***2023 First Revised Draft for Comment by 18 September 2023***

**Draft - ICC Rules on Combating Corruption (2023)**

**Introduction**

The ICC Rules are designed as a method of self-regulation by business against the background of applicable national law and international legal instruments. Their voluntary acceptance by Enterprise promotes high standards of integrity in business transactions, whether between Enterprises and public bodies or between Enterprises themselves. These Rules play an important role in assisting Enterprises to comply with their legal obligations and with the numerous anti-corruption initiatives at the international level. They also provide an appropriate basis for resisting attempts at Extortion or Solicitation of bribes.

ICC Model Contracts contain references to Part I of the present Rules. Enterprises are urged to incorporate, in full or by reference, Part I of the present Rules in their commercial contracts, in order to prevent their contractual relationships from being affected by any form of Corruption.

Although these Rules do not change according to the size of an Enterprise or the nature of its activities, their implementation will have to be adapted according to a risk assessment and notably to the nature of the business conducted by small and medium-sized Enterprises. The success of these ICC Rules will depend on the “tone at the top”: there should be a clear message from the Chair of the Board of Directors (or other body with ultimate responsibility for the Enterprise) and/or the Chief Executive Officer of the Enterprise that corruption is prohibited and that an effective corporate compliance programme will be implemented. Buy-in by all employees of the Enterprise is also essential.

The ICC Rules on Combating Corruption are not designed to replace or modify existing laws and regulations. Rather, the Rules are a self-regulatory set of rules, and ultimately a business toolkit, aimed to be used by Enterprises in addition to, and in careful coordination with, applicable instruments and regulations. Therefore, the Rules require voluntary adoption and implementation by Enterprises, and in case of conflict between applicable laws and regulations and these Rules, the former shall prevail.

**Ways to adopt the Rules**

Voluntary adoption of the Rules may occur either because Enterprises include the Rules in an agreement (in full) or because they include them in an agreement by reference (or as a result of adoption of the Rules as part of Enterprises´ internal policies and/or anti-corruption initiatives). For example, the International Chamber of Commerce has prepared a large number of model contracts and clauses over the years, which reflect best international corporate practice in transactional work, facilitate business negotiations and improve the drafting of the numerous contractual documents companies are processing. Some of said model contracts and clauses, like the ICC model Anti-Corruption Clause, contain references to Part I of the Rules, allowing for incorporation of the Rules by reference. The same rule applies to any other document or contract an Enterprise is a party to.

**Collaboration and coordination are key**

Enterprises are advised to collaborate with each other as well as with relevant international, regional, and sectoral initiatives to promote and develop the practices reflected in these Rules.

Also, to the extent permitted by applicable national laws, Enterprises are further encouraged to cooperate with national and foreign law enforcement authorities conducting corruption related investigations.

Finally, those within Enterprises who have the responsibility to lead the Rules´ adoption and implementation efforts, are encouraged to work in close coordination with those responsible for other key areas such as ESG, Data Protection, Policy and legal. In other words, core subject matters of the Rules are just one of many pieces of the puzzle.

**Risk-based approach**

Just as with any other compliance system, the risk-based approach is central to the effective adoptions and implementation of the Rules.

A risk-based approach means that Enterprises identify, assess, and understand the specific risks to which they are exposed, and take the appropriate mitigation measures in accordance with them.

Therefore, although the Rules do not change as a result of Enterprises´ specific characteristics, effective adoption and implementation of the Rules should respond to the specific risks of adopting Enterprises. Thus, any Enterprise, regardless of its size, nature, business, activities, jurisdictions it operates in, industry, etc, can adopt and implement the Rules.

**General structure of the Rules**

The Rules consist of four parts: Part I states the Rules; Part II deals with policies which Enterprises should enact to support compliance with the Rules, Part III lists the suggested elements of an effective corporate compliance programme, and Part IV comprises definitions of terms used.

**I ANTI-Corruption Rules**

**Article 1 - Prohibition of Bribery**

Bribery is prohibited at all times and in all forms, including Commercial or Public Bribery or through the use of Third Parties, whether direct or indirect.

**Article 2 - Prohibition of Laundering the Proceeds of Bribery**

Laundering the Proceeds of Bribery is prohibited at all times and in all forms, whether direct or indirect.

**Article 3 - Reporting**

Enterprises, its Third Parties or Associates, are encouraged to report any Prohibited Practice, through available formal or informal reporting mechanisms unless such report puts the life, liberty or physical integrity of the potential reporter in danger.

**II Coprorate Policies to Support Compliance WITH ANTI-corruption Rules**

**Article 4 - Policies regarding Third Parties**

Enterprises should not use Third Parties to perform Prohibited Practices.

Enterprises should:

1. Hire or retain Third Parties only to the extent appropriate for the regular conduct of the Enterprise’s business, and refrain from paying them more than an appropriate remuneration for their legitimate services.
2. Ensure that their central management has adequate control over the relationship with Third Parties and maintains record of all relevant information, in accordance with 0 of these Rules.
3. Take measures within their power and, as far as legally possible, to ensure that Third Parties comply with these Rules in their dealings on behalf of, or with the Enterprise.
4. Avoid dealing with Third Parties known or reasonably suspected to commit any Prohibited Practice.
5. Conduct periodic and appropriate risk-based due diligence on the reputation and the capacity of its Third Parties, to comply with Anticorruption Laws and Regulations and with these Rules, in their dealings with or on behalf of the Enterprise.
6. Conduct its procurement of goods and services and its transactions with Third Parties in accordance with accepted business standards and Anticorruption Laws and Regulations and, to the extent possible in a transparent manner, without any Conflict of Interest, in accordance with these Rules.
7. Enter into a written agreement with Third Parties, which should include provisions covering at least the following:

> Informing the Business Partner of the Enterprise’s policies and/or expected standards in connection with the Prohibited Practices;

> Requesting the Third Parties to declare, represent and warrant that it complies with these Rules, with all regulations applicable to it and with all Anticorruption Laws and Regulations, and that it has implemented and complies with the compliance systems to which it is obliged in accordance with all regulations applicable to it;

> Committing the Business Partner not to engage in or tolerate any of the Prohibited Practices and to notify the enterprise if there any breach in relation with the anti-corruption clause;

> That all activities carried out by the Business Partner on behalf of the Enterprise shall comply with the Enterprise’s policies, with these Rules, and with all regulations applicable to the Enterprise and the Business Partner in connection with the Prohibited Practices;

> Permitting the Enterprise to request and perform an audit on the Business Partner’s books and accounting records, directly or through an independent auditor, to verify compliance with both these Rules and the written agreement entered into between the Enterprise and the Business Partner; and

> Providing that the Business Partner’s remuneration and/or other payments to the Third Party, as well as payments made by the Third Party shall not be paid in cash and shall only be paid: (i) in the country of incorporation of the Business Partner, (ii) the country where its headquarters are located, (iii) its country of residence, or (iv) the country where the obligations of the parties to the written agreement are performed.

> A Provision, such as the ICC Anti-Corruption Clause, allowing the Enterprise to unilaterally suspend or terminate the relationship, following notification, and offer of possibility of remedial action to the extent possible, if it has a good faith concern that a Business Partner has acted in violation of Enterprise’s policies, these Rules, and or in violation of any Anticorruption Laws and Regulations.

Article 5 - Policies **regarding charitable contributions and sponsorships**

1. So as to mitigate any conflict of interest or undue influence, enterprises should only make charitable contributions and sponsorships in accordance with applicable law and public disclosure requirements and said charitable contributions and sponsorships should be transparent.
2. Enterprises should conduct an appropriate risk-based due diligence regarding charitable contributions and sponsorships before making said contributions.
3. Enterprises´ political and charitable contributions and sponsorships to political parties, party officials, and/or candidates should be approved by the Board of Directors, which should base its decision on an appropriate risk-based due diligence.
4. Enterprises should take measures within their power to ensure that charitable contributions and sponsorships are not used as a subterfuge for Prohibited Practices.
5. To further mitigate any undue influence, enterprises should also take measures within their power to appropriately manage certain prohibitions that may arise in some jurisdictions as a result of charitable contributions and sponsorships to political parties, party officials, and/or candidates. For example, there are restrictions in some jurisdictions, according to which Persons who made political and charitable contributions and sponsorships to political parties, party officials, and/or candidates, are disqualified to enter into agreements with certain public entities.

**Article 6** - **Gifts and Hospitality**

Enterprises should establish procedures regarding Gifts and Hospitality in order to ensure that such arrangements:

> Comply with national law, applicable international instruments, these Rules and Anticorruption Laws and Regulations.

> Are limited to reasonable and *bonafide* expenditures and are delivered in good faith.

> Do not improperly affect, or might be perceived as improperly affecting, the recipient’s independence of judgment towards the giver.

> Are not contrary to the known provisions of the recipient’s internal controls, ethics, codes of conduct and compliance programmes.

> Are neither offered or received too frequently nor at an inappropriate time that may appear as unduly influencing a decision-making process, such as during contract negotiations or during the course of a public bidding process.

Are directly related to the Enterprise´s business and have a clear, reasonable, proportionate and legitimate business purpose.

**Article 7 - Facilitation Payments**

Facilitation Payments are prohibited in most jurisdictions. Accordingly, Enterprises should not make facilitation payment unless confronted with exigent and extraordinary circumstances in which the making of a Facilitation Payment can hardly be avoided, such as when the health, security or safety of the Enterprise’s employees are at risk. When a Facilitation Payment is made under such circumstances, it must be accurately accounted for in the Enterprise’s books and accounting records.

**Article 8 - Conflicts of Interest**

Conflicts of interest should be disclosed and mitigated because they can affect an individual’s judgment in the performance of his/ her duties and responsibilities.

Enterprises should closely monitor and regulate actual or potential conflicts of interests, or the appearance thereof, of their Third Parties and Associates, or other individuals to assure that their actions, judgment, or decision-making are unbiased.

Enterprises should not take advantage of Conflicts of Interests of others.

Enterprises should have specific policies regarding conflicts of interest arising out of situations in which a public official or employee leaves or sets aside their public position to represent their own or other private interests before the same government. In connection with it, Enterprises should consider the following rules:

Enterprises should avoid hiring Incumbent Public Officials and should avoid conflicts of interest with regard to public officials.

Enterprises should refer to [ICC’s Guidelines on Conflicts of Interest in Enterprises](https://iccwbo.org/wp-content/uploads/sites/3/2018/08/icc-conflicts-of-interest-guidelines-july-2018.pdf) with regard to monitoring and managing conflicts of interests with public officials and others.

**Article 9 - Financial Reporting and Accounting**

Enterprises should ensure that:

1. All financial transactions are adequately identified and properly and fairly recorded, in reasonable detail, in appropriate books and accounting records.
2. Among said books and accounting records should be maintained a record of the names, business rationale for engagement, terms of engagement and payments, Gifts, Hospitalities and other benefits to Third Parties.
3. There are no “off the books” or secret books and accounting records, and no documents may be issued which do not fairly and accurately record the transactions to which they relate.
4. There is no recording of non-existent expenditures or liabilities or with incorrect identification of their objects or of unusual transactions which do not have a genuine, legitimate purpose.
5. Cash payments or payments in kind are monitored in order to avoid that they are used as an Advantage in connection to Bribery. Only small cash payments made from petty cash or in countries or locations where there is no working banking system should be permitted.
6. No bookkeeping or other relevant documents are intentionally destroyed earlier than required by law.
7. Books and accounting records must remain available for inspection by Enterprise´s Board of Directors, by internal and external auditors, and by duly authorized governmental authorities under conditions of confidentiality.
8. Voluntary self-disclosure to and full cooperation with governmental authorities is encouraged when the occurrence of transactions related to Prohibited Practices is strongly suspected.
9. Independent systems of auditing are in place, whether through internal or external auditors, designed to bring to light any transactions which contravene these Rules or applicable accounting rules and which provide for appropriate corrective action if the case arises; and
10. All provisions of national tax laws and regulations are complied with, including those prohibiting the deduction of any form of Bribery payment from taxable income.

**III Elements of an Effective Corporate Compliance Programme**

**Article 10 - Elements of An Effective Corporate Compliance Programme**

Each Enterprise should implement an effective Corporate Compliance Programme (i) reflecting these Rules and applicable law (ii) based on the results of a periodically conducted assessment of the risks faced in the Enterprise’s business environment, (iii) adapted to the Enterprise’s particular circumstances and (iv) with the aim of preventing and detecting Prohibited Practices and of promoting a culture of integrity in the Enterprise.

Each Enterprise should consider including all or part of the following good practices in its Corporate Compliance Programme. Specifically, it may choose, among the items listed hereunder, those measures which it considers most adequate to ensure, based on their own proportional risk assessment:

1. **Commitment by Associates with management responsibility**: expressing a strong, explicit and visible support and commitment to the Corporate Compliance Programme by Associates with management responsibilities within the Enterprise (“tone at the top”).
2. **Autonomy** **and Resources:** appointing one or more senior (full or part time) Compliance Officers to oversee and coordinate the Corporate Compliance Programme with an adequate level of resources, authority, and independence, reporting periodically to the Board of Directors or to the relevant committee thereof.
3. **Risk Assessment:** mandating the Board of Directors, the relevant committee thereof, or the Individuals Responsible for Implementation addressed in article 3.8, to conduct periodical risk assessments and independent reviews of compliance with these Rules and recommending corrective measures or policies, as necessary. This can be done as part of a broader system of corporate compliance reviews and/or risk assessments.
4. **Due Diligence** related policies: exercising appropriate due diligence, based on a structured risk management approach, in the selection of its Associates, as well as of its Third Parties. Appropriate due diligence may vary based on the size and nature of the Enterprise, the transaction, or the Third Party and it should be able to detect and prevent the types of misconduct most likely to occur in a particular Enterprise´s line of business.
5. **Written Standards:** establishing clearly articulated and visible written standards address and aim to reduce risks identified by the Enterprise as part of the risk assessment process. Written standards must reflect these Rules and must be binding for all Associates and Business Parties, and applied to all controlled subsidiaries, foreign and domestic.
6. **Training and Communications:** providing to Associates and Third Parties, as appropriate, periodical guidance and documented training in identifying Prohibited Practices in the daily business dealings of the Enterprise. Enterprises should take into account the importance in terms of effectiveness of (i) providing a periodical risk-based training; (ii) designing an appropriate training curriculum and (iii) ensuring periodic internal and external communication regarding the Enterprise’s anti-corruption written standards.
7. **Whistleblowing programmes**:offering efficient, trusted and secure channels to raise, anonymously and confidentially, concerns, seek advice or report in good faith established or soundly suspected violations of the Enterprise’s anti-corruption policy without fear of retaliation or of discriminatory or disciplinary action. All good faith reports should be promptly investigated and addressed. Establishment of a non-retaliation policy is key for a Whistleblowing Programme. See [ICC’s 2022 Guidelines on Whistleblowing](https://iccwbo.org/wp-content/uploads/sites/3/2022/02/icc-guidelines-on-whistleblowing-2022.pdf).
8. **Monitoring and auditing**: establishing and maintaining proper systems of control, monitoring and reporting procedures, including independent auditing.
9. **Corrective and disciplinary measure**s: acting on reported or detected violations of the Enterprise’s anti-corruption policy by taking appropriate root cause analysis, corrective action and disciplinary measures and considering making appropriate public disclosure of the enforcement of the Enterprise’s anti-corruption policy.
10. **Human Resources processes:** including the review of business ethics competences in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met, and specifically against the compliance with the Enterprise’s anti- corruption written standards.

Key personnel in areas subject to high corruption risk should be trained and evaluated regularly; and the rotation of such personnel should be considered.

1. **Continuous** **improvement, periodic testing and review:** engaging in meaningful efforts to periodically review its Corporate Compliance Programme to ensure that it does not become stale in light of lessons learned. Enterprises should consider the improvement of its Corporate Compliance Programme by seeking external certification, verification or assurance.

For effective measurement and evaluation, impact metrics need to be developed, that demonstrate the level of effectiveness of the compliance programme.

1. **Financial Reporting and Accounting:** designing financial and accounting procedures for the maintenance of fair and accurate books and accounting records, to ensure that they cannot be used for the purpose of engaging in or hiding Prohibited Practices.
2. **External Reporting:** reporting publicly in an accessible form about the different elements of the compliance programme, including training and incident management metrics. Ensuring external reporting responds to a modern expectation of enterprises’ compliance programmes. A compliance report can show customers and shareholders how an enterprise is trustworthy, secure and meets ethical standards.

**IV DEFINITIONS**

**Advantage** means anything of value, whether financial, monetary, pecuniary or otherwise, including, but not limited to: (i) Cash; (ii) Any kind of goods or assets, including chattel, movable property, personal property, real estate, immovable property, civil or commercial, tangible and intangible and securities; (iii) Services; (iv) Invitations, entertainment or Hospitality, including meals, tickets to events and shows, etc.; (v) Travel or vacation expenses; (vi) Benefits or discounts; (vii) Gifts, charity and donations; (viii) Employment or any other type of position for the bribed person or a person close to him/her; (ix) Remission of debt or obligation; (x) Inflating or increasing debt or obligation; (xi) Discount, a waived fee, (xii) Medical treatment; and (xiii) Any other benefit, advantage or anything of value.

**Associates** refers to the individuals or organizations that have the quality of subordinates to an Enterprise, including directors, officers, managers and employees of an Enterprise.

**Bribery** is the offering, promising, giving, authorizing or accepting of any undue pecuniary or other advantage to, by or for a public official at international, national or local level, a political party, party official or candidate to political office, and a director, officer or employee of an Enterprise, or for anyone else in order to obtain or retain a business or other improper advantage, e.g. in connection with public or private procurement contract awards, regulatory permits, taxation, customs, judicial and legislative proceedings.

Bribery often includes (i) kicking back a portion of a contract payment to public officials or to employees of the other contracting party, their close relatives, friends or Third Parties or (ii) using intermediaries such as agents, subcontractors, consultants or other Third Parties, to channel payments to public officials, or to employees of the other contracting party, their relatives, friends or Third Parties.

Bribery has a narrower meaning than Corruption, which is sometimes used to include practically any perversion of integrity.

**Board of Directors** refers to the body with ultimate responsibility for an Enterprise.

**Bribery of Public Official** is any form of corruption where the purpose of the Bribe is to obtain an undue advantage from an act or omission of a Public Official in relation with his/her public duties.

**Conflicts of Interest** refers to a situation in which the private interests of an individual or of his/her close relatives, friends or business contacts diverge from those of the organisation to which the individual belongs. An example of improperly acting while facing a conflict of interest, occurs when an individual grants himself/herself an improper advantage by exercising his/her decision-making power to his/her advantage (or to that of a person close to him/her). Typical, improperly acting while facing a conflict of interest includes hiring relatives or favouring relatives as suppliers of goods or services.

**Contractors and Suppliers** are parts of an Enterprise’s supply chain, linking together a supplier of services, materials or components, a manufacturer, a distributor or retailer, and ending with the consumer. Outsourcing by an Enterprise of certain functions to e.g. local partners can be used by this Enterprise as a way to avoid direct involvement in areas particularly exposed to Corruption.

**Enterprise** means any Person engaged in business and other economic activities, whether or not organised for profit, including any entity controlled by a State or a territorial subdivision thereof; it includes a parent and its controlled subsidiaries.

**Facilitation Payments** are unofficial, improper, small-value payments made to a low-level official to facilitate, secure or expedite the performance of a routine or necessary action that involves non-discretionary acts, to which the payer of the facilitation payment is legally entitled. This is a widespread form of Bribery, despite being illegal in almost every country.

**Gift** means any payment, gratuity, gratification, present or advantage, pecuniary or not, offered, promised, given or received, without any direct or indirect material or immaterial compensation.

**Hospitality** means all forms of social amenity, entertainment, travel or lodging, or an invitation to a sporting or cultural event given or provided, offered, promised or accepted to be given or provided, or received, accepted or solicited to be given or provided (whether or not coupled with a threat if the demand or solicitation is refused), without any direct or indirect material or immaterial compensation.

**Joint Venture or Consortium Partners** are partners of an Enterprise for a specific project or activity. Joint venture or consortium arrangements can take the form of a partnership or of a joint subsidiary Enterprise. However, they may be used as a subterfuge for corruption, especially when they involve a local partner in a country with high corruption risk.

**Laundering the Proceeds of Bribery** is:

> The conversion or transfer of property, knowing that such property is derived from Bribery, for the purpose of concealing or disguising the illicit origin of the property or of assisting any Person who is involved in the commission of such an activity to evade the legal consequences of that person’s action.

> The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from Bribery.

> The acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from Bribery.

**Person** means any individual or natural person, a legal entity, including public and private, Public Officials at international, national or local levels, political parties, party officials or candidates to political offices, Public Official and Foreign Public Official. For purposes of this definition, Person includes partnerships, Joint Venture or Consortium Partners, corporations, trusts, and any unincorporated organization, as well as any government or any department or agency thereof.

**Public Official** is any person holding a legislative, administrative, or judicial office at any level of government, national, or local. International civil servants are also public officials. Employees of public enterprises (enterprises over which a government exercises a dominant influence) are public officials unless the enterprise operates on a commercial basis on its market like a private enterprise. Employees of a private enterprise performing an activity in the private interest such as customs inspections or tasks delegated in connection with public procurement are also considered as public officials in that respect.

**Public Bribery** is any form of Corruption where the purpose of the Bribe is to obtain an undue advantage from an act or omission of a Public Official in relation with his/her public duties.

**Commercial Bribery** means any form of Bribery where the purpose of the Bribe is to entice a private person, such as an Associate of a private sector Enterprise to breach his/her duties towards that Enterprise.

**Rules** means the ICC Rules on Combating Corruption (2023 Edition).

**Third Parties** refers to an independent individual or organization who does not have the status of subordinate to an Enterprise but has a contractual or legal relationship of any nature with it. Without being limited, enterprises third parties may include:

* Agents
* Business Partners
* Consultants
* Contractors
* Investors
* Joint Venture or Consortium Partners
* Distributors/resellers
* Logistics, supply chain management, storage, maintenance etc.
* Marketing and sales agents
* Customs or visa agents
* Suppliers and sub-suppliers
* Other intermediaries