

Business Code of Conduct for Combating Corruption in Malawi



***Malawi Business
Action Against
Corruption***

Collective action and pro-active leadership are vital in addressing the complex nature of corruption. The corrosive effect of corrupt practices significantly undermines the efforts of a country to foster sustainable growth and development. I therefore fully support Business Action Against Corruption with its emphasis on practical results and seeking out coalitions for change that involve business forming innovative partnerships with government to combat corruption in its various forms.

His Excellency
Dr. Bingu wa Mutharika
President of the Republic of Malawi

December 2006

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The Steering Committee that produced this document comprised of the following companies and organisations:

AICC - African Corporate Sustainability Forum
Anti - Corruption Bureau
Chemicals and Marketing Co Ltd
Malawi Bureau of Standards
Malawi UN Global Compact
Rab Processors Limited
United States Agency for International Development (USAID)
Yara Malawi (PVT) Limited

Chairman of the Steering Committee and Taskforce

Sean de Cleene - **African Institute of Corporate Citizenship (AICC)**

The Steering Committee is part of the *Malawi Business Action Against Corruption*. In addition, to those organisations listed above, the taskforce currently includes:

Africa Leaf
 Illovo Sugar (Malawi) Ltd
 Limbe Leaf Tobacco Company Ltd
 Malawi Revenue Authority
 Malswitch Reserve Bank of Malawi
 Multichoice Malawi
 Ministry of Trade and Private Sector Development
 Press Corporation
 Press Trust
 Safetech
 The Society of Accountants in Malawi (SOCAM)
 United Nations Development Programme (UNDP)

Printing costs and ongoing support for BAAC taskforce provided by



Corruption is a serious hindrance to a country's social, economic as well as political development. Corruption increases the cost of doing business, undermines the rule of law, distorts competition in the market system, results in the inefficient allocation of scarce resources, undermines respect for human rights, affects the will to invest, destroys predictability and hope for the future and demoralises political systems and democracy.

The need for a *Business Code of Conduct to Combat Corruption* emerged out of the *Malawi Leaders Forum on Building Alliances to Eliminate Corruption*, held in June 2005, and organised by the AICC African Corporate Sustainability Forum and Malawi UN Global Compact. A multisector steering committee was subsequently established to develop this code of conduct. The purpose of this document is therefore to describe a code of conduct to be observed by institutions, organisations and companies operating in Malawi in order to ensure that they do not engage in corrupt practices.

The adoption of this code should be a strategic decision of an organisation. The design and implementation of the code may be influenced by varying needs, particular objectives, the products or services provided, the processes employed and the size and structure of the organisation.

This code can be used by internal and external parties to assess the organisation's ability to combat corruption.

INTRODUCTION SCOPE

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INTRODUCTION

The *Business Code of Conduct for Combating Corruption in Malawi* has been developed by a multisector steering committee that forms part of a wider Malawi Business Action Against Corruption Taskforce. The Code has been developed, through private sector initiative, as a tool to assist organisations to develop effective actions in combating corruption in all its forms.

The Code of Conduct draws on various international initiatives, in particular:

- Business Principles for Countering Bribery, an initiative of Transparency International and Social Accountability International,
 - BAAC Malawi is a lead programme in a broader African driven initiative to combat corruption - Business Action Against Corruption (BAAC). It is also a flagship governance programme under Business Action for Africa, established at the G8 summit in order to promote Africa's development. BAAC currently has presidential approved chapters in Malawi, Cameroon and Nigeria and has been asked to lead on a national initiative on codes of conduct in Zambia as well as being invited to work in Mauritius, Madagascar, Namibia and Lesotho. The BAAC is led by a management group composed of the following organisations: AICC African Corporate Sustainability Forum, BAAC Malawi, Commonwealth Business Council, Convention on Business Integrity (Nigeria) Southern African Forum Against Corruption, Human Rights Trust of Southern Africa and the West Africa Business Association (Cameroon). BAAC also acknowledges Shell who are currently the lead business sponsor for the pan-African initiative.
- but also includes other initiatives such as:
- African Union Convention on Corruption,
 - Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery,
 - International Chamber of Commerce (ICC) Rules of Conduct to Combat Extortion and Bribery,
 - Interpol Global Standards to Combat Corruption,
 - United Nations Convention on Corruption.

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SCOPE

2.1

General

This code provides a framework for good business practices and risk management strategies for countering corruption. It is aimed at assisting organisations to:

- (i) eliminate corrupt practices;
- (ii) demonstrate their commitment to countering corruption; and
- (iii) make a positive contribution to improving business standards.

2.2

Application

Though the code is specifically designed for use in large and small public and private companies, the requirements contained herein are in themselves generic and are intended to be applicable to all organisations, regardless of type, size and product/service provided, that wish to demonstrate their ability to combat corruption.

DEFINITIONS CORRUPT PRACTICES

3 DEFINITIONS

Corrupt practices include: bribery, fraud, theft, abuse of position or authority, embezzlement, extortion, influence peddling; facilitation payments

3.1 **Bribery:** promising, offering, giving or soliciting of any benefit in cash or in kind that improperly affects the actions or decisions of any person.

3.2 **Fraud:** false representation or concealment of material facts in order to part with something of value.

3.3 **Abuse of position or authority:** Use of one's vested authority to improperly benefit oneself or an entity or another person.

3.4 **Embezzlement:** This involves theft of resources by persons entrusted with the authority and control of such resources.

3.5 **Extortion:** This involves coercing a person or entity to provide a benefit to himself, another person or an entity in exchange for acting (or not acting) in a particular manner.

3.6 **Influence peddling:** The practice of using one's influence with persons in authority to obtain favours or preferential treatment for another, usually in return for payment.

3.7 **Facilitation payment:** These are small, or sometimes large, payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement. Also called "facilitating", "speed" or "grease".

4 CORRUPT PRACTICES

Corrupt practices include:

4.1 Behaviour that involves any of the following: bribery, fraud, theft, misuse of position or authority, embezzlement, extortion, influence peddling or the providing of facilitation payments;

4.2 The offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person;

4.3 The offering, giving, acceptance or soliciting of a bribe in any form or the use of other routes or channels for the benefit of an employee or that of the employee's family, friends, associates or acquaintances;

4.4 The abuse of entrusted power for private gain or any conduct or behaviour in relation to persons entrusted with responsibilities which violates their duties and which is aimed at obtaining undue advantage of any kind for themselves or for others; and

4.5 The unauthorized dissemination or solicitation of confidential or restricted information for reward.

PRINCIPLES FOR COMBATING CORRUPTION REQUIREMENTS

5 PRINCIPLES FOR COMBATING CORRUPTION

- 5.1 The enterprise should prohibit corrupt practices in any form whether direct or indirect.
- 5.2 The enterprise should commit to the fundamental values of integrity, transparency and accountability.
- 5.3 The enterprise should aim to create and maintain a trust-based and inclusive internal culture in which corruption is not tolerated.
- 5.4 The enterprise shall commit to implementation of a programme to counter corruption.

6 REQUIREMENTS

6.1 Development of a programme for combating corruption

- 6.1.1 An organisation, institution or company should develop a programme reflecting its size, business sector, potential risks and locations of operation, which should, clearly and in reasonable detail, articulate values, policies and procedures to be used to prevent corruption from occurring in all activities under its effective control.
- 6.1.2 The programme should be consistent with all laws relevant to countering corruption in all the jurisdictions in which the organisation or company operates.

6.2 Standards of conduct

Each organisation, institution or company should be committed to following practices as they relate to corrupt practices, and should put measures in place to:

- 6.2.1 prohibit corrupt practices by any employee, agent, or any other person under the employment or authority of the enterprise;
- 6.2.2 make corruption by an employee subject to severe disciplinary measures;
- 6.2.3 establish a system for the recruitment of employees who are of high integrity, and systems for promotion and termination that are not arbitrary but based on fairness, openness, ability and performance;
- 6.2.4 provide adequate safeguards to prevent abuse of powers by those engaged in the anti-corruption system and to minimize unnecessary infringements of individual rights;
- 6.2.5 establish systems for the procurement of goods and services that are based on openness, efficiency, equity and certainty of the rules to be applied and that seek the best value for money;
- 6.2.6 set up and maintain effective mechanisms to oversee and detect failures to meet standards and enforce the high standards of conduct required;
- 6.2.7 train its employees to understand and practice honest, ethical and appropriate behaviour, to avoid conflicts of interest, and to report acts of corruption;
- 6.2.8 require the reporting of all known instances of corruption to the relevant authorities;

REQUIREMENTS CONTINUED

6.2.9 require public disclosure of all its political or charitable contributions, or sponsorships;

6.2.10 protect employees from repercussions for reporting corruption.

6.3 Specific programme requirements

In developing the programme for countering corruption, an organisation, institution or company should analyse which specific areas pose the greatest risk from corruption. The programme should address the most prevalent forms of corruption relevant to the organisation, institution or company, but to a minimum should cover the following areas:

6.3.1 Bribes

6.3.1.1 The organisation, institution or company should prohibit the offer or acceptance of a bribe in any form or the use of other routes or channels to provide improper benefits to customers, agents, contractors, suppliers or employees of any such party or government officials.

6.3.1.2 The organisation, institution or company should prohibit an employee from arranging or accepting a bribe from customers, agents, contractors, suppliers, or employees of any such party or from government officials, for the employee's benefit or that of the employee's family, friends, associates or acquaintances.

6.3.2 Political contributions

6.3.2.1 The organisation, institution or company, its employees or agents should not make direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a way of obtaining advantage in business transactions.

6.3.2.2 The organisation, institution or company should publicly disclose all its political contributions.

6.3.3 Charitable contributions and Sponsorships

6.3.3.1 The organisation, institution or company should ensure that charitable contributions and sponsorships are not being used as a subterfuge for corruption.

6.3.3.2 The organisation, institution or company should publicly disclose all its charitable contributions or sponsorships.

6.3.4 Facilitation payments

Recognising that facilitation payments are a form of bribery, the organisation, institution or company should work to identify and eliminate them. Facilitation payments are payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

6.3.5 Gifts, hospitality and expenses

The organisation, institution or company needs to have a publicly available policy on what constitutes appropriate behaviour in relation to gifts hospitality and expenses. This policy should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could affect the outcome of business transactions and are not reasonable and bona fide expenditures.

IMPLEMENTATION REQUIREMENTS

7	<p>IMPLEMENTATION REQUIREMENTS</p> <p>The organisation, institution or company should meet the following minimum requirements when implementing the programme:</p>	7.2	<p>Business relationships</p> <p>The enterprise should apply its programme in its dealings with subsidiaries, joint venture partners, agents, contractors and other third parties with whom it has business relationships.</p>
7.1	<p>Board and management responsibilities</p>	7.2.1	<p>Subsidiaries and joint ventures:</p>
7.1.1	<p>The Board of Directors or equivalent of the organisation, institution or company should base their policy on this code of conduct and provide leadership, resources and active support for implementation of the programme.</p>	7.2.1.1	<p>The organisation, institution or company should conduct due diligence before entering into a joint venture.</p>
7.1.2	<p>The Chief Executive Officer is responsible for ensuring that the programme is carried out consistently with clear lines of authority.</p>	7.2.1.2	<p>The organisation, institution or company should ensure that subsidiaries and joint ventures over which it maintains effective control adopt its programme. Where an organisation institution or company does not have effective control it should make known its programme and use its best efforts to monitor that the conduct of such subsidiaries and joint ventures is consistent with the code.</p>
7.1.3	<p>The Board of Directors, Chief Executive Officer and senior management should demonstrate visible and active commitment to the implementation of this code.</p>	7.2.2	<p>Agents:</p>
7.1.4	<p>The Board of Directors or CEO should oversee that all management and if appropriate all staff members should sign an individual contract of agreement to abide by the policy as set out by the company.</p>	7.2.2.1	<p>The organisation or company should not channel improper payments through an agent.</p>
7.1.5	<p>A structure will be established that provides for regular reporting to senior management and the board on the nature and magnitude of exposure to corrupt practices and an assurance to the board, and it's audit committee in particular, that procedures to follow the principles as laid down in this code are in place and being properly applied at all times. Internal reporting of actual corrupt practices should remain transitional subsequent to reporting to the appropriate authority.</p>	7.2.2.2	<p>Compensation paid to agents should be appropriate and justifiable remuneration for legitimate services rendered.</p>
7.1.6	<p>That the Board and/or it's audit committee reviews the mandate and actions undertaken by both the internal and external auditors, with particular reference to issues outlined within this code, and undertake any corrective action deemed necessary to ensure progress towards fully adhering to the principles laid down in the code. Any significant concerns would also be reported to the full board.</p>	7.2.2.3	<p>The relationship should be documented.</p>
7.1.7	<p>That each director (both executive and non-executive) submit signed attestations, in a public disclosure statement to the effect they are fully satisfied that all the organisations anti-corrupt practices are being followed, monitored and managed appropriately in accordance with the code and that procedures are in place to achieve this.</p>	7.2.2.4	<p>The agent should contractually agree to comply with the enterprise's policy on corrupt practices.</p>
		7.2.2.5	<p>The organisation, institution or company should monitor the conduct of its agents and should have a right of termination in the event that they pay bribes.</p>
		7.2.3	<p>Contractors and suppliers:</p>
		7.2.3.1	<p>The organisation institution or company should conduct its procurement practices in a fair and transparent manner.</p>
		7.2.3.2	<p>The organisation institution or company should undertake due diligence in evaluating major prospective contractors and suppliers to ensure that they have effective anti-bribery policies.</p>
		7.2.3.3	<p>The organisation institution or company should make known its anti-bribery policies to contractors and suppliers. It should monitor the conduct of major contractors and suppliers and should have a right of termination in the event that they pay bribes.</p>

**IMPLEMENTATION REQUIREMENTS CONTINUED
CRITERIA FOR COMPLIANCE**

7.2.3.4 The enterprise should avoid dealing with prospective contractors and suppliers known to be paying bribes.

7.3 Human resources

7.3.1 Recruitment, promotion, training, performance evaluation and recognition should reflect the organisation institution or company commitment to the programme.

7.3.2 The organisation institution or company should make it clear that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes even if it may result in the organisation institution or company losing business.

7.4 Training

7.4.1 Managers, employees and agents should receive specific training on the programme, which should include integrity training and principle based training.

7.4.2 Where appropriate, contractors and suppliers should receive training on the programme.

7.5 Raising concerns and seeking guidance

7.5.1 To be effective, the programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the organisation, institution or company should provide secure and accessible channels through which employees and others should feel able to raise concerns and report violations (“whistle-blowing”) in confidence and without risk of reprisal.

7.5.2 These channels should also be available for employees and others to seek advice or suggest improvements to the programme. To support this process, the organisation institution or company should provide guidance to employees and others with respect to the interpretation of the programme in individual cases.

7.6 Communication

7.6.1 The organisation institution or company should establish effective internal and external communication of the programme.

7.6.2 The organisation institution or company should, on request, publicly disclose the management systems it employs in countering corruption and bribery.

7.6.3 The organisation institution or company should be open to receiving communications from relevant interested parties with respect to the programme.

7.7 Internal controls and audit

7.7.1 The organisation, institution or company should maintain accurate books and records, available for inspection, which properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.

7.7.2 The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the programme.

7.7.3 The organisation institution or company should subject the internal control systems, in particular the accounting and record keeping practices, to regular audits to provide assurance that they are effective in countering bribery.

7.8 Monitoring and review

7.8.1 Management of the enterprise should monitor the programme and periodically review the programme's suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report to the Board of Directors or shareholders, or any such appropriate body, the results of the programme review.

7.8.2 The Board of Directors, shareholders, or any such appropriate body should make an independent assessment of the organisation, institution or company regarding the adequacy of the programme and make its recommendations.

8 CRITERIA FOR COMPLIANCE

Organisations wishing to demonstrate their compliance to the requirements of this code shall be voluntarily audited and rated on the level of compliance to this code. Such a rating system is currently being developed in Malawi and ratings will be determined by identifying process, mechanisms and practices within the organisation that enable it to comply with the requirements of the code and ensure that corrupt practices, as far as can be ascertained, are not taking place within the organisation.

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