

The Wolfsberg Statement against Corruption

The Wolfsberg Group¹ is making the following Statement in close association with Transparency International and the Basel Institute on Governance to describe the role of the Wolfsberg Group and financial institutions more generally in support of international efforts to combat corruption, and to identify some of the measures financial institutions may consider in order to prevent corruption in their own operations and protect themselves against the misuse of their operations in relation to corruption.

The decision by the Wolfsberg Group to issue a Statement dedicated to the issue of corruption at this time is occasioned by a number of developments, including the UN Convention Against Corruption, which came into force on 9 December 2005 and which is an important addition to existing supranational and national law aimed at combating corruption². The Preamble to the UN Convention Against Corruption describes the effects of corruption as undermining the rule of law, democratic processes and basic human freedoms, impoverishing States, and distorting free trade and competition. In addition, the level and efficacy of investment and financing are reduced, particularly within economically disadvantaged societies.

1. Introduction

Whilst there is no single definition of corruption a common description is that it involves the misuse of public office or public power for private gain by offering or promising anything of value – whether directly or indirectly – to a public official or a political candidate, party or party official, in order to obtain, retain or direct business or to secure any other improper advantage in the conduct of business. Conversely, corruption involves the demanding or accepting of anything of value by such a person, as a condition to conferring business or other improper advantage whether directly or indirectly. Corruption is often associated with organized crime, money laundering and sometimes even the financing of terrorism.

The fight against corruption requires a comprehensive, multi-stakeholder approach which has to be led by supranational and national government agencies and law enforcement, assisted by civil society and the wider business community. The members of the Wolfsberg Group are committed to participating in this fight and are of course, opposed to all forms of corruption and commit to abide by laws designed to fight corruption. The Wolfsberg Group members will co-ordinate their efforts to combat corruption with those taken by governments having jurisdiction over the relevant financial institution and other public and private sector institutions, organizations and civil society as may be considered appropriate by the financial institution.

¹ The Wolfsberg Group consists of the following leading international banks: ABN AMRO, Banco Santander, Bank of Tokyo-Mitsubishi-UFJ, Barclays, Citigroup, Crédit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, Société Générale and UBS. This Statement was made in conjunction with Transparency International and Professor Mark Pieth of the Basel Institute on Governance.

² Examples include the 1997 OECD Convention on Bribery of Foreign Public Officials in International Business Transactions; Criminal Law Convention on Corruption, Strasbourg 27/01/1999 European Treaty Series 173; Convention on the Protection of the Financial Interest of the EU EG Nr. C316/48 27 November 1995 and C221/11 19 July 1997; and the 1996 Inter-American Convention Against Corruption.

The Wolfsberg Group members recognize that their institutions may be misused for the purpose of paying bribes or laundering their proceeds and as such recognize the need to take practicable measures to counteract such misuse. Whilst members are legally obliged to report suspicious activity in accordance with applicable laws that may be related to corruption when detected in customers' financial operations, in most instances and without further information, it may not be possible to detect whether customers' transactions involve or are otherwise linked to corruption.

2. Scope

This Statement addresses the issue of public corruption from the following perspectives:

- First, this Statement discusses the measures to prevent corruption that financial institutions may themselves consider internally to ensure that their own employees adhere to high standards of integrity;
- Secondly, it considers the misuse of financial institutions to further acts of corruption together with some of the measures that financial institutions could implement to attempt to mitigate activity involving corruption; and
- Thirdly, it highlights the importance of taking a multi-party approach to combating corruption which includes efforts by governments and other entities. Areas for cooperation relevant to the financial aspects of corruption are set out for further consideration in the last section of this Statement, the aim of which is to promote further dialogue among the relevant parties.

The Appendix to this Statement provides guidance on the various risks associated with corruption, and possible measures to mitigate the misuse of financial institutions for the purpose of corruption.

3. Financial Institutions' Internal Measures

This section addresses the internal measures that financial institutions may consider taking to prevent their own employees' and officers involvement in corruption.

Corruption has long been identified with the public sector³, including public works, political parties, police, taxation & licensing authorities, and also with certain industrial sectors including defence, real estate, construction, oil and gas, and the metals and mining industries. Such public sector entities and industries have implemented or should implement appropriate policies, procedures and controls designed to combat corruption.⁴ The Wolfsberg Group

³ See the Transparency International Global Corruption Barometer, published annually.

⁴ Recent examples of private sector initiatives aimed at combating corruption through the adoption of Anti Corruption Codes of Conduct include the WEF Partnering Against Corruption Initiative 'PACI Principles' which were derived from the TI Business Principles for Countering Bribery (see www.transparency.org/content/download/5102/29957/file/business_principles.de.pdf). The PACI Principles (see www.weforum.org/site/paci) have been adopted by more than 110 companies worldwide by companies from the energy, engineering and construction, and metals and mining sectors. Other examples of partnerships between the private and public sectors to combat bribery include the Extractive Industries Transparency Initiative (see <http://www.eitransparency.org>) Publish What You Pay Coalition (see <http://www.publishwhatyoupay.org>) and the G-8 'Action Plan on Fighting Corruption and Improving Transparency' (see http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/) amongst others. **Note:** The initiatives mentioned in this footnote are examples only and their inclusion does not constitute any form of endorsement by the Wolfsberg Group.

recommends that financial institutions consider appropriate measures which require employees and officers to adhere to high standards of integrity.

At a minimum, financial institutions should prohibit the involvement of their own employees and officers in corruption in all business transactions carried out directly or indirectly when acting for or on behalf of their employer. An appropriate measure may include taking into account for example, the size, nature, and risks of each financial institution's business. In particular these could address: -

- the offer and acceptance of gifts and controls on expenses related to travel and entertainment;
- the making of political and charitable contributions;
- the treatment of facilitation payments; and
- the use of intermediaries and / or agents, mandated on behalf of the financial institution.

4. Misuse of the Financial System through Corruption

Financial institutions may be misused to further acts of corruption. For example:

- a customer directing or collecting funds, for the purpose of paying a bribe;
- a recipient of a bribe placing proceeds of the illicit bribe payment into the financial system;
- the deposit of misappropriated state assets; or
- the clearing of transactions in any of the above cases.

In most instances, without further information, it is not possible for financial institutions to make a distinction between accounts and transactions associated with corruption, and those accounts and transactions that have a legal and sound commercial basis. This is particularly, but by no means exclusively the case when dealing with substantial companies with complex business operations. The primary responsibility to ensure that funds are neither collected nor used for illicit operations, including bribery, must rest with a financial institution's customer or that customer's representatives. This is particularly true since a financial institution will seldom have a complete overview of its customer's financial activity.

Transactions involving the proceeds of corruption often follow patterns of behaviour common to money laundering associated with other criminal activities; and adherence to existing anti-money laundering policies procedures and controls is therefore important in the fight against corruption. By the same token, the standards and guidance set out in our existing papers are similarly relevant to determine and manage money laundering risks related to corruption⁵.

5. Risk Based Approach

Before appropriate AML policies, procedures and controls can be applied, financial institutions may consider it important to identify criteria to assess potential money laundering risks

⁵ See <http://www.wolfsberg-principles.com>

throughout their respective business lines and areas of operation. The Wolfsberg Group has elaborated more generally on the risk criteria and risk variables in the Wolfsberg Guidance on a Risk Based Approach and this Guidance is of some relevance in assessing money laundering risks related to corruption. How a financial institution's general risk assessment methodology and its anti money laundering measures may apply to AML related to corruption is considered in the Appendix and is based on the following criteria;

- Services Risk
- Country Risk
- Customer Risk
- Industry Risk
- Transaction Risk Indicators ('red flags')

Where risk factors are identified an assessment should be made as to whether the customer should be the subject of particular focus. Enhanced due diligence, transaction monitoring, senior management approval and review oversight should be applied to such customers and or their financial operations as may be appropriate.

6. Suspicious Activity Reporting

Where circumstances lead a financial institution to suspect corruption, further due diligence should be undertaken, and further steps may have to be taken, including, where appropriate, the filing of a suspicious activity report.

7. A Multi-Stakeholder Approach

The UN Convention Against Corruption recognizes the need for States to cooperate with one another in order to prevent and eradicate corruption. It also recognizes that if efforts are to be effective, the involvement and support of individuals and groups outside the public sector are required, including civil society, non-governmental organizations and community-based organizations. Private sector companies and their related industry organizations, Chambers of Commerce and other industry organizations also have an important role to play in this regard in apprising financial institutions of developments to prevent corruption by industrial sectors or individual firms.

The Wolfsberg Group supports the publicly led multi-stakeholder approach to addressing the following important areas where further dialogue and co-operation may lead to improvements in preventing and deterring bribery and other corrupt activity as it affects the financial sector, in particular:

- Governments and their agencies: Export credits, development aid, lending and trade departments, so that co-ordinated due diligence and monitoring may be carried out by such governments and agencies and an appropriate audit trail in respect of money transfers and credits may be established by them.
- Governments and international bodies: In order that a more co-ordinated and harmonised approach may be developed between governments to the recovery and

repatriation of assets held by financial institutions and identified as connected to corruption.

- Law enforcement and Financial Intelligence Units: Should identify new techniques used by money launderers in relation to bribery and other corrupt activity, communicate typologies to the financial community and develop appropriate countermeasures.
- Regulators and supervisors: In relation to the development of policies and procedures that are consistent with regard to the definition and identification of Politically Exposed Persons as well as the initial and ongoing management of relationships with customers who fall into this category.
- Civil society and non-governmental organizations: Should identify trends, patterns and mechanisms used by bribe payers and recipients thereby gaining a better understanding of the causes and effects of bribery and other corrupt activity, in order to prevent the misuse of financial institutions in their perpetration, and support the development of appropriate standards and controls.

The Wolfsberg Group believes that constructive dialogue in this area will help to increase the knowledge and ability of such agencies and institutions to identify trends, patterns, money laundering techniques and mechanisms used in the furtherance of acts of bribery and corruption and with an effective public private partnership financial institutions will be better placed to assist in the fight to prevent and/or detect and disclose incidents of corruption.

Appendix - Guidance

This Appendix provides guidance only and is based upon existing Wolfsberg papers. In particular it is based on the Wolfsberg AML Principles on Private Banking, the Wolfsberg AML Principles for Correspondent Banking and FAQs on Correspondent Banking and the Wolfsberg Guidance on a Risk Based Approach which should be read in conjunction with the appropriate sections in this Appendix.

As noted above, bribery has long been identified with the public sector, and in certain industrial sectors. Whilst the financial sector is itself seldom associated with the direct commission of bribery, it may however, be misused by those paying and receiving bribes, including the laundering of the proceeds of bribes. The guidance in this Appendix supports section 4 above by highlighting some of the risks a financial institution faces in relation to a customer's financial activity through the financial institution and possible measures to counteract those risks are set out below.

1. Services Risk

The payment and receipt of bribes may be effected through a variety of services provided by financial institutions. However, in considering and assessing exposure to this risk, there are certain services that may be considered more vulnerable to abuse in this area. The risks and possible mitigating measures are highlighted below together (where appropriate) with any particularly relevant red flags⁶:-

1.1 Private Banking

Risks – Private Banking, particularly international private banking services, are vulnerable for a variety of reasons. These reasons include the high net worth characteristics of the customer base, the offshore nature of the facilities offered and the type of products and services available (e.g. asset protection and investment vehicles such as trusts, foundations, personal investment companies; cross border wire transfers etc). In particular, recipients of bribes may seek international private banking services.

Mitigating Measures – Important mitigating measures are those in relation to acceptance procedures for customer/beneficial owner, based on verification of identity and due diligence including establishing the source of wealth and source of funds deposited. These measures should take into account risk indicators such as countries identified as representing higher risk for corruption, whether the customer is categorized as a PEP, whether the

⁶ In most cases a financial institution will not necessarily be aware that corruption is involved in a particular transaction, 'red flags' may, however, be identified in the course of anti money laundering transaction monitoring, and financial institutions should take measures to address such 'red flags'. None of the transactions types or patterns mentioned as 'red flags' in this Appendix should automatically be considered suspicious without further investigation. Where such transaction types or patterns are identified, there may often be acceptable explanations for such activity. The 'red flags' mentioned in this Appendix do not comprise a comprehensive list nor are they intended to be used by financial institutions as a mandatory set of rules that must be applied. Each financial institution should take its own view on how best to configure its monitoring, based on its own circumstances.

customer is involved in a higher risk industry (e.g. arms dealing or acting as an agent or intermediary for the arms trade or other industry sector), etc. Adherence to the Wolfsberg AML Principles on Private Banking should constitute effective risk management in this area.

Red Flags - Substantial cash or wire transfers into or from an account of a private banking customer where such activity is not consistent with legitimate or expected activity. Particularly substantial activity over a relatively short time period and / or the improper use of corporate vehicles to obscure ownership and / or the involvement of industries and / or countries posing increased corruption risk may also raise suspicions.

1.2 Project Finance / Export Credits

Risks – The provision of finance to customers of a financial institution and/or involvement in transactions linked to major project finance initiatives, such as those to support public sector infrastructure/construction projects or the exploitation of natural resources, are specifically vulnerable in relation to the payment of bribes, not least because of the size and complexity of projects of this nature, together with the large number of participants involved including government export credit agencies, private companies and banks. The responsibilities of financial institutions will generally be limited to their direct involvement in the financial advisory, arranging or financing process such as with the borrower, exporter of record or sponsor and then only as regards disbursement of funds to or for and on behalf of the direct customer

Mitigating Measures – Where governments, international organizations or multilateral lending organisations are involved in loans, donations or other arrangements or in facilitating trade through export credits, financial institutions may have an involvement in these arrangements. In these circumstances, financial institutions can reasonably expect such governments or organizations to conduct appropriate assessments (diligence) on the parties involved and to take other appropriate measures to ensure that funds are not siphoned off to pay bribes. Financial institutions will however, need to complete their own due diligence as appropriate to their customers.

Factors that could be considered by a financial institution whose customers are directly involved in project finance or related activities might include country, industry and political risk (see sections 2, and 3 below) as well as due diligence or enhanced due diligence on the customer. For example it might be appropriate to consider a customer's record in relation to convictions or other sanctions for corruption, if known. It would not be reasonable to extend due diligence beyond the direct customer to sub-contractors, suppliers, agents, consultants or other intermediaries. However, if the financial institution discerns something sufficiently unusual about the transaction, it should seek clarification about the matter so as to dispel concerns it may have with regard to the transaction

1.3 Retail Banking

Risks - The diversity of products and services offered through a retail banking operation results in a huge variety of customers. This factor, together with the nature and scale of transactions executed through retail banks means that it is virtually impossible to identify specific transactions that may be linked to corrupt activities, particularly petty corruption, unless such transactions are sufficiently unusual and are identified in the course of monitoring designed to detect money laundering.

Mitigating Measures – In general a retail bank's AML policies and procedures should be applied adopting a risk based approach.

2. Country Risk

Countries have been identified by credible sources as having significant levels of corruption, for further information see the Wolfsberg Guidance on a Risk Based Approach.

3. Customer Risk

Certain customers identified during due diligence or enhanced due diligence (initial and ongoing) may potentially represent a greater degree of risk. Such due diligence or enhanced due diligence may include identification of negative publicly available information from credible sources that calls into question a customer's activities regarding corruption, or, indeed, that indicates that prosecutions or actions have been taken by governmental authorities and / or law enforcement. The risks and possible mitigating measures are highlighted below together with any particularly relevant red flags. Examples include;

3.1. Politically Exposed Persons - PEPs potentially represent higher risk because they either are in a position to exert undue influence on decisions regarding the conduct of business by private sector parties, or have access to state accounts and funds.⁷

Red Flags - Substantial cash or wire transfers into or from an account of a customer identified as a PEP where such activity is not consistent with legitimate or expected activity. Particularly substantial activity over a relatively short time period and / or the improper use of corporate or other vehicles to obscure ownership may also raise suspicions.

3.2. Intermediaries / agents - In certain industries the services of intermediaries or agents are used by companies to help secure or retain business abroad. Commissions paid to agents have sometimes been used to pay bribes to government officials on behalf of a company. Intermediaries and / or agents are often difficult to identify.

Mitigating Measures - If a financial institution is able to identify a private banking prospect or client as an intermediary and / or agent particularly in

⁷ Mitigating Measures: When PEPs are private banking clients, they should be subjected to greater scrutiny. See the Wolfsberg AML Principles on Private Banking and also the FAQs on PEPs on <http://www.wolfsberg-principles.com/>.

industries and / or sectors identified as posing increased corruption risk, it may determine that enhanced due diligence would be appropriate because, for example, the services (private banking), industry, country and / or transactional risk indicators are present which could increase the risks posed for the financial institution in dealing with the customer. Under these circumstances, the financial institution might consider one or more of the following as part of that enhanced due diligence exercise, for example whether the customer:

- has a family member in a government position, especially if the family member works in a procurement or decision-making position or is a high-ranking official in the department with which the intermediary is known to have dealings that is the target of the intermediary's efforts;
- has failed upon request (or has been suspiciously reluctant) to disclose owners, partners or principals;
- uses shell or holding companies or equivalent structures that obscure ownership without credible explanation;
- has little or no expertise in the industry or the country in connection with which he acts as an intermediary which he seeks to represent the company;
- anticipates substantial commission payments as intermediary either in absolute terms or as a percentage of the main contract sum which cannot plausibly be verified vis-à-vis the role undertaken;
- is retained by a company whose reputation in relation to the payments of such commissions is questionable by reference to prior convictions or governmental actions or that is reputed to otherwise engage in improper payments to governmental organizations.

Red Flags - Substantial cash or wire transfers into or from an account of a customer identified as an agent or intermediary where such activity is not consistent with legitimate or expected activity. Particularly substantial activity over a relatively short time period and / or the improper use of corporate vehicles to obscure ownership and / or the involvement of industries and / or countries posing increased corruption risk may also raise suspicions.

3.3 Correspondents – Correspondent customers potentially represent higher risks because the bank typically has no direct relationship with the customers of the correspondent bank. The bank is therefore unable as a matter of course to verify the identity of these underlying customers or understand the nature of the business and transactions (e.g, wire transfers, clearing cheques) it processes on their behalf.⁸

3.4 Industry Risk – Certain business sectors and industries have historically been identified with high perceived levels of corruption, financial institutions therefore need to assess, based on their own criteria, whether a particular customer poses a higher risk of corruption.

⁸ See the Wolfsberg AML Principles for Correspondent Banking and also the Wolfsberg FAQs on Correspondent Banking on <http://www.wolfsberg-principles.com/>.