

Say no to corruption – it pays!

Information for Norwegian businesses
operating in a global market



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS

■ Foreword

Norway has a policy of combating corruption at both the national and international level. Corruption undermines democracy, human rights and the proper functioning of an open market economy. Corruption imposes heavy costs on society, and can impede economic development and efforts to fight poverty.

The Government and the private sector share the responsibility for enforcing a zero tolerance policy towards corruption, and for building open and responsible institutions. Clarity, transparency and trustworthiness are important constituents of Norway's reputation.

Corruption can take many forms, and carries severe penalties. Through this brochure, the Ministry of Foreign Affairs wishes to inform the Norwegian public administration and businesses operating abroad about the consequences of corruption and the Norwegian legislation regarding this social evil. This is a revised edition of the brochure published by the Ministry in 2005.

Responsible management requires a carefully considered and clear business strategy. This brochure contains concrete advice on how businesses can prevent and deal with corruption. The Ministry challenges the private sector to say no to corruption – it pays!

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■ Challenges facing businesses

Corruption is not limited to foreign countries, and globalisation involves increased challenges for the Norwegian private sector. Businesses need to have clear anti-corruption policies for their activities in both developing and developed countries.

The 2007 Global Economic Crime Survey¹ revealed that corruption is increasing. Most of the major Norwegian businesses operating internationally have developed measures for combating corruption. Ethical guidelines, internal audits, training, and reporting routines are on the agenda. The challenge now is to implement and further develop the measures that have already been initiated.

By contrast, less than three quarters of small and medium-sized enterprises have introduced systematic anti-corruption measures.² This is a serious problem.

It can be difficult to distinguish between corruption and normal cultivation of business contacts. Although there are grey zones, businesses should avoid pushing the boundaries. It is important for businesses to spot the warning signs at an early stage, to prevent the occurrence of inappropriate situations. *(See center pages for further details.)*

1) Survey carried out by PriceWaterhouseCoopers and based on interviews with over 5,400 companies in 40 countries.

2) Corruption in International Business Transactions: The perspective of Norwegian firms, Chr. Michelsen Institute, 2004.

Businesses that engage in corruption undoubtedly do so because they hope to earn more money, and they gamble on not being caught. The consequences, however, can be severe. The disclosure or even rumours of corruption can quickly destroy the reputation of a business. Businesses may be excluded from markets and public tenders. If convicted, they face severe penalties. Export guarantees may be withdrawn. Jobs may be lost. Stock market values may fall. In the most severe cases, businesses may suffer permanent damage to their reputation.

Norway, like many other countries, is party to international agreements that contain obligations to combat corruption. These define the conditions for business activity both within and outside Norway's borders.

In Norway, measures to combat corruption have been tightened in recent years, in particular through the amendments to the Penal Code passed on 4 July 2003, which the Government described as "the world's most stringent rules against corruption." More and more countries are introducing equivalent legislation, not least to comply with the UN Convention against Corruption.

The world is moving towards a global standard. Norwegian businesses that operate internationally will therefore increasingly encounter legislation similar to Norway's in other countries.

Corruption takes many forms: examples of difficult situations

- You are the marketing director of a major international construction company and want to bid on a contract for building a bridge. You are contacted by the head of a competing foreign company, who suggests that you “cooperate”. This cooperation involves your company making an artificially high bid so that the competing company is awarded the contract. The competing company will inflate its bill by 5 per cent, and split the proceeds between those involved in the deal. The head of the other company also states that he has contacts who will ensure that his company gets the contract in any event, and that he knows people in the courts who will assist in the unlikely event that the cooperation is discovered.
- You represent a newly established company that produces high-tech equipment for the oil industry. Your company plans to participate in a competitive tender abroad, for a contract worth USD 300 million. You contact a local firm of consultants, which informs you that in order to be shortlisted, your company will have to pay USD 100 000 into an account in a known tax haven. The account belongs to the son of a former government minister. The consultants further recommend that your company submits a low bid, approximately 10 per cent below the normal price, to ensure that it is awarded the contract. The consultants will ensure that a new specification is issued after the tender process, so that your company can recoup the 10 per cent shortfall. Your company is also to charge an additional USD 1 million, of which 85 per cent will go to the consultants and 15 per cent to you personally. If you refuse to cooperate, your company will have no chance of winning the contract.
- You plan to launch your product in another country. You are told that it will take 6–12 months to obtain public approval for your product. You contact a public official, who says that for EUR 5 000 he can arrange for the product to be approved in one month.

■ Corruption carries severe penalties

– *Corruption is the abuse of confidence for personal gain*

Corruption occurs when a person requests, receives or accepts an offer of an improper advantage or reward by virtue of the position, office or assignment he/she holds. It is irrelevant whether it takes place in the private or the public sector. Both the person who offers such advantages and the person who accepts them may be convicted of corruption.

All forms of corruption are prohibited by Norwegian law. The legislation also applies fully to Norwegian nationals and persons resident in Norway who are involved in activities abroad. Facilitation payments, i.e. payments for services to which one is already entitled without paying extra, are also a form of corruption.

The Penal Code includes three sections that are particularly important in the fight against corruption. These are: section 276a, on corruption; section 276b, on gross corruption; and section 276c, on trading in influence. Those convicted of corruption face sentences of up to three years' imprisonment, while gross corruption carries a penalty of up to 10 years' imprisonment.

Trading in influence takes place when a person requests, offers or makes a payment or other reward for the purpose of causing the recipient to exert improper influence on a decision-maker, whereby that person hopes to secure an advantage that he/she would not otherwise have secured. A person may be convicted of trading in influence even if it is not proven that any advantage has been achieved. Both the person who offers and the person who receives an improper advantage are liable to a penalty.

The statutory prohibition applies to an "improper advantage". The Norwegian courts will generally apply the Norwegian standards, even when business has been conducted abroad. Businesses therefore have to observe *both* local and Norwegian laws.

■ Anti-corruption provisions of the Penal Code

§ 276a. Corruption

Any person who

- a) for himself or other persons requests or receives an improper advantage or accepts an offer thereof in connection with a position, office or assignment, or
- b) gives or offers any person an improper advantage in connection with a position, office or assignment shall be liable to a penalty for corruption.

Position, office or assignment in the first paragraph also mean a position, office or assignment in a foreign country.

The penalty for corruption shall be fines or imprisonment for a term not exceeding three years. Any person who aids and abets such an offence shall be liable to the same penalty.

§ 276b. Gross corruption

Gross corruption shall be punishable by imprisonment for a term not exceeding 10 years. Any person who aids and abets such an offence shall be liable to the same penalty.

In deciding whether the corruption is gross, importance shall be attached to, inter alia, whether the act has been committed by or in relation to a public official or any other person in breach of the special confidence placed in him by virtue of his position, office or assignment, whether it has resulted in a considerable economic advantage, whether there was any risk of considerable damage of an economic or other nature, or whether false accounting information has been recorded, or false accounting documents or false annual accounts have been prepared.

§ 276c. Trading in influence

Any person who

- a) for himself or other persons requests or receives an improper advantage or accepts an offer thereof in return for influencing the conduct of any position, office or assignment, or
- b) gives or offers any person an improper advantage in return for influencing the conduct of a position, office or assignment shall be liable to a penalty for trading in influence.

Position, office or assignment in the first paragraph also mean a position, office or assignment in a foreign country.

Trading in influence shall be punishable by fines or imprisonment for a term not exceeding three years. Any person who aids and abets such an offence shall be liable to the same penalty.

Application of the Penal Code in instances of corruption

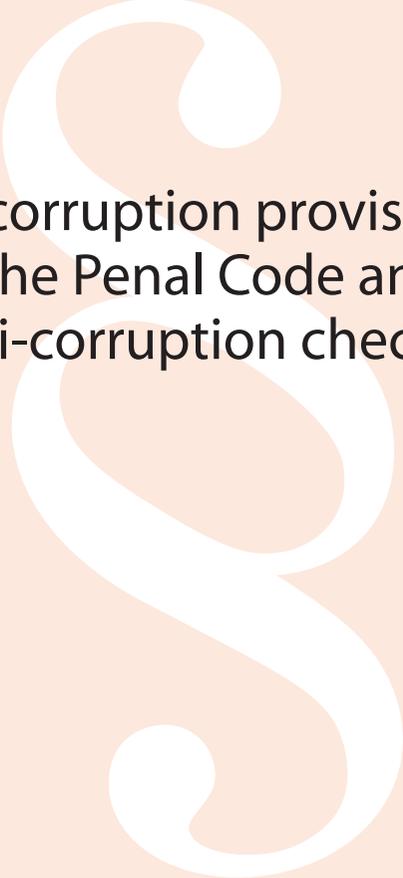
Large fines

In October 2004, a Norwegian oil company accepted a fine of NOK 20 million from the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) for contravention of section 276c of the Penal Code on trading in influence. The company had signed an agreement that involved paying a consultant USD 15.2 million to influence persons involved in making decisions concerning the award of oil and gas contracts in another country. The payment was to be made to a certain firm, which was to send the money on to a consultant who was the son of an influential politician. The advantage that was to be gained was deemed improper for various reasons, including the size of the payment and the fact that the true nature of the agreement had been concealed.

Severe prison sentences

In January 2003, a Norwegian citizen who had been a departmental head in an international organisation was convicted of corruption. He had received a total of NOK 5.2 million in bribes from suppliers. He was sentenced to five and a half years' imprisonment. In addition, the court ordered seizure of NOK 4.6 million and awarded the employer NOK 11.5 million in compensation.

On 1 July 2005, a Norwegian businessman was convicted of corruption for having bribed a foreign public servant. He had paid NOK 100 000 for a Swedish certificate of boatmanship. He was sentenced to 90 days' imprisonment, of which 60 days were suspended.



Anti-corruption provisions of the Penal Code and anti-corruption checklist

Removable insert:

Tip: photocopy and distribute to your colleagues

■ Anti-corruption provisions of the Penal Code

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■ Anti-corruption checklist

– *Corruption impedes free and fair market competition*

The fight against corruption is a management responsibility and must be pursued both systematically and with a long-term perspective. Simply firing corrupt employees is not enough. Reasonable suspicions of corruption must be reported to the police. Strategies should be developed, and the following measures should be implemented as a minimum:

- Undertake thorough studies of the risk of corruption in the relevant markets.
- Ensure that all employees are familiar with the Norwegian and relevant foreign legal provisions on corruption.
- Introduce ethical guidelines, regular internal audits and routines for detecting irregularities.
- Consider establishing a contact point, preferably outside the business, that employees can turn to if they have any suspicions of corruption.
- Ensure that employees, intermediaries and agents are involved on a regular basis in measures to reduce the risk of corruption.
- Be particularly aware of roles in which employees could come under strong pressure to offer or accept bribes. Job rotation and other measures to reduce the risk of corruption should be considered.
- Check the references of employees, agents and partners who represent the business and, insofar as possible, keep a close eye on their activities.
- Require that employees, intermediaries and agents agree to comply with the business's rules for preventing corruption.
- Maintain a high ethical standard and avoid circumstances that could bring impartiality into question.
- When faced with a difficult situation, focus on mutual interest in working together in an open, lawful manner. Suspicions of corruption can have extremely serious consequences.
- Seek the advice of experts if necessary.

Advice and tools for combating corruption

Businesses that need help to develop and improve their anti-corruption efforts can contact the Confederation of Norwegian Enterprise (NHO), the Norwegian Confederation of Trade Unions (LO), trade organisations, Norwegian embassies or Innovation Norway (see the list of websites at the end of this brochure). NHO has developed a template for information posters on whistleblowing, as well as practical guides on combating corruption. The NHO publication “*Crossing the line?*” is a useful tool for influencing attitudes and practices in relation to gifts, hospitality and expenses.

Transparency International has a chapter in Norway. Some of Norway's largest businesses are members of the organisation, which provides information on the principles that businesses should apply in their efforts to fight corruption.

The Ministry of Foreign Affairs supports the website www.business-anti-corruption.com, which is aimed at small and medium-sized businesses. The website contains information on corruption in developing countries categorised by sector (type of corruption) and level (individual, business or political). It also offers tools for identifying and avoiding corruption in contracts, and guidelines on how businesses can integrate anti-corruption measures in their policies and practice.

The Norwegian Agency for Development Cooperation (Norad) supports the U4 Anti-Corruption Resource Centre (www.u4.no), which includes information on corruption in the private sector. The website also features a helpdesk for aid agencies that face corruption-related problems in developing countries.

■ Norwegian anti-corruption efforts

– *Corruption undermines democracy*

Corruption undermines good governance, hinders economic and social development, and often has the most serious ramifications for the poorest countries. The best interests of society and business are compromised. Corruption is a serious crime that impedes free and fair competition. The Norwegian authorities therefore participate actively in the fight against corruption nationally and internationally.

National initiatives

In the summer of 2004, the Norwegian Government launched an action plan for combating economic crime. An important aim of the plan is to ensure that legislation and other measures are consistent with current international standards and obligations. This also helps to ensure that businesses operate under fair competitive conditions.

Pursuant to the action plan, legislative changes have been introduced to strengthen the control of financial information. New rules have been introduced regarding the duty to implement measures that facilitate internal notification concerning censurable conditions (see section 3-6 of the Working Environment Act), as have new ethical guidelines for the civil service. The Police and the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) have intensified their efforts to combat corruption and economic crime, and all police districts now have their own economic crime teams.

There is widespread agreement internationally that the risk of corruption in the public sector (i.e. where private actors bribe public officials) is particularly significant in relation to public procurements, the processing of permits, and similar services where decisions are largely based on individual discretion. In January 2007 the Norwegian Government implemented new and improved rules regarding public procurement. Suppliers who have

been convicted of corruption, fraud or money laundering are to be excluded from tender processes.

The Ministry of Foreign Affairs has established a central control unit with responsibility for monitoring that financial management in the Foreign Service complies with the applicable regulations, instructions and routines. In addition, the Ministry of Foreign Affairs has established an external whistleblowing service, prepared an information poster on whistleblowing, and developed guidelines on how to handle cases of suspected financial irregularities and/or corruption.

International initiatives

The Norwegian Government prioritizes anti-corruption efforts in both its development and foreign policy agendas. Corruption drains countries of large sums every year, presenting a serious obstacle to sustainable development and state-building. Corruption is therefore a major issue that Norway brings up regularly in dialogues with bilateral and multilateral cooperation partners.

Corruption clauses are being systematically incorporated into all cooperation agreements, so that the agreements can be terminated if corruption is detected in projects financed by Norway. The same applies to support agreements under the EEA financial mechanisms, which emphasise transparency and good governance.

Norway is participating actively in promoting the implementation of the UN Convention against Corruption. Further, Norway is supporting a network of anti-corruption experts, with participation from some developing countries. The network offers a forum for dialogue between prosecution authorities, courts and other similar bodies. The Ministry of Foreign Affairs and Norad are also working to increase knowledge and attention regarding illicit capital flows and their effect on development.

The Government will also present a White Paper on corporate social responsibility in 2008, where anti-corruption is an important element.

■ On the international agenda

– *Corruption is found in all countries*

Bribes and other forms of corruption have long been accepted as a necessary part of doing business in many parts of the world. Such practices used to be regarded mainly as an internal affair of the country concerned. Until 1995, Norwegian businesses could even qualify for tax relief for documented expenses incurred in connection with dubious payments (bribes) abroad. Over the last 10 years, there has been a move away from this acceptance and towards the criminalisation of corruption.

The Stolen Asset Recovery (StAR) Initiative report estimates that bribes amounting to USD 20–40 billion per year are paid to public officials in developing countries and transitional economies (not including industrialised countries). Moreover, the flow of money from criminal activities is estimated to be at least USD 1 trillion. These estimates do not factor in the damaging effects of corruption, which may include everything from loss of investments, loss of profits and decline in a country's economy, to increased poverty, greater child mortality and greater social inequality.³

All over the world, in both the North and the South, there is growing awareness and understanding of the damage corruption causes to society, and of its criminal nature. There is therefore also growing support for common rules that apply across national borders. This means that businesses must expect to encounter anti-corruption legislation that is similar to Norwegian legislation when they are operating abroad.

3) The StAR report of June 2005 was prepared by the World Bank and the UN Office on Drugs and Crime.

Important international initiatives and processes

The **UN Convention against Corruption** came into force in December 2005, and was ratified by Norway on 29 June 2006. The Convention includes provisions on preventative measures, criminalisation, international cooperation, asset recovery, technical assistance and assessment. Parties to the Convention are to develop anti-corruption policies. A number of developing countries already have such policies in place, while others are in the process of preparing them. The Convention is supported widely with ratification by over 100 States, and the number is increasing .

The **UN International Anti-Corruption Day** is on 9 December.

The **UN Global Compact** brings together 5,000 companies and organisations from all over the world. Members are expected to follow ten principles in the areas of human rights, labour, the environment and anti-corruption. Members are to submit and publish reports on implementation of the principles in an annual Communication on Progress.

The **Council of Europe Criminal Law Convention on Corruption** of 1999 encompasses active and passive corruption in both the private and the public sector. Norway ratified the Convention in 2004, and is a member of the Group of States against Corruption (GRECO), which monitors States' compliance with these anti-corruption standards.

The **Council of Europe Civil Law Convention on Corruption** of 1999 deals with the civil law aspects of corruption. Its measures include enabling persons who have suffered damage as a result of corruption to claim compensation. Norway ratified the Convention in 2007.

The **OECD Convention against Bribery of Foreign Public Officials in International Business Transactions** is also of great importance to

the Norwegian private sector. Norway ratified the Convention in 1998, and it came into force in 1999. The purpose of the OECD Convention is to establish a common framework and equal competitive conditions for companies in all Convention countries. The Convention makes it a criminal offence for any person intentionally to offer or give a foreign public official any undue advantage in exchange for illegal actions. This also applies to persons who attempt or are accessory to such practices. The Convention also applies to the bribery of foreign public officials in countries that are not party to it. The Convention is binding on all OECD states plus Argentina, Brazil, Bulgaria, Chile, Estonia, Slovenia and South Africa.

The **OECD Guidelines for Multinational Enterprises** constitute a set of voluntary recommendations to businesses in all the major areas of business ethics, including combating bribery and corruption. Adhering countries comprise all 30 OECD member countries and ten non-member countries who have committed to promote the Guidelines among multinational enterprises operating in and from their territories. National Contact Points (NCP) in adhering countries are to resolve specific instances related to the Guidelines, create a platform for dialogue, promote the Guidelines, and report annually to the OECD. The Norwegian NCP is made up of representatives from the Ministry of Foreign Affairs, the Ministry of Trade and Industry, the Norwegian Confederation of Trade Unions (LO) and the Confederation of Norwegian Enterprise (NHO).

The anti-corruption practices of the **World Bank** have become increasingly stringent. The Bank maintains its own blacklist of firms and persons with which it has severed its ties due to corruption. The list consists of 340 enterprises and individuals, and is available on the World Bank website.

The **EU** has adopted two directives (2004/17/EC and 2004/18/EC) on corruption and the consequences of corruption. Enterprises that are

convicted of bribery or corruption in a member state may be disqualified from participating in tenders in other member states. Several EU countries have already introduced blacklisting in conjunction with public procurement.

Other **international rules** and the **national legislation of other countries** may also be relevant for Norwegian exporters. The WTO Agreement on Government Procurement (1996) is an example of this, as is the US Foreign Corrupt Practices Act (1977). Norwegian companies that are listed on US stock exchanges are subject to the Foreign Corrupt Practices Act. Norwegian companies that participate in joint ventures with US companies may also be subject to this legislation.

Norway is participating in various international anti-corruption initiatives. One of them is the **Extractive Industries Transparency Initiative (EITI)**, whose purpose is to shed light on the flow of funds between companies in the extractive industries and the authorities in the countries in which these companies operate. Companies operating in EITI-implementing countries are obliged to comply with EITI requirements. Norway is committed to implementing the EITI criteria, supports the initiative politically and financially, and has hosted the secretariat in Oslo since 2007.

■ Would you like to find out more?

The following websites provide further useful information:

TOOLS

- Business anti-corruption portal: www.business-anti-corruption.com
- NHO guide, ...Crossing the line: www.nho.no/files/crossing_the_line_web_2.pdf
- U4 Anti-Corruption Resource Centre: www.u4.no
- Business principles for countering bribery:
www.transparency.org/global_priorities/private_sector/business_principles

NORWAY

- Innovation Norway: www.innovasjon Norge.no
- Lovdata (Norwegian legislation online): www.lovdata.no
- Norad: www.norad.no
- Norfund: www.norfund.no
- Norwegian embassies and consulates: www.norway.info
- Norwegian Confederation of Trade Unions: www.lo.no
- Norwegian Guarantee Institute for Export Credits: www.giek.no
- The Norwegian Ministry of Foreign Affairs: www.regjeringen.no/en/dep/ud
- The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime: www.okokrim.no
- The Ministry of Justice and the Police: www.regjeringen.no/nb/dep/jd
- Transparency International Norway: www.transparency.no
- The Confederation of Norwegian Enterprises: www.nho.no/korrupsjon

INTERNATIONAL

- EU: www.eumap.org/topics/corruption
- Extractive Industries Transparency Initiative (EITI): www.eitransparency.org
- OECD Guidelines for Multinational Enterprises: www.oecd.org

- The Council of Europe: www.coe.int/t/dg1/Greco
- The World Chambers Network: www.worldchambers.com
- The World Bank: www.worldbank.org/publicsector/Anticorrupt
- The International Chamber of Commerce: www.iccwbo.org/policy/anticorruption
- The Anti-Corruption Gateway for Europe and Eurasia: www.nobribes.org
- Transparency International: www.transparency.org
- UNODC and corruption: www.unodc.org/unodc/en/corruption/index.html
- UN Global Compact: www.unglobalcompact.org

OTHER COUNTRIES

Denmark:

Trade Council of Denmark: www.um.dk/da/menu/Eksportraadgivning

Germany:

Federal Ministry for Economic Cooperation and Development:

www.bmz.de/en/index.html

GTZ: www.gtz.de/en

Sweden:

Swedish Partnership for Global Responsibility:

www.regeringen.se/sb/d/2657/a/14557

www.institutetmotmutor.se

Canada:

Export Development Canada: www.edc.ca/english

Department of Justice Canada: www.canada.justice.gc.ca

USA:

US Department of Justice: www.usdoj.gov/criminal/fraud/fcpa

US Government Export Portal: www.export.gov/advocacy



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