

Guidelines for Board's Oversight Role in Anti-Corruption



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Introduction

Corruption is crucial problem worldwide, particularly in developing countries. Factors like economic monopoly and bureaucratic system that hinges greatly on discretion of government officials partly accommodate corruption culture. The severity of corruption has substantial impact on sustainable development and at the same time undermine economic and social growths in all dimensions.

To tackle corruption in Thailand, several agencies have been established, such as the National Anti-Corruption Commission (NACC), the Office of Public Sector Anti-Corruption Commission (PACC), the State Audit Office of the Kingdom of Thailand, etc. while a great volume of legislations have been enacted to penalize corruptors. However, collaboration with the civil society and the private sector is also essential in resolving corruption problem. In this regard, Anti-Corruption Organization of Thailand (ACT) and the Thai Private Sector Collective Action Against Corruption (CAC) have been initiated. The CAC is operated under cooperation with eight leading business organizations, including the Thai Institute of Directors (IOD), Thai Chamber of Commerce, Joint Foreign Chamber of Commerce in Thailand, Thai Listed Companies Association, Thai Bankers' Association, Federation of Thai Capital Market Organizations, Federation of Thai Industries, and Tourism Council of Thailand.

The formation of such initiatives reflected the significance of corruption among the country's top challenges. All elements in the private sector (including listed companies and SMEs) should take parts in the battle against corruption because this difficult task cannot be achieved by any single enterprise. Therefore, the Board should recognize the significance in joining the collective action to demonstrate clear stance of the company and create confidence among stakeholders by putting in place policy and practical guideline against all forms of corruption. Doing so will not only raise the company's credibility and transparency, but also upgrade business standard of the Thai private sector.

This guideline has been developed to reflect the significance of this matter and we hope the content in this document will effectively enhance board's functions. Meanwhile, it should also provide useful guidance for the company in revisiting and reassessing its business processes to ensure they are legitimate, transparent, and in alignment with principles of corporate governance, which considered a substantial fundamental for business sustainability.

• **Thai Institute of Directors (IOD)** •



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Guidelines for Boards 2020

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Section 1



Key Principles

Key Principles

- 1 The Board should recognize and comprehend with corruption context as well as its potential impact on the company, business sector, and overall society in order to gear the company toward earnest and concrete solutions against the problem. *(See guideline 1)*
 - 2 The Board should express strong commitment to zero tolerance against corruption by acting as role model and promote anti-corruption awareness among employees at all levels. *(See guideline 3)*
 - 3 The Board has a role to oversee anti-corruption measures by setting procedural framework and assigning the management with appropriate roles and responsibilities. It must also ensure adequate resources have been allocated to the management to perform such assigned tasks. *(See guideline 2)*
 - 4 The Board should comprehend with the company's key corruption risks, requiring the management to identify and assess corruption risks and then report to the Board annually. *(See guideline 3)*
 - 5 The Board has a role in approving anti-corruption policy and constantly review the policy to ensure it matches the company's corruption risks, business environment and relevant rules and regulations. *(See guideline 3)*
 - 6 The Board should assign the management to prepare anti-corruption procedure or guideline clear enough for employees in all divisions / departments to comply properly. *(See guideline 3)*
 - 7 The Board should ensure there are adequate and proper internal controls to prevent corruption, such as
 - 7.1 Developing written code of conduct for all levels of employees to adhere to.
 - 7.2 Ensuring that human resource procedures, such as recruitment, orientation and training, performance evaluation, remuneration, and promotion are in alignment with anti-corruption measures. The organization structure should appropriately divide roles and responsibilities to enable effective check and balance mechanism.
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- 7.3 Constantly communicating anti-corruption policy with both internal and external stakeholders.
 - 7.4 Preparing accounting / financial system with sufficient record keeping for verification, and setting clear, rigid, transparent, and accountable authorization of business transactions.
 - 7.5 Having third-party due diligence process.
 - 7.6 Setting rigid and specific operating controls, particularly in transactions with high corruption risks.
 - 7.7 Ensuring the implementation of internal and external audit, covering key business activities, by independent agency.
 - 7.8 Arranging safe and secure whistleblowing channels for employees and other stakeholders while setting appropriate investigation procedures and whistleblower protection.
 - 7.9 Setting disciplinary penalties for those who violate anti-corruption measures that cover both employees and external parties, such as agents, intermediaries, suppliers, etc. *(See guideline 3)*
- 8 The Board should collaborate with Audit Committee in monitoring anti-corruption measures to ensure that existing controls are appropriate and implemented. The Board should also provide useful suggestions on how to make relevant guidelines more effective. *(See guideline 3)*
 - 9 The Board should promote the company to act as the "Change Agent" by engaging in activities to share knowledge, experience, and guideline with other industry peers and relevant parties to establish strong coalition against corruption. *(See guideline 3)*

Section 2



Guidelines

Guideline 1 | Basic Understanding About Corruption

The Board should recognize and adequately comprehend with key issues and context of corruption problem in its business process in order to gear the company toward earnest and concrete solutions against the problem.

1.1 Definition of Corruption

- 1.1.1 “Corruption” has been widely defined with no universal definition. Its definition hinges on the purpose, moral standard, political and economic context, and different views of the public and private sectors.
 - 1.1.1.1 In the public sector aspect, “Corruption” refers to any action, inaction, or abuse of power to provide unjust benefit to oneself or cronies.
 - 1.1.1.2 In the private sector aspect, “Corruption” refers to any action that could imply accepting, demanding, soliciting, giving, offering, promising “property or other benefits” to government officials or private entities with an aim to persuade them to wrongfully perform or not perform their duties for unjust benefits of the company, the person, or relevant parties which cause damage to other persons. (*Appendix 1*)
 - 1.1.2 “Property or other benefits” cover different types of “bribe” including cash, gift, hospitality, travel -recreation, etc. Other circumstances also categorized as corruption are nepotism, usage of insider information, special treatment, and collusion, etc.
 - 1.1.3 Corruption is the mechanism of “demand and supply”, with “bribe seeker” on the demand side and “bribe payer” on the supply side. Corruption can occur either in B2G (Business to Government) or B2B (Business to Business) transactions. However, this guideline emphasizes mainly on transactions between the public sector (bribe seeker) and the private sector (bribe payer).
 - 1.1.4 Corruption is one form of “fraud”, which has wider definition and also cover other malpractices like asset misappropriation and falsifying financial statement.
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1.2 Causes of Corruption in the Private Sector

1.2.1 In transactions between the private sector (bribe payer) and the public sector (bribe seeker), key reasons that make companies offer bribe to state officials can be divided roughly into three categories including.

- 1) To buy convenience when the speed of public services or permissions are required from state agencies.
- 2) To buy advantage over competitors or certainty in being selected as contractor via public procurement process.
- 3) To get away from wrongdoings, fix malpractices, or ward off public officials exercising legitimate authorities that could obstruct business operations.

All these cases could occur with any company, though one is exposed to different type of corruption risks, depending on its business characteristics. Therefore, the Board should adequately comprehend with business context, environment, and characteristics of the company in order to identify corruption risks from the aforementioned causes and seek ways to improve business process so as to mitigate or eliminate such risks.

1.3 Channels of Corruption

Certain business activities can be used as bribery channels, such as

- 1.3.1 **Political Contribution** – Direct or indirect contribution, either in monetary or other forms, to support political activities, political parties, politicians, individuals with political roles can be used as bribery channel if such contribution is made on hope that the receivers will grant unjust benefit, privilege, or business advantage to the company.
 - 1.3.2 **Charitable Contribution** – A company may use “donation” as a channel to pay bribe to an individual, hoping to be granted certain benefit. The company may claim that such donation (such as aid to underprivileged persons, disaster victims, or social organizations) is part of the company’s corporate social responsibility (CSR) program and that it has no intention to gain anything in return. However, part or all of the contributions may not actually be spent for the claimed purpose but being transferred to certain authorized individual (i.e. state official related to the charity) seeking personal benefit from the charitable activity.
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- 1.3.3 **Sponsorship** – A company may use marketing activities (such as sport sponsorship, etc.) to promote its business, build trust, and enhance corporate image. However, sponsorship may be used as an indirect bribe to induce certain individual involving with the activity to perform inappropriate action for the benefit of the company.
- 1.3.4 **Use of Agent** – To avoid direct bribe payment, a company may hire juristic person or external individual to conduct certain transaction on behalf of the company. In such case, the company may pay bribe through these agents and book the payment as expenses, such as commission or advisory fees.
- 1.3.5 **Entertainment and Hospitality** - A feast, social gathering, party, or other recreation activities can be used as a channel to get acquainted with or induce certain individual to grant unjust benefits to the company.

1.4 Anti-Corruption Legislations That Board Should Know

In Thailand, corruption / bribery is illegal and subject to both civil and criminal penalties. Among anti-corruption legislations that the Board should know are

1.4.1 Penal Code and Penal Code Amendment Act (No. 26) B.E. 2560

Article 144 Anyone who gives, offer to give, or promises to give any property or benefit to official, member of State Legislative Assembly, member of Provincial Assembly or member of Municipal Assembly with an intent to induce such person to wrongfully perform, not perform or delay the performance of any duty in his or her office shall be liable to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand baht or to both.

Penal Code and Penal Code Amendment Act (No. 26) B.E. 2560

1.4.2 The Organic Act on Anti-Corruption B.E. 2561

Under section 176 of the Organic Act on Anti-Corruption B.E. 2561, juristic person and its authorized directors are liable for imprisonment and fine should anyone in the company pay bribe to public official or foreign public official even if the directors do not aware of the bribery payment. The legislation stipulated maximum fine at up to two times the damage caused to the state or benefits gained by the company.

Section 176: Any person who gives, offers to give, or promises to give any property or benefit to a public official, foreign public official, official of a public international organization with an intent to induce such person to wrongfully perform, not perform or delay the performance of any duty in his or her office shall be liable to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand baht or to both.

In case the offender under paragraph one is a person associated with any juristic person and the action was taken for the benefit of such juristic person, provided that such juristic person does not have in place appropriate internal control measures to prevent the commission of such offence, the juristic person shall be deemed to have committed the offence under this Section and shall be liable to a fine of one to two times of the damages caused or benefits received.

The juristic person under paragraph two shall mean juristic person established under Thai laws and juristic person established under the foreign laws which operates business in Thailand.

A person associated with a juristic person under paragraph two shall mean a representative, employee, agent, affiliated company, or any person acting for or on behalf of such juristic person, regardless of whether having the power or authority to take such action.

The Organic Act on Anti-Corruption B.E. 2561

However, such penalty can be waived if there is proof that the juristic person has in place appropriate internal controls to prevent such malpractice in accordance with the NACC's Guidelines on Appropriate Internal Control Measures for Juristic Persons. (*Appendix 2*)

1.4.3 Anti-Money Laundering Act B.E. 2542 amendment (No. 5) B.E. 2558

Property or benefits received from corruption could be transformed or "launder" through various methods in order to obscure, hide, or conceal the source of such property so that the general public would misunderstand that the property has been legitimately obtained. Therefore, the Board should be cautious, alert, and promote whistleblowing process for money laundering incident. The Board should also encourage accurate booking of financial transactions and other properties in accordance with relevant legislations.

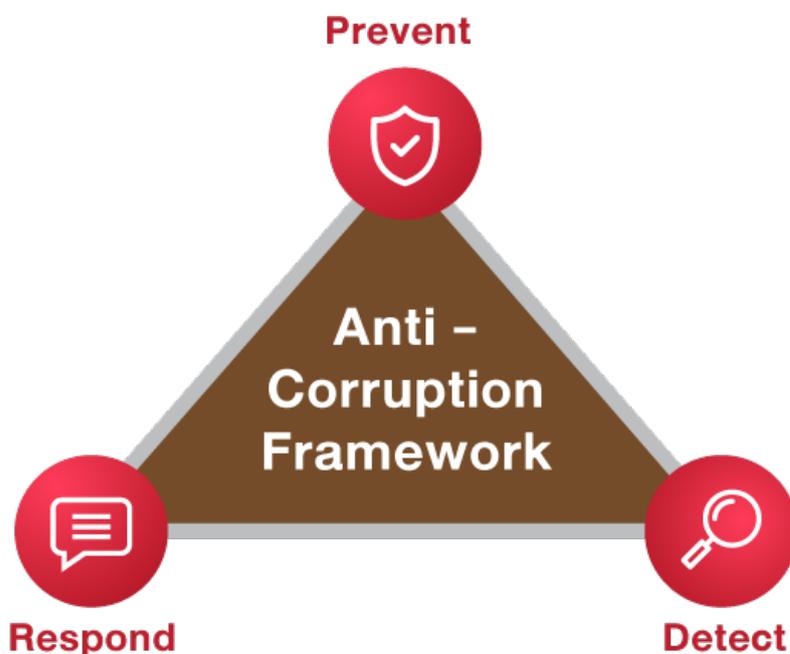
Section 61: Any juristic person who is found guilty of an offense under Sections 5, 7, 8, or 9 shall be liable to a fine in the amount of two hundred thousand to a million baht.

A Director, Manager, or any person responsible for the operation of the juristic person under the first paragraph which is found guilty of an offense shall be liable to imprisonment for a term of one to ten years, or a fine of twenty thousand to two hundred thousand baht, or both.

*Anti-Money Laundering Act B.E. 2542
amendment (No. 5) B.E. 2558*

Guideline 2 | Corporate Anti-corruption Measures

2.1 Framework of Anti-Corruption Measures



2.1.1 Overall anti-corruption framework that the Board may suggest management to apply consists of three key elements including

2.1.1.1 Prevention

- The company should develop proactive measures to mitigate or eliminate corruption risks.
- Prevention activities have many forms. For examples, preparation of written policy or guideline, communication or training for executives / employees to raise awareness, etc.

2.1.1.2 Detection

- The company should put in place mechanism or system that accommodate detection of incident / behavior containing corruption risk before and at the time it occurs.
- There are various forms of detective measures, such as arrangement of whistleblowing channels, internal and external audit by independent agency, etc.

2.1.1.3 Response

- The company should lay clear guideline in managing corruption related incident or employees as well as finding flaws to improve operating process.
- There are various forms of response, such as arrangement of transparent and independent investigation process, setting clear and rigid penalties or disciplinary measures, etc.

2.1.2 Successful implementation of anti-corruption framework requires collaboration of all employees. Therefore, the Board should ensure that roles and responsibilities concerning anti-corruption activities / measures are appropriately assigned to personnel in all levels.

2.1.2.1 Board

- Set policy framework and oversee anti-corruption measures.
- Support the management in corruption risk assessment as well as allocate adequate resources to ensure the company has effective measures to control corruption risks.
- Consider report on the effectiveness of anti-corruption policy / measures and provide useful suggestions for the management to improve such policy / measures.

2.1.2.2 Management

- Put policy into implementation by setting internal controls to prevent corruption within departments / units they are in charge of.
 - Conduct training or communicate regularly with subordinates to ensure they have adequate understanding of anti-corruption policy / measures.
 - Review and monitor subordinates' performances to ensure the alignment with anti-corruption policy / measures as well as review operating system / process if they match with changes in business contexts.
 - Periodically report the Board on the effectiveness of anti-corruption policy / measures.
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2.1.2.3 Employee

- Comprehend with roles and responsibilities in corruption risk management related to respective department / unit.
- Perform duties in accordance with anti-corruption policy / measures, code of conduct, and relevant guidelines.
- Provide support and cooperate in corruption prevention and suppression, such as report suspicious incident once detected, etc.

2.1.3 Successful implementation of anti-corruption measures also hinges on capabilities of “supporting functions” within the company, such as finance, legal, human resource, internal audit, compliance, etc. Therefore, the Board should ensure that employees in these functions possess adequate skills and comprehension to implement anti-corruption measures.

2.2 Desired Characteristics of Anti-Corruption Measures

The Board should support and provide useful guidance to the management in establishing anti-corruption measures. The Board should ensure that such measures have appropriate characteristics as follow:

2.2.1 Align with relevant laws, rules, and regulations

- The Board should ensure that content and guideline of the anti-corruption measures are in alignment with relevant laws, rules, and regulations at both industry and national levels.
- In case the company has overseas operations or branches, the Board should ensure that anti-corruption measures are also in alignment with relevant laws, rules, and regulations of respective countries. The Board may seek advice from the legal department or external legal expert in considering appropriateness of such measures.

2.2.2 Match with business category / context

- The Board should reiterate that the management develop anti-corruption measures on the basis of corruption risks that match with the company's business category and in alignment with corporate culture, level of employees, and industry norms.

2.2.3 Engage with stakeholders

- The Board should encourage stakeholders, such as employees, suppliers, etc. to engage in the development of anti-corruption measures. Such engagement will generate the sense of ownership, reduce resistance, and create acceptance toward the measures.
- There are many ways to enhance stakeholder engagement. They include seeking feedback from employees, informal discussion with suppliers, or inviting certain group of stakeholders (such as external auditor) to provide useful suggestions, etc.

2.2.4 Create shared responsibility mechanism

- To prevent discrimination and double standards, the Board should stipulate that anti-corruption measures and all penalties are strictly and equally applicable with employees at all levels, including the Board.
- The Board should ensure that anti-corruption measures are reflected in the company's human resource policy, covering recruitment and selection, orientation / training, remuneration, and performance evaluation processes.

2.2.5 Accessibility

- To make all stakeholders aware of the company's anti-corruption commitment, the Board should ensure that information and details of anti-corruption measures can be easily accessed through various channels as appropriate.

2.2.6 Easy to comprehend

- The Board should put anti-corruption policy in written with universal and easy-to-understand format / language.
- The Board may suggest that the management provide examples, handbook, or guideline that elaborate key contents of anti-corruption policy in order to help base-level employees and external parties gain better understanding.

2.2.7 Build trust-based environment

- The Board should encourage the company to express anti-corruption commitment constructively and build trust-based environment among employees rather than work environment with excessive controls.
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- Constructive expression can be conducted in various ways, such as campaigning or embedding desirable behaviors through defining core values, philosophy, or professional ethics, etc.

2.2.8 Applicability

- The Board should ensure the company's anti-corruption measures can be practically implemented, have adequate flexibility, not contradict measures in other aspects, and align with business and social norms.

2.2.9 Continuity

- The Board should have the right mindset toward anti-corruption measures that they are not one-time project but ongoing process with continuous development to match with changing business environment.

2.2.10 Efficiency

- The Board should ensure that appropriate financial and human resources are adequately allocated to the management for developing anti-corruption measures. Excessive controls should be avoided as they would raise additional cost, work load, and inefficiency in business process.



Guideline 3 | Board's Oversight Roles in Anti-Corruption

3.1 Board's Commitment in Anti-Corruption

- 3.1.1 The Board should demonstrate firm commitment to operate business with honesty and in alignment with good corporate governance principles. It should adopt fair and transparent competitive strategy that adheres strictly to relevant laws.
- 3.1.2 The Board should demonstrate intention toward "zero tolerance" against all forms of corruption, both directly and indirectly. Besides being role model, the Board can also use other methods, such as releasing statement to express the commitment or separate anti-corruption as a company's key policy.
- 3.1.3 Such intention of the Board should be used as core principle in all business decisions and extend to all relevant parties, both internal and external.
- 3.1.4 The Board should clearly express firm support for the company to join the Thai Private Sector Collective Action against Corruption (CAC) or other initiatives with similar purpose. This will demonstrate that the company has a clear stance against bribery and ready to play its part in solving the country's corruption problem.
- 3.1.5 The Board should promote the company to be a role model and act as a "Change Agent" by urging associate companies, subsidiaries, and suppliers to recognize the significance of the matter and join the collective action to help expanding clean and transparent business network.



Questions the Board should ask management

- 1) How does the management plan to communicate anti-corruption commitment with all employees and stakeholders?
- 2) How does the management plan to transform "zero tolerance" corporate culture into concrete result?

3.2 Corruption Risk Assessment

3.2.1 Corruption risk assessment is the key fundamental activity that will help the company design appropriate internal controls for its business. Therefore, the Board should ensure its existing enterprise risk management framework also cover the identification of corruption risks.

3.2.2 The Board should comprehend with the company's key corruption risks. It may ask Risk Management Committee (if any) to preliminarily set framework, agenda, or corruption risk indicators and then assign the management to assess such risks. The Board should allocate adequate financial and human resources (perhaps in the form of Cross Functional Team) for the tasks.

3.2.3 The Board should assign the management to identify corruption risks involving activities in business processes, taking into account both internal and external environment that accommodate such risks.

- External environment, such as opportunities that the company have to contact or get involved with public officials, location where business is conducted, business partner, third party (who may be used as bribery channel), type and size of project, etc.
- Internal environment, such as management collaboration, employees' understanding of anti-corruption measures, determination of employees' targets and performance indicators, and remuneration or incentive policies, etc.

3.2.4 In general, identified corruption risks will be assessed to gauge the likelihood that such risks will materialize and the magnitude of potential impact from bribery incident.

Likelihood that the risk will materialize can be assessed from various factors, such as

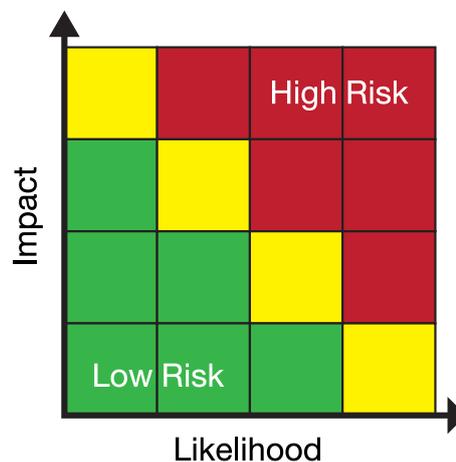
- Frequency / complexity of the transaction
- Images of the state agency or business partner that the company has to engage with
- Business norms in the area that the company is operated

Magnitude of impact can be assessed in various dimensions including

- Financial impact, such as the loss of company's key client
 - Legal impact, such as fine and penalty
 - Image / reputation impact, such as negative news on media
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3.2.5 Since corruption risks are dynamic and subject to changes in various factors, such as economic condition, business model, relevant regulation, etc., the Board should reiterate that management conduct corruption risk assessment periodically, at least once a year. The result will be used to improve internal controls to ensure they match with changes in corruption risks.

3.2.6 The Board should ensure the management properly process the result of Corruption Risk Assessment. The outcome can be put in the form of risk ranking (high, medium, low) or other methods it deems appropriate. The information must then be put down in the company's Risk Heat Map or Risk Register. (Appendix 3)



3.2.7 The Board should question the management about the effectiveness of “existing controls” in preventing or mitigating identified corruption risks, whether it needs to develop “additional controls”, and which issues should be given priority.



Questions the Board should ask management

- 1) What are key corruption risks of the company?
- 2) How does the management conduct corruption risk assessment to ensure that all key risks are identified completely and comprehensively?
- 3) Have the management considered corruption risks that may occur from the third party related to the company?

3.2.8 The Board should periodically monitor the company's corruption risks through reports from the Risk Management Committee (if any) and / or the management. Such reports can be in the form of Executive Summary and use as a basis to develop appropriate anti-corruption policy and measures.

3.3 Formulation of Anti-Corruption Policy

3.3.1 The Board has direct roles to determine and approve anti-corruption policy. It may assign the management to draft the policy and have the Corporate Governance Committee (if any) screened the draft before submitting for Board approval. The policy should be set clearly and in written.

“The board should establish a clear anti-corruption policy and practices (including communication and staff training), and strive to extend its anti-corruption efforts to stakeholders.”

Corporate Governance Code for Listed Companies 2017

3.3.2 In some businesses, anti-corruption measures may be included as a chapter in the code of conduct or corporate governance policy. However, the Board may consider establish separate anti-corruption policy to demonstrate firm and concrete commitment in the matter.

3.3.3 The Board should ensure that key contents of anti-corruption policy match identified corruption risks (from risk assessment under Guideline 3.2) as well as business context. The anti-corruption policy should cover the following topic:

- Tone from the top (the Board and senior executives)
- Objectives, principles or rationale of the anti-corruption policy
- Scope of policy enforcement
- Definition of terms or phrases, such as corruption, bribery, public officials, etc.
- Roles and responsibilities of personnel in different levels concerning the policy including the Board, Audit Committee, management, internal audit, employees, and other relevant functions
- Prohibition or guidelines about relevant issues, such as gift giving or receiving, licensing, auctioning, hospitality, political contribution, etc.
- Whistleblowing, reporting channels, and whistleblower protection measures
- Policy violation, penalty, and disciplinary measures
- Policy distribution and communication guideline
- Other relevant issues as deem appropriate

- 3.3.4 The Board should ensure the enforcement scope of anti-corruption policy covers employees at all levels (including the Board), subsidiaries, other companies controlled by the company, and individuals related to the company's business operations.
- 3.3.5 The Board should review anti-corruption policy to ensure it matches with changes in the business context, relevant rules, regulations, and laws, and approve the policy amendment accordingly.



Questions the Board should ask management

- 1) Does the company has clear, written, and up to date anti-corruption policy that matches its key corruption risks?
- 2) Does the management strictly implement anti-corruption policy and how does it communicate / enforce such policy to ensure all employees aware and actually comply?

3.4 Establishment of Internal Controls to Prevent Corruption

- 3.4.1 The Board should oversee and encourage the management to develop appropriate and adequate internal controls in accordance with identified corruption risks. Internal controls comprise of 1) Control Environment and 2) Operating Controls for specific functions or activities with high corruption risks.
- 3.4.2 **Control Environment** consists of
- 3.4.2.1 Code of Ethics / Code of Conduct
- 3.4.2.1.1 The Board should stipulate that the company has code of ethics / code of conduct for its employees to adhere in performing their duties. The Board may assign the Corporate Governance Committee (if any) to craft key contents of the codes before submitting for Board approval.
- 3.4.2.1.2 The Board should ensure key contents of the code of ethics or code of conduct cover anti-corruption topic.
- 3.4.2.1.3 The Board should reiterate that the management regularly probe employees' understanding about practices indicated in the guideline to ensure they recognize it and comply accordingly.

3.4.2.1.4 The Board should review and approve the code of ethics or code of conduct annually to ensure the contents match with potential changes in business environment or regulations.

3.4.2.2 Human Resource Policy

3.4.2.2.1 The Board should ensure the company has human resource policy that accommodates and aligns with anti-corruption measures. For examples:

- Set appropriate division of roles and responsibilities to create prudent check and balance mechanism, such as clear organizational structure and job description for positions in all levels.
- Arrange for transparent, fair, and indiscriminate recruitment and selection processes with background and qualification checking for all key positions prior to the employment.
- Arrange for clear, transparent, and accountable policy or guideline in hiring former public official to hold key position in the company (Revolving Door).
- Set compliance to anti-corruption measures, such as anti-corruption training attendance, participation in the annual code of conduct recertification, etc. as one criteria in performance evaluation, remuneration, and promotion consideration.
- Set clear performance targets while ensuring that returns or incentives provided do not encourage corruption or malpractice.
- Stipulate clear penalties for violation of anti-corruption measures, which could be in the form of warning, suspension, or termination of employment, etc.

3.4.2.3 Finance, Accounting, Data Recording and Book Keeping

3.4.2.3.1 The Board should ensure the company has clear and rigid financial / accounting policy or procedures, such as

- Division of roles and responsibilities between 1) authorization or approval 2) recording transactions and 3) custody of assets.
- Clear and written delegation of authority. This can be conducted in the form of approval matrix to ensure transparency and accountability.
- Proper storage of documents / memos to make them ready for verification and probe for appropriateness of financial transaction.
- Prohibit off-the-book record and has procedures to ensure that no transaction is not booked, unexplainable, or being falsely recorded.

3.4.2.4 Whistleblowing System

- 3.4.2.4.1 The Board should encourage honest reporting when facing potential malpractice.
 - 3.4.2.4.2 The Board should ensure the company has mechanism to receive complaints concerning potential corruption. Such mechanism should cover reception of complaints, investigation, conclusion, and reporting.
 - 3.4.2.4.3 The Board should ensure that employees at all levels including stakeholders can conveniently access the company's whistleblowing channels, which should have more than one.
 - 3.4.2.4.4 The Board should reiterate that the management develop safe and credible whistleblowing system. It may suggest the management to open anonymous channel and ensure that people assigned to receive complaints are qualified and independent. In some cases, the company may assign certain independent director or Audit Committee member to assume this role as appropriate.
 - 3.4.2.4.5 The Board should ask the management about the effectiveness of the company's whistleblowing channel. It may consider from number of complaints or whistleblowers in each year, etc.
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3.4.2.4.6 The Board should ensure the company has appropriate measures to protect honest whistleblowers. It may also set policy not to demote or punish employee who turns down corruption even if such action results in loss of business opportunity.

3.4.2.5 Training and Communication

3.4.2.5.1 The Board should support the management in the preparation of written anti-corruption communication plan and monitor its progress periodically.

3.4.2.5.2 The policy can be communicated through multiple channels, such as newsletter, leaflet, training program, staff orientation, bulletin board, or other channels as appropriate.

3.4.2.5.3 The Board should ensure the company discloses anti-corruption policy / measures to external parties including shareholders, customers, suppliers, agents, business intermediaries, and the general public via various channels, such as annual report, circular, company website, etc.

3.4.2.5.4 The Board should support the company in assigning a particular person / function to act as a helpdesk in case employees has doubt or concern about practices that could link to corruption.

3.4.2.5.5 The Board should promote exchanges in knowledge, experience, and best practices among industry peers and regularly join anti-corruption activities conducted by relevant organizations.

3.4.2.6 Internal and External Audit

3.4.2.6.1 The Board should ensure the company has independent internal audit function to assess risk management system, monitor compliance with anti-corruption policy, and review the adequacy and appropriateness of internal controls. The internal auditor also has a task to offer suggestions for improvements.

3.4.2.6.2 The Board should reiterate that the management ensure internal audit system covers all key activities, such as supplier selection, license renewal, etc. The examination of activities identified to have high corruption risk must be explicitly included in the annual audit plan.

3.4.2.6.3 The Board should have a mechanism to ensure the company has effective audit system and select independent external auditor to ensure the company's financial statements are accurate, credible, timely, and legitimate.

3.4.2.7 Treatment of Person Who Has Business Relationship with the Company

3.4.2.7.1 The Board should urge its associate companies, subsidiaries, other companies that the company has controlling power, business partners, agents, and contractors to also adopt the company's anti-corruption measures. It can be in the form of "statement of commitment" to confirm common understanding and to comply with such measures.

3.4.2.7.2 The Board should support the establishment of third-party due diligence mechanism to probe background of those having business relationships with the company, such as agents, advisors, contractors, etc. This is essential, especially for those engaging with public agencies or transactions that have high corruption risks.

3.4.2.7.3 The Board should support the establishment of clear measures in case third parties violate the company's anti-corruption policy, such as prosecution, contract termination, etc.

3.4.3 Operating Controls in Departments or Activities with High Corruption Risks

3.4.3.1 The Board should ensure the company has mechanism to control and probe operations of departments / functions with high corruption risks, such as procurement, sales & marketing, and government relations, etc.

3.4.3.2 For transactions with high corruption risks, such as gift offering, donation, political contribution, etc., the Board should reiterate that the management set clear and specific operating processes / controls as well as prepare written guideline that cover details, such as

- Criteria to consider appropriateness of such activities
 - Approval process in details before conducting such activities
 - Clear procedures to conduct such activities, possibly in the form of a flowchart, etc.
 - Reporting and reviewing process to ensure such expenses have been appropriately spent.
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Questions the Board should ask management

- 1) Has the management arranged for operating controls designed to match with type and severity of identified corruption risks? and how?
- 2) How well can existing controls mitigate corruption risks? How to ensure they are complete and adequate?
- 3) What has the management done to ensure the employees actually understand and comply with anti-corruption measures? How can the management evaluate the result in this aspect?

3.5 Monitoring and Reporting

- 3.5.1 The Board should monitor compliance of anti-corruption measures through report of Audit Committee, tasked to ensure the company have adequate internal controls to prevent corruption. The Audit Committee should regularly report progress and compliance result as well as provide recommendations to the Board at least quarterly.
- 3.5.2 The Board should encourage the management to constantly review anti-corruption measures, taking into consideration changing situation and risks as well as learning from past experiences and stakeholders' feedbacks.
- 3.5.3 The Board should ensure the mechanism to examine effectiveness of the company's anti-corruption measures and verify if it is continuously working. This could be done in various ways, such as
 - Consideration of internal and external audit results
 - Consideration of feedback from business partners or individuals having business relationship with the company
 - Assessment of employees' knowledge and understanding from survey / training
 - Benchmarking with industry peers
 - Consideration of whistleblowing statistics and outcome
- 3.5.4 The Board should emphasize "independence" of those tasked to monitor and evaluate effectiveness of the company's anti-corruption measures. In some companies, this task belongs to internal audit function, legal function, or other functions as appropriate.
- 3.5.5 The Board should ensure the management has a mechanism to immediately report to the Board when it detects corruption incident that could have substantial impact on the company as well as clarify any flaws and ways to solve the problem.
- 3.5.6 The Board should recognize that although the company has been assessed to have adequate and appropriate internal controls, the measures may have high cost or redundancy. Therefore, the Board should reiterate that management constantly seeks to improve processes to reduce redundancy or find new measures that may be more appropriate to enhance effectiveness of overall anti-corruption system.

Appendix

Appendix 1 Examples of Corruption in the Private Sector

Corruption in the private sector may occur in various forms, such as:

- **Bribery** – Payment of bribe to public or private official in the forms of cash, gift, present, valuable goods, hospitality, party, travel and recreation activities, etc.

Such payment can be disguised through various channels, such as political contribution, charitable contribution, sponsorship, advisory fee, etc.

Bribe may be called in different terms depending on industries, such as graft, meed, under table money, tea money, lubricant fee, additional charge, facilitation payment, etc.

- **Kickbacks** – Money that a company transfers to public or private official as compensation for helping it secure certain job or project via overbilling scheme.

- **Collusion** – The colluding act or other similar behaviors, such as bid rigging, restrictive specification, usage of internal confidential information, etc.

- **Conflict of Interests, Nepotism, and Cronyism** – Signing contract with specific group of people in the same circle or supporters as well as hiring former public officials to take advantage from inside information, influence, or connection of the officials (revolving door), etc.

Appendix 2

Juristic persons are required to establish internal controls to prevent anyone related to them and act for the benefit of them by giving, offering to give, or promising to give any property or benefit to a public official, foreign public official, official of a public international organization with an intent to induce such person to wrongfully perform, not perform or delay the performance of any duty in his or her office. Such internal controls must at least cover the following fundamental principles.

1. Strong, visible policy and support from top-level management to fight bribery
2. Risk assessment to effectively identify and evaluate exposure to bribery
3. Enhanced and detailed measures for high-risk and vulnerable areas
4. Application of anti-bribery measures to business partners
5. Accurate books and accounting records
6. Human resource management policies complementary to anti-bribery measures
7. Communication mechanisms that encourage reporting of suspicion of bribery
8. Periodical review and evaluation of anti-bribery prevention measures and their effectiveness

National Anti-Corruption Commission's Guidelines on Appropriate Internal Control Measures for Juristic Persons to Prevent Bribery of Public Officials, Foreign Public Officials or Officials of Public International Organizations.

Source: <http://www.gm.co.th/demo/abas/upload/files/2018/03/a6dab34056053fbd7f8bea8eeaeefe8a.PDF>

Appendix 3

Example: Corruption Risk Register												
	Business Activity (1)	Risk Type (2)	Corruption Risk Description (3)	Inherent Risk (4)			Existing Controls (5)	Residual Risk (6)			Additional Controls (7)	Risk Owner (8)
				Likelihood	Impact	Risk Level		Likelihood	Impact	Risk Level		
1												
2												
3												
	Explanation (1) Identify business process vulnerable to corruption risk, e.g. licensing, bidding for a contract, etc.	Explanation (2) Identify possible reasons why business decides to corrupt, e.g. to buy advantage over competitors, to buy convenience, or to get away from wrongdoings etc.	Explanation (3) Explain such corrupted activity/ transaction in details	Explanation (4) Rate the likelihood and the potential impact of "gross risk" (extent of risk without any controls or mitigation activities)	Explanation (5) Identify existing measures, monitoring procedures, or controls (if any) for such corruption risk	Explanation (6) Rate the likelihood and the potential impact of "residual risk" (extent of risk remaining after considering the reduction impact of mitigating controls as indicated in (5))	Explanation (7) Identify other possible measures, monitoring procedures, or controls that can be added to address such corruption risk more effectively	Explanation (8) Identify department / person responsible for managing such risk				

Appendix 4

Checklist for Board on the Oversight of Anti-Corruption Program			
Checklist	Key issues	Yes	No
1	The Board and management have demonstrated firm tone from the top in zero tolerance for corruption.		
2	The company has clear written anti-corruption policy that is applicable to all levels of personnel.		
3	The company has corruption risk assessment and constantly monitor changes in corruption risks.		
4	Resources (employees, budget, etc.) have been adequately allocated for the implementation of anti-corruption measures.		
5	The company has effective and sufficient controls that match its corruption risks and can be implemented practically.		
6	The company has operational controls for activities with high corruption risks.		
7	The company has regularly communicated and trained internal and external stakeholders, including those of associate companies, subsidiaries, agents, and suppliers to make them understand the company's anti-corruption policy / measures.		
8	The company has human resource procedures (such as recruitment and selection, performance evaluation, remuneration, promotion, and disciplinary measures) that are in alignment with anti-corruption measures.		
9	The company has provided safe whistleblowing channels, with whistleblower protection policy as well as independent investigation process, for both internal and external individuals.		
10	The company has mechanism to examine and monitor the implementation of anti-corruption measures as well as periodic review of guidelines to match with changes in business contexts, rules, and regulations.		
11	The company has regularly reported the monitoring and execution results of corruption incident to the Board.		
12	The company joined anti-corruption collective action and assumed the "Change Agent" role by persuading and encouraging subsidiaries, associate companies, agents, suppliers, etc. to join such collective action.		

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