

# ANTI-CORRUPTION GUIDE FOR JUNIOR MINING COMPANIES

A guide on managing risks during licensing and permitting

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**Transparency International Australia (TIA) is the Australian national chapter of a global coalition against corruption, operating in over 100 countries.**

**Through Transparency International (TI) we are part of a global movement leading the fight against corruption. Each chapter is independent and unique, and together we aspire to a unified vision: a world free of corruption.**

**Our mission is to tackle corruption by shining a light on the illegal practices and unfair laws that weaken our democracy. We shine a spotlight through our research, which informs our evidence-based advocacy to build a better system of governance for all.**

**[www.transparency.org.au](http://www.transparency.org.au)**

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Cover: [unsplash.com/@kctinman](https://unsplash.com/@kctinman)

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# ANTI-CORRUPTION GUIDE FOR JUNIOR MINING COMPANIES

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## TABLE OF CONTENTS

### 2-4

#### Quick guide

### 5

#### Introduction

### 6-15

#### Getting started

What are the costs of corruption for me and my business?

Why is licensing a corruption hotspot?

How do we prepare for a high-risk jurisdiction?

### 16-30

#### High-risk areas

Licence fees

Facilitation payments

Gifts & political influence

Community consultation

Third parties

### 31-43

#### Ways to prevent corruption

What policies and procedures do we need?

How can we make sure our policies and procedures are implemented?

What practical strategies could help?

## **THIS GUIDE IS FOR JUNIOR MINING COMPANIES WITH EXPLORATION AND MINING PROJECTS IN HIGH-RISK JURISDICTIONS**

Transparency International's Accountable Mining Programme has developed this guide to support junior mining companies make good decisions and avoid corruption.

The guide contains:

- + Guidance on five high-risk situations
- + Practical scenarios, red flags and actions
- + A list of anti-corruption policies and procedures
- + Recommended resources and links

You can start anywhere in the guide, so choose the section that is most relevant to you.

The information, principles and resources in this guide are applicable to any junior mining company operating in a high-risk jurisdiction. For Australian mining companies, the guide makes reference to Australian legislation.

### **USE THIS GUIDE TO LEARN**

- + **Why investors and regulators expect you to prevent corruption in your operations**
- + **What you need to know before starting business in a high-risk country**
- + **How to respond to the red flags in licensing and permitting**
- + **Which policies and procedures you need to put in place to stop corruption in your business**

# QUICK GUIDE

## WHAT ARE THE COSTS OF CORRUPTION FOR ME AND MY BUSINESS?

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Bribery and corruption affect:

- + You, your business and career
- + Your investors and directors
- + The lives of people in the country where you work

Failing to have systems in place to prevent, detect and address bribery and corruption in your business can result in significant legal, financial and reputational damage.

## HOW DO WE PREPARE FOR A HIGH-RISK JURISDICTION?

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Before starting exploration or a new mining project, you need to understand what kinds of business and corruption risks you may be exposed to in the target country.

To assess the corruption risks, you need to gather information about:

- + The general level of corruption risk in the country, and
- + The specific risks associated with securing exploration or mining rights and other related permits

## WHAT ARE THE HIGH-RISK AREAS WITHIN LICENSING AND PERMITTING?

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For each of these five high-risk areas, there are specific corruption risks, red flags and good practices you need to be aware of.

The key areas are:

- + Licence fees
- + Facilitation payments
- + Gifts & political influence
- + Community consultation
- + Third parties

## WHAT POLICIES AND PROCEDURES DO WE NEED?

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There are four fundamental policies and procedures you should have in place.

- + Code of conduct
- + Anti-bribery and corruption policy and procedure
- + Gifts and hospitality policy
- + Third party anti-corruption policy

## HOW CAN WE MAKE SURE OUR POLICIES ARE IMPLEMENTED?

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To ensure the policies are effectively followed, you need to make them part of the day-to-day business of your company. The following implementation mechanisms can help:

- + Values and commitment from leaders
- + Whistleblower channels
- + Governance and Board oversight
- + Training
- + Monitoring and review

## WHAT PRACTICAL STRATEGIES COULD HELP?

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Some practical strategies to prevent corruption in your business include:

- + Building your in-country network
- + Developing an integrity field manual
- + Demonstrating transparency

# INTRODUCTION

## CORRUPTION IS BAD FOR BUSINESS

Bribery and corruption affect:

1. You, your business and career
2. Your investors and fellow directors
3. The lives of people in the country where you work

Failing to have systems in place to prevent, detect and address bribery and corruption in your business can result in significant legal, financial and reputational damage.

This guide is for junior mining companies wanting to reduce corruption risks in their operations.

Start anywhere in the guide. Choose the section that is most relevant to you.

### GETTING STARTED

- + What are the costs of corruption for me and my business?
- + Why is licensing a corruption hotspot?
- + How do we best prepare for a high-risk jurisdiction?

### HIGH-RISK AREAS

- + Licence fees
- + Facilitation payments
- + Gifts and political influence
- + Community consultation
- + Third parties

### WAYS TO PREVENT CORRUPTION

- + What policies and procedures do we need?
- + How can we make sure our policies are implemented?
- + What practical strategies could help?

# GETTING STARTED

This section explains why you need to prevent corruption in your business and what you need to know before applying for exploration and mining rights in high-risk jurisdictions.

Read this section to get answers to these questions:

- + What are the costs of corruption?
- + Why is licensing a problem?
- + How do we prepare for high-risk jurisdictions?



# WHAT ARE THE COSTS OF CORRUPTION FOR ME AND MY BUSINESS?

## Bribery and corruption affect

1. You, your business and career
2. Your investors and directors
3. The people in the country where you work

Failing to have systems in place to prevent, detect and address bribery and corruption in your business can result in significant legal, financial and reputational damage.

## LEGAL CONSEQUENCES

Bribing a foreign official is a criminal offence with serious consequences for you and your business.

- + Bribery can take different forms and is not limited to payments of cash.
- + Directly or indirectly providing a benefit or anything of value to a foreign government official to influence their decisions or their conduct in order to gain a business advantage may be a violation of foreign bribery laws.

**Bribes** can take many forms including offers of employment, business contracts, scholarships, donations, designer goods, entertainment, travel.



**Australian anti-corruption laws apply to Australian businesses in any country, so adopting (corrupt) local standards may seem expedient in the short term, but leaves a company vulnerable to prosecution in an Australian court, and at the mercy of any competitor or part of a supply chain wishing to report to authorities.**

David Tonkin, Chief Counsel, Legal, Procurement & Fraud,  
Australian Trade & Investment Commission (Austrade)

**Enforcement actions are increasing. Companies need to take the legal risks of corruption seriously.**

Strict domestic and foreign laws apply to conduct overseas.

- + Directors, managers and employees involved in bribery face criminal prosecution and penalties.
- + Australian companies are subject to the *Criminal Code Act 1995* (Cth). The far-reaching application of the *UK Bribery Act 2010* and the US *Foreign Corrupt Practices Act* may also cover the conduct of Australian companies with business overseas.
- + Under the *UK Bribery Act* companies can also be **liable for failing to prevent bribery** by their directors, managers, employees and agents. Companies with 'adequate procedures' (anti-bribery controls and systems) may avoid prosecution under this offence. The Australian government has proposed similar legislation.
- + The penalties for breaking the law are significant and apply to both the individual and the company as a whole.

Currently in Australia, an individual guilty of bribery faces up to 10 years imprisonment or a fine of up to 10,000 penalty units (AUD 2.22 million in 2020). Companies involved in bribery can be fined 100,000 penalty units or 10% of their annual turnover – whichever is greater.

Foreign bribery cases in the United States have settled for tens millions of dollars ([SEC Enforcement Actions: FCPA Cases - online](#)).

## INVESTOR FALLOUT

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Investors want to be sure that their investment will be profitable and free of unforeseen liabilities.

Trends in investment:

- + Increasing focus on transparency in mining deals
- + Increasing scrutiny of company systems
- + Increasing emphasis on ethics and integrity



**Bribery and corruption compromise the discovery outcome which is the prime reason investors invest in junior exploration companies. As an investor, I stay away from companies that act like cowboys in a casino with no rules. These days there's no excuse for a cavalier attitude to bribery and corruption. We know the risks in exploration are very high, and to compound these with the risks set in motion by paying bribes and acting corruptly, is a double down. Good luck if you don't think the consequences apply to you.**

Peter Williams, Director, Elemental Royalties

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Not having any policies and procedures on integrity and anti-corruption is a major red flag for investors.

A potential investor (whether a bank, asset manager, private equity investor or major mining company) will want to be sure that you obtained project rights in accordance with the law.

If you are doing business in a high-risk jurisdiction, you can be sure that there will be a higher level of scrutiny.



As part of their integrity due diligence, investors will also want to see that you have robust internal systems to prevent, detect and address bribery and corruption.



**BHP is committed to upholding the highest standards of ethical conduct and expects the same from all of our partners, investments and contractors. We perform due diligence for all of our partners, investments and contractors including on their policies to prevent bribery and their prior conduct in obtaining their licences and permits.**

Tim Robinson, Chief Compliance Officer, BHP

Businesses that do not raise their standards to meet these expectations will find it increasingly hard to attract investment. Having in place proper anti-bribery and corruption policies and procedures that are proportionate to your size and risk exposure just makes good business sense.

A company's performance on environmental, social and governance (ESG) issues – which includes ethics and anti-corruption compliance – is now a basic consideration for many investors.

Investing based on ESG criteria has skyrocketed.

**33%** of all funds managed in the United States and 37% in Australia are in sustainable investments.

**3/4** of retail and institutional investors globally apply ESG principles to at least a quarter of their investments.

**56** stock exchanges now require some form of ESG reporting by their listed companies.

## LOSS OF LICENCE TO OPERATE

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Without the acceptance or support of host communities and the broader public in the countries where you want to explore or mine, you may find that your projects encounter significant resistance.

Engaging in or being associated with bribery and corruption has significant reputational consequences.

Information travels quickly on the internet and so questionable conduct will be detected.

Demonstrating the company's values and commitment to act with integrity will be critical to securing social licence to operate.

In any case, having a reputation or history of corruption makes a company more vulnerable to

further extortion and demands for bribery.

You can avoid this vicious circle by implementing strong policies and having a vocal commitment against all forms of bribery and corruption that echoes from the Board right through to frontline staff.



**Australian mining and exploration companies which ignore ethical practices in foreign jurisdictions do so at their own peril and put their shareholders' investments at jeopardy. Not only is participation in corrupt practices generally illegal it is ultimately counter-productive since it demonstrates to authorities that you and your company can be manipulated, are corrupt and not to be trusted. Corruption puts your company's key assets – its tenements (rights) – at risk of cancellation and forfeiture.**

Adrian Larking, Councillor (2003-2017) and Life Member,  
Association of Mining & Exploration Companies, Australia (AMEC)

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# WHY IS LICENSING A CORRUPTION HOTSPOT?

**The licensing and permitting phase of exploration and mining is known to be highly prone to corruption.**

- + **The OECD (2016) estimates a quarter of all corruption cases in the oil, gas and mining sectors globally arise at the very start of those extractive projects**
- + **Transparency International's Accountable Mining Programme has conducted in-depth research into the corruption risks in the licensing and permitting processes of close to 25 countries.**

At the licensing stage you are interacting with government officials and local communities. The stakes are high.

Securing the necessary exploration, mining rights and related permits such as environmental licences, is a deal-breaker for any mining company. Without these rights, your business cannot go ahead.

If you do not anticipate the corruption risks involved or have the systems to properly deal with challenges when they arise, you are putting yourself and your business at risk.

Other phases of the project lifecycle may also be vulnerable to corruption such as site inspections by regulators and collection of taxes and royalties. Many of the risk controls and strategies in this guide are relevant to all business activities - not only licensing and permitting, so getting things right from the start will set you up well for the life of your operations.



# HOW DO WE PREPARE FOR A HIGH-RISK JURISDICTION?

## UNDERSTAND THE RISKS YOU FACE

Before starting exploration or a new mining project, you need to understand what kinds of business and corruption risks you may be exposed to in the target country.

To assess the corruption risks, you need to gather information about:

- + the general level of corruption risk in the country, and
- + the specific risks associated with securing exploration or mining rights and other related permits

An integrated approach to risk management is efficient and effective – as risks are often interlinked. Assess corruption risks together with security and other business risks.

## WHAT ARE THE RISKS IN THE COUNTRY CONTEXT?

There are a range of databases and tools that provide information about the level of corruption risk in different countries.

Three publicly available tools are:

- + [Transparency International's Corruption Perception Index](#) (updated annually)
- + [Austrade Summary of Corruption Risks in Austrade jurisdictions \(2020\)](#)
- + [GAN country risk reports](#)

Other factors that affect your risk exposure and that you should be aware of include: any upcoming elections; political tension/instability; participation of political elites in mining industry; court cases, particularly on constitutional matters such as Indigenous rights or land rights; and community conflicts/social unrest related to resource extraction.

## WHAT ARE THE RISKS IN THE LICENSING PROCESS?

The table below lists some of the corruption risks in the licensing process.

### Are these corruption risks present in the country you are planning to enter?

Building your in-country networks and relationships will help you to obtain relevant information to

understand to what extent you could be exposed to these risks.

See the High-Risk Areas in the next section for details on the areas that are most prone to corruption.

For more examples, see Transparency International's [Mining Awards Corruption Risk Assessment Tool](#) and country risk assessment reports.

Legal/regulatory factors	Effect on levels of corruption risk
Application and evaluation criteria	Increased corruption risk if application requirements and evaluation criteria are unclear or vague
Application fees	Increased corruption risk if fees payable are unclear, frequently change or discretionary
ESIA requirement	Increased corruption risk if requirements for environmental and social impact assessment are not clearly defined
Free, Prior and Informed Consent and community engagement	Increased corruption risk if requirements for community engagement are not clearly defined
Method of licence allocation	Different corruption risks arise for non-competitive (first-come, first-serve) allocation processes, compared to competitive (tender, auctions) processes
Power to revoke	Increased corruption risk if government's power to revoke is based on vague criteria and broad ministerial discretion
Reason for rejection	Increased corruption risk if the relevant government authority is not required to provide reasons for rejecting an application
Right of review/appeal	Increased corruption risk if no right to seek review of government decision in court
Surface rights/access rights	Increased corruption risk if process for acquiring access to land is not clear; increased corruption risk if land titles, including traditional land rights, are not properly registered.

<b>Institutional factors</b>	<b>Effect on levels of corruption risk</b>
Cadastre/licence register	Increased corruption risk if register is not digital or online, or if information about allocated mining blocks and licences granted is not up-to-date.
Cadastre agency – location	Increased corruption risk if agency office located in regional area and not adequately funded
Government agencies – funding	Increased corruption risk if funding of agency is low or inadequate
Government officials – experience and expertise	Increased corruption risk if government officials in the licensing agency are not experienced or do not have the expertise to properly administer the process
Government officials – wages	Increased corruption risk if wages of government officials in relevant departments are low
Government agencies – number	Increased corruption risk if many agencies involved and coordination between them is low
Ministerial discretion	Increased corruption risk if Minister has broad discretion; even higher if Minister's office has a history of making decisions contrary to technical advice/if the Minister does not receive and consider expert technical advice
Planned regulatory or legal reform	Increased corruption risk is possible depending on the context and the purpose of the reforms
State-owned companies	Increased corruption risk if state-owned companies are present and level of risk is higher if they are required to have a stake in the project



photo: [www.istockphoto.com/portfolio/ejafjallajokull](https://www.istockphoto.com/portfolio/ejafjallajokull)



# HIGH-RISK AREAS

**When applying for exploration or mining rights and related permits and approvals, you will likely encounter several high-risk areas:**

- + Licence fees
- + Facilitation payments
- + Gifts & political influence
- + Community consultation
- + Third parties

*Learn about the bribery and corruption risks that can arise in each of these areas and how to respond.*

# LICENCE FEES

## OVERVIEW

The fees and charges involved in applying for an exploration or mining licence and related permits can be a problem area for corruption when there is no clear and reliable official information about:

- + The value of the fees
- + What the fees are for
- + Who/which government body they are to be paid to

It is important that you obtain advice about the fees and charges that are payable otherwise you risk being unwittingly caught up in extortion or making a corrupt payment.

## CORRUPTION RISKS

If you are not familiar with standard fees and costs within the jurisdiction, you and your business may be vulnerable to risks including:

- + Engaging in bribery of a foreign official by paying more than is due and/or paying directly to an individual rather than a government entity
- + Extortion through the payment of fabricated fees and charges or payment of excessive amounts
- + Creating a reputation for yourself and your business as an easy target for repeat requests for payment

## RED FLAGS

### Red flags scenario

Iron Land Co was looking to begin exploration in a foreign country. Mr Anderson, a company representative, travelled to the country to visit the proposed site and apply for an exploration permit. The regulations setting out the permit fees were not available on the internet and the

website of the licensing agency did not contain any information.

Mr Anderson visited the local office of the licensing agency to make enquiries. The government official told him a price that Mr Anderson thought was excessive based on the rates in other

countries and explained that several ancillary fees were also payable. Mr Anderson negotiated a lower rate and was then told he should pay in cash when he submitted his application form. The government official would receive his application personally.

### RED FLAGS

**External:** regulatory uncertainty – purpose of additional fees unclear – cash payment directly to official

**Internal:** failure to obtain legal advice – failure to seek other opinions – negotiation of the fee

## GOOD PRACTICE

### Good practice scenario

After being informed about the fees payable by the official in the licensing agency, Mr Anderson contacted the national chamber of mines to make enquiries about what he had been told.

He learned that the amount he had been quoted was several times more than what was to be paid, although the fees seemed to change frequently and there was often confusion about the amount payable.

The person he spoke to suggested he seek local legal advice and also submit his application in the capital city as the regional office had a reputation for questionable conduct and for irregularities in the way it handled licence applications.

## CHECKLIST AND RESOURCES

### Key questions to consider:

1. Have you read the application requirements and understood the documents you must provide and fees you must pay when applying for a licence or permit?
2. If the requirements are unclear, have you asked other companies in the country about their experience and how they identified the correct fees and payment process?
3. Have you explained the situation to your board and obtained legal advice if required?

### Resources/where to get help:

- + National chamber of mines/ commerce
- + Your country's embassy
- + Your country's export development /trade agency

# FACILITATION PAYMENTS

## OVERVIEW

Facilitation payments are essentially small bribes. They are payments designed to get a government official to perform a standard government action or service, often in situations where the person making the payment wants them to 'speed up'.

Facilitation payments are often demanded by government officials or offered by companies at moments of critical vulnerability for the business – such as when they are applying for the licences and permits needed to start exploration or mining.

Internationally, it is recognised that there is no clear dividing line between a facilitation payment and a bribe. Companies are best advised to impose an absolute prohibition on facilitation payments. Even in Australia, which has some narrow exemptions for facilitation payments, government authorities advise against making facilitation payments.

### IS THERE A DISTINCTION BETWEEN A FACILITATION PAYMENT AND A BRIBE?

**'No, not really. Such payments are difficult to distinguish from bribery. Even if you prove that a benefit constitutes a legitimate facilitation payment defence under Australian law, you may be liable for bribery under the local laws that govern the foreign public official. Such payments are questionable from the point of view of business ethics. They are banned in most OECD countries.'**  
 Austrade, Facilitation Payments – Just Say 'No'.

## CORRUPTION RISKS

If your business does not have proper policies and processes in place, you risk having your employees and/or agents and advisors offering facilitation payments or agreeing to requests for facilitation payments thinking they are legitimate payments.

This may expose you and the company to criminal prosecution for bribery by the host country and in your home country.

It also makes you and your company vulnerable to a never-ending spiral of demands for more bribes.



## MOST COUNTRIES BAN FACILITATION PAYMENTS

**Most countries, including the UK and Canada, prohibit companies incorporated under their laws from making facilitation payments overseas. Many countries do not distinguish between a bribe and a facilitation payment made to local government officials.**

### Key things to look out for:

- + Excessive use of cash payments and employee or agent per diems
- + Agents who do not want employees present
- + when interacting with government officials
- + Evidence of payments that do not appear in the company's records
- + Unexplained transactions or expenses recorded as 'administration fees' without any supporting documentation or receipts

## RED FLAGS

### Red flags scenario

Goldilocks Minerals Ltd is liaising with a government department to obtain an environmental licence required for an exciting new project. Despite submitting the application some time ago, Goldilocks has not heard any news about the status of its application. A representative from the company meets with the

government official responsible for handling the file. The official says that the delays are normal, but with a 'consulting fee' of US \$500 he could get the application in front of the right person quickly and then processed. Otherwise, he warns, the application might 'get lost' in the department's system or face interminable

delays. Unsure what to do and feeling the pressure from the company, the representative makes the payment in cash and the company secures the licence. The company's representative knows that senior management will be happy now the project can get started.

## RED FLAGS

**External:** Fee for no valid purpose – threat of delay/offer of favourable treatment – excessive charges – cash payment

**Internal:** No clear policy against facilitation payments – culture of 'business at any cost' – no procedure to report requests for facilitation payments to management



## GOOD PRACTICE

### Good practice scenario

Mine Co. started working in a new country. While travelling by car, Mine Co.'s staff are stopped by police who take their passports and refuse to return them unless they pay \$200 each. The staff

are in an isolated area and feel unsafe. Aware that the company's policy prioritises the safety of employees, they pay the police and continue travelling. As soon as they reach their destination,

they notify the relevant manager at Mine Co about what happened and how much was paid. Mine Co then informs the local embassy of their home country about the incident.

## CHECKLIST AND RESOURCES

### Key questions to consider:

1. What are the chances of being asked to make a facilitation payment in the country?
2. Do you have a clear position on facilitation payments and process for your employees and agents to follow if they are asked to make a facilitation payment?
3. How would you handle a report from an employee or agent that they have encountered a demand to make a facilitation payment?

### Resources/where to get help:

- + Austrade, [Facilitation payments – Just Say No](#)
- + Transparency International, [RESIST: Resisting Extortion and Solicitation in International Transactions](#)
- + Transparency International UK, [Countering Small Bribes](#)

# GIFTS & POLITICAL INFLUENCE

## OVERVIEW

**Gifts, hospitality and entertainment** are high risk for corruption.

The interactions that you and your business have with government officials and politicians enters a corruption red zone when you, your employees and agents offer money, gifts and other benefits that could be seen as being an attempt to

influence government decisions or policy-making.

Companies need to implement clear and effective policies about the circumstances in which they will provide gifts and benefits to government officials and political parties, or they could find themselves in breach of bribery laws.

**Gifts and benefits include designer goods, entertainment expenses, travel, employment opportunities, payment of tuition fees.**

**Political contributions and political influence can take the form of donations to political campaigns, sponsorship or purchase of tickets to political events, and direct or indirect lobbying.**

**Lobbying and donations** to political parties are another area where you need to tread carefully.

Whether working alone or with others through an industry association, companies that attempt to that attempt to influence lawmakers to change

laws and regulations to their benefit – such as the opening up of new mining areas or the lowering of safeguards and standards in licensing processes to fast-track approval times – can face significant reputational costs.

## CORRUPTION RISKS

If your business does not have robust policies and procedures regulating the provision of gifts and benefits and your engagement with government and political officials, your business may be vulnerable to risks including:

- + Engaging in bribery and subsequent prosecution under local and/or foreign bribery laws
- + A reputation as an easy target and ongoing demands for more benefits
- + Being perceived by the local public as corruptly influencing the government resulting in conflict and public campaigns against the company

## RED FLAGS

### Red flags scenario

To secure greater local economic benefits, the country of Diamatina has introduced local content laws that require foreign mining companies to source a prescribed percentage of their goods and services from local suppliers. Main Metals Ltd. has secured almost all necessary permits and licences to move into the development phase.

One of the few things remaining is Department approval of the company's local procurement plan. On a call to a senior manager of the company, a Department of Mines official says that it is the Department's view that the company should source engineering and materials for road construction from an experienced local company called

Big Roads Ltd instead of another local company. Main Metals Ltd agrees, signs the contract with Big Roads, and gets government approval to start mining. The company later finds out that one of the directors of Big Roads Ltd is the Mining Minister's brother. Questions begin to be asked about how Main Metals Ltd secured approval for its mine.

### RED FLAGS

**External:** Government specifying preferred supplier – Licence is conditional on company hiring government's preferred supplier

**Internal:** Failure to conduct due diligence – Policy on gifts does not cover benefits like supplier contracts

## GOOD PRACTICE

### Good practice scenario

There is talk that a valuable deposit of rare earth minerals is located on the border of the Pristine National Park. Mining is currently not allowed within 10km of the national park.

The Chamber of Mines has been lobbying the Minister of Mines to change the regulations to open the area to mining – but with no success. It is an election year and members have decided to raise funds for the Opposition's political campaign because the Opposition has spoken out in

favour of investment in the mining sector and the Shadow Mining Minister used to work for a mining company.

Cleen Mining Ltd has a strict policy against making political donations and refuses to participate.

## ✓ CHECKLIST AND RESOURCES

### Key questions to consider:

1. Do you have a policy that spells out the circumstances when providing gifts and benefits is appropriate and when they are prohibited?
2. Do your staff understand the scope of what 'benefits' include any related record-keeping requirements?
3. Are you involved in any lobbying or other efforts to influence decisions or laws and regulations – either individually or through an industry group? Have you considered the risks involved?

### Resources/where to get help:

- + 'Gifts and hospitality policy' in the next section of this guide
- + [Austrade Gifts and Hospitality Policy](#)
- + [Transparency International UK, Gifts and Hospitality](#)



photo: [www.istockphoto.com/portfolio/eyemark](http://www.istockphoto.com/portfolio/eyemark)

# COMMUNITY CONSULTATION

## OVERVIEW

Engaging in a meaningful way with the women and men in communities near your exploration activities or mining project is indispensable to the success of your business.

The arrival of your business to the area needs to be accompanied with outreach activities to introduce your plans and explain the potential impacts to the people living nearby.

Failure to do this could create a negative first impression and sow the seeds of distrust.

**Engagement should start early – before any exploration and mining activity starts- and needs to continue throughout the project lifecycle. As you move to advanced exploration and begin more intense drilling and other activities, engaging closely with the community becomes even more important.**

During licensing and permitting – even at the exploration stage – there may be legal requirements to consult and, in some cases, obtain the consent of local communities for the work that you are planning to undertake. This is especially the case where your business will affect the lands and resources of Indigenous peoples.

Companies will need to engage with communities as part of:

- + Negotiating land access deals and compensation
- + Environmental social impact assessments
- + Free, prior and informed consent processes with Indigenous peoples

Even where there is no formal legal requirement or the requirements for community engagement are weak, international best practice and investor standards set an expectation that mining companies will meaningfully engage with local communities. Engaging with communities is also critical to avoid mistrust and subsequent community opposition and disruption of the project.



## CORRUPTION RISKS

If you and your business are not aware of the requirements for consultation and consent and do not have proper systems for meaningful community engagement, you could be vulnerable to risks including:

- + Manipulation of the consultation process by local elites for their personal benefit
  - + Overzealous employees or third-party consultants providing misleading information that downplays the potential impacts of the project or does not fully disclose the extent of exploration or mining activities
  - + Bribery and conflicts of interest in the form of offers of employment to traditional leaders and their family members or through the provision of benefits to influential individuals in exchange for their support
- This could result in:
- + Breaching (Indigenous) cultural heritage laws and violating human rights
  - + Local backlash and rejection of the project
  - + Community investment schemes that benefit only a few

## RED FLAGS

### Red flags scenario

DeterMINEd Ltd wants to start exploring in an area that falls within a traditional kingdom. The kingdom is comprised of several villages, each with their own leader. The Chief leads the kingdom, but he resides in a village that will not be affected by the exploration activities. Most of the exploration, blasting and sample drilling will take place near a village that is led

by a woman. Being a woman, her authority is not recognised by the Chief or the leaders of the other villages. The company establishes a community communications protocol that stipulates it will only consult with the Chief, as representative of the entire Kingdom's community. After some time, the Chief calls for compensation for the environmental impacts

of DeterMINEd's exploration activities. The company begins exclusive compensation negotiations with the Chief who makes it clear he expects the compensation to be paid directly to him. Meanwhile, the members of the village led by the Headwoman raise concerns with a local human rights NGO.

### RED FLAGS

**External:** Exclusive negotiations with a single individual – payment directly to an individual – sidelining of other community leaders and representatives

**Internal:** Rigid consultation policy – failure to undertake stakeholder mapping to identify different interests and community dynamics – failure to determine whether compensation will benefit the community

## GOOD PRACTICE

### Good practice scenario

Rusty Mines Ltd has recently secured an exploration licence. While not required by law or the licence conditions to conduct any community engagement or consultation during exploration, Rusty Mines Ltd knows that establishing a positive relationship with the local community is critical to the success of its business - especially if the company wants to have any chance of securing funding from a bigger mining company to move into later phases of exploration and development.

Rusty Mines Ltd hires a local agent who speaks the local language to engage with the community. After some time, the in-country manager realises that the agent has been making exaggerated claims to the community about the benefits and jobs the project is likely to bring them. The local agent had likely been expecting that this would quickly secure community support and enable him to unlock the performance incentive payments in his contract. Rusty Mines Ltd hosts an emergency

meeting to decide whether to replace the agent and to map out a pathway to provide the community with the correct information without losing their trust. The company revises its incentives to reward meaningful and representative engagement rather than time-bound performance.

## CHECKLIST AND RESOURCES

### Key questions to consider:

1. Are there Indigenous groups who will be affected by your project? What are the legal requirements for community consultation and consent as part of the licensing process? Do they align with international best practice?
2. Do you have the right skills and knowledge within your organisation to meaningfully engage with local communities as part of consultation and consent processes?
3. Are employees and any consultants working with communities aware of the types of corruption risks and potential for manipulation during community consultation and how to respond?

### Resources/where to get help:

- + [Transparency International UK, Sponsorship, donations and community investment](#)
- + [OECD, Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector](#)
- + [IFC, A Strategic approach to early stakeholder engagement- guide for junior companies in extractives](#)
- + [Accountable Mining Programme, Corruption risks in community consultation](#)

# THIRD PARTIES

## OVERVIEW

Moving into a new jurisdiction, you inevitably depend on third parties for advice and to help implement your business activities.

However, third parties are the single greatest source of corruption risk for companies.

The overwhelming majority of corruption cases involve third-party intermediaries or agents. Companies are liable for acts of bribery by their third parties ('associates' under Australian law).

If you are planning to do business in a high-risk jurisdiction, you must conduct some basic background research before hiring a third party ('due diligence') and monitor and manage the risks once they are hired – especially if you are hiring them to deal with government officials to help you secure rights and permits.

**Third parties that are commonly hired during licensing and permitting include: lawyers and consultants to advise on legal requirements and to help prepare applications/bids, agents to represent the company in interactions with government officials, and local business partners.**

## CORRUPTION RISKS

If you do not conduct due diligence on your third parties to find out about their background and connections or if you don't have proper systems for monitoring them once hired, you and your company are vulnerable to the following risks:

- + Hiring someone with a conflict of interest because of their connection to government decision-makers or politicians
- + Hiring someone with a history of corruption or questionable conduct
- + Creating incentives or inducements for the person to engage in corrupt conduct

In these circumstances, there is a higher chance the third party will engage in corruption – for which your business may be liable.

## RED FLAGS

### Red flags scenario

After several years of consistent peace and stability following the civil war, the nation of Minestan is becoming a popular destination for mining. However, the country's mining laws are confusing and sometimes contradictory. It is not always clear what type of licences and permits are required and the process for securing a mining tenement is ambiguous. This does not deter Rockstar Mining Co.

which wants to push ahead with permitting with the aim of starting exploration in a promising area as soon as possible.

To help the company navigate the confusing permitting process, the country manager hires a flashy, well-connected local consultant who recently left a senior role in the Ministry of Mines. The country manager offers to pay

the consultant a bonus for getting all the necessary permits and licences within three months. The consultant asks to be paid 50% upfront in cash. Desperate to be one of the first companies to explore this region, the country manager authorises the payment immediately. Rockstar Mining's senior management only learn that a consultant was been hired several months later.

### RED FLAGS

**External:** Request for cash payment – connection to relevant decision-makers

**Internal:** No pre-approval required to hire third party – Performance-based remuneration – Incentives tied to approval times – No pre-approval required to make cash payment

## GOOD PRACTICE

### Good practice scenario

Bright Gold Co needs a local lawyer to help them interpret legislation and prepare and submit their licence application. They identify a candidate who speaks English and has experience working with foreign mining companies. Before the lawyer is hired, Bright Gold's third-party policy requires they do

some background checks on the lawyer as she will be engaging in a high-risk activity on their behalf (interacting with government officials) and the country is known for corruption. Due diligence reveals that the lawyer has some remote political connections, but none that are relevant in this context. Bright Gold's country

manager gets internal approval to hire the lawyer. Before the lawyer starts, the country manager briefs her on the company's anti-bribery policy and instructs her that if she encounters any requests for unofficial payments or bribes, she should refuse to pay and report that straight away to the country manager.

## CHECKLIST AND RESOURCES

### Key questions to consider:

1. Do you have a clear process for hiring third parties including a due diligence procedure? How do you determine what level of due diligence is required?
2. Who is responsible for authorising or signing off on the hiring of third parties who will be involved in high-risk activities like licensing and permitting?
3. What payment arrangements do you usually have in place for third parties? What care is taken to ensure incentive payments do not encourage unethical or corrupt behaviour?

### Resources/where to get help:

- + 'Third party anti-corruption procedure' in the next section of this guide
- + [GAN, Due Diligence Tools](#)
- + [Austrade Template Risk Assessment Process for Associates](#)



# WAYS TO PREVENT CORRUPTION

**Having proper systems in place shows regulators, investors and other stakeholders that you are serious about embedding anti-corruption and integrity in your business.**

Read on to learn more about:

- + the policies and procedures you need
- + measures to ensure the policies are effectively implemented
- + practical anti-corruption strategies



# WHAT POLICIES AND PROCEDURES DO WE NEED?

There are four fundamental policies and procedures you should have in place.

Read on to learn more about each of the policies, see samples and access resources.

1. Code of conduct
2. Anti-bribery and corruption policy and procedure
3. Gifts and hospitality policy
4. Third party anti-corruption policy

**There is no 'one-size-fits-all' design of these policies and procedures.** These policies should be proportionate to the size of your company and the nature of your business – how many projects and assets you have and where they are located.

You will need to tailor these policies to ensure they are practical and realistic for you to implement, while still being effective in preventing and detecting corruption.

While this section sets some minimum expectations, the breadth and scope of the policies, measures and strategies you adopt need to be appropriate for the size of your company. Your anti-corruption system needs to be workable within the realities of your business. You should adapt the guidance so that it is effective in your circumstances.

**Company business ethics and anti-corruption systems are core requirements of international responsible business frameworks. By putting in place measures to identify and manage corruption risks, you can show that your business is aligned with leading sustainability frameworks such as:**

- + **Global Reporting Initiative (GRI)**
- + **Sustainability Accounting Standards Board (SASB)**
- + **UN Global Compact and Sustainable Development Goals**
- + **OECD Guidelines for Responsible Business Conduct**

## 1. CODE OF CONDUCT

Your Code of Conduct summarises your mission, values and principles, linking them with standards and expectations of professional conduct.

The Code articulates the values your company aspires to foster in staff and defines expected behaviour.

It should set out a process for staff to raise concerns about breaches of the Code and also

outline the consequences for any breaches or misconduct.

Staff and third parties should be made aware that they are required to comply with the Code for the duration of their employment and contract, respectively.

### RESOURCES

- + **GAN, [Sample Code of Conduct](#)**
- + **Bribery Prevention Network, [‘Policies and Procedures’](#) has examples of codes of conduct**

## 2. ANTI-BRIBERY AND CORRUPTION POLICY AND PROCEDURE

This should include a statement about the company’s unequivocal position against all forms of bribery and corruption. It should explain in simple and practical terms what bribery and corruption mean and who counts as a ‘foreign official’.

### Facilitation payments

Zero tolerance for facilitation payments is international best practice and also an advisable position to take because such payments are banned in most jurisdictions. The line between a facilitation payment and a bribe is extremely fine, so an absolute ban on facilitation payments is the safest route to take.

#### Resources

- + **[Austrade, Facilitation payments – just say no](#)**
- + **[Transparency International UK, Facilitation payments](#)**
- + **[Transparency International UK, Countering Small Bribes](#)**

## Corruption Risk Assessment

The company should have a procedure for conducting corruption risk assessments as part of its business and general risk management processes.

For the purposes of this guide, this means assessing the corruption risks in the jurisdictions in which the company has or is planning projects, and within any licensing

or permitting processes that are required to start the project.

As part of the assessment, the company should identify the actions it will take to deal with each risk.

### RESOURCES

- + **'How to prepare for a high-risk jurisdiction' in this guide**
- + **[GAN, Sample corruption risk assessment](#)**
- + **Bribery Prevention Network, '[Policies and Procedures](#)' has examples**
- + **Transparency International, [Mining Awards Corruption Risk Assessment Tool](#)**

## 3. GIFTS AND HOSPITALITY POLICY

It is important to have this policy to help staff help staff distinguish between legitimate gifts and hospitality and those that could breach anti-bribery laws.

The policy should set out the value limit of any gifts and expenses, appropriately adjusted to each country and any prohibitions. The limit should be low. Care should be taken with giving non-financial benefits to influential persons and associates (including advisers to decision-makers) that could be considered bribes, such as scholarships, consulting roles, employment, travel.

### Pre-approval and record-keeping procedures

The policy should also set out the procedures for pre-approval of gifts/hospitality and record-keeping. It is essential that the details of all such expenses are recorded and documented to allow for regular review and detection of questionable expenses.

### Prohibited gifts

Giving of gifts, hospitality and other expenses that could influence, or be perceived to be capable of influencing a decision should be prohibited. For this reason, the policy should include an absolute ban on gifts and hospitality to officials in a government department or agency involved in any current or future licensing process concerning the company.

Similarly, gifts to traditional and tribal leaders may constitute bribery in some contexts and the policy should set out the company's position on such payments.

## RESOURCES

- + [Austrade, Gifts and Hospitality Policy](#)
- + [Bribery Prevention Network, 'Policies and Procedures' has examples](#)
- + [Transparency International UK, Gifts and Hospitality](#)
- + [Transparency International UK, Sponsorship, donations and community investment](#)

## 4. THIRD PARTY ANTI-CORRUPTION POLICY AND PROCEDURE

The company will be liable for bribery and improper actions by its third parties (agents, intermediaries, consultants, associates).

Managing third party relationships is therefore important to safeguard the company from potential legal breaches and associated reputational risks.

### Due diligence and pre-approval procedure

This policy should set out the procedure for anti-corruption due diligence on third parties and for obtaining internal sign-off/pre-approval. Due diligence should be focused on the high risk third parties, for example agents or intermediaries interacting with government officials, as opposed to stationery suppliers.

The procedure should set out the record-keeping process that must be followed to document the due diligence conducted and internal approvals.

### Managing the conduct of third parties

The policy should also set out the company's expectations of the third parties it engages. Third parties supplying goods and services to or acting on behalf of the company should be bound by the company's anti-corruption policies, including the Code of Conduct.

The policy should also outline the steps the company will take to ensure that third parties it engages meet those expectations of conduct, such as providing anti-corruption training and including standard anti-corruption clauses in the service/supplier contract with audit rights.

## RESOURCES

- + [GAN, Due Diligence Tools](#)
- + [Austrade, Template Risk Assessment Process for Associates](#)
- + [Bribery Prevention Network, Due Diligence](#)
- + [Transparency International UK, Managing third parties](#)



# HOW CAN WE MAKE SURE OUR POLICIES AND PROCEDURES ARE IMPLEMENTED?

To ensure the policies are effectively followed, you need to make them part of the day-to-day business of your company.

Learn more and find resources about each of these recommended implementation mechanisms on the following pages.

- + **Values and commitment from leaders** – the shared understanding and expectations of how those working in your business will behave
- + **Whistleblower channels** – the channels for people in the business and outside the business to safely raise concerns and complaints, and to have them addressed
- + **Governance and Board oversight** – the responsibility and expertise of your directors to oversee integrity and corruption risk management within the business
- + **Training** – the way employees, managers and directors are educated about the corruption risks they may face and the company's policies and procedures
- + **Monitoring and review** – systematic reviews to improve your anti-corruption controls and systems

## 1. VALUES AND COMMITMENT

Everybody working in your company should be clear about what standards of conduct are expected in line with the values of your company.

Defining your core values is the first step. You could even promote your values using posters in common areas in the office or your intranet.

Regularly talking in clear and practical terms about your values

and expectations can help bring the Code of Conduct to life and make it meaningful for staff, helping them to make good judgement calls when they are out in the field and supporting them to do business in line with the core values.

**Being practical about your values means recognising that actions speak louder than words:**

- + **Do you tolerate sloppy record-keeping about payments and transactions?**
- + **Do you encourage staff to ask questions and raise concerns?**
- + **Do you have a company culture of doing 'whatever it takes' to advance your business goals?**

Senior people in the company and members of the Board should regularly talk about the importance of acting with integrity, being honest and not compromising on standards in difficult situations.

In practical terms, this means leading by example, explaining why it is important that things are done in a certain way, and taking the time to ensure that staff understand.

This is how values become embedded in the day-to-day culture of an organisation.

### RESOURCES

- + **[Austrade, Top level commitment to anti-bribery](#)**
- + **[Transparency International UK, Top level commitment & culture](#)**
- + **[Bribery Prevention Network, Management & Culture](#)**

## 2. WHISTLEBLOWER CHANNELS

An open culture that encourages staff to speak up and be supported and protected is important.

Whistleblowers are often the best way for companies to understand the corruption and bribery risks they are exposed to.

Staff should feel comfortable raising concerns and feel confident the issues raised will be taken seriously and addressed, without any negative consequences for them.

Having an independent Board member with whom staff can discuss integrity concerns might be a good option. You could also pay for an external and secure

'speak up' or whistleblower service where staff can report concerns and suspicious conduct. There are a range of services available such as those provided by [Whispli](#).

Australian companies are advised to look at the ASIC Guidance on whistleblower protection and support to make sure they are complying with Australian law.

### RESOURCES

- + [Bribery Prevention Network, Whistleblowing](#)
- + [Transparency International UK, Whistleblowing](#)
- + [ASIC, Whistleblowing](#)

## 3. GOVERNANCE AND THE BOARD

The Board has an important role to play – even in small companies.

Effective anti-corruption and integrity risk management depends on good internal governance.

The Board is responsible for making sure the right policies and procedures are in place and for overseeing their implementation.

They should receive regular reports on bribery and integrity issues, just as they would on other commercial and security risks.

Your Board needs to understand the importance of business integrity and the need to integrate bribery and corruption issues into general risk management procedures.

Do you have a board member with this understanding and expertise? If not, consider sourcing some training or bringing in external expertise.

### RESOURCES

- + [Transparency International UK, Governance](#)

## 4. TRAINING

All staff should be trained on the company's values and the Code of Conduct.

In addition to this, any staff that will be interacting with third parties and government officials should be trained on the anti-corruption and third-party due diligence policies and procedures.

- + Training should be practical and scenario-based – tailored to the risks and scenarios they are likely to face in their role
- + It should be focused on making sure staff understand the purpose of the policies and procedures, what

they involve and why it is important to follow them

- + Training should make it clear to staff what steps they should follow and who they should report to if they are exposed to a demand for a bribe or corrupt conduct, or if they suspect corrupt conduct has occurred.

You should also consider training for third parties engaging in high-risk activities such as agents interacting on your behalf with government officials because you may be liable for any bribery that they engage in related to your business.

There are several free, general training modules and resources:

- + Austrade, [Red Flags for Bribery](#)
- + Australian Attorney-General's Office Department, Foreign [Bribery Training Module](#)
- + Transparency International, [RESIST: Resisting Extortion and Solicitation in International Transactions](#)
- + Transparency International UK, [Doing Business Without Bribery Module](#)

## RESOURCES

- + **Austrade, Communication and Training**
- + **Transparency International UK, Communications & Training**



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## 5. MONITORING AND REVIEW

You need to ensure your systems are working properly and to adapt them over time to fit changing circumstances and as you learn about any gaps or deficiencies.

Monitoring how well your policies and procedures are understood and are being implemented and updating them as required is the key to an effective anti-bribery and corruption system.

You need to decide on an approach that works for you and the size of your organisation.

- + Periodic, formal monitoring and review of records is advised to ensure that record-keeping procedures are being followed and to detect red flags.
- + Some records that should be monitored and even audited on occasion include:
  - Payment and transaction records
  - Third party due diligence/supplier procurement records
  - Anti-corruption training records
- + If there is a breach of procedure or a concern raised or complaint reported about corruption or bribery, a review should be conducted to understand how your systems could be tightened to prevent future breaches and changes made accordingly.
- + It might be appropriate to bring an external, independent auditor or reviewer from time-to-time.
- + The Board should receive a report once or twice a year on the implementation of the anti-bribery and corruption systems

More informal monitoring mechanisms include gathering feedback from staff about how well they understand the policies and procedures.

### RESOURCES

- + [Austrade, Monitoring and review](#)
- + [Bribery Prevention Network, Monitoring](#)
- + [Transparency International UK, Monitoring & Review](#)



# WHAT PRACTICAL STRATEGIES COULD HELP?

Some practical strategies to prevent corruption in your business include:

- + Building your in-country network
- + Developing an integrity field manual
- + Demonstrating transparency

## 1. IN-COUNTRY NETWORK

Building your network of country experts particularly in-country is a useful way to better understand your context, how the licensing process works, and the risks that you might face and how to deal with them.

Here are some groups and organisations that are worth consulting:

- + The national chamber of mines or mining association
- + Other mining companies with projects in the country
- + Local civil society organisations that work on mining governance in the country such as those involved in Transparency International, Publish What You Pay or the Extractive Industries Transparency Initiative
- + Your country's embassy or consulate in the jurisdiction and those of countries who take a strong stand against corruption, such as the United Kingdom and United States.
- + Your government's trade or export development agency (Austrade for Australian companies).

## 2. INTEGRITY FIELD MANUAL

Develop a brief 'Integrity Manual' to take to the field to support you and your staff.

This could contain:

- + The red flags checklist from this guide

- + A basic overview of your company's key anti-bribery procedures, including 'no-go zones'
- + Your company's Code of Conduct (1-2 pages)
- + References to the anti-bribery laws that bind you at home and in the country

This will not only serve as a resource to you and your staff, but the Code of Conduct can be shown to government officials to reinforce that you will not engage in bribery or corruption and that you are bound by the company code.



**It's helpful to make it clear to authorities, both verbally and in writing, that neither you nor your employer will pay bribes or comply with any corrupt demands. Show that your company policy absolutely forbids offering or accepting bribes and participation in other corrupt practices. If authorities insist or persist in their corrupt demands then invest your time, efforts and capital elsewhere.**

Adrian Larking, Councillor (2003-2017) and Life Member, Association of Mining & Exploration Companies, Australia (AMEC)

### 3. DEMONSTRATE TRANSPARENCY

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Publishing your Code of Conduct and other relevant anti-corruption policies on your website demonstrates transparency and shows that you are committed to integrity and high standards.

- + For governments and stakeholders in countries where you are doing business, this introduces your company as a business that will not engage in bribery and corruption, helping to make important first impressions.

- + Having your policies available shows regulators in your home country that your business understands and will respect the law.

- + It also provides reassurance to potential investors that you are a responsible business and are aligned with their ESG and responsible investing guidelines.

Being transparent about your project plans will help to build trust with local communities and avoid misunderstandings and false rumours. Also communicating your plans in offline and accessible formats will be important to reach all women and men in local communities.



# CREATE CHANGE WITH US

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**[transparency.org.au](https://transparency.org.au)**

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We can only tackle corruption by working together. Whether you're an individual, a business, a government agency, or a not-for-profit, become a member of TIA to help us build better, more transparent and more accountable systems.

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