or other business entities, which is why bribery-related crimes under Chinese legislation are specifically elaborated.

1.1 Criminal law

In China, criminalization of various forms of corruption has been thoroughly implemented in the Criminal Law of the People’s Republic of China (PRC Criminal Law) in line with Chapter III of UNCAC.
Table A1
Comparison between the UN Convention against Corruption and PRC Criminal Law

<table>
<thead>
<tr>
<th>Content</th>
<th>UN Convention against Corruption</th>
<th>PRC Criminal Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of a public official</td>
<td>Article 2</td>
<td>Article 93</td>
</tr>
<tr>
<td>Bribery and trading in influence</td>
<td>Articles 15, 16, 19 and 21</td>
<td>See details below</td>
</tr>
<tr>
<td>Money-laundering and concealment</td>
<td>Articles 23 and 24</td>
<td>Articles 191 and 312</td>
</tr>
<tr>
<td>Embezzlement, abuse of functions and illicit enrichment</td>
<td>Articles 17, 19, 20 and 22</td>
<td>Articles 271, 272, 383, 385, 395 and 397</td>
</tr>
<tr>
<td>Obstruction of justice</td>
<td>Article 25</td>
<td>Articles 277 and 307</td>
</tr>
<tr>
<td>Liability of legal entities</td>
<td>Article 26</td>
<td>Articles 30 and 31</td>
</tr>
</tbody>
</table>

PRC Criminal Law provides a detailed classification of bribery-related crimes. The identities of the bribees play a significant role in determining the specific crimes and the corresponding criminal liabilities, inter alia, whether they are public officials (defined as “state functionary under the Criminal Law). The term “State Functionary” would refer to:

- Individuals who perform public services in state organs.
- Individuals who perform public services in state-owned companies, enterprises, public institutions or people's organizations (e.g., All-China Women's Federation, China Association for Science and Technology, All-China Federation of Trade Unions, etc.).
- Individuals who are assigned by state-owned companies, enterprises, public institutions, or people's organizations to perform public services in non-state-owned companies, enterprises, public institutions or people's organizations.
- Other individuals (e.g., members of rural villagers committees who assist in administrative works of local government) who perform public services according to law.

Here, the “public services” would refer to the performance of organizations, leadership, supervision, management, or other functions on behalf of the state organs, state-owned companies, enterprises, public institutions, or people's organizations. Such public service would mainly include public affairs connected with the authorities, as well as the supervision and management of state-owned properties. In BRI-related projects, the officers of Chinese SOEs (including branches in other countries) could be deemed as State Functionaries while performing public service.

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1 Article 93 of the PRC Criminal Law.
2 Part I.1 of the Summary of Symposium Minutes on the Hearing of Economic Criminal Cases by Courts Nationwide.
Active bribery of foreign public officials, including public officials of foreign countries and officials of public international organizations, has been criminalized under Paragraph 2, article 164 of the PRC Criminal Law in 2011, following China’s ratification of the UN Convention against Corruption. Since foreign public officials are not public servants of the Government of China and, therefore, not included in the State Functionaries, active bribery of foreign officials is treated more like bribery in the private sector. In addition, the threshold for active bribery of foreign public officials is the same as that for active bribery in the private sector.

**Crimes related to bribery**

In order to deter criminal behaviour, China has introduced increasingly heavy penalties for bribery-related crimes, which are further divided into crimes related to active and passive bribery. As per the PRC Criminal Law, this can be summarized as follows:

- **Active bribery**: bribers offer properties to bribees for improper or illegal benefits.
- **Passive bribery**: bribees illegally ask for or take properties from bribers and misuse their positions to seek benefits (not necessarily illegal) for the bribers.

Action would be taken based on whether the bribees are State Functionaries; and whether the crimes could be committed by individuals, entities, or both.

<table>
<thead>
<tr>
<th>Identity of Bribees</th>
<th>Article under the PRC Criminal Law</th>
<th>Type of Crime</th>
<th>Individual/Corporate Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-State Functionaries</td>
<td>Article 164</td>
<td>Crime of offering bribes to non-state functionary</td>
<td>Both</td>
</tr>
<tr>
<td>Non-State Functionaries (foreign countries or officials of public international organizations)</td>
<td>Article 164</td>
<td>Crime of offering bribes to functionaries of foreign countries or officials of public international organizations</td>
<td>Both</td>
</tr>
<tr>
<td>State Functionaries</td>
<td>Article 389</td>
<td>Crime of offering bribes</td>
<td>Individual</td>
</tr>
<tr>
<td></td>
<td>Article 393</td>
<td>Crime of offering bribes by entity</td>
<td>Corporate</td>
</tr>
<tr>
<td>State organs, State-Owned companies, enterprise, public institutions, or people’s organizations</td>
<td>Article 391</td>
<td>Crime of offering bribes to entity</td>
<td>Both</td>
</tr>
<tr>
<td>Relatives or persons with close relationships to State Functionary</td>
<td>Article 390(A)</td>
<td>Crime of offering bribes to influential people</td>
<td>Both</td>
</tr>
</tbody>
</table>
Table A3

<table>
<thead>
<tr>
<th>Identity of the Bribees</th>
<th>Number of Article under PRC Criminal Law</th>
<th>Type of Crime</th>
<th>Individual/Entity Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-State Functionaries</td>
<td>Article 163 Article 184, Paragraph 1</td>
<td>Crime of taking bribes by non-state functionary</td>
<td>Individual</td>
</tr>
<tr>
<td>State Functionaries</td>
<td>Article 184, Paragraph 2 Article 385 Article 388</td>
<td>Crime of taking bribes</td>
<td>Individual</td>
</tr>
<tr>
<td>State Organs, State-Owned Companies, Enterprise, Public Institutions, or People’s Organizations</td>
<td>Article 387</td>
<td>Crime of taking bribes by entity</td>
<td>Corporate</td>
</tr>
<tr>
<td>Relatives or Persons with close relationships to State Functionaries</td>
<td>Article 388(A)</td>
<td>Crime of taking bribes by using influence</td>
<td>Individual</td>
</tr>
</tbody>
</table>

Table A4

<table>
<thead>
<tr>
<th>Identity of the Bribees</th>
<th>Number of Article under the PRC Criminal Law</th>
<th>Type of Crime</th>
<th>Individual/Entity Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Functionaries</td>
<td>Article 392</td>
<td>Crime of introducing bribery</td>
<td>Individual</td>
</tr>
</tbody>
</table>

Penalties

As per the law, criminal liabilities could be imposed on individuals and entities engaged in criminal conduct. For entities involved in bribery-related crimes, the individuals in charge or directly responsible could also be criminally penalized, in addition to the penalties directly imposed on the entities per se. To elaborate:

- directly responsible individuals in charge: those who play the role of determination, authorization, solicitation, connivance, direction, etc., in criminal activities; and
- other directly responsible personnel: those who specifically implement and assist in criminal activities.

Penalties are levied based on the nature of the offence.

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3 Paragraph 2, Article 1, Part 2 of the Summary of Symposium Minutes on the Hearing of Financial Criminal Cases by Courts Nationwide.
### Table A5

**Applicable penalties for bribery-related crimes under the PRC Criminal Law**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Offence</th>
<th>Applicable Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>Active bribery</td>
<td>- Life imprisonment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Fixed-term imprisonment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Criminal detention</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Confiscation of properties</td>
</tr>
<tr>
<td>State Functionary</td>
<td>Passive bribery</td>
<td>- Death (only in extreme cases)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Life imprisonment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Fixed-term imprisonment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Criminal detention</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Confiscation of properties</td>
</tr>
<tr>
<td>Non-State Functionary</td>
<td>Passive bribery</td>
<td>- Life imprisonment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Fixed-term imprisonment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Criminal detention</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Fine</td>
</tr>
<tr>
<td>Entities</td>
<td>Active and passive bribery</td>
<td>- Fine</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Individual liabilities on directly responsible persons in charge and other directly responsible personnel in accordance with the liabilities imposed on the individuals who conducted the same offence</td>
</tr>
</tbody>
</table>
The PRC Criminal Law provides a strong basis for jurisdiction, as summarized in Table 6.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Territorial Jurisdiction</td>
<td>• The Law is applicable to all crimes committed within the territory of China, except as otherwise specifically provided by law.</td>
</tr>
<tr>
<td></td>
<td>• The Law is applicable to all crimes committed on board a ship or aircraft of China.</td>
</tr>
<tr>
<td></td>
<td>• If a criminal act or its consequence takes place within the territory of China, the offence would be deemed to have been committed within the territory of China.</td>
</tr>
<tr>
<td>National Jurisdiction</td>
<td>• The Law is applicable to any Chinese citizens who commit a crime prescribed thereunder outside the territory of China.</td>
</tr>
<tr>
<td></td>
<td>• If the maximum punishment to be imposed is fixed-term imprisonment of not more than three years as stipulated in the Law, the suspects may be exempted from investigation for criminal liabilities.</td>
</tr>
<tr>
<td></td>
<td>• The crimes committed by State Functionaries or servicemen outside the territory of China cannot be exempted.</td>
</tr>
<tr>
<td>Protective Jurisdiction</td>
<td>• The Law is applicable to any foreigner who commits a crime outside the territory of China against China or any of its citizens if, for that offence, the Law prescribes a minimum punishment of fixed-term imprisonment of not less than three years; however, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.</td>
</tr>
<tr>
<td>Universal Jurisdiction</td>
<td>• The Law is applicable to offences that are stipulated in international treaties concluded or acceded to by China and over which China exercises criminal jurisdiction within the scope of its obligations under these treaties.</td>
</tr>
<tr>
<td>No Recognition of Foreign Judgments</td>
<td>• Any person who commits a crime outside the territory of China, for which, according to Law, he should bear criminal liability, may still be investigated for his criminal liability, even if he has already been tried in a foreign country.</td>
</tr>
</tbody>
</table>

1.2 Administrative Law

The administrative liabilities for bribery under China’s laws are stipulated under the Anti-unfair Competition Law, which is treated as unfair competition behaviour. This means using monies, assets or other means to bribe the following organizations or individuals so as to seek transaction opportunities or competitive advantage is prohibited\(^4\) and may be punishable under the Anti-unfair Competition Law:

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\(^4\) Article 7, Anti-unfair Competition Law.
- Staff of a transaction counterparty
- Organizations or individuals entrusted by a transaction counterparty to handle the relevant matters
- Organizations or individuals who make use of their official powers or influence to affect a transaction

In addition, in the case where a staff member is suspected of bribery, it can be deemed as the conduct of the company unless proven otherwise.

1.3 Enforcement regimes and supervisory commission

Established in March 2018, the National Commission of Supervision of China (NCS) is in charge of duty-related violations involving public officials, exercising the function of both internal disciplinary inspection and punishment in the Communist Party of China (CPC) and criminal investigation of duty-related crimes of public officials, including but not limited to officials of State organs, executives of SOEs, etc.

Since its establishment, the mandate and working scheme of the NCS were further defined with two new laws. Firstly in September 2021, the NCS published the Implementation Measures on the PRC Supervision Law, which provides detailed regulations and guidelines on supervisory works. Later in January 2020, the PRC Supervision Law came into effect and enhanced the management of the officials of the supervisory commission, who are defined as “supervisors”.

As a result of the anti-corruption efforts, from December 2012 to May 2021, 392 government officials at the provincial/ministerial level (e.g., governor of a province), 22,000 government officials at the department/bureau level (e.g., mayor of a city), and 786,000 government officials at the primary level were investigated by the disciplinary inspection commissions and supervision commissions.

According to Chapter VI of the Supervision Law of the PRC, the NCS is the competent authority to coordinate China’s international anti-corruption cooperation. With its zero tolerance to corruption, China has made rigorous efforts in extradition cases and asset recovery as well as in combating transnational corruption, with noteworthy achievements. It has also taken a leading role in contributing to global anti-corruption governance. In 2014, during China’s APEC presidency, the Beijing Anti-Corruption Declaration was adopted. In 2016, during China’s G20 presidency, the G20 High-Level Principles for International Cooperation on Persons Sought for Corruption and Asset Recovery was adopted. In 2019, China, together with 14 countries and international organizations, launched the Beijing Initiative for Clean Silk Road. In 2022, during China’s BRICS presidency, the BRICS Initiatives on Denial of Safe Haven to Corruption was adopted.

China has also been steadily supporting the Convention as the main channel for international anti-corruption cooperation and working closely with the UNODC in this regard. In 2018, the NCS and the UNODC Regional Office for Southeast Asia and the Pacific co-organized the
APEC ACT-NET Training Workshop on Asset Recovery, publishing the Ten Recommendations for Asset Recovery. At the milestone 2021 Special Session of the UN General Assembly against Corruption, Mr. Zhao Leji, a member of the Standing Committee of Political Bureau of the CPC Central Committee and Secretary of the CPC Central Commission for Discipline Inspection, put forward “Four Proposals” for international cooperation against corruption: (i) to uphold fairness and justice by punishing wrongdoings while promoting good conduct; (ii) to respect differences and promote equality and mutual learning; (iii) to pursue mutually-beneficial cooperation through extensive consultation; and (iv) joint contribution, and to honor commitments and put action first.

The NCS and other competent Chinese law enforcement authorities will continue to follow the “Four Proposals” as the fundamental principles for international anti-corruption cooperation. The focus will remain on denying safe haven to corrupt persons and their illicit assets, and further strengthening anti-corruption law enforcement cooperation with other countries and regions.

2. Overview of national criminal laws of selected BRI-participating countries on combating bribery

By July 2023, China had signed BRI cooperation agreements with 152 countries and 32 international organizations. For the purpose of this handbook, the main points of the anti-corruption legislation and regulations of 16 countries are briefly introduced. These include (in alphabetical order): Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, China, Greece, Iran (Islamic Republic of), Kazakhstan, Kyrgyzstan, Mongolia, Montenegro, Pakistan, Serbia, Tajikistan, Türkiye, Turkmenistan and Uzbekistan.

The establishment of business integrity should focus on reducing opportunities for all forms of corruption, including bribery, which was the main focus of foreign anti-corruption regulations under the foreign investment guidelines of the Ministry of Commerce of China. To help understand the structure of national anti-bribery regulations of relevant BRI countries, the following five main areas of national criminal laws were analyzed against the Convention requirements: (a) criminalization of bribery, including whether passive and active bribery in public and private sectors are deemed as crimes; (b) nature of bribes, including whether undue advantages of non-pecuniary nature would be treated as bribes; (c) criminalization of bribery of foreign public officials, including whether the acts of foreign public officials are treated in the same manner as of domestic public officials; (d) jurisdiction, including whether extraterritorial jurisdiction established by countries is sufficient to cover bribery offences committed by business entities outside their territories; and (e) liabilities of legal persons, including the forms and scope of sanctions established for bribery.

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5 The following content in Table A7 was based on information available in the public domain, including national laws. It is not intended as a professional legal analysis, and allowances should be made for any translation errors.

6 See the full list at: https://www.yidaiyilu.gov.cn/xwzx/roll/77298.htm.

### Table A7

Summary of national criminal laws of selected BRI countries

<table>
<thead>
<tr>
<th>Country*</th>
<th>Albania</th>
<th>Armenia</th>
<th>Azerbaijan</th>
<th>Bosnia and Herzegovina</th>
<th>Greece</th>
<th>Iran Islamic Republic of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminalization</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Would active bribery of public officials be punished criminally?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Would passive bribery of public officials be punished criminally?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Would bribery in the private sector be punished criminally?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Nature of a bribe</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the bribe include non-monetary advantages?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Foreign Public Officials</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Would bribery made to foreign public officials be punished?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Can bribery committed by foreign nationals inside the country be punished?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Can bribery committed by nationals outside the country be punished?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Can bribery committed by foreign nationals outside the country be punished if against the country or its nationals?</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Corporate Criminal Liability**</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Could the company of that country be liable?</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Could a foreign company be liable if bribery is implemented in the country?</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Penalties</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Individuals – imprisonment</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Individuals – fines</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Individuals – others</td>
<td>N.A.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Companies – fines</td>
<td>✓</td>
<td>N.A.</td>
<td>N.A.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Companies – others</td>
<td>- Termination of the right to hold certain posts or practice certain activities N.A.</td>
<td>- Debarment from public contracts tendering N.A.</td>
<td>- Confiscation of property gained through the perpetration of the criminal act N.A.</td>
<td>- Lashes N.A.</td>
<td>- Confiscation of bribed money or property N.A.</td>
<td>- Compensations for damages N.A.</td>
</tr>
</tbody>
</table>

* Footnote pp: 9–25 see p. 106.
** Only limited to criminal liabilities of legal persons, the same below.
<table>
<thead>
<tr>
<th>Kazakhstan</th>
<th>Kyrgyzstan</th>
<th>Mongolia</th>
<th>Montenegro</th>
<th>Serbia</th>
<th>Tajikistan</th>
<th>Türkiye</th>
<th>Turkmenistan</th>
<th>Uzbekistan</th>
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<tbody>
<tr>
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</table>

- Restriction of freedom
- Deprivation of the right to hold specific positions or engage in certain activities for a specific term
- Confiscation of bribe
- Deprivation of the right to engage in certain activities
- Restriction of liberty
- Arrest
- Confiscation of bribe

N.A.  - Confiscation of properties
N.A.  - Corrective labour

N.A.  N.A.  ✓  ✓  ✓  ✓  N.A.  [Seizure of assets or income]  N.A.  N.A.
N.A.  N.A.  - Deprivation of the right to engage in certain activities for a specific term
- Confiscation of bribe
- Confiscation of bribe
- Cancellation of a permit if operating through a permit obtained from a State institution

N.A.  N.A.  N.A.  N.A.