

Responsible Business Conduct and Practices

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Using the tools contained in this manual, the responsible business enterprise (RBE) has set standards and procedures to guide employees and agents, fostered reasonable expectations among its stakeholders, built supporting business ethics infrastructure, and aligned its management practices with its core beliefs. This chapter applies these elements of a business ethics program as the foundation for five specific areas of business conduct and practice that challenge an RBE, especially, but not exclusively, in emerging market economies. By developing responsible business practices in those five areas, the RBE can be part of the solution to the challenges facing business in all markets.

Challenges to the Responsible Business Enterprise

There are a number of issues of responsible business conduct to which the owners and managers of an RBE need to give special attention:

1. Relationships with government officials and entities
2. Role of the private sector in the regulatory process
3. Government contracting and procurement
4. Role of voluntary action
5. Relationships with foreign governments and businesses

- **Challenges to the Responsible Business Enterprise**

- **Relationships with Government Officials and Entities**

- **Role of the Private Sector in the Regulatory Process**

- **Government Contracting and Procurement**

- **Role of Voluntary Action**

- **Relationships with Foreign Governments and Businesses**

These five issues are central to what it means to be a responsible business enterprise. The discussion in this chapter, along with RBE Worksheet 13 at the end of the chapter, will help owners and managers establish responsible standards, procedures, and expectations and compensate for weaknesses through business ethics infrastructure, communications and feedback, and enterprise alignment. The chapter will also help create reasonable expectations for external stakeholders: government, other businesses, civil society, and the community as a whole.

Relationships with Government Officials and Entities

Governments establish the necessary conditions for economic stability, social progress, and environmental protection by adopting laws, policies, and practices that help markets perform independently, free of undue government interference. These conditions, sometimes referred to as “good public governance,” help an economy grow according to market principles. Just as an RBE has a vital interest in good corporate governance, the private sector as a whole has a vital interest in supporting trustworthy, stable, accountable, and reliable governments capable of good public governance.

Good public governance respects human and property rights, supports the sanctity of contracts, protects residents, provides infrastructure that speeds the transportation of goods and services and supports the transmission of knowledge, and establishes a market-oriented legal framework and reliable judicial institutions that allow its residents to resolve conflicts. Good public governance is founded on a transparent relationship between government and the private sector.

REDUCING CORRUPTION, BRIBERY, AND EXTORTION

To create the conditions necessary for good public governance, one must address the problem of corruption, from both the demand side and the supply side. Both government and the private sector are responsible for creating conditions for transparent business, and they should repudiate all corruption, bribery, and extortion. Leaders in business and government should work together to combat corruption.

One means of private–public sector cooperation is for business enterprises to recommend standards, procedures, and expectations to help the government administer laws and regulations in a transparent, accountable, and fair manner. Business leaders and government officials should have an ongoing public dialogue about issues that contribute to corruption, such as monopoly practices, discretionary fees, onerous taxes, and regulations and licenses that impede business and entrepreneurship. This dialogue should

GOVERNMENT ANTICORRUPTION POLICIES

Government anticorruption policies take many forms:

- Commercial codes governing contracts and dispute settlement
- Law enforcement and judicial procedures promoting due process and the rule of law
- Independent systems promoting and ensuring the integrity and efficiency of agencies
- Civil service reforms and competitive wages
- Systems promoting integrity of capital markets and transparency on issuance of securities
- Systems promoting predictable and transparent procurement and privatization
- Improved and standardized public accounting, auditing, and management systems
- Effective bankruptcy and insolvency laws
- Limits on discretionary authority tending to administrative corruption
- Oversight mechanisms and appellate remedies
- Protection for whistleblowers and the media
- Disclosure of and access to public records
- Encouragement of civil society participation in anticorruption efforts

U.S. Department of State

“Recognizing and Making Anticorruption Issues Part of the Business–Government Dialogue”

aim to ensure that government administrative processes at all levels are fair, transparent, competitive, and informed. Box 9.1 lists some of the anti-corruption and good governance policies that emphasize transparency, due process, and accountability.¹ See also Appendix F for a more comprehensive list of guiding principles for fighting corruption in government.

Government administrative, licensing, inspection, and certification procedures intended to regulate business often create obstacles to business. For example, governments sometimes require several official signatures to complete the simple act of registering and opening a business. Such administrative obstacles increase opportunities for public officials to demand bribes and favors. As Table 9.1 shows, while opportunities for bribery and extortion vary somewhat from market to market, the average proportion of bribes spent on each type of public service varies substantially.²

Bribery, kickbacks, and other forms of illegal or corrupt conduct increase costs for an enterprise not only because of the payments involved but also because it requires management time and effort to work with officials, maintain secret accounting books, and address threats of extortion and blackmail. To reduce such obstacles, business leaders and government officials should work together to establish regulatory practices that reduce administrative discretion and promote transparency and efficiency.

TABLE 9.1 The Average Proportion of Bribes Spent on Each “Service”

Country	Connection to Public Services	Licenses	Taxes	Government Contracts	Customs	Courts	Health/Fire Inspections	Legislation Influence	Other	Total
Armenia	10.9	9.8	30.6	5.8	14.0	4.7	2.9	3.2	18.0	100.0
Azerbaijan	9.2	20.2	31.6	17.4	8.6	6.0	4.3	2.4	0.1	100.0
Belarus	9.6	30.4	28.2	7.3	7.1	3.6	13.6	0.2	0.0	100.0
Bulgaria	17.7	22.6	14.1	6.6	11.9	13.6	8.2	2.8	2.6	100.0
Croatia	9.1	6.7	7.3	44.7	10.7	8.8	4.1	4.0	4.5	100.0
Czech Republic	8.3	16.3	7.2	43.0	6.4	6.5	9.2	1.6	1.6	100.0
Estonia	2.0	26.5	6.4	34.5	15.2	2.5	4.2	5.9	2.8	100.0
Georgia	11.0	18.3	29.3	3.6	9.6	11.3	10.4	6.6	0.0	100.0
Hungary	7.3	43.6	10.9	11.1	14.2	3.1	3.3	1.4	4.9	100.0
Kazakhstan	10.7	23.2	20.3	5.3	14.4	12.7	9.5	1.3	2.8	100.0
Kyrgyzstan	5.0	15.2	53.5	6.5	6.8	4.5	7.4	1.1	0.0	100.0
Lithuania	14.0	8.5	16.3	5.0	15.1	8.7	17.6	4.3	10.6	100.0
Moldova	14.9	29.7	21.4	3.9	10.4	9.0	7.0	1.6	2.2	100.0
Poland	7.4	26.1	8.8	17.7	15.8	9.9	5.7	4.3	4.3	100.0
Romania	16.1	39.8	6.3	7.8	15.2	5.2	5.7	3.4	0.6	100.0
Russia	11.7	20.4	18.5	11.3	8.8	11.1	11.6	2.8	3.7	100.0
Slovakia	5.7	33.2	10.1	18.3	11.8	12.9	4.3	1.3	2.5	100.0
Slovenia	6.5	24.9	4.3	36.3	8.7	5.3	5.8	8.2	0.0	100.0
Ukraine	10.3	21.3	25.8	10.4	12.2	6.8	9.7	2.5	1.1	100.0
Uzbekistan	8.5	18.0	27.9	15.4	10.9	5.2	12.0	0.9	1.2	100.0
Overall	10.6	22.0	19.4	14.6	12.2	7.9	7.8	2.6	2.9	100.0

Source: Joel S. Hellman et al., “Measuring Governance, Corruption, and State Capture” Policy Research Paper 2312 (Washington, D.C.: World Bank, 2000)

Business associations in some emerging market economies have succeeded in influencing governments to adopt one-stop registration for new businesses. In the Russian Federation, for example, the Business Partnership of Seversk (Tomsk Oblast), a nongovernmental organization (NGO), has worked with municipal authorities to increase transparency and to reduce administrative barriers. With input from the NGO, government authorities simplified procedures for leasing public property, which included streamlining procedures to resolve disputes and eliminating illegal fees. A database of federal and local laws and regulations was developed, and the business community has received training in current laws and regulations related to business operations and business rights and responsibilities.³

To facilitate good public governance, the RBE can adopt standards, procedures, and expectations for conducting business with government officials and entities as part of its business ethics program. They should be based on knowledge of and respect for the specific rules that govern the conduct of

Transparency and Government Revenue

In 1998, when Newmont Mining Corporation began its joint-venture Batu Hijau copper mine in Indonesia, it created a program to promote transparency in revenue-sharing payments to host governments. With its first royalty payment, Newmont placed a full-page advertisement in local and regional newspapers detailing the amount of money transferred to the national government. For subsequent payments, totaling more than \$38 million by the first quarter of 2002, the company generated news coverage detailing the royalty payment, transfer documents, and deposit account number. Legally, a percentage of royalties is to flow back to the region of impact but, in reality, it is often delayed or not sent at all. At first, regional authorities, whose receipt of mining royalties was suddenly exposed to public scrutiny, reacted by attempting to deny the payments. Over the course of a year, however, both local and regional authorities used the increased transparency and media coverage to pressure the national government to return funds more quickly to the region.

Juliette Bennett

“Multinational Corporations, Social Responsibility, and Conflict”

public officials.⁴ These standards, procedures, and expectations should make clear that employees and agents must abide by all laws and regulations, especially refraining from bribery and other forms of corrupt conduct intended to influence official decisions.

ENCOURAGING GOVERNMENT STANDARDS AND PROCEDURES

Responsible business leaders should encourage governments to adopt formal programs to guide the choices and actions of civil servants through established standards, procedures, and codes of conduct. These standards and procedures should address issues such as values of public service, conflicts of interest, use of public office for private gain, and acceptance of political contributions and bribes. Government standards and procedures help ensure that government officials uphold the law and avoid even the appearance of impropriety. Creating clear standards and procedures to which public officials are held accountable helps instill respect and public confidence in government institutions.

Government officials should be encouraged to go beyond simply setting standards and procedures. Civil servants should be hired and assigned transparently and should receive compensation adequate to support their families

properly without resorting to corruption. Training and education should be provided to raise awareness of the devastating impact of corrupt practices on the functioning of public governance, as well as on economic growth and social capital. Oversight mechanisms to monitor and audit government functions at particular risk to corruption are essential, especially where civil servants are reluctant to report their concerns. Finally, these standards and procedures must be enforced, and the government must respond appropriately when bribery and corruption are uncovered.

Business leaders must also recognize, however, that good public governance requires resources. Reasonable civil servant compensation, for example, tends to reduce corruption, but it must be paid, in part, with the taxes that businesses pay. Failure to pay business taxes when the government is trying to reform makes reform efforts virtually fruitless. Being part of the solution to this challenge of developing a market economy requires paying the enterprise's fair share of the cost of government.

Role of the Private Sector in the Regulatory Process

The ultimate objective of good public governance is to create conditions under which markets function independently and facilitate fair competition. These conditions help innovative, effective, and efficient enterprises succeed and grow while preventing inefficient enterprises from looting public resources. They create opportunities for increased investment and trade.

Under conditions of good public governance, the private sector has a vital role in influencing the government to adopt laws, regulations, and practices designed to enable the market to function independently. This activity should be conducted on a transparent basis designed to benefit all stakeholders in the development of a market economy and civil society.

IMPROPERLY INFLUENCING GOVERNMENT

There are several obstacles to good public governance, including practices that enable enterprises to influence government policy improperly. Enterprises operating in many markets have adopted the practice of forming patron relationships with individual public officials as a means of securing government contracts and preferential treatment.

Many large and successful enterprises strive to “capture” the state by securing the passage of laws or obtaining licenses that benefit them over other enterprises. What many think of as state capture is the effort of a firm to shape the laws, policies, and regulations of the state to its own advantage by providing illicit, illegitimate, and non-transparent private gains to public

officials.⁵ Such practices may offer short-term gains, but they are a major source of business risk and market instability.

State capture is also a cause of poor public governance, because decrees issued to benefit one enterprise or organization injure the economy as a whole by undermining competition. An enterprise that engages in state capture has a stake in maintaining conditions of poor public governance, including weak state institutions and ambiguous laws and regulations. State capture seriously impedes the development of the rule of law. It creates conditions under which effective and efficient enterprises support ineffective and inefficient enterprises. World Bank studies show an association between state capture and poor governance in emerging market economies.⁶

PROPERLY INFLUENCING GOVERNMENT

To foster stable conditions for economic growth, responsible business leaders should help establish clearly defined laws and practices regulating how businesses might influence government decision-making. RBEs conduct their business with government on a transparent basis. They organize themselves around issues of mutual concern with other enterprises to lobby the government under applicable laws and procedures.

Business associations provide a structure that enables private-sector leaders to find one voice and coordinate efforts. They provide the opportunity and leverage to influence lawmakers in an ethical and democratic

PRACTICE NOTE

Goals of Business and Government Executives

Greater emphasis on morale, productivity, stability, efficiency, and growth is placed by business executives than government executives. Government executives place more importance than business executives on such goals as quality, effectiveness, public service, and value to community. Goals like customer service, leadership, and innovativeness are rated similarly important by business and government executives.

Barry Z. Posner and Warren H. Schmidt
 “The Values of Business and Federal Government
 Executives: More Different Than Alike”

manner. RBE leaders work with their business associations and trade groups to demand accountability of government and to create conditions for fair competition.

To maximize their leverage and influence, RBE leaders develop a national business agenda that promotes the goals and incorporates the interests of both large enterprises and small to medium-sized enterprises (SMEs)—and the public interest.⁷ This agenda identifies policy and legal reforms that are required of government to create the conditions necessary for all transparent enterprises to compete and succeed. RBEs publish their goals and strategies in the media in order to reach out to other businesses and solicit feedback from external stakeholders and civil society.

Private-sector lobbying efforts by RBEs promote and instill good public governance and respect for the rule of law. When a particular law or regulation is damaging to the market, RBEs seek to amend or replace it in a manner that respects the legislative process.

To strengthen this process, business associations often adopt a legislative advisory program, which analyzes current legislation and assesses whether it meets the requirements and the needs of business. As part of such a program, the associations provide legislators with objective and accurate information regarding market conditions to assist in their decision-making processes. For an example of such a program, see Box 9.2.⁸

RBE leaders work closely with civil society—including chambers of commerce, trade associations, industry associations, community advocacy groups, public interest groups, and other NGOs—to form alliances that help promote the national business agenda. Civil society “includes organizations, structures, and networks separate from the legislative, administrative, and judicial power of the state and, many would argue, from business but inter-

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INTERNATIONAL CENTER FOR ENTREPRENEURIAL STUDIES

The International Center for Entrepreneurial Studies has established an innovative program in Romania called the Strategic Alliance of Business Associations (SABA). SABA consists of 44 chambers of commerce and trade groups. SABA brings together large enterprises and small to medium-sized enterprises (SMEs) that have similar concerns and priorities. It helps these enter-

prises create a national platform for their objectives. It also educates members on changes in business laws and regulations. SABA has helped establish an SME development agency in Romania with wide participation from entrepreneurs. The SABA program is a model for promoting the collective private-sector interests of large enterprises and SMEs in economic reform.

acting with both in a variety of ways.”⁹ The groups that make up civil society often act collaboratively for the common good to “stimulate democratic action, and to analyze and educate public debate.”¹⁰

NGOs have a stake in the success of RBEs as entities that operate on a legal and transparent basis and fulfill their social responsibilities. Some NGOs specialize in working with the private sector to shape legal and government reform. NGOs also bring business and government leaders together to educate and train them in areas where they should work together on a more cooperative basis. On controversial issues, NGOs can serve as mediators between private- and public-sector representatives.

Government Contracting and Procurement

When an RBE conducts business directly with a government official or entity, whether as a contractor, supplier, or in some other capacity, it should take steps to ensure that its relationships are transparent and ethical. It should abide by all laws; refrain from engaging in bribery, cronyism, or coercion; and avoid even the appearance of impropriety. By so doing, the RBE minimizes the risk of penalties, fines, and other forms of sanction for misconduct.

The success of public projects rests on sound government procurement practices that promote integrity, respect, fairness, and transparency. These practices also help create conditions for good public governance and the development of a market economy. See Box 9.3 for a sample policy.

CHALLENGES IN GOVERNMENT CONTRACTING

The process of government contracting and procurement poses a risk of corruption from both the demand side and the supply side. Corruption distorts the process by favoring one enterprise or group of enterprises over another. An obvious example is a contract for government procurement awarded to an enterprise in response to a bribe. Corruption can occur at any point in the process, starting from design and preparation, when selection of the technical criteria, the due date for submission of offers, the time of delivery of the project, and the parties invited to tender may distort the process.

Under such conditions, a responsible enterprise cannot compete successfully for government contracts, even when it outperforms other companies in terms of quality and price. Nevertheless, when seeking a government contract, an RBE abides by all applicable laws, regulations, and stipulations of the tender. It ensures that all statements, communications, and representations to government officials are truthful and accurate.

MODEL PROCUREMENT STANDARDS

The World Bank Group, which lends to governments to finance major restructuring of industries and development of infrastructure, has five basic guidelines that govern its procurement policies:

1. All goods and services needed to carry out the project must be procured with special consideration for economy and efficiency.
2. The loan must be used to purchase only those goods and services needed to carry out the project.
3. All qualified bidders from the bank's member countries have an equal opportunity to compete to participate in the bank's projects.
4. The borrower must encourage the development of local contractors and manufacturers in borrowing countries.
5. The procurement process must be transparent.¹¹

Other examples of government procurement policies that ensure transparency and due process in government contracting can be found in some international procurement agreements, most notably the World Trade Organization (WTO) Agreement on Government Procurement (GPA).¹²

The GPA is an accord entered into by 28 WTO member countries to provide market access to each other's government procurement of goods and services. It calls for governments to maintain transparency in government procurement by establishing standards in procurement procedures. These standards are designed to ensure consistency and predictability for enterprises. For example, the GPA sets guidelines for governments to publish notices of procurement opportunities. The notices are required to contain basic information necessary for enterprises to assess their interest in an opportunity and to prepare meaningful bids. The GPA sets out minimum time periods—usually 40 days—in which interested suppliers must submit bids. It also requires that technical specifications be prepared in terms of performance rather than design or descriptive characteristics and not be developed or applied as inappropriate obstacles to international trade.

The GPA addresses other procurement procedures, including qualification procedures, contract award decisions, and publication of procurement laws and regulations. It also seeks due process for suppliers, who are provided the right to learn from procuring entities the reasons that their bids or qualification applications are unsuccessful. The GPA also requires governments to maintain independent and impartial review bodies to hear supplier complaints.

BUSINESS ETHICS AND CONDUCT IN CONTRACTING WITH THE UNITED STATES GOVERNMENT

10. Government rules on gifts and gratuities (broadly defined to include entertainment and business meals) are very restrictive. Employees shall not offer or give a gift or gratuity to any government employee, except where clearly permitted by applicable government regulations (for example, 32 Code of Federal Regulations Part 40). Guidance with respect to the applicable regulations can be obtained from the operating unit Business Practices/Compliance Officer. Furthermore, employees shall not offer or give, directly or indirectly, anything to a government employee who is a procurement official or who performs a procurement function except: (a) beverages at a business meeting, (b) light snacks for a business meeting where government employees in travel status are in attendance, and (c) promotional items displaying the company logo and having a truly nominal value, such as baseball caps or pads of paper. Any exceptions must be approved in writing by the UTC Vice President, Business Practices.

14. Employees shall not offer or give entertainment, gifts, or gratuities to representatives or employees of higher tier government contractors other than customary business courtesies that are reasonable in frequency and value. Offering or giving any payment, gift, or other thing of value to such a person for the purpose of obtaining or acknowledging favorable treatment (a “kickback”) is a crime.

15. Even though not otherwise prohibited, employees will not offer or give to any representative or employee of a higher tier government contractor any entertainment, gift, gratuity, or anything else of value that such representative or employee is known to be prohibited from accepting under the policies of the higher tier government contractor.

16. Consultants performing work related to a government contract or subcontract shall be required by contract to comply with the laws and regulations relating to government contracting and with this Policy Statement. This Policy Statement shall be incorporated in the standard terms and conditions for all such consultant contracts, and each such contract shall expressly provide for termination in the event the consultant violates either the laws or regulations relating to government contracting or this Policy Statement.

Implementation

All organizations in the Corporation that contract directly or indirectly with the federal government of the United States are required promptly to maintain current, detailed procedures and policies, including an ongoing program of communication and training, to insure compliance with this Policy Statement and with the laws and regulations governing contracting with the government. Such procedures and policies shall expressly designate the department or activity responsible for implementing each element of the detailed policies and procedures.

United Technologies Corporation
“Code of Ethics”

INTEGRITY PACTS

Another means of ensuring more transparency in government procurement and contracting is called an *integrity pact*, a concept developed by the NGO Transparency International in the mid-1990s. In the context of government procurement, an integrity pact is a formal pact or agreement between a government office inviting tenders and the enterprises intending to participate. By signing such an agreement, an enterprise commits itself to participate in

the tendering process in a legal and transparent way. In particular, it pledges not to offer, pay, accept, or seek bribes of any kind during the tender. The government office, in turn, commits that its officials will not demand or accept any bribes.

The key component of an integrity pact is transparency. All offers and payments made by an enterprise should be reported to members of the pact. The pact has preapproved sanctions for violations. Sanctions include denial or loss of the contract, forfeiture of bid security, liability for damages, or blacklisting by the government office.¹³

Use of the integrity pact is slowly developing on a global basis, hindered by the expertise and funds needed to encourage governments and enterprises to enter into the agreement. Transparency International has facilitated integrity pacts in Argentina, Benin, Colombia, and Panama.¹⁴ See Appendix C for a sample integrity pact.

Role of Voluntary Action

The private sector has an economic interest in creating a trustworthy, stable, and reliable government capable of good public governance. Business enterprises, in general, have the potential to be powerful and influential members of their communities.

Beyond the contributions they make in producing goods and services to meet the needs of customers and consumers, businesses provide livelihoods for employees, other agents, and suppliers. Business enterprises pay taxes that support good public governance, but they can do much more as responsible members of their communities.

LEVELING THE BUSINESS PLAYING FIELD

Declarations of integrity are a form of voluntary action by enterprises designed to help promote a transparent business environment through responsible business conduct. They document a coalition of enterprises that are committed to fair business practices and showing leadership in this direction. Such declarations offer a means of bringing enterprises together with civil society and government officials and entities with the goal of developing a more transparent investment climate. See Appendix D for an example of a declaration of integrity.

Industry-specific declarations of integrity may be an especially effective means of promoting responsible business conduct. In developing market economies, many industries, professions, and chambers of commerce

accomplish much the same effect through codes of conduct that they voluntarily adopt and follow.

A prominent example in the United States is the Defense Industry Initiative, which was formed in 1986 to improve the responsible business conduct of defense contractors following a series of defense contracting scandals. To avoid further government regulation, prominent defense contractors voluntarily subscribed to designing and implementing business ethics programs, to reporting on their performance, and to meeting to share best practices annually.

In emerging market economies, codes of conduct are being developed in many industry sectors, including engineering and banking.

PRACTICE NOTE



Community-Driven Development

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It is increasingly being recognized in the debate over the approach to development that countries have to own their own development. The catch phrase is that they have to be “in the driver’s seat.” The imposition of solutions from the outside or the ad hoc injections of support here and there will not add up to long-term development.

Louise Fréchette, Deputy Secretary-General
United Nations
“A New Development Agenda”

PARTICIPATING IN COMMUNITY DEVELOPMENT

An RBE may also contribute to its community by participating in community economic development projects. Such projects promote cooperation between business and the local community. An enterprise that engages in a community economic development activity designs programs to train and employ local citizens. Through such projects, a multinational enterprise partners with locally owned enterprises and franchises to help develop successful business strategies. Such actions enhance an enterprise’s reputation and goodwill in the community.

Another avenue for an RBE is to work with a community foundation and local government to support community-driven development. Development projects are designed to meet important community needs by engaging the community itself with help from donors to a local community foundation. The role of enterprises, both foreign and local, is increasing as foreign donors, in particular, see the value in local communities fashioning their own solutions to local problems.¹⁵

An RBE may encourage its employees to support philanthropic initiatives or to take part in volunteer programs. The RBE might also institute a release-time policy, giving employees paid leave to take part in voluntary initiatives during business hours. Such an initiative will reinforce the enterprise's commitment to supporting employees and the community.

FORMING CHARITABLE FOUNDATIONS

Leading multinational enterprises establish charitable foundations that donate funds to entities whose missions are consistent with the enterprise's values and vision. Such foundations provide funding for educational institutions and students through grants and scholarships, to improve the quality of education.

Relationships with Foreign Governments and Businesses

When engaging in international business, enterprises face government officials and entities, laws, customs, and cultural practices different from those in home markets. An enterprise will face new and different ethical dilemmas, which are shaped by local law, customs, and practices. An enterprise that seeks to conduct business in a foreign market or to form a joint venture with a foreign partner must first become knowledgeable of the local customs and practices. Differences in values and notions of responsible business conduct between joint venture partners, for example, often lead to "communication, cooperation, commitment, and conflict resolution problems . . . , which in turn cause interaction problems that adversely influence joint venture performance."¹⁶

While consciously striving to understand cultural and legal differences, an RBE remains focused on and committed to its core beliefs and standards, procedures, and expectations of responsible business conduct. It abides by the laws of its home country and all applicable foreign laws, whichever are stricter. It develops a strategy to remain loyal to its core beliefs and standards while adapting to the culture and expectations of local markets.

COMBATING BRIBERY OF FOREIGN OFFICIALS

When doing business abroad, an enterprise should be aware of the strict rules and regulations that govern bribery in international transactions. In 1997, 34 nations signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This convention, established by the Organization for Economic Cooperation and Development (OECD), went into effect in 1999, and requires signatory nations to make the payment of bribes to foreign government officials a criminal offense. Before the adoption of the OECD convention and its implementing legislation, many nations allowed their enterprises to deduct the costs of bribing foreign government officials from their taxes.

Now enterprises operating in foreign markets are under increasing scrutiny and regulation in their home countries. For example, U.S. firms are governed by the Foreign Corrupt Practices Act (FCPA), which makes it unlawful to bribe foreign government officials to gain a business advantage. U.S. firms that conduct business internationally usually find it advisable to maintain rigorous corporate compliance programs to ensure that they comply with the FCPA and the laws of the other nations that are party to the OECD Convention.

The FCPA prohibits U.S. enterprises from using intermediaries such as an independent agent, joint venture, or foreign enterprise to make corrupt payments on the U.S. enterprise's behalf. These provisions require U.S. enterprises to develop business relationships with reputable and qualified partners and representatives. They encourage these enterprises to practice due diligence when working with foreign enterprises.

Due diligence may come in the form of investigating foreign representatives and joint venture partners to determine their status as a local business. The FCPA encourages enterprises to be aware of red flags. These indicators include unusual payment patterns or financial arrangements, a history of corruption, a refusal to pledge to uphold legitimate business practices, and a lack of transparency. Failure to comply with these provisions could lead to fines or imprisonment under U.S. law. See Appendix F for a detailed description of the Foreign Corrupt Practices Act.

ADHERING TO ANTI-MONEY LAUNDERING PROVISIONS

Using legitimate business to conceal the illegitimate origins of large sums of money—money laundering—has a destabilizing effect on the enterprises involved, on domestic financial institutions, and on society as a whole. An economy that enables laundering of illegitimate funds is vulnerable to organized crime infiltrating financial institutions and legitimate businesses and aggravating corruption in government. An emerging market economy

may be tempted to risk these disasters for the immediate flow of cash through the economy. However, having an image as a haven for money laundering will make it much harder to develop a reputation as a stable and secure environment for investment.¹⁷

Enterprises working with a foreign partner, or even with a domestic partner that has connections with U.S. financial institutions, should be aware that the anti-money laundering regimes and reporting of suspicious activity that have been required for several years have been extended to additional categories of financial institutions. Under U.S. Treasury regulations that have been promulgated, have been proposed, or are pending, financial institutions required to have an anti-money laundering program include not only banks, savings associations, and credit unions, but also securities brokers and dealers, casinos, operators of credit card systems, businesses engaged in vehicle sales, pawnbrokers, private bankers, and a number of other entities.

While many countries, including emerging market economies, have similar anti-money laundering provisions, the U.S. provisions may affect foreign operations through requirements for due diligence for correspondent accounts and private banking accounts. Under these regulations, a broad range of financial institutions outside of the United States are subject to exercising due diligence under the U.S. anti-money laundering regime if they maintain a correspondent account in the United States. Under some circumstances of enhanced due diligence, U.S. and other financial institutions may be required to gather detailed information before doing business with enterprises or individuals.

Even when an RBE is not technically a financial institution, the basic “know your customer” rule is responsible business conduct. This rule is important for an emerging market economy, in particular, to gain international acceptance. For example, an international body combating money laundering, the Financial Action Task Force on Money Laundering, advocates countermeasures that would restrict financial transactions with some countries. It has recommended or considered such restrictions for a number of countries thus far.¹⁸

PROTECTING THE ENVIRONMENT

Finally, when engaging in business in a foreign market, an enterprise should be particularly sensitive to issues involving protection of the environment. At a minimum, an RBE abides by the local laws and regulations designed to protect the environment. An enterprise has a social responsibility to examine the impact its operations may have on the local environment and adopt global best practices for protecting the environment.

Global best practices may be more demanding than local practices, but in a global environment, an RBE is expected to adopt the more stringent environmental protection requirements of the host government or its home government. Doing so often requires an RBE to self-regulate, because in emerging market economies the desire to attract foreign direct investment may encourage governments to be somewhat less inclined to enforce their own standards.¹⁹

SUMMARY

Responsible owners and managers apply all the perspectives, practices, and principles developed in the earlier chapters to meet the challenges that their markets present. Five issues are particularly challenging for enterprises in emerging market economies, although they are present in all markets:

1. Relationships with government officials and entities
2. Relationships with foreign governments and businesses
3. Role of the private sector in the regulatory process
4. Government contracting and procurement
5. Role of voluntary action

Business leaders and government must work together to develop the institutions, laws, regulations, and practices that contribute to good public governance and independent markets. Particular attention should be given to reducing corruption in the forms of bribery and extortion. Government must reduce the opportunities and motivations for corruption. This objective can be achieved through both good corporate governance and good public governance, applying the lessons of Chapters 5 through 8 of this manual.

An RBE is alert to opportunities to improve the business environment through its own responsible business conduct and through its association with other enterprises, civil society, and government. All enterprise decisions and activities aim to improve the RBE's business performance; to help build social capital in its economy; and to work with leaders in business, government, and civil society to develop the essential market-oriented legal framework and reliable judicial institutions.



RESPONSIBLE BUSINESS ENTERPRISE

Checklist

1. **What is our policy for working with government officials and entities?**
2. **What does an evaluation of our government's policies tell us?**
3. **How are we involved in working with other enterprises, civil society organizations, and government to improve market conditions?**

13 Responsible Business Practices Worksheet

RBE Worksheet 13 provides a tool to help owners and managers consider the responsible business practices discussed in this chapter. The worksheet may be photocopied for use within your organization. Owners, managers, and staff members should work together to compare and contrast current management practices with enterprise standards, procedures, and expectations or the reference standards discussed in this chapter. Expect significant give and take about what the relevant current standards and practices actually are; this discussion is part of the dialogue and engagement process an RBE wants to foster.

	Compliance	Risk Management	Reputation Enhancement	Value Added
Relationships with government officials and entities				
Role of the private sector in the regulatory process				
Government contracting and procurement				
Role of voluntary action				
Relationships with foreign governments and businesses				