

NBA Guide 1137

# Corruption, and accountant's procedures

*This document is an unofficial English translation and does not constitute an official translation of the original Dutch NBA Guide 1137. The English version has not undergone any formal due process. In the event of any discrepancies, the Dutch-language text of the NBA Guide 1137 prevails.*

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Royal Netherlands  
Institute of Chartered  
Accountants



Royal Netherlands  
Institute of Chartered  
Accountants




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## Guide 1137 - Corruption, and accountant's procedures


NBA Guide 1137	Corruption, an accountant's procedures
Applicable to	Intended primarily for accountants carrying out audit and compilation engagements, secondarily for other accountants
Status	NBA guide, no mandatory provisions
Relevant regulations	EU Regulation 537/2014 Dutch Criminal Code, Articles 177, 317, 328b and 363 Money Laundering and Terrorist Financing (Prevention) Act (Wwft) Audit Firms (Supervision) Act (Wta) Audit Firms (Supervision) Decree (Bta) Code of Conduct and Professional Practice for Accountants Regulation (VGBA) Further Regulations on Non-Compliance with Laws and Regulations (NV NOCLAR) Further Regulations on Audit and Other Standards (NV COS)
Relevant policy	Instruction on the Investigation and Prosecution of Official Corruption in the Netherlands, Public Prosecution Service 2024
Format	New style: interactive, easily searchable document with internal links to interconnected text sections and hyperlinks to external sources. Accessible linguistic style, infographics and practical examples.


This document contains bookmarks, hyperlinks and navigation buttons:


 Adobe Acrobat bookmarks - key combination "Ctrl-b"

 Text is an internal document link or external hyperlink

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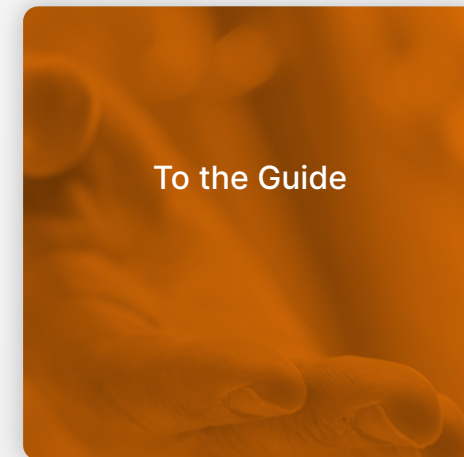
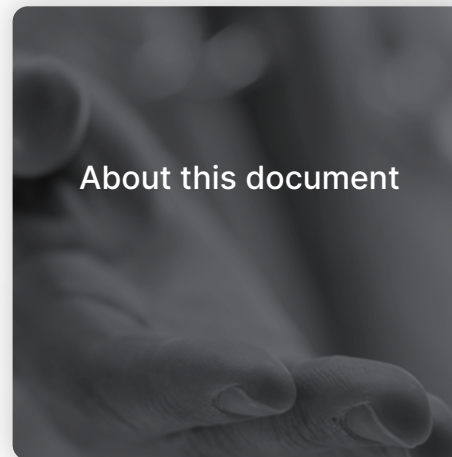
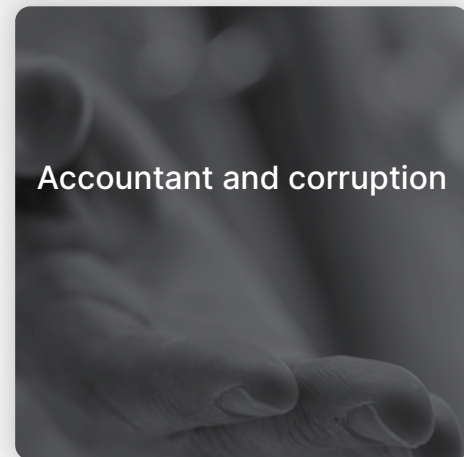
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## Introduction

Corruption is more common than people think, also in the Netherlands. The Public Prosecution Service has tightened its investigative policies and the Fiscal Intelligence and Investigation Service (FIOD) has a separate anti-corruption unit. Accountants have various obligations in respect of corruption. This new-style guide sets out what an accountant should

look out for, and when he has to take what action. The Guide confines itself primarily to bribery (including kickbacks) and facilitation payments. Because these forms of corruption usually go hand in hand with forgery of documents, the Guide follows the accountant's responsibilities with regard to fraud.



# I Accountant and corruption

Corruption is not limited to 'countries of concern', but can also be found in the Western World, Europe and the Netherlands. Building contractors bribe public officials, while suppliers 'wine and dine' procurement officers and producers of medicines or medical appliances and make arrangements with physicians. In the notorious 'Klimop' property fraud, some key figures received money or a yacht in return for a deal. After the treasurer of Vestia had earlier demanded money for the purchase of shares and derivatives, a senior property manager and a social relations officer of this housing association took bribes in money and kind for awarding cleaning and maintenance contracts from 2015 to 2018. The time when paying backhanders and sweeteners was considered 'normal' and was tax deductible is far behind us. Nowadays, society and the authorities take a grim view of bribery, facilitation payments and other forms of corruption.

For example, the following passage can be found on page 5 of [Doing business honestly, without corruption 2023](#) - a joint publication of the Ministries of Foreign Affairs, Justice and Security, and Economic Affairs and Climate Policy, and the business associations ICC Netherlands, VNO-NCW and MKB-Nederland:

*Corruption threatens the integrity of the market, damages public confidence, increases disparities in income and prosperity, undermines the rule of law and imposes a heavy financial burden on society. Corruption is also a significant source of finance for the waging of war and destabilises societies. Corruption can result in safety regulations being disregarded, with potentially serious consequences. Besides the suffering it causes to the people concerned, for businesses it entails risk of reputational damage, financial loss and prosecution.*

How should accountants deal with the risks and signals of corruption – in particular bribery and facilitation payments at clients? In December 2016, the NBA published its first Guide for auditing accountants. This revised 2024 version focuses on bribery, kickbacks and facilitation payments. It contains more examples and indicators and provides greater clarity for audit and compilation engagements in particular. The format has been adjusted as well: a more stylish presentation in a document in which it is easy to navigate to the relevant information, so that there is no need to read the Guide from beginning to end.

# II About this document

## II.1 How to use the Guide

The Guide consists of blocks, which can be consulted independently of each other. Thanks to internal links, the user can navigate to the applicable text blocks and pages with a click of the mouse. External links (hyperlinks) provide access to Internet sources, such as relevant (disciplinary) case law and supporting documents. There are no hyperlinks to standards and legislation, due to the risk that the link leads to an outdated version.

The Guide is intended primarily for auditing accountants and accountants carrying out compilation engagements. Chapter 9 focuses entirely on accountants conducting compilation engagements. The Guide also contains valuable information for accountants acting in other capacities. These could be internal auditors, public-sector accountants and accountants in business who are managing directors, financial directors or members of an audit committee. Except in the text blocks about NV NOCLAR and the VGBA, and a separate chapter about obligations in respect of [compilation engagements](#), the focus is on the application of the auditing standards. The Guide follows the steps the accountant goes through in the audit and starts with the mandatory risk analysis.

The examples in the Guide are partly fictitious and partly derived from reality. The practical examples in [Appendix A](#) are based on actual cases. Company names are given in full if they were disclosed, but otherwise the cases are anonymous.

## II.2 Why this Guide?

Just like 'fraud', 'corruption' is a collective term for a range of behaviours. We speak of corruption when a person abuses his or her position for per-

sonal or business profit. In essence, corruption is often tantamount to bribery. It does not matter whether the recipient of the bribe is a public official, politician or private person.

Corruption nearly always involves other criminal offences, such as forgery of documents, money laundering and/or participation in a criminal organisation.

Society disapproves of corruption and takes a negative view of service providers who turn a blind eye to corruption or its facilitation. It is important that accountants can make a proper assessment of the risks and complexity of corruption.

The example in Chapter [A.3](#) shows that recognising corruption risks does make a difference and that bribery is a criminal offence. And this is for good reason, because corruption in general and bribery in particular create victims. For example, if medical specialists at a hospital accept payment for prescribing or implanting particular items, this will affect the care quality and drive up the costs of care; see among other things [A.7](#). If municipal officials or procurement officers give tips on tendering in return for watches, a new kitchen, car accessories, a jacuzzi, holidays or events, then honest contractors are left empty handed and the municipality will probably pay too much for services; see [A.4](#).

*"Corruption (...) undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish."* This is stated in the introduction to the United Nations Anti-Bribery Convention.

*"Corruption damages public confidence and causes social indignation. Corruption allows crime to flourish and harms companies, government*

## II About this document

*authorities and society. This undermines the fair and efficient performance of public duties and the functioning of the economic system. In the business sector, corruption distorts the level playing field that is necessary for a well-functioning economy, which means that new entrants do not stand a chance and bona fide businesses are pushed out of the market.”* (Public Prosecution Service)

In the Netherlands, bribery as a manifestation of corruption is a criminal offence under the Dutch Criminal Code. This Code refers to both official and non-official bribery. Dutch law also applies to Dutch entrepreneurs that bribe a party in another country. This is known as extraterritorial effect. International anti-corruption laws, such as the US Foreign Corrupt Practices Act (FCPA), the French Sapin II and the UK Bribery Act, have extraterritorial effect as well. This means that Dutch companies may also have to deal with the US, British and French law enforcement agencies if they are (also) subject to this foreign legislation. The consequences – fines, loss of reputation and loss of revenue – may be of such magnitude as to be material for the annual accounts. These US, British and French laws also set requirements for a company's internal control system. Failure to pay proper attention to corruption and corruption risks will be an aggravating circumstance.

European states are trying to fight corruption in various ways, including at OECD level. The OECD Anti-Bribery Convention obliges the associated states to make bribery of foreign public officials by their residents a criminal offence. The [European Commission](#) has aimed at stricter, harmonised anti-corruption policies since 2023.

Apart from conventions and legislation, accountants are obliged under their own rules of professional conduct and practice to take action when encountering corruption – as well as fraud, money laundering and terrorist financing – and to act in the public interest. Especially the fundamental principle of integrity laid down in the VGBA requires the accountant to

keep well away from corruption. The NV COS also address this public responsibility, with Standards 240, 250 and 4410. [See Chapter 3](#). The Standards require the accountant to look out for indications of corruption.

The accountant's role is limited, however. It is primarily the client who is responsible for fighting and preventing corruption. For example, the client must ensure proper internal control that prevents material frauds and therefore also material bribery.

### II.3 Principal changes

The first version of Guide 1137 was introduced in 2016. Since then, the laws and regulations concerning the accountancy profession have changed, the criminal prosecution policy on facilitation payments has been tightened, and insight into new manifestations of corruption has increased. The principal substantive changes compared to the previous version of the Guide are as follows:

- the Guide now takes account of the Public Prosecution Service's tightened policy on facilitation payments and its effect on audits;
- the references to the VGBA, in particular the fundamental principle of integrity, and to the NV NOCLAR make it clear that in principle *all* accountants should be mindful of corruption risks and give follow-up to indications of corruption, even though this Guide primarily focuses on audit engagements;
- a chapter has been added about compilation engagements;
- the Guide has been adjusted to the revised Standard 315;
- the new version includes a section on the NV NOCLAR;
- an explanation has been added of the various manifestations of corruption;
- the way to determine when corruption risk *factors* become *corruption risks* is explained in more detail;



## II About this document

- many practical examples have been added, largely derived from (disciplinary) case law;
- there are details on how the accountant should deal with international group structures, audit evidence falling under the right of non-disclosure, the right of audit, transactions with agents and intermediaries, as well as with facilitation payments;
- communication about findings has been worked out in more detail;
- the possible consequences for the auditor's report have been worked out in more detail.

Although this Guide discusses the most common risks relating to corruption, such as bribery, facilitation payments and kickbacks as exhaustively as possible, this is not a complete description. In many cases, the accountant will have to use professional judgment in order to comply with the fundamental principles. This Guide may help with this.

The Guide contains information on:

- **what corruption is** and in forms it can take (see also the practical examples in Appendix A);
- **the accountant's role:**
  - the **corruption risk analysis as part of the fraud risk analysis**;
  - what to do if **corruption risks** or indications of corruption are identified;
  - how to communicate about **findings regarding corruption risks**;
  - what the **possible consequences are for the auditor's report**;
  - obligations regarding **compilation engagements**.

The Guide concludes with a **chapter with in-depth information** on relevant topics.

### Format

The format of this Guide is new. In order to highlight the urgency of the corruption issue and show that corruption also occurs in the SME sector, **practical examples** have been added as Appendix A, primarily from (disciplinary) case law. To make the Guide more user friendly, a document type has been chosen in which it is easy to click through to the applicable text blocks and internal sources. Although the text can be read from beginning to end, this will usually not be necessary. In order to prevent users from skipping relevant passages, internal links provide cross-references between related text blocks. Some linguistic changes have been made to improve readability. As a result, some sentences may appear more imperative than the Standards prescribe. Obviously, the Guide does not impose any obligations that are not also included in the Standards. In case of doubt about interpretation, the text of the Standards will prevail.

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### 3 The accountant's role

Code of Conduct and Professional Practice for Accountants Regulation (VGBA)  
NV NOCLAR (Non-Compliance with Laws and Regulations)  
Standard 240  
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# 1 Introduction

This chapter in brief

This chapter will explain the principles underlying this Guide:

- The target group;
- Why the focus is on bribery;
- Why professional judgment remains important;
- The corruption risk analysis is an integral part of the mandatory fraud risk analysis;
- When will a factor become a risk, and a risk become an indication? And when will an indication become a suspicion? When is there a reasonable suspicion?
- Corruption and fighting corruption are primarily the responsibility of management;
- The accountant acts as a gatekeeper.

## 1.1 Target group

All accountants can encounter (potential) corruption. This Guide focuses on audit and (to a lesser extent) compilation engagements. In all other cases, accountants may benefit from the description of the inherent risk factors and the description of the follow-up actions if there is a suspicion of corruption.

## 1.2 Focus on bribery and facilitation payments

Just like fraud, corruption is a catch-all term that comprises many forms, including: bribery, kickbacks, facilitation payments, unlawful benefits in kind, conflicts of interest and extortion (including ransomware).

The prosecution policy of the Public Prosecution Service, which was tightened in 2020, is aimed especially at bribery – including kickbacks – and facilitation payments. This Guide therefore focuses on these forms of corruption. These forms nearly always go hand in hand with fraud and

money laundering. In most cases, bribery involves misappropriation of assets. Section A5 of Standard 240 presents several examples of misappropriation of assets. Among other things, this section states that the use of the organisation's resources for services that were not received qualifies as misappropriation of assets. Bribery may also involve a payment for a service not received. In addition, (a sales officer of) a company may use resources to bribe other parties in order to secure or achieve revenue. The examples mentioned in section A5 of Standard 240 also include an explicit example of private bribery: "commissions paid by suppliers to procurement officers of the entity in return for artificially increasing prices". This means that bribery falls within the scope of Standard 240 (Standard 240.3). While this Guide was being written, the International Auditing and Assurance Standards Board (IAASB) launched a consultation on the amendment of ISA 240. This draft version of the new Standard provides detailed examples of corruption.

The Netherlands Authority for the Financial Markets (AFM), the Tax and Customs Administration/FIOD and the Public Prosecution Service also regard corruption as a form of fraud. Thus, the AFM brackets corruption with forgery of documents as examples of an incident that must be reported:

*"A client of the audit firm is suspected by an investigative body of committing one or more criminal offences. The suspicions are of a serious nature. This could involve forgery of documents, money laundering, corruption, tax offences, but also breaches of the Wwft and serious breaches of the Wft." (See p. 8, 'Interpretations')*

In this Guide, Standard 240 takes centre stage. The definition of 'fraud' according to this Standard is: "An intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage." Under this definition, bribery is nearly always a form of fraud

# 1 Introduction

in practice, because this involves:

- intent;
- aimed at an unjust or illegal advantage;
- deception.

Unlike fraud, however, corruption is not covered by a separate Standard. Partly because of the focus on bribery, the detailed discussion in this Guide is based primarily on Standard 240.

## 1.3 Professional judgment and iterative process (self-repeating)

The Standards prescribe that, when forming their audit opinion, an accountant must obtain reasonable assurance on whether financial statements as a whole are free from material misstatement due to fraud or error. The facts and circumstances may differ for each annual accounts audit. Therefore, the accountant must use professional judgment both when planning and when conducting the audit. This Guide covers the most common risks and forms of corruption and is as exhaustive as possible, but not complete. In many cases, the accountant will have to act on the basis of professional judgment and plan and conduct the audit with professional scepticism.

An audit in accordance with the Standards is iterative in nature, which means that the accountant must have the flexibility to go back to an earlier phase of the audit process if necessary. By doing so, the accountant will respond to new information or circumstances that come to light during the audit. For instance, if a suspicion of possible corruption arises during the performance of substantive procedures, Standard 240 provides that it is not only the accountant's responsibility to take the necessary measures, but also to re-evaluate the risk analysis performed earlier.

## 1.4 Corruption risk analysis = fraud risk analysis with attention for corruption risk factors

Under Standard 240, the fraud risk analysis is a mandatory element of the audit. In performing the fraud risk analysis, the accountant may identify fraud risk factors that are related to corruption. For reasons of clarity, this Guide refers to the attention for corruption risk factors as the 'corruption risk analysis'. This analysis is not an isolated procedure and does not result in a stand-alone document, but is part of the fraud risk analysis. In the corruption risk analysis, the accountant follows Standard 240, which prescribes more specific (analysis) procedures and steps than Standard 315 does for the general risk analysis that is a mandatory element of the audit.

During a corruption risk analysis, the accountant analyses the corruption risk factors at the audit client and its environment. The analysis of the corruption risk factors is discussed in [Chapter 4](#). Corruption risk factors may be an indication of risks of material misstatement due to corruption. The focus in [Chapter 5](#) is on how the accountant deals with identified corruption risks. The accountant may come across indications of corruption during the audit, but also in other ways. In [Chapter 6](#), this Guide sets out what the accountant must do if there are indications of corruption. The discussion with management about the investigation of the indications may result in a suspicion of corruption. Subsequently [Chapter 6](#) describes what the accountant must do if there are suspicions of corruption. The section below will explain the differences between factor, risk, indication and (reasonable) suspicion.



# 1 Introduction

**Risk factor**

The client depends on tendering procedures, involving large contracts, whereby the decision is taken by a select group of people.

**Risk**

The risk that procurement officers of tendering organisations are bribed in order to win the contract.

**Indication**

The random check of the costs reveals that costs were recorded without a clear counter-performance and substantiation.

**Suspicion**

The accountant asks management to investigate the indication of corruption or ask others to do so. The investigation shows that procurement officers received money or goods not related to the operations.

# 1 Introduction

## 1.5 Factor, risk, indication, suspicion, reasonable suspicion

Standard 240 defines fraud risk factors as events or conditions that indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud.

An evaluation of risk factors may show them to be risks, and risks may, based on additional procedures or audit evidence obtained, turn out to be an indication of corruption, which after further investigation results in a suspicion. Below the differences between indication, suspicion, Wwft-related suspicion and reasonable suspicion will be explained in more detail.

Indication: circumstances that indicate the possibility that the financial statements contain material misstatements due to corruption. This definition is derived from the explanation of an indication of fraud in Standard 240. Following an indication of corruption, the accountant carries out further investigation in order to evaluate whether this involves a suspicion of material corruption. In the case of an audit engagement, the accountant re-evaluates the risk assessment and determines the effect on the nature, timing and extent of the audit procedures. An indication is therefore a matter that requires further evaluation. That evaluation and that investigation may result in a suspicion of corruption; see also [Chapter 6](#).

In Standard 240, the indications of fraud and the suspicion of fraud are not detailed in the list of definitions. Likewise, Standard 240 makes no distinction between an indication of fraud and a suspicion of fraud. In both cases, the accountant is obliged to take additional steps when identifying this. To ensure the clarity of this Guide, we opted to treat a suspicion of fraud as the phase in which the accountant's further evaluation takes place.

Suspicion: if the accountant concludes, after further evaluation and

investigation of an indication, that the information is an indication of material corruption. In most cases, only a court can decide whether that suspicion is correct. In case of a suspicion, the accountant must in any case hold consultations with management or the internal supervisory bodies and urge the client to take remedial measures with regard to the suspected corruption. See also [Chapter 6](#).

Suspicion in the context of the Wwft: in many cases, an indication of corruption will result in the suspicion that the transaction in question is unusual within the meaning of the Wwft. The definition of "suspicion" in the [Wwft](#) is different from that in Standard 240. An accountant is more likely to have a suspicion of an unusual transaction under the Wwft than under Standard 240. Under [settled case law](#), the accountant must report every unusual transaction, as soon as the accountant suspects that it may be related to money laundering (or terrorist financing). The interpretation of a suspicion in accordance with the Wwft entails that the notification barrier is low. The accountant may perform some investigative work before making a notification, but is not allowed to wait until he has found a proper basis or conclusive evidence of money laundering or terrorist financing. The audit firm must report the unusual transaction 'immediately' to the Financial Intelligence Unit Netherlands (FIU-NL). [See also 6.3](#).

'Reasonable suspicion' is a criminal law term – not further defined by the legislator – that has particular relevance for the use of coercive measures by investigating officers. This is relevant for accountants who conduct statutory audits. [Article 26 of the Wta](#) speaks of a 'reasonable suspicion': if an accountant comes across data or information at a non-public interest entity which "justifies the reasonable suspicion of material fraud" in the audit client's annual reporting, the accountant must report this to a competent investigating officer. An important exception to this rule is laid down in Article 37 of the Bta. The exception is that a notification will not be required if the client carries out an investigation and subsequently

# 1 Introduction

takes appropriate remedial measures. [See also 6.3](#). From a practical perspective, there is no difference between the definition of a suspicion of fraud under Standard 240 and the definition of a reasonable suspicion of fraud under the legislative texts. This Guide uses the term 'suspicion'.

When auditing financial statements, therefore, an accountant has responsibilities if there are indications of fraud in the context of Standard 240. An accountant has a responsibility to investigate and evaluate whether there is a suspicion of fraud in conformity with Standard 240. After the suspicion of fraud has been established in conformity with Standard 240, the accountant evaluates the obligation to make a notification in the context of Article 26 of the Wta.

## 1.6 Gatekeeper

Do accountants have to act as gatekeepers? If this role is understood to mean that the accountant carries out further investigation in case of indications of corruption, discusses this with management and reports unusual transactions, the answer is 'yes'. Based on Standards 240 and 250, the NV NOCLAR and the Wwft, the accountant has a gatekeeper role in cases of material fraud and corruption. In this context, the judiciary uses the term 'gatekeeper function'; [see 6.3](#).

## 1.7 Responsibility of management

The primary responsibility for preventing and detecting corruption lies with management and those charged with governance at the entity. It is therefore essential that management, supervised by those charged with governance, gives sufficient consideration to preventing corruption, for instance via internal control measures or a good tone at the top. These may reduce pressure and opportunity to commit corruption, and possibly its rationalisation or justification.

Preventing and detecting corruption also includes identifying risks of corruption. It is important that management weighs up these risks and determines the probability of these risks occurring. Based on this risk analysis, management must decide what actions it should take in order to reduce these risks. We call this a (fraud) risk analysis, which must also consider the risk of corruption. The revised [COSO fraud risk management guide](#) may help organisations with this. It is essential that management does everything in its power to discourage people from committing corruption by increasing the chance of detection and sanctioning. It is also important that management carries out this analysis and these control measures in a manner appropriate for the circumstances of the organisation.

## 2 Corruption – forms of criminality

This chapter in brief

- What is corruption and what forms exist?
- What is the difference between official and non-official, active and passive bribery?
- Why are bribery, kickbacks and facilitation payments nearly always a form of fraud?
- The Public Prosecution Service does indeed prosecute facilitation payments.

### 2.1 What is corruption?

Just like 'fraud', 'corruption' is a collective term for a range of behaviours. We speak of corruption when a person abuses his or her position for personal or business profit. In essence, corruption is often tantamount to bribery, including payment of kickbacks, or payment of sweeteners (facilitation payments). It does not matter whether the recipient of the bribe is a public official, politician or private person. See, for example: [Doing business honestly, without corruption 2023](#).

Corruption nearly always involves other criminal offences, such as forgery of documents, money laundering and/or participation in a criminal organisation; see the [practical examples](#). Corruption is usually regarded as a form of fraud. According to fraud investigators, it is the most common form of observed fraud.

### 2.2 Forms of corruption

There are various forms of corruption:

- bribery;
- kickbacks;
- facilitation payments;
- conflict of interest;
- extortion;
- ransomware;
- unlawful benefits in kind.

*Bribery* is unlawfully providing or promising money, goods or services in order to get something done. This includes payments to persons in a private capacity as part of the procurement process, as well as the provision of money, goods or services to persons in a private capacity. Expensive watches, jewellery and art are well-known examples of bribery goods. The services offered range from maintenance work to someone's private home, to travel and 'client entertainment'. Bribery is a criminal offence.

*Kickback payments* are payments made to influential persons within an organisation in return for a form of benefit. Unlawful payments to, for example, contract awarders also fall under bribery, even though they will not always be visible in the accounts.

*Facilitation payments* are small payments to (minor) public officials for routine acts that are permitted in themselves and do not necessarily result in an unfair competitive advantage. These are made, for example, in order to accelerate the customs clearance of goods or the issue of visas and work permits. Making facilitation payments is a criminal offence and the Public Prosecution Service has tightened its prosecution policy on this point; [see 10.5](#).

## 2 Corruption – forms of criminality

*Conflict of interest* is a situation in which a person serves multiple interests that may influence each other to such an extent as to jeopardise the integrity of either interest and, for example, have the effect that work is always awarded to the same parties. A conflict of interest as such is not a criminal offence.

*Extortion* is compelling a person, by an act of violence or a by a threat of violence (Article 318 of the Dutch Criminal Code):

- to surrender a property belonging to that person or a third party;
- to incur a debt or relinquish a claim to a debt;
- to disclose confidential information.

Infecting computers with ransomware and subsequently demanding a ransom is also a form of extortion (see Article 317 of the Dutch Criminal Code).

Unlawful benefits in kind are provided to reward a particular decision or act, *after* the recipient took the decision or performed the act.

The difference with extortion and bribery is that there is no intention to exert pressure or undue influence in advance.

Facilitation payments and backhanders are usually not recorded as such in the accounts. In many cases, the payments or gifts are disguised. Gifts in kind are often recorded as operating expenses. Overpricing and kickbacks are usually kept off the books as well. Various cases are described in [Appendix A](#), most of which have been derived from case law. They paint a picture of the ways in which corruption manifests itself in the Netherlands in particular, and of the possible fraud risk factors. In many cases, for that matter, those factors may also be indications of fraud or money laundering.

It is important to establish the economic reality of the transactions. For instance, transactions with or via [agents and intermediaries](#) entail an increased risk of corruption. What did the agent do with the client's money? What did the agent or intermediary effectively deliver in return for the commission or fee?

Overbilling and kickbacks may for instance be dressed up as invoices for '[consultancy services](#)'. Invoices from out-of-sector suppliers for supplies to third parties or unknown parties also deserve scrutiny, see [A.3](#) and [A.4](#), as do (very) large [fee payments without invoices](#). As regards the operating expenses, consideration must be given to [staff costs](#), [bonus payments](#) and [\(representation\) expenses such as those of conferences, dinners and team building](#). Backhanders – money used as a bribe – can also take the form of [sponsor money](#) or [unequal input in a joint venture](#), especially in a high-risk [sector or country of concern](#).

### 2.3 Bribery of public officials and private persons

In the Netherlands, bribery is a criminal offence under the Dutch Criminal Code. The Criminal Code distinguishes between providing bribes (active bribery) and accepting bribes (passive bribery). In this context, it makes a difference whether the recipient of the bribe is a public official (official bribery) or an employee, officer or representative of a private business (non-official bribery).

Dutch and foreign nationals are not allowed to bribe a Dutch public official, while Dutch public officials are not allowed to accept bribes either. Furthermore, it is a criminal offence to bribe a foreign public official. In general, the Dutch Public Prosecution Service will have jurisdiction if a case of bribery has a connection with the Netherlands. Bribery is a criminal offence in most countries.



## 2 Corruption – forms of criminality

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The accountant must bear in mind that the criminalisation of bribery may differ from one country to another. During the corruption risk analysis, the accountant will therefore consider the specific provisions of the relevant foreign corruption legislation.

### **Active bribery of foreign public officials or officers (Dutch Criminal Code, Article 177)**

#### **Liable to punishment shall be:**

1. any person who gives a gift or makes a promise to a public official or provides or offers him a service with a view to inducing him to act or to refrain from certain acts in the performance of his office, in violation of his duty;
2. any person who gives a gift or makes a promise to a public official or provides or offers him a service as a result or as a consequence of certain acts he has undertaken or has refrained from undertaking in the performance of his current or former office, in violation of his duty. (...)

#### **Active bribery of foreign public officials or officers (Dutch Criminal Code, Article 178a)**

1. For the purposes of [Article 177](#), persons in the public service of a foreign state or of an organisation under international law shall be considered as equivalent to public officials.
2. For the purposes of [Article 177\(1\) \(2°\)](#), former public officials shall be considered as equivalent to public officials. (...)

### **Passive official bribery (Dutch Criminal Code, Article 363)**

#### **Liable to punishment shall be any public official:**

1. who accepts a gift or promise or service, knowing or reasonably suspecting that it is given, made or rendered to him in order to induce him to act or to refrain from certain acts in the performance of his office, in violation of his duty;

2. who accepts a gift or promise or service, knowing or reasonably suspecting that it is given, made or rendered to him as a result or as a consequence of certain acts he has undertaken or has refrained from undertaking in the performance of his current or former office, in violation of his duty;
3. who requests a gift, promise or service in order to induce him to act or to refrain from certain acts in the performance of his office, in violation of his duty;
4. who requests a gift, promise or service, as a result or as a consequence of certain acts he has undertaken or has refrained from undertaking in the performance of his current or former office, in violation of his duty; (...)

### **Bribery in the private sector**

#### **Non-official bribery (Article 328b)**

##### **Passive**

#### **Liable to punishment shall be:**

1. Any person who, in a capacity other than that of a public official, either in the service of his employer or acting as an agent, accepts or requests a gift or promise or service in consideration for certain acts he has undertaken or has refrained from undertaking or will undertake or will refrain from undertaking in the course of his duties. (...)

##### **Active**

#### **Liable to punishment shall be:**

2. (...) Any person who gives a gift or makes a promise or renders or offers a service to another person who, in a capacity other than that of public official, is in the service of an employer or acts as an agent, in consideration for certain acts he has undertaken or has refrained from

## 2 Corruption – forms of criminality

*undertaking or will undertake or will refrain from undertaking in the course of his duties as employee or agent, the gift or promise or service being of such nature or given, made, rendered or offered under such circumstances that he might reasonably assume that the latter acts in violation of his duty. (...)*

This provision makes bribery of and by persons in the private sector a criminal offence. In contrast with the US Foreign Corrupt Practices Act (FCPA), for example, Dutch law considers bribery to be a criminal offence.

In the case of non-official bribery, a person acts in contravention of his duty to his employer or principal. The briber and the bribee will usually do so if they do not disclose the bribery to their employer or principal.

Private bribery may harm the organisation if companies and authorities no longer want to do business with an organisation of which an employee or agent is suspected or has been convicted of bribery.

A company may pamper private business contacts, such as procurement officers or decision-makers of other companies, to some extent with a view to, say, acquiring contracts. If a company goes beyond the bounds of propriety, however, this may become a criminal offence as well.

### Facilitation payments

The FIOD and the Public Prosecution Service regard facilitation payments as a separate form of bribery. The [OECD Convention](#) on combating corruption does not address the payment of small amounts 'to grease the wheels'. This kind of *facilitation payments* does not fall under the Convention obligation for countries to make bribery of foreign public officials a criminal offence. The Netherlands fulfils this obligation through [Article 177](#) of the Dutch Criminal Code. In this article, however, it makes no difference for criminal liability with what objective a public official is bribed.

Therefore, it also covers the facilitation of procedures. The [FCPA](#), on the other hand, does make an exception for facilitation payments. This means that the distinction between bribery and this kind of payments may indeed be relevant with regard to clients falling under the jurisdiction of the FCPA.

Because this usually involves small amounts, some people believe that the Public Prosecution Service does not assign high priority to this kind of corruption. However, in the 2022 [Instruction on the Investigation and Prosecution of Official Corruption in the Netherlands](#), the Public Prosecution Service no longer makes a distinction between bribery and facilitation payments. In both categories, the same factors determine when the Public Prosecution Service brings criminal proceedings. More information on the prosecution policy and dealing with potential facilitation payments can be found in [10.5](#).

## 3 The accountant's role

This chapter in brief

- An overview of the rules of professional conduct and practice and Standards that are most relevant in relation to corruption;
- The emphasis is on the norms for audit engagements and to a lesser extent on compilation engagements;
- Some norms apply to *all* accountants, therefore also to accountants in business, internal auditors and public-sector accountants.

Important principles and rules can be found in the VGBA and the NV NOCLAR. After all, these apply to all types of accountants, that is, to both auditing and non-auditing accountants, whether in a senior position or otherwise. In addition, audit engagements are subject to Standard 240 in particular and compilation engagements to Standard 4410.

### Code of Conduct and Professional Practice for Accountants Regulation (VGBA)

The fundamental principles and rules laid down in the VGBA apply to all accountants who perform a professional service. Where corruption is concerned, the integrity principle in particular applies. This principle has been worked out in Articles 6 to 10a inclusive.

Article 6 provides that an accountant must act with integrity and honesty. Obviously, an accountant will not be acting with integrity if he commits bribery himself.

Under Article 7, an accountant who is involved or implicated in unethical practices of others, for instance a client or the organisation where the accountant works or with which he is associated, must take measures aimed at terminating these practices. The accountant must therefore take

action if the client or organisation where the accountant works is bribing public officials. If this is not possible, the accountant must distance himself from those acts (or omissions).

### NV NOCLAR (Further Regulations on Non-Compliance with Laws and Regulations)

The NV NOCLAR provide how accountants should deal with the fundamental principles under the VGBA in the event of non-compliance with laws or regulations.

The NV NOCLAR apply to all accountants, but in the steps a distinction is made between types of accountants: auditors and non-auditors and a senior or other position within an organisation. Further details can be found in the [Explanatory Memorandum](#).

If the accountant, while performing a professional service, notices potential or imminent breaches of laws and regulations which are relevant and clearly more than insignificant, the accountant will be expected under **NV NOCLAR** to take action and go through the **NOCLAR step-by-step plan** (Article 3).

The accountant must discuss indications of corruption with management, have the indications investigated (by the client or an expert) and press for appropriate measures. If the client does not respond adequately, the accountant must consider terminating the engagement (Standard 210.17). Notification requirements may apply ([see also Overview of notification requirements](#)).

The accountant must always report suspicions of corruption immediately to FIU-NL pursuant to [the Wwft](#). [See 6.3](#).

## 3 The accountant's role

### Standard 240

In *Standard 240.12a*, fraud is defined as an intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage. Fraud therefore involves three characteristics:

- intent;
- aimed at an unjust or illegal advantage;
- deception.

This Guide will follow the steps laid down in Standard 240 and NOCLAR. Corruption is a catch-all term and is not covered by one specific Standard. Because bribery – including kickbacks – and facilitation payments are most prevalent and are the focus of the prosecution policy of the Public Prosecution Service, this Guide addresses these forms of corruption in particular. In this Guide, Standard 240 is the point of departure and the accountant follows the steps prescribed by this Standard. In those rare cases in which corruption lacks one or more of the elements of fraud, the auditing accountant must comply primarily with [Standard 250](#). The [NV NOCLAR](#) apply to all types of accountants and procedures.

Corruption is aimed at obtaining an unjust or illegal advantage. In addition, it nearly always involves deception, because both the payer and the receiver will try to hide the payment of backhanders or sweeteners (i.e., money used as a bribe).

Unlike 'ordinary' fraud, which disadvantages the client, corruption entails the risk that individual staff members and managers at various levels will try to justify corruption by pointing out the financial 'advantage' which the client obtains in the short term.

Compared with 'ordinary' fraud, therefore, the short-term advantage is more likely to convince people that corruption is 'acceptable', whereas that advantage for the client is obviously no justification for corruption that is detrimental to others.

If the auditing accountant notices indications of corruption, he will, as in the case of an indication of fraud, perform additional procedures in order to establish the nature and scope of potential breaches.

### Standard 250

The accountant must be alert to risks relating to compliance with laws and regulations, including regulations concerning corruption and fraud. In those rare cases in which corruption lacks one or more of the elements of fraud, the auditing accountant must act in accordance with Standard 250 and the [NV NOCLAR](#).

Rules have been laid down in [Standard 250](#) which help the auditing accountant identify material misstatements in the financial statements insofar as these are the result of non-compliance with laws and regulations. During the audit, the accountant must maintain professional scepticism and be alert to breaches of laws and regulations, since these may cause the financial statements to contain material misstatements.

The identification of breaches of laws and regulations may have consequences for the auditing accountant. Where necessary, the auditing accountant must not only reconsider the integrity of management or of employees, but also evaluate the risk analysis for the audit engagement and/or for the client itself.

# 3 The accountant's role

If the client fails to comply with the laws and regulations, for example by cooperating in corruption, this may result in material misstatements in the annual accounts. Because of the threat of fines, compensation claims, loss of reputation and loss of revenue, it may be necessary to include a provision or an adequate disclosure in the annual accounts (Standard 250.19b).

## Standard 4410

In compilation engagements, the accountant follows Standard 4410. Section 21 of this Standard provides that the accountant must comply with the relevant ethical requirements in this context. Under section 34(c), the accountant must suggest 'appropriate amendments' to management if the accountant realises during the compilation process that the historical financial information is misleading – *"including identified or suspected fraud or non-compliance with laws and regulations"*. The NV NOCLAR may apply as well with regard to compilation engagements.

The accountant will terminate the engagement if:

- he suspects corruption; and
- he therefore suggests amendments; but
- management refuses to implement the amendments; or
- management forbids the accountant to make the proposed amendments.

This will also be the case if management gives no adequate follow-up to identified or suspected fraud or non-compliance with laws and regulations (section 35).

The accountant must subsequently inform those charged with governance of the reasons for this termination (section 35).

For more information on compilation engagements, see [Chapter 9](#).



# 4 The corruption risk analysis

This chapter in brief

- The corruption risk analysis is an element of the mandatory fraud risk analysis;
- The auditing accountant performs the mandatory risk analysis of Standard 315 with five supplementary procedures under Standard 240;
- This chapter explains how the accountant evaluates corruption risk factors and identifies and assesses corruption risks.

Please note: Pursuant to Standard 240, the fraud risk analysis is a mandatory element of the audit. When performing the corruption risk analysis, the accountant may identify corruption risk factors. This analysis is not an isolated procedure and does not result in a stand-alone document, but is part of the fraud risk analysis. For reasons of clarity, this Guide refers to the attention for corruption and corruption risk factors in the fraud risk analysis as the 'corruption risk analysis'.

## 4.1 Introduction

This chapter contains practical instructions for performing a risk analysis aimed at corruption, which is part of the fraud risk analysis as described in Standard 240. This Guide refers to this analysis as the 'corruption risk analysis'. The corruption risk analysis is therefore an element of the fraud risk analysis and is part of the auditing accountant's existing obligations.

As observed in [section 1.4](#), Standard 240 in particular is relevant in the context of corruption. This Standard 240 explains specifically how Standard 315 and Standard 330 must be applied in the event of fraud risks. The accountant therefore performs the following procedures, among others:

1. Obtain information from management and optionally from others within the entity, such as (if present) the internal audit function and those charged with governance (240.18-22);
2. Analyse figures in order to identify unusual or unexpected relationships (240.23);
3. Evaluate other information which the accountant obtained (240.24);
4. Evaluate fraud risk factors (240.25);
5. Identify and assess risks of material misstatement due to fraud (240.28).

These procedures are aimed at gaining an understanding of the client and its environment, the applicable financial reporting framework and the internal control system. The accountant uses the information obtained in identifying fraud risks.

Below, [section 4.2](#) sets out what the accountant must look out for when identifying and assessing risks of material misstatement. Subsequently, [section 4.2.1](#) explains how the accountant can gain an understanding of the client and its environment and the applicable financial reporting framework. This includes a description of the corruption risk factors associated with particular [sectors](#) and with [geographical areas](#), as well as [client-specific characteristics](#).

Thereafter, [section 4.2.2](#) explains how the accountant can gain an understanding of the internal control system. Among other things, this section describes how the accountant performs analytical procedures and [obtains information](#), and how the accountant [identifies and assesses](#) corruption risks.

## 4 The corruption risk analysis

### 4.2 Identifying and assessing risks of material misstatement

During the audit, the accountant identifies the risks of material misstatement due to fraud or error.

The accountant starts the risk assessment procedures by gaining an understanding of:

- the client and its environment (including the applicable laws and regulations);
- the applicable financial reporting framework; and
- the client's internal control system (Standard 315.19-27).

As observed in [section 1.5](#), Standard 240 defines risk factors as events or conditions that indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud. Vulnerabilities in the administrative organisation and internal control (AO/IC) may indicate an opportunity to commit corruption.

The fraud triangle and vulnerabilities in the AO/IC



The accountant identifies corruption risks using the elements of the fraud triangle as described in Standard 240. The fraud triangle comprises the elements pressure, rationalisation and opportunity. Pressure refers to financial, emotional or other circumstances which may induce an individual to commit corruption, for example the objective to secure new large customers. Rationalisation refers to the arguments which a person devises in order to justify fraud, such as the assertion that it is customary in the sector to bribe parties. Opportunity refers to the circumstances or vulnerabilities in the internal control environment which enable fraud, such as insufficient supervision, lack of separation of duties and functions, or weak security measures. By examining these elements, the accountant can gain a better understanding of the potential fraud risks within the entity and devise targeted control measures to respond to these risks and mitigate the risk of material misstatement due to fraud.

Examples of circumstances that indicate the possibility of fraud can be found in Appendix 3 to Standard 240. The accountant uses a similar approach with regard to corruption risk factors.

The risk analysis first of all maps out the inherent risk factors associated with the client and its products and services. According to Appendix 2 to Standard 315, deficiencies in the internal control environment, in the risk assessment process and in the monitoring process may be indicative of risks of material misstatement at the level of the financial statements, in particular if these are not addressed by management. As stated earlier, vulnerabilities in the AO/IC may provide an opportunity to commit corruption.

## 4 The corruption risk analysis

By analogy with the definition of fraud risk factors (Standard 240.12b), corruption risk factors are events or circumstances that indicate an incentive or pressure to commit corruption or provide an opportunity to commit corruption.

This section explains three procedures in more detail:

- identifying corruption risk factors based on an understanding of the client **and its environment**;
- identifying corruption risk factors due to **deficiencies in internal control**;
- describing the manner in which corruption risk factors have been evaluated and corruption risks have been identified.

### 4.2.1 Gaining an understanding of the client, its environment and the applicable financial reporting framework

When performing risk assessment procedures, the accountant must gain an understanding of, for example, the client's sector, the applicable laws and regulations and other external factors. In doing so, the accountant can use the knowledge about corruption available within his own firm, as well as examine publications about corruption in the client's sector (Standard 315).

As part of the fraud risk analysis, the accountant maps out the corruption risk factors in conformity with Standard 240. This especially involves events or conditions that provide an opportunity to commit corruption. In this context, the accountant may pay attention to corruption risk factors which are (inherently) associated with:

- **the sector** in which the client is active;
- **the geographical areas** in which the organisation operates; and
- **other client-specific characteristics**, including the way in which the company does business and the nature of the transactions.

#### 4.2.1.1 Corruption risk factors associated with sectors

Corruption is more prevalent in some sectors than in others. According to the OECD, for example, the following sectors are particularly prone to corruption: construction/infrastructure, mining, commodities extraction, the medical and pharmaceutical sector, defence, transport, telecommunications, energy and property development ([Transparency.org](https://www.transparency.org)).

Relatively large transactions, which are often arranged through the agency of third parties, are very common in these sectors. What is more, the complexity of the product or service in this sector can obscure the manner in which the market price is set. This increases the opportunities for paying backhanders and other forms of corruption.

Clients active in these sectors generally have regular business dealings with government officials. The interests for the client may be substantial: for example, securing government contracts, cooperating with local authorities, obtaining permits or bringing goods into a country. This may result in the presence of fraud risk factors in respect of corruption.

Corruption may also occur outside the (semi-)public sector between private parties. An example would be a client's procurement process, whereby a procurement officer agrees higher prices with the supplier, who then favours the procurement officer with a personal *kickback*, therefore a part of the proceeds by way of reward.

Every sector has its own characteristics and specific manifestations of corruption. In extracting and trading commodities, for instance, backhanders – money used as a bribe – may be paid in order to obtain concession licenses illegally. In the construction/infrastructure and shipping sectors, large amounts are at stake, permits are often required and/or the government is a major customer. [See for instance A.2.](#)

# 4 The corruption risk analysis

## 4.2.1.2 Corruption risk factors associated with geographical areas

Corruption is more prevalent in some geographical areas than in others. This is related on the one hand to the culture, on the other to the extent to which anti-corruption laws and regulations are in place and enforced. It is generally assumed that less political stability leads to more corruption. Rapid economic development – significant growth or relapse – in an area may also involve a greater chance of corruption. Certain countries in Africa, Asia, Latin America and the Middle East are characterised by rapid development, which may increase opportunities for corruption.

There are several sources that provide information on the extent to which corruption is observed and/or can be prevented in specific countries. For example, Transparency International (TI) annually publishes the [Corruption Perception Index](#) (CPI). This league table shows to what extent businesspeople and country experts experience corruption in the public sector. The higher a country ranks in the table, the lower the level of corruption observed. However, this does not mean that countries ranked high in the index are not prone to corruption. There have indeed been significant cases of corruption in countries which scored well in this league table. These involved bribery of political parties and politicians, for example.

The [Global Corruption Barometer](#) is TI's counterpart of the [CPI](#), based on the observations of tens of thousands of citizens all over the world. The survey results are published per region; here are the results of the [European Union](#).

TI has assessed the enforcement of anti-corruption laws and regulations per country. In this [Exporting Corruption Index](#), many countries with a favourable CPI score do less well. This index shows to what extent a country takes effective action against the involvement of (domestic)

companies in bribery abroad. This may be a relevant factor in the risk analysis.

Please note: If a client does business with a customer in a country with a low CPI score, this does not mean that there will automatically be a corruption risk. In many cases, this only constitutes a risk factor and the accountant evaluates whether there is a corruption risk. This may differ from one case to another. Conversely, a high CPI factor does *not* automatically mean that there is no corruption risk.

Dutch companies may – either directly or via foreign parent or group companies – run a corruption risk by paying backhanders via their Dutch entities. Corruption risks which occur at, say, a foreign group company may also affect the Dutch parent company which incorporates that group company's data into the consolidated annual accounts. If a client is part of an (international) group structure, the accountant will have to perform [specific procedures](#). An example can be found in [A.6](#).

## 4.2.1.3 Client-specific characteristics

The way in which an organisation does business and the structures within the organisation may encompass corruption risk factors.

Examples include organisations where:

- many transactions are conducted through the agency of third parties, such as an agent or intermediary ([see 10.3](#));
- frequent use is made of a *success fee*;
- use is made of personal networks;
- decisions are taken by a limited number of persons;
- frequent use is made of cash.

Another example is an organisation where the organisational culture is aimed at rapid growth, with sales officers being encouraged to pull out all the stops to secure contracts. League tables are kept of sales officers'

# 4 The corruption risk analysis

results, which are shared with the whole company each week. This may constitute a pressure factor for sales officers and a rationalisation factor for management and the sales officer.

Identifying corruption risks factors also means that any precedents must be taken into account. The accountant must be extra alert to a possible repetition of corruption.

Another relevant factor in light of the corruption risk analysis is the type of transactions that an organisation conducts. This is because particular transactions inherently entail an enhanced corruption risk.

## 4.2.2 Gaining an understanding of the internal control system

### 4.2.2.1 Introduction

Having identified the client's inherent risk factors, the accountant checks how the client's internal control system has been designed and implemented. The accountant evaluates the design of the internal control system and establishes that the identified internal control measures have actually been implemented. In this phase, the accountant does not yet establish whether these measures are effective. An understanding of the client's internal control system may expose potential deficiencies, which the accountant includes in the corruption risk analysis.

As indicated in section 4.2.1, deficiencies in internal control – in particular in the internal control environment, in the risk identification process and in the monitoring process – must be included in the consideration of inherent risks. This applies especially to deficiencies which management does not address itself. In this context, see also Appendix 2 to Standard 315 regarding risk factors (*the susceptibility of an assertion to a misstatement that can be material, either on its own or together with other misstatements, before account is taken of any associated internal control measures*).

### 4.2.2.2 Design and implementation of internal control measures

For an understanding of the design and implementation of internal control measures, the accountant especially analyses the elements that are relevant for controlling the corruption risk.

The internal control system comprises five elements:

- the internal control environment;
- the entity's risk assessment process;
- the process of monitoring the internal control system;
- the information system and the communication; and
- the internal control activities.

The auditor requests information from management, and may also put questions about the internal control system to the head of the internal audit function, the compliance officer, the head of legal affairs – if these positions exist – and/or other staff members (Standard 315.14).

Clients may have an anti-corruption programme in place in order to control corruption risks. An anti-corruption programme may comprise the following elements (among others):

- fraud risk analysis with attention for corruption risk factors;
- anti-corruption policy (including code of conduct and policy on business gifts);
- anti-corruption courses;
- complaints procedure or whistleblowers' scheme for employees, customers and suppliers, and incident registration;
- investigation protocols;
- procedures for engaging third parties to perform background checks, media analysis, internal selection, approval and contract procedures, for example;
- implementation of other internal control activities, such as payment procedures, procurement and sales procedures, procurement policy, staff procedures such as bonus and expense claim rules;



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- anti-corruption procedures in relation to acquisitions and mergers;
- monitoring of the anti-corruption programme.

The accountant gains an understanding of the internal control environment, including the client's policies and procedures on the desired behaviour of board members, management and employees, such as:

- *the tone at the top*: for example, in what way does management periodically communicate with employees, customers, suppliers, agents and any other parties? Are they required to read, confirm and sign the code of conduct?
- *governance*: how is governance structured, and is the independence of those charged with governance guaranteed in relation to management?
- *training and knowledge management*: are courses actually taken and is the knowledge of anti-corruption measures tested?
- *third-party management*:
  - does the client sufficiently review customers, suppliers and agents before concluding contracts with them?  
In other words, does the client sufficiently review the history of legal entities and their policy-making natural persons and the ultimate beneficial owners (UBOs), using sources in the public domain (media, sanctions lists, Internet) and the UBO registers and trade registers?; does it follow integrity due diligence procedures when acquiring a stake in another entity?
  - does the client actually exercise the *right to audit*; does it do so periodically or only if there are potential indications of integrity violations by agents and intermediaries?
- *whistleblowers*: does the client follow the procedures laid down in the whistleblowers' scheme?
- *staff*:
  - do key officers disclose their ancillary positions, and if so, what is done with these disclosures?

- does the client abide by the procedural agreements regarding background checks on staff members in key positions, and in that context also consider any ancillary positions held in the past?

### 4.2.2.3 Evaluating the internal control environment

The evaluation of the internal control environment and the anti-corruption programme (if any) may reveal potential deficiencies, such as:

- the client performed the corruption risk analysis too superficially in view of the complexity and scope, or downplays particular corruption risks;
- the anti-corruption policy is not or insufficiently in line with the applicable laws and regulations;
- the client did not communicate the anti-corruption policy with staff members, or did so to an insufficient extent;
- the client does nothing or little to investigate indications of possible corruption;
- the client does not have a whistleblowers' scheme;
- the client does not systematically record notifications from whistleblowers and/or gives them little to no follow-up.

If management does not respond to corruption risks by taking appropriate internal control measures, this may be an indication of a significant deficiency in internal control. The accountant must inform those charged with governance and management about this (Standard 265, sections 9, 10 and A7). The deficiencies will result in modification of the risk analysis.

Deficiencies detected earlier and deficiencies of a different nature may also be a corruption risk factor. The accountant involves all identified deficiencies in the corruption risk analysis.

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**Example:** company X and company Y both have China as a new sales area – a country with a low CPI score. This in itself may be a corruption risk factor that is taken into account in identifying a risk, but it need not be a deficiency. There are other deficiencies at company X, however, such as a lack of policy on business gifts and donations. This is a corruption risk factor which makes it more likely that a corruption risk will actually manifest itself. If an analytical procedure subsequently shows that there has been an inexplicable rise in business gifts and donations, the factors that indicate corruption will be larger in number. This increases the chance of corruption being committed.

Please note: The identification of deficiencies in the internal control system may result in corruption risk factors. In identifying corruption risk factors, the positive effect of the internal control measures is disregarded. It is therefore not possible to cancel out or reason away corruption risks by involving the effectiveness of internal control measures in the risk assessment.

### **Pitfall in evaluating corruption risks – agents**

An accountant has a client whose revenue depends to a significant extent on agents. Agents also introduce the most important customers. During the audit of the annual accounts, the accountant interviews the director and major shareholder, who indicates that contracts are in place with all agents. The director and major shareholder and the head of legal affairs ensured that these contracts included a right to audit included. The client exercises this right to audit every year by having an external party investigate whether the agents abided by the contractual agreements.

The accountant establishes during the planning phase that there is a corruption risk factor because of the agents. The accountant sub-

sequently concludes that the internal control environment is sound where the agents are concerned, and that sufficient internal control measures have been implemented. This evaluation leads to the conclusion that the agents do not pose a corruption risk.

In evaluating whether any corruption risks exist, the accountant wrongly took account of the internal control system and of internal control measures. The accountant should have assessed whether the corruption risk factors could result in corruption risks without first taking the effect of internal control into account.

Section 5.2 provides more information on the procedures to check the effectiveness of the internal control system.

Chapter 7 addresses the communication with directors and internal supervisory bodies.

### 4.3 Performing analytical procedures and obtaining information

The accountant's risk assessment procedures include the performance of analytical procedures. Analytical procedures may help the accountant recognise inconsistencies, unusual transactions, events, amounts ratios and trends that may result in corruption risks. Analytical procedures may comprise both financial and non-financial information. The analytical procedure may show that the client is highly dependent on tendering, which means an enhanced corruption risk.

The accountant can also analyse aspects such as the commissions paid per agent. At the start of the risk identification procedures, the figures of the current financial year are often not available. This means that the accountant can only gain an understanding by examining the figures up to that point, the budget or the previous year's figures.

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The accountant also has other options to obtain information. For example, the accountant can make enquiries of management and request information from the head of the internal audit function, the compliance officer, the head of legal affairs – if these positions exist – and/or other staff members about:

- internal and/or external allegations;
- current legal proceedings that may be an indication of corruption (Standard 315.14).

The accountant can also ask about notifications of (suspicions of) abuse, as defined in the Whistleblowers Protection Act (Wbk). Under the Wbk, however, an organisation may be obliged to protect natural persons who reported or disclosed (a suspicion of) abuse in the context of their work-related activities. Thus, an organisation may be obliged to observe secrecy in respect of confidential data, including the notifier's identity. An organisation will usually be able to provide insight into the number of notifications of (suspicions of) abuse and the general, non-traceable, tenor of those notifications. Furthermore, the accountant can examine lawyers' letters and look out for indications of corruption that may necessitate an adjustment of the risk analysis. The accountant can also investigate negative coverage of the client in the media and enquire whether the bank asked critical questions about particular customers and transactions.

If a client is part of an (international) group structure, **specific procedures** will be required.

In accordance with Standard 240 (section 20), the accountant asks the head of internal audit whether the latter is aware of indications or suspicions of corruption. In addition, the accountant asks the head of the internal audit function for their views on the risks of corruption.

### 4.4 Identifying and assessing corruption risks

#### 4.4.1 Introduction

After the accountant has identified the corruption risk *factors*, the accountant evaluates these factors in order to identify and assess the corruption *risks*.

#### 4.4.2 Evaluating corruption risk factors and identifying corruption risks

In order to identify a corruption risk, the accountant evaluates the corruption risk factors. In order to identify an inherent risk, the accountant may perform an analysis based on the probability and order of magnitude of a (possible) misstatement.

A corruption risk will exist if it is likely that there is a material misstatement. In practice, a combination of multiple factors will increase the likelihood of a corruption risk. Take for instance a Netherlands-based insurance company that is active in the Dutch market and uses Netherlands-based insurance agents. The Netherlands ranks high in the Corruption Perception Index. On paper, the likelihood of corruption is small in comparison with a construction company which, via agents, carries out government projects in, say, a Latin American country that ranks low on the index.

In identifying the corruption risks, the accountant considers:

- the **materiality aspect**;
- the **probability** that the risk will manifest itself.

In doing so, the accountant assesses whether or not an identified risk is significant (Standard 315). Risks of material misstatement due to fraud are always significant (Standard 240.28). Given the connection between corruption and fraud, the same applies to corruption risks.

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### 4.4.3 Materiality

Misstatements will be material if they can reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements (Standard 320.2).

Misstatements may also be hiding in disclosures (Standard 320.9).

#### Derived transactions

##### **Excessive commission**

*A construction company wins the contract for a construction project with the help of an agent. The contract sum of the project is €100 million and the cost price is €94 million, which means that the profit margin is €6 million. The agent was paid a commission of €0.3 million, whereas the accountant notices that under the contract the agent would receive 0.2 percent of the contract sum as commission. The client and the agent cannot demonstrate why €0.1 million more was paid, and what this amount was spent on. Later it appears that the agent used this money to bribe a government official.*

*The auditing accountant applies a materiality of €5*

*million. The direct transaction flow here is €0.3 million, of which €0.1 million is related to bribery. The derived transaction flows are €100 million (contract sum), €94 million (cost price) and €6 million (profit margin).*

With regard to corruption, a distinction can be made between direct and derived transaction flows, balance sheet positions and disclosures relating to corruption. Direct transaction flows, balance sheet positions and disclosures concern the actual payments or receipts in respect of the corrupt activities. In the case of bribery, therefore, these are the back-handers. The wide-ranging **forms of corruption** do not always involve direct transaction flows, balance sheet positions and disclosures. Derived transaction flows, balance sheet positions and disclosures reflect

the consequences of the corruption. Thus, the payment of backhanders may result in winning the contract for a construction project. In that case, the derived transaction flows will be the revenue, costs and profit margin relating to this project. Important: the accountant examines both the direct and the derived transaction flows when assessing whether there is a risk of material misstatement. In practice, the direct transaction flows will often not be material in quantitative terms, but the derived elements, such as balance sheet positions or disclosures, will be.

The derived transaction flows, balance sheet positions and disclosures may be relevant if the client is convicted of corruption and deprived of the unlawfully obtained gains. Leaving aside the possibly debatable integrity of management, a conviction may result in a material misstatement in the financial statements, on account of fines, the recovery of unlawfully obtained gains and compensation claims. A provision must be made for this in the annual accounts in good time, or an adequate disclosure must be included. Do bear in mind that a criminal fine may be as much as 10% of the annual revenue of the previous financial year (**Article 23(7) of the Dutch Criminal Code**).

The derived transaction flows are also relevant because the annual accounts must give the public insight into a company's financial performance. Users of the annual accounts will base their decisions (in part) on the annual accounts. If a part of the financial performance is the result of corruption, a user might have taken a different decision. Staying with the construction company described under **Excessive commission**: the company's total revenue is €850 million. This figure exceeds investors' expectations. This is because the construction company had forecast expected revenue of €800 million. If the €100 million project had not been secured, the expected revenue would not have been achieved.

##### **Qualitative approach**

The accountant must not only approach the materiality in terms of figures, but also consider the qualitative aspects of materiality. Corruption can

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have a substantial impact on a company's *license to operate*. For example, municipal authorities may exclude companies from public procurement procedures if they have been convicted of corruption.

As in the case of fraud, the company that has been caught and convicted runs a reputational risk. Stakeholders will be less inclined to consort with a corrupt business. This may have far-reaching consequences for the client and its annual accounts. For example, crucial suppliers or financiers may decide to terminate the cooperation.

Materiality is a matter of professional judgment. If the accountant identifies corruption risks, the accountant will consider whether a specific materiality level needs to be applied that is lower than the materiality for the annual accounts as a whole. Before planning audit procedures and evaluating any findings concerning corruption, the accountant expressly considers the qualitative aspects of the transactions. If it appears that management is involved in corruption, doubts may arise as to the reliability of other estimates, communications and statements made by management.

## 4.4.4 Probability

Considering aspects such as probability and order of magnitude, the accountant can evaluate whether an inherent risk factor will result in an inherent risk. Probability is the chance of a misstatement occurring, and the accountant relies on professional judgment when determining that chance (Standard 315).

The greater the sensitivity to material misstatement of a transaction flow, account balance or disclosure, the greater the probability of the misstatement. Performance criteria may be another inherent risk factor if the client grows unusually rapidly or records an unusually large amount of profit compared with other entities in the same sector.

In identifying inherent risks, the accountant also considers the relative effects of inherent risk factors. Thus, the inherent risk factor will be higher and may be regarded as an inherent risk in the event of:

- transactions that can be recorded in the accounts in several acceptable ways, and therefore involve subjectivity;
- high estimation uncertainty or complex models;
- account balances based on complex data collection and processing;
- account balances or quantitative disclosures involving complex calculations;
- reporting principles that are open to multiple interpretations;
- changes to the business activities and – by extension – to the accounting, such as mergers and acquisitions.

In practice, a very high order of magnitude may go together with a larger probability, or vice versa. For example, the probability of misstatements in respect of cash transactions at supermarkets is normally estimated as higher than average because of the risk of money being embezzled. On the other hand, the order of magnitude is usually very low because of the small volume of physical cash at the stores. Therefore, the combination of these two factors does not necessarily mean that the presence of cash is a material risk.

## 4.4.5 Profound impact

Risks of material misstatement may also have a profound impact on the financial statements as a whole and on a large number of assertions (Standard 315.30). The accountant must consider these risks in the inherent risk assessment at assertion level.

Below are some examples of situations that may result in risks of material misstatement with a profound impact on the financial statements:

- deficiencies in internal control;
- dominant influence of one person, who can take many decisions independently;



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- a lack of competence among management;
- a lack of supervision of the compilation of the financial statements;
- individual transactions, such as a payment of €100,000 in order to win a project worth €100 million;
- deprivation of the unlawfully obtained gains in combination with a fine, termination of covenants by banks and reputational damage resulting in loss of revenue.

### 4.4.6 Assessing corruption risks

The evaluation of the corruption risks factors results in the accountant identifying or not identifying corruption risks. Subsequently the accountant can make an assessment of the identified risks. However, in determining the response to the identified risks (the audit plan), corruption risks must always be regarded as a significant risk.

If the accountant identifies a risk of material misstatement due to corruption, the accountant must regard this risk as a significant risk.

First, the accountant identifies the internal control measures addressing such risks, evaluates their design and determines whether they have been implemented, insofar as this has not happened yet (Standard 240.28). In doing so, the accountant also plans additional audit procedures that are appropriate for the identified risk (Standard 240.31).

If the accountant intends to check the effectiveness of internal control measures in the context of a systems audit, the accountant must assess the internal control risk.

When subsequently conducting a systems audit, the accountant checks the effectiveness of the internal control measures. In addition, the accountant performs substantive procedures as required by Standard 330.21. In doing so, the accountant addresses the identified risk, for example by adjusting the nature, timing and extent of the audit procedures and incorporating an element of unpredictability (Standard 240.A38/A41).

If the approach to a significant risk consists only of substantive procedures, the procedures must include tests of detail, among other things (Standard 330.21).

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Bribery by a bonus-dependent representative

Factors	Evaluation of factors & identification of risks	Identified risk
<p><i>Sector: Construction</i></p> <p><i>Geographical area: Venezuela</i></p> <p><i>Client characteristic: Small department, working solo</i></p> <p><i>Vulnerability in IC: No dual control principle for travel and subsistence expenses</i></p> <p><i>New staff member may experience pressure to prove themselves and achieve the company's ambitions.</i></p> <p><i>New staff member may experience pressure because their salary to a large extent depends on bonuses.</i></p> <p><i>The lack of a dual-control principle in reimbursing travel and subsistence expenses provides an opportunity for corrupt acts.</i></p>	<p><i>Materiality aspect:</i>  <i>The projects have a high financial value, which means that the derived transactions are material in quantitative terms.</i></p> <p><i>The probability that the risk will manifest itself:</i>  <i>The sector and the geographical area in which the company operates, as well as the customer (the Venezuelan government) make it probable that corrupt acts take place.</i></p> <p><i>Degree of profound impact on the annual accounts:</i>  <i>Potential corrupt acts on the revenue side at this company are expected to have a profound impact on the annual accounts.</i></p>	<p><i>The risk that staff members bribe potential clients in order to win contracts.</i></p>

# 5 What to do if you identify corruption risks?

This chapter in brief

- How can the effect of the internal control system be checked?
- What substantive procedures can be performed if necessary?
- What types of transactions, costs and items require particular attention in that context?

## 5.1 Introduction

If the corruption risk analysis results in the identification of corruption risks and the accountant has established the design and implementation of the internal control system on this point, the accountant can examine the effectiveness and perform substantive procedures.

## 5.2 Checking the effectiveness of internal control in respect of corruption risks

If the accountant identifies corruption risks and the entity has taken internal control measures to reduce these risks, the accountant will check whether these measures are effective if the accountant wants to rely on the internal control. Using the outcomes of this check, the accountant will be able to determine the nature, timing and extent of the **substantive audit procedures**.

The accountant can examine whether internal control measures have been designed and implemented, and can subsequently check their effectiveness based on, for example, the following procedures:

- contracting procedures: do relevant contracts with, say, agents contain anti-corruption provisions and a **right-to-audit clause**, so that the client can ask an expert to conduct an audit?
- implementation of the *right-to-audit* clause: does the client check regularly whether the agent complies with the contract terms?
- payment procedures: are there Chinese walls and other measures for checking, authorising and making payable invoices from suppliers and agents, and expense claims for representation, sponsorship and/or travel and subsistence expenses?
- purchase and sales procedures: does the client authorise purchase and sales contracts on the basis of a dual-control principle?
- tendering procedures: has the client set up a dual-control principle and formulated objective acceptance criteria for tendering processes, and act accordingly?
- business gifts: is there a financial limit for accepting and presenting business gifts, and is it observed? Are there clear agreements on reporting gift received, and are they observed?
- travel and subsistence expenses: has the client set up an approval process for expense claims and expenditure on travel and subsistence, and is it observed?
- incident reports: what follow-up is given to corruption incidents (evaluation of internal and external investigation reports)?
- cash management: has the client drawn up rules for administering and approving cash payments or accepting cash receipts, and how are they observed?
- staff: are there agreements on maximum employee bonuses (including

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purchase and sales bonuses) and other fringe benefits, and are they observed?

This list is not exhaustive; other specific internal control measures are conceivable for each entity.

If the internal control is not effective in respect of risks of material misstatement due to corruption, this may indicate a significant deficiency of which management, the board of directors, the shareholders, the non-executive directors and the internal supervisory bodies must be **informed** (Standard 265, sections 9, 10 and A7). In that case, the accountant will also check if the client complies with the laws and regulations on this point.

By only performing systems audit procedures, the accountant will not obtain sufficient and appropriate audit evidence. However, the systems audit procedures will help the accountant determine how in-depth the **substantive audit procedures** will have to be.

## 5.3 Performing substantive procedures

### 5.3.1 Introduction

Because a corruption risk is a significant risk, planning and performing substantive procedures (including tests of detail) in respect of the corruption risk is a mandatory element of the audit procedures (Standard 330.21).

If the accountant establishes that the internal control is not effective, the accountant will perform additional substantive procedures concerning risks of material misstatement due to corruption. If a significant risk is

followed up only with substantive audits, the procedures must include elements such as tests of detail. Substantive procedures will also be required if the accountant finds that the internal control measures are appropriate for reducing the significant corruption risk.

### 5.3.2 Determining and performing substantive procedures

What substantive procedures are necessary will depend on the identified corruption risks and the extent to which the accountant can rely on internal control measures to reduce those risks. The accountant must check how the identified risks can manifest themselves at the client, and what the resulting transaction flows will be. Examples of transaction flows and risks:

Transaction flows	Risk description
1 Payments to agents	Risk of tender manipulation and invoice kickbacks
2 Transactions with government authorities	Risk of tender manipulation
3 Costs of representation, sponsorship and other marketing related costs, travel and subsistence expenses	Risk of undue benefits in kind to third parties
4 Procurement, including tendering and the risk of kickbacks (passive bribery)	Risk of corrupt procurement agreements with third parties

## 5 What to do if you identify corruption risks?

If the accountant performs sample tests or applies other selection methods as part of the substantive procedures, he must sufficiently substantiate the scope in the audit file (Standard 530).

In this context, the accountant must indicate in particular how he took account of:

- the specific aspects of corruption risks, such as concealment and abnormal materiality;
- audit evidence resulting from other procedures.

Furthermore, the accountant must be expressly mindful that contracts and descriptions on invoices and other documentation may **not correspond with reality**. The accountant must therefore examine the documentation received with professional scepticism and give specific consideration to the economic reality of the underlying transaction. Examples of possible substantive procedures can be found in sections **5.3.3 to 5.3.7 inclusive**.

### 5.3.3 Payments to agents, for instance in order to obtain contracts

There are various reasons why the client can opt to use an agent, for example in order to smooth out the tendering process. An agent is often a local party that has connections which the client is eager to exploit. What is more, an agent is familiar with the local mores and knows, for example, how a contract can be secured.

However, the risk is that the agent, in trying to win that contract, will bribe an officer in order to manipulate the (formal or informal) tendering

process to the agent's advantage. This is a risk for the client, because the agent is acting on the client's behalf and is paid by the client. This means that the client is ultimately the party that finances the potential bribery.

The client has limited control over the agent, because the latter is not part of the organisation and the control environment. The bribery may be a direct payment by the agent to the bribee in order to win a contract. Alternatively, the parties may drive up the price and split the difference via kickbacks.

In order to reduce the control risks, the accountant checks whether:

- a contract was concluded with the agent and who were involved in this, and assesses the agreements laid down in this contract;
- the payments to the agent are related to the activities which the agent performed in cultivating the market;
- the substantive procedures do not reveal any indications that these agent payments were used for purposes such as bribery.

The accountant also examines the background and record (if any) of the agent and checks what the client's policy is with regard to commission payments. In practice, it may happen that agents are referred to by terms other than 'agent'. The accountant must therefore be mindful of all intermediaries or third parties who do business with customers, government authorities or other stakeholders on the client's behalf. Examples of possible additional substantive procedures aimed at addressing corruption risks associated with the use of agents include:

- Evaluating the reason for deploying agents and the way in which the agreements with the agents are structured:

## 5 What to do if you identify corruption risks?

- for what services does the client engage the agent? For obtaining contracts, looking after local operational matters, or both? And why does the client not perform these activities itself?
- the nature of the contracts for which the client engages the agent: do these involve expensive capital goods and/or intensive projects of a different kind, or for instance low-priced goods?
- what are the contracting procedures? Do they stipulate how, and how often, the agent will report and/or render account?
- how are the payments to agents recorded in the accounts?
- is the agent also engaged for other projects and were the agent's activities recognised for the right project?
- does the client have a *right to audit* in respect of the agent?
- does the contract contain anti-corruption and anti-bribery clauses?
- Evaluating with regard to the commissions paid:
  - the kind of fees paid (a fixed amount per hour, a fixed percentage, a fixed total amount, or a success fee);
  - the commission-related revenue;
  - the period in which the commissions were paid and the frequency of commission payments;
  - authorised graduated commission scales and, where possible, their market conformity;
  - any highs or lows per agent, or per transaction (in both relative and absolute terms);
  - the agent's counter-performance;
  - the client's existing commission obligations.
- Analysing the sales margins per agent, comparing the sales margins with competitors' margins, requesting an explanation and performing other procedures to determine that the sales prices were not increased in order to pay kickback fees.
- Checking a selection from a list of amounts paid and agreed per agent, by:
  - requesting signed commission contracts;
  - evaluating whether the commission contract was implemented in conformity with the quotation process for the contract, and whether the right persons at the entity were involved in the formation of the contract, such as the legal affairs department;
  - checking how the agent invoices and how the invoice must be paid;
  - taking account of the country where the agent is based;
  - looking at the size of the region in which the agent represents the client's interests;
  - looking at the availability of agents in a specific region or sector;
  - gaining an understanding of the relevant laws and regulations that may make the use of (local) agent obligatory, including the existence of a *right to audit* for the client;
  - checking to what extent the agent is a natural person or a company;
  - examining whether the audit client pays agents via bank accounts in countries with an enhanced corruption risk;
  - asking how the level of the amount paid was determined (percentage of revenue, or hours x rate) and determining whether the percentages in the contract are in line with the company's standards and/or the market standards;
  - comparing the commission contract with the contract template of the company or a best practice, in which it is agreed with the agent that the latter will comply with the anti-bribery and anti-corruption provisions;
  - comparing authorised invoices with the contract;
  - comparing payments on bank statements with invoice and bank



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details in the contract, giving specific consideration to the name in which the bank account is registered, as well as the agent's country of origin and whether the payment was transferred to the bank account number specified in the contract or on the invoice;

- requesting the outcome of a screening of the agent carried out by the entity;
- requesting and evaluating reports submitted by the agent, and checking whether the fee received by the agent is appropriate for the work which the agent performed (is the remuneration in line with the market?);
- requesting other correspondence between the entity and the agent, as well as other documentation supporting the agent's performance;
- requesting visit reports and time sheets of the agent;
- requesting the client or an expert to perform a background check of the agent;
- checking third-party confirmations which the client requested from the agents: statements in which agents confirm that the payments received do not contravene local laws and regulations and are not put towards corrupt acts.

The accountant can have these checked by an independent lawyer in the country concerned, or by calling in a network or partner firm.

For more information, see [section 10.3](#). Although that section is about payments, the accountant should preferably look also at the obligations assumed.

### 5.3.4 Transactions with government authorities

Doing business with government authorities may entail the risk of official corruption. In some jurisdictions, a semi-public body or a subsidised entity is regarded as a government authority.

If cooperation with the government is compulsory, the parties often set up a joint venture in the country where the project is carried out. In this structure, the partner is a party affiliated to the government. For instance, this could be a *politically exposed person* (PEP). See example [A.10](#).

When reviewing transactions between the client and the (semi-)public body, the accountant can select projects/contracts. The accountant:

- evaluates how the quotation process proceeded;
- assesses among other things whether there are adequate Chinese walls between, say, the seller and the person who drew up the contract, whether the contracts were authorised and whether there are contract terms which differ from expectations;
- analyses the project results relative to the budget and results of comparable projects; compares the project results of these activities with each other if the entity serves both the public and the private market; in doing so, considers the proportion between the proceeds and the efforts of the joint venture partners, such as the investments made and the associated risks;
- analyses the recognised costs with sufficient depth, being alert to items that may be an indication of facilitation payments, such as general journal entries, cash payments and items recorded as overheads without an invoice or other proof of payment;
- establishes a connection between the contractual agreements and the proceeds, costs and cash flows recognised in the project administration;

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- performs tests of detail in respect of recognised costs and checks them against contracts, invoices and payments;
- examines to what extent there may be a conflict of interest by screening relations between the entity and the government body with which the entity conducts a transaction, including possible relations between important decision-makers at the entity and the government body.

## 5.3.5 Costs of representation, sponsorship and other marketing costs

Expenditure on representation, sponsorship and other marketing may be related to bribery or the excessive entertainment of persons who are important to the entity. The accountant can perform the following audit procedures:

- analysing the recognised costs, giving consideration to aspects such as the nature of the costs, the beneficiaries and the relation between these costs and the entity's activities and contracts. In doing so, the accountant can also focus on out-of-sector or unusual creditors on the basis of the bank transactions;
- performing tests of detail in respect of the recognised costs, checking these costs against the underlying documentation such as (sponsorship) contracts, invoices, expense claims, receipts and other documentation.

With regard to sponsor monies, also see example [A.8](#).

## 5.3.6 Travel and subsistence expenses

Just like representation expenses, travel and subsistence expenses may relate to bribery or excessive entertainment. The item 'travel and subsistence expenses' may include expenditure on corruption if:

- the expenses which the client incurred to influence potential customers were recorded in the accounts as travel expenses and costs of *hospitality* (hotel costs, dinners, *client entertainment*, etc.).

In that case the accountant can, for example:

- take a critical look at the recipient, the extent of the travel and subsistence expenses, the place where the services were enjoyed, the connection with possible contracts secured, etc.;
- perform a critical test of detail in respect of the recognised costs, including a review of underlying documentation such as invoices, contracts and payments.

See also example [A.4](#).

## 5.3.7 Procurement, including tendering and the risk of kickbacks

The procurement process may entail the corruption risk that the procurement officer agrees higher purchase prices with the supplier and the latter is subsequently favoured in a private capacity with a kickback payment, see for example [A.1](#). It is possible that the supplier facilitates such a kickback payment via a credit note to a company that is affiliated to the procurement officer. It may also happen that a company affiliated to the procurement officer sends an invoice to the supplier for, say, 'services rendered'.

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With regard to this risk, the accountant does not have any administrative details of the supplier and/or the officer's private company. As well as relying the client's internal control measures, the accountant can:

- perform an analytical procedure in respect of the recognised cost price of the purchases, including a price comparison of various suppliers;
- perform a test of detail in respect of the procurement process by checking compliance with the tendering procedures at the time of procurement;
- if it is known that staff members are connected to the supplier via ancillary positions or family relationships, check that a different staff member is responsible for procurement and that the prices are transparent and in line with the market; this is only possible if the client provides a list of ancillary positions;
- request creditor confirmations regarding possible payments to a company affiliated to a procurement officer;
- perform tests of detail in respect of the costs in order to check that the agreed price, which the accountant found to be in line with the market in earlier procedures, was actually invoiced, paid and recognised in the accounts.

# 6 What to do if you identify indications of corruption?

This chapter in brief

- When is there an indication?
- When is further investigation required?
- Under what conditions is such investigation useful for the audit?
- When should a Wwft notification be made?

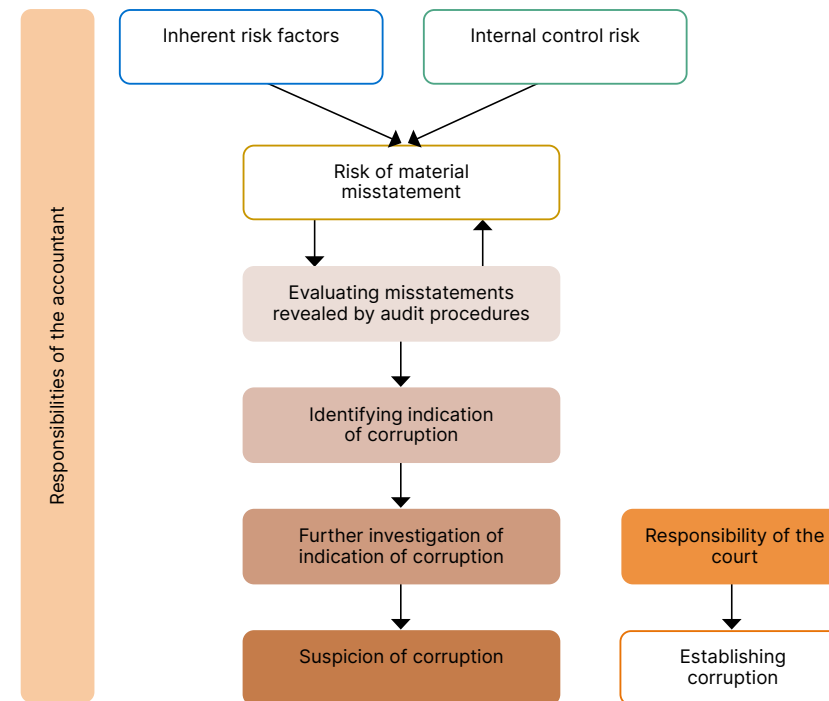
## 6.1 Introduction

On further consideration, a misstatement may constitute an indication of corruption. According to [Standard 200.1](#) a misstatement is:

*“A difference between the amount, classification, presentation, or disclosure of a reported financial statement item and the amount, classification, presentation, or disclosure that is required for the item to be in accordance with the applicable financial reporting framework. Misstatements can arise from error or fraud. Where the auditor expresses an opinion on whether the financial statements are presented fairly, in all material respects, or give a true and fair view, misstatements also include those adjustments of amounts, classifications, presentation, or disclosures that, in the auditor’s judgment, are necessary for the financial statements to be presented fairly, in all material respects, or to give a true and fair view.”*

If no satisfactory explanation can be found or obtained for the misstatement, it may not be an error but an indication of fraud or corruption that requires further investigation. In other words, an indication is a matter that requires further evaluation. That evaluation and that investigation may result in a suspicion of corruption. Whether that suspicion is justified is up to a court to decide.

In the event of a suspicion, the accountant must take action in any case by contacting management or the internal supervisory bodies and asking them to carry out further investigation, and/or carrying out such investigation himself. Depending on the outcome, further steps will be required.



## 6 What to do if you identify indications of corruption?

If there is an indication of corruption, additional procedures will be required in order to establish whether there is a suspicion of corruption. The accountant will first examine whether management could be involved in the corruption. If this is not the case, the accountant will ask management to carry out or arrange a further investigation of the indications. If the accountant suspects that management is involved in the corruption, however, the accountant will ask the supervisory board or the board of overseers to order further investigation. If there is no supervisory body, the accountant will discuss this with management. Compare: **Factor, risk, indication, suspicion and reasonable suspicion.**

### 6.2 Further investigation

In the context of Standard 240, the accountant will perform additional procedures if there is an indication of fraud. The accountant can carry out further investigation himself, but in many cases the preferred option is to ask the client to perform or arrange an (external) investigation. Management and, where applicable, the supervisory board have their own responsibilities when investigating an indication of fraud. Most likely, therefore, management or the supervisory board will have an external investigation carried out. If the investigation becomes a personal investigation, the client will want to receive a report that can be used in legal proceedings if necessary. In the context of the audit of the annual accounts, an accountant will not supply an additional report that could serve as evidence in legal proceedings. Therefore, the accountant will tell the client that the in-depth investigation should preferably be carried out by experts of another firm. These may be specialist accountants or lawyers, for instance. In this context, the provisions of Standard 500.A35-A39 will apply.

In determining whether the outcomes of the in-depth investigation are useful for the audit of the annual accounts, the accountant must check whether the engagement issued is adequate in terms of its nature, extent and execution. This can be done by examining the terms of reference before the engagement is issued. To this end, the accountant must hold consultations with management and the investigators.

If the investigation is carried out on the instructions of a lawyer, the content will in principle fall under the lawyer's **right of non-disclosure**. The accountant will examine the content without breaching the right of non-disclosure.

To be able to use the investigation in the audit, the accountant will need to:

- establish the objectivity, capabilities and competence of the specialist accountant or other specialist investigators;
- validate the nature and scope of the investigation to be carried out;
- evaluate whether the investigator's activities and findings are appropriate for the audit;
- have an understanding of the nature of the potential corruption and the circumstances under which it took place;
- have access to all information that may affect the entity's financial reporting.

The accountant can evaluate the investigation by the specialist accountant or other specialist investigators among other things by:

- examining the investigation approach, the activities performed and the outcomes of the investigation;
- holding consultations with the investigator(s) and evaluating whether the activities performed are adequate and provide sufficient

## 6 What to do if you identify indications of corruption?

- and appropriate audit evidence;
- checking to what extent comparable transactions have been investigated.

The accountant can also:

- re-evaluate the impact of findings on earlier and current engagements, which includes a re-evaluation of fraud risks and the risk that management breached internal control measures;
- analyse the outcomes and scope of tests of detail in respect of money flows, insofar as these are related to the indication of corruption, which includes an inspection of the documentation relating to the money flows;
- analyse the outcomes of the data analysis of money flows and establish connections with performances delivered and/or goods flows;
- analyse the outcomes of background checks on customers or suppliers insofar as these are involved in the transactions concerned;
- re-evaluate the external confirmations from customers and suppliers involved in the transactions concerned;
- re-evaluate the nature, timing and extent of audit procedures;
- re-evaluate the impact on client and/or engagement acceptance;
- evaluate whether the client analysed and complied with external notification requirements;
- re-evaluate the client's remediation plan (root-cause analysis, remediation, measures to prevent repetition in the future). Check what the sanctions are under, for example, codes of conduct or staff contracts, and whether these sanctions are imposed and enforced in the event of a breach.

If, in the event of material fraud, the client has made sufficient progress with the investigation or the implementation of the remediation measures, the accountant will, if the audit is a statutory audit, report this to an investigating officer pursuant to [Article 26 of the Wta](#). The possible consequences for communication with management, with persons charged with governance and with external parties are explained in more detail in [Chapter 7](#). The consequences of this for the auditor's report are set out in [Chapter 8](#).

### 6.3 Notification of unusual transaction under the Wwft

As soon as a transaction gives rise to a suspicion of corruption, it will be unusual within the meaning of [the Wwft](#) and the audit firm, as a Wwft institution, must report it 'immediately' to the Financial Intelligence Unit Netherlands (FIU-NL). It must be borne in mind that the barrier for reporting unusual transactions is low. Under [settled case law](#), the Wwft institution must report every unusual transaction, as soon as the accountant suspects that it may be related to money laundering or terrorist financing. Therefore, the institution should not wait until the accountant has found concrete indications, a proper basis or evidence of money laundering or terrorist financing.

Materiality is also irrelevant when making a notification under the Wwft. For more information on the notification requirement, see chapter 7 of Guide 1124. Examples from disciplinary case law regarding unusual transactions can be found in [Rode Vlaggen](#) ('Red Flags'), in the text box below and in [Chapter A.1](#).



## 6 What to do if you identify indications of corruption?

### Fine for gatekeeper

The District Court of Amsterdam underlined the importance of the notification requirement by imposing a **fine** on an audit firm in a criminal trial. According to the court, criminal money flows may cause social disruption. *“The purpose of the Wwft is to expose these flows and thus ensure the reliability of the economic systems in different countries. Chartered accountants, among others, act as gatekeepers in that respect.”* However, the audit firm waited years before reporting several unusual transactions involving a total amount of around USD 50 million, while being aware all that time of at least a part of the unusual transactions. By delaying the notification for so long, the firm cooperated in abuse of the financial system.

In its judgment (paragraph 7.4), the court referred to the low threshold of the notification requirement: *“The notifier need not be sure that the transaction concerned is related to money laundering or terrorist financing. The general principle is that this is a transaction whereby the institution has reason to presume that it may be related to money laundering or terrorist financing.”* Therefore, the notification requirement does not mean that the firm must first perform an investigation of its own. On the other hand, the accountant should not be too rash in making a notification, in view of the duty of secrecy. This means that the accountant is allowed *“to first perform some investigative work himself”* if *“there are signals that a transaction is unusual”*. The accountant *“is not required to furnish conclusive evidence that money laundering or terrorist financing is involved, however. A notification must be made if there are sufficient serious indicators.”* Thereby the court rejected the firm’s defence that it had to make a notification only after *“having itself exhaustively investigated the precise background to the transaction”*. For that matter, the firm had

*“more than enough information at its disposal to regard the transactions as unusual transactions within the meaning of the Wwft”*. The court (in paragraph 7.6) considered it proven that the firm deliberately breached the notification requirement of **Article 16 of the Wwft**.

### Cash payments in Ukraine

*A chartered accountant audits, as group auditor, the consolidated annual accounts of an international timber merchant with branches inter alia in the Netherlands, Belgium and Ukraine. A working visit to Ukraine reveals that cash payments are made to staff members (salary supplement) and to Ukrainian officials (facilitation payments), and that material investments are made in cash without an underlying invoice. All this results in a discrepancy of around €600,000 in the books of the holding company and the Ukrainian subsidiary, rising to €900,000 the following year.*

*The group auditor asks the company to start complying with the local laws and regulations as soon as possible, and makes an internal notification to the firm’s compliance officer, who in turn makes an external notification to FIU-NL. The cash payments and the improper recognition in the books justify the suspicion that the transactions are unusual. This does not require evidence, a proper basis or a concrete indication, according to **Guide 1124**.*

*However, the accountant wrongly failed to investigate the signals of fraud and corruption in more detail, as Standards 240 and 250 prescribe. The accountant did not review the application of the funds, did not put critical questions to the board of directors, did not establish significant issues and did not draw up a step-by-step plan for the client to redress the fraud.*

## 6 What to do if you identify indications of corruption?

5/5

*If cash payments are customary in the country itself, but the accountant considers them unusual enough by Dutch standards to report them to FIU-NL, the accountant must also gear the audit procedures to this situation and terminate the engagement if the board of directors does not redress the fraud or corruption. What he should not do, therefore, is continue and only stop when the invoice remains unpaid.*

*The next question is whether payments to officials in order for them to turn a blind eye must be regarded as facilitation payments. The Accountancy Division believes in any case that under Guide 1137 the accountant must also evaluate facilitation payments in the context of the Wwft. According to the disciplinary court, the fact that the Public Prosecution Service would not prosecute the provision of facilitation payments does not mean that such payments do not constitute unusual transactions. This is a criminal offence. For that matter, the Public Prosecution Service can and certainly will prosecute those who make facilitation payments, based on the new [Instruction](#).*

*(Source: [21/1533 Wtra AK](#))*

# 7 Communication about findings regarding corruption risks

This chapter in brief

- What should management put in the directors' report?
- How does the accountant communicate with management and the supervisory body about deficiencies in internal control and the resulting breaches of laws and regulations?
- How does the accountant communicate with external parties about corruption risks?
- How does the accountant communicate with management, the internal supervisory body and external parties about indications and suspicions?
- What should the accountant do if the client does not remediate detected corruption?

## 7.1 Introduction

The auditing accountant communicates with management and/or the internal supervisory body about corruption risks. In principle, it is up to the audit client to communicate about corruption risks in the directors' report. If necessary, the accountant can urge the management to address these issues in the directors' report and possibly the annual accounts. If there is a suspicion of corruption and the client does not respond adequately, the accountant may have to report the matter to the National Police Service.

## 7.2 Communication about corruption risks in the directors' report

The law requires a company to report about the principal risks and uncertainties (Article 2:391(1) of the Dutch Civil Code, detailed in DASB Guideline 400.1052). This may be the case, for example, if there is a suspicion of corruption or if the corruption risk is one of the principal risks. If an accountant has identified a corruption risk, this may be an indication that this corruption risk is one of the company's principal risks.

An obligation to report specifically about the principal corruption risks applies to public-interest entities with more than 500 employees (Disclosure of Non-Financial Information Decree, Article 3(1b)(iii)). The company discloses how it fights corruption and bribery, and describes the principal risks in this area in connection with the activities, including (if relevant and proportional) the business relationships, products or services that will probably have a negative impact on this topic, and how the company manages these risks.

In exceptional situations, the disclosure need not be made if:

- it concerns current developments or matters about which negotiations are in progress; and
- the disclosure would seriously harm the company's commercial position (Disclosure of Non-Financial Information Decree, Article 3(4)).

The accountant checks whether the directors' report meets the above requirements and will in that context hold consultations with the board of directors and those charged with governance of the audited entity, emphasising the importance of reliable information provision to the users

# 7 Communication about findings regarding corruption risks

of the annual report and indicating that the company must also report about the principal risks in the directors' report. These principal risks could therefore include corruption risks. Insofar as the accountant is obliged to report about this, the accountant can refer to the directors' report of the company in the auditor's report.

If the accountant believes that a corruption risk is one of the principal risks and a company fails to report about this in the directors' report, the accountant will evaluate the impact of this on the auditor's report.

## 7.3 Communication with management and the supervisory body

### 7.3.1 Communication about deficiencies in internal control (design, existence or effect)

During the audit, the accountant may come across a flaw in the internal control of corruption risks. Such a deficiency will nearly always be significant. It arises if an internal control measure is designed, implemented or operated in such a way that the client is unable to detect or correct misstatements in the financial

statements on a timely basis. A deficiency will also occur if the internal control measure necessary to prevent, or detect and correct, misstatements in the financial statements on a timely basis is missing. (Standard 265.6a)

The accountant informs the management and those charged with governance in an appropriate manner about the deficiencies which the accountant, using professional judgment, believes to be important (Standard 265.5 and 265.6b). In addition, the accountant evaluates the impact of these deficiencies on the corruption risk analysis.

Situation	Communication with management	Communication with the supervisory body
Significant deficiency in internal control.	Yes, timely and in writing, unless this is not appropriate in the given circumstances, for example if there are doubts about management's integrity or competence (Standard 265.9).  A prior verbal discussion is recommended.	Yes, timely and in writing (Standard 265.9). A prior verbal discussion is recommended. On this occasion, management's response can be clarified and the proposed corrective measures can be discussed.
Other, non-significant deficiencies in internal control.	Yes, if the accountant considers this necessary based on professional judgment (Standard 265.10b). This could be verbal or in writing.	Not required.

# 7 Communication about findings regarding corruption risks

In the written communication with the supervisory directors, internal supervisory bodies or shareholders, the accountant describes the significant deficiencies and explains their potential effects (Standard 265.11), in particular that:

- the purpose is for the accountant to express an opinion on the financial statements;
- the audit includes evaluation of internal control so that the accountant can design audit procedures that are appropriate in the circumstances;
- at this stage, the accountant does not (yet) aim to express an opinion on the effectiveness of internal control; and
- the matters being reported are limited to the relevant deficiencies which the accountant identified during the audit.

## 7.3.2 Communication in case of non-compliance with laws and regulations due to deficiencies in internal control

If the client falls under the scope of, for example, the [FCPA](#), [UK Bribery Act](#) and/or the [Loi Sapin II](#), the client is obliged to have an internal control system which also focuses specifically on corruption risks. Deficiencies in internal control of corruption risks may then result in a suspicion on the accountant's part that there is no compliance with laws and regulations, or non-compliance is imminent. If a corruption risk established actually involves non-compliance, this deficiency will be significant and will be communicated to management (Standard 265).

### **Discussing the absence of measures**

*An entity carries out activities in the United Kingdom and therefore falls under the scope of the [UK Bribery Act](#). According to this act, entities must implement internal control measures in order to prevent bribery. If such internal control measures are absent, the suspicion arises that the entity does not comply with laws and regulations.*

*The accountant discusses this suspicion with management (Standard 250.20). If this suspicion continues to exist, or if it is established that the rules are indeed being breached, the accountant asks management still to comply with laws and regulations by taking internal control measures that counteract bribery (Articles 12 and 13 of the [NV NOCLAR](#)). If the deficiency continues to exist, the accountant discusses this with management and with the supervisory body (Standard 250.20).*

## 7.3.3 Requesting written confirmations

Under Standard 580, the accountant is responsible for ensuring that management – and sometimes those charged with governance – confirms/confirm in writing that all known cases of non-compliance or suspected non-compliance with laws and regulations were communicated to the accountant. Furthermore, the accountant asks the internal or external legal advisor for a list of all claims and court cases, including those resulting from corruption (Standard 501.9).

# 7 Communication about findings regarding corruption risks

## 7.3.4 Communication if the opinion is modified due to deficiencies in internal control or insufficiently reduced corruption risks

During the audit, the accountant may encounter such serious deficiencies in the internal control of corruption risks as to be unable to collect sufficient and appropriate audit evidence by performing substantive procedures. In that case, the deficiencies will have an impact on the opinion and may even cause the accountant to consider terminating the engagement.

Sometimes the client is unable to mitigate a corruption risk with internal control measures. If the accountant cannot reduce the control risk to an acceptable level by performing additional substantive procedures, and is therefore unable to collect sufficient and appropriate audit evidence on the material corruption risk, this will obviously have an impact on the opinion as well. The accountant not only discusses these situations with management, but also informs the supervisory body about this in writing (Standard 265.9).

### **Commissions for agents in Nigeria**

A commodities trading company does business with the Nigerian government. On behalf of the company, agents maintain contact with the Nigerian government and see to the fulfilment of orders and the payments. On the [Corruption Perception Index](#), Nigeria scores 24 out of a maximum of 100 points. This means that corruption is considered to be more prevalent in Nigeria than in other countries.

The commissions for the agents range from 10 to 20 percent of the order value. The revenue flow generated by these orders is mate-

rial to the annual accounts. In his own risk analysis, the accountant identified corruption risk factors because of Nigeria's low CPI score and the use of agents. The accountant treats this as a (significant) corruption risk in the audit file.

During the audit procedures, the accountant finds that, although the trading company does have contracts with the agents in Nigeria, these contracts lack provisions which prohibit the agents from engaging in corruption. Likewise, the contracts do not include agreements on what activities the agents are to perform and how they are to render account for these activities. As the company has not screened the agents, it is not clear whether they could have ties with the Nigerian government. The payments to the agents fall outside the generic payment process, which means that internal control measures are lacking.

When asked, the company says that it has no insight into the agents' activities or into the relation between the commission payment and the services which the agents render in return. The trading company tries to induce the agents to provide insight into their activities and their spending pattern, but these attempts are unsuccessful. What is clear, however, is that the agents have the commissions transferred to bank accounts outside Nigeria without stating reasons.

The accountant concludes that he is unable to collect sufficient and appropriate audit evidence about the risk of the agents bribing Nigerian government officials. The accountant modifies the opinion.



# 7 Communication about findings regarding corruption risks

## 7.3.5 Possible points for discussion with management

When discussing (potential deficiencies in) the internal control of corruption risks with management, the accountant may raise the following topics, among others:

- the manner in which management identifies and assesses risks of corruption, bribery and conflicts of interest, and how often this risk analysis is performed (risk awareness);
- management's attitude towards corruption, bribery and conflicts of interest, and how management actively and passively conveys this attitude to its staff members (tone at the top, employee training and information, communication, etc.);
- the policies in respect of corruption and expenditure on representation and sponsorship;
- the entity's sensitivity or vulnerability to bribery (active or passive);
- the sensitivity to corruption of the activities, sector or geographical areas in which the entity operates;
- to what extent the entity depends on particular customers or suppliers;
- to what extent the entity is open to notifications of abuse by employees, customers and/or suppliers, for instance on the basis of a whistleblowers' scheme or complaints procedure; to what extent management communicates about this;
- compliance with and implementation of the statutory rules on a complaints procedure or whistleblowers' scheme;
- how management identifies, or arranges identification of, potential or existing conflicts of interest and makes them transparent;
- whether and how key officers at the entity are screened;
- whether and how potential new customers, suppliers and agents are screened;
- how management establishes that the agents and other intermediaries

it uses do not commit bribery;

- how management communicates with the staff about the policies on representation, sponsorship, conflicts of interest and forms of corruption;
- whether and how the entity's staff are trained in how to prevent active and passive bribery;
- whether any cases of (attempted) corruption are known, how these became known and what follow-up management gave to these incidents.

The accountant can also discuss the above points with the supervisory body. In that case, the emphasis will be on how this body monitors the control and reduction of corruption risks by management.

## 7.4 Communication with external parties about corruption risks

If deficiencies in internal control result in a breach of anti-corruption laws and regulations, the accountant may have to report this to external parties. The accountant first asks management to undo the breach insofar as this is possible.

A refusal may cause the accountant to doubt management's integrity and reconsider the continuation of the engagement. The accountant may want to obtain legal advice before deciding whether or not to terminate the engagement. This also applies to the question what follow-up actions are required, such as notifying regulatory or supervisory authorities (Standard 240, sections 39, A55, A56 and A57).

# 7 Communication about findings regarding corruption risks

## 7.5 Communication with management and the supervisory body about indications and suspicions

The accountant will hold consultations with management if:

- the accountant carried out or arranged a **further investigation** into the indications, or is asking the company to do so; and
- this investigation results in a suspicion of corruption; or
- the court has ruled that corruption has been committed (Standard 240.3).

If the investigation into the indications results in a suspicion of corruption, the accountant will also bring this to the supervisory body's attention (Standard 240.42). If management is involved in corruption, the accountant will communicate more intensively with the supervisory body. The NBA has drawn up **sample texts** for this purpose in Dutch and in English. In that case, this body will play a more proactive role in the remediation process. If management is not involved in the corruption, the accountant will communicate primarily with management, and communication with the supervisory body will be limited to matters that cause material misstatement in the financial statements.

The accountant follows the **NV NOCLAR step-by-step plan** and the step-by-step plan laid down in **Article 37 of the Bta**. The latter is mandatory for statutory audit engagements at non-PIEs, but may also be used in voluntary audit engagements. Under the Bta provisions, the accountant first draws the attention of the entity's management and supervisory body to a 'reasonable suspicion' of corruption and subsequently asks them to investigate this or arrange an investigation, insofar as this has not

happened yet in the context of Standard 240. The term 'reasonable suspicion' is a criminal law term, which has not been defined in more detail. Therefore, this Guide only uses the term 'suspicion'.

Subsequently the entity reports the outcomes to the accountant.

These outcomes determine whether a suspicion exists.

The rest of the step-by-step plan comes down to the following:

1. The accountant asks management and the supervisory body to draw up a written plan setting out the entity's measures to undo the effects of the corruption insofar as possible and prevent repetition; the plan specifies the time limits within which the entity must have implemented the measures;
2. The accountant assesses within four weeks of its completion whether the remediation plan is sufficient; the accountant communicates the outcomes of this assessment with management and, if possible, with the supervisory body;
3. The accountant checks whether the entity implemented the measures within the time limits set and communicates these findings with management and the supervisory body (**Article 37(1) of the Bta**).

### **Air tickets to Greece**

*A construction company carries out a wide range of infrastructure projects. One of the larger projects in the past financial year was an extensive renovation of canal banks on the instructions of the provincial authorities. During the year-end audit, the accountant goes through the books and notices a substantial 'travel and subsistence expenses' item. The substantive audit of the invoices and expense claims reveals that this primarily involves air tickets and accommodation in a Greek resort of one person and his family.*

# 7 Communication about findings regarding corruption risks

The person is not an employee of the construction company. The accountant discusses the travel and subsistence expenses with the board of directors, which provides a vague explanation. The accountant performs a further background check on the person. This reveals that the person is a public official who awarded the contract to the construction company on behalf of the provincial authorities. The accountant regards this as an indication of bribery and discusses this with the audit committee of the supervisory board. The accountant also reports this in writing to the supervisory board, which considers the matter very serious and asks the board of directors for a further explanation. No such explanation is provided, however.

The accountant asks the supervisory board to carry out or arrange a further investigation of the indication. The company instructs a forensic accountant to conduct an in-depth investigation. The nature, extent and execution are discussed with the external accountant. The investigation reveals that for three years executive directors committed official corruption by providing the public official with money, goods or services on a structural basis in order to win contracts.

The supervisory board draws up a written remediation plan with measures such as:

- dismissing and replacing the board of directors;
- claiming compensation from those involved at internal level;
- making a notification to the provincial authorities;
- making a notification to the Public Prosecution Service and/or the AFM if the client wrongly does not report a criminal offence; see 10.6;

- implementing a code of conduct which does not accept bribery under any circumstance;
- drawing up an anti-corruption programme for the board of directors and staff, in which everyone is trained in how to fight bribery and report bribery attempts by customers or suppliers to the board of directors;
- tightening the internal control measures in respect of assuming obligations regarding travel and subsistence expenses.

The accountant establishes that the remediation plan is adequate and that the measures were either implemented (change of board of directors and code of conduct) or initiated (anti-corruption programme). The accountant reports the outcomes in writing to the (new) board of directors and the supervisory board.

## 7.6 Communication with external parties about indications and suspicions

### 7.6.1 No adequate response to suspicion of corruption

#### For a non-PIE organisation

If an entity fails to take adequate (remediation) measures following a suspicion of material corruption, [external notification requirements](#) come into play. In the case of a statutory audit engagement at a non-PIE client, the accountant must then report the corruption to [the central notification point](#) of the National Police Service pursuant to the fraud notification requirement laid down in [Article 26 of the Wta](#).

# 7 Communication about findings regarding corruption risks

If the entity refuses to take adequate measures, this will usually raise doubts about management's integrity. This may be a reason for the accountant to reconsider or terminate the engagement (unless there are legal impediments to doing so). The accountant can obtain legal advice on this point, as well as on determining other follow-up actions, such as notification of regulatory or supervisory authorities (Standard 240, sections 39, A55, A56 and A57).

If the accountant terminates a statutory audit engagement in the interim, the accountant must inform the AFM and state the reason for this termination ([Article 2:393](#) of the Dutch Civil Code and [Article 13\(3\) of the Bta](#)).

In addition, the accountant must be mindful throughout the audit of a possible notification to the FIU if there is a suspicion of unusual transactions.

Finally, the audit firm evaluates whether a corruption case must be reported to the AFM in the context of [Article 21 of the Wta](#) and [Article 32 of the Bta](#).

## Notification requirement – For public-interest entities

If a statutory audit of a PIE client gives rise to a suspicion of corruption, only the obligation to investigate is relevant for a notification. If no investigation is carried out in the event of material corruption at a PIE client, the accountant reports the corruption to [the central notification point](#) of the National Police Service pursuant to [EU Regulation 537/2014](#). Although the EU Regulation requires the client to take remediation measures, the accountant will not need to make a notification if the client fails to implement these remediation measures. See Guide 1138 for a further explanation concerning EU Regulation 537/2014.

If the entity refuses to take adequate measures, this will usually raise doubts about management's integrity. This may be a reason for the accountant to reconsider or terminate the engagement (unless there are legal impediments to doing so). The accountant can obtain legal advice on this point, as well as on determining other follow-up actions, such as notification of regulatory or supervisory authorities (Standard 240, sections 39, A55, A56 and A57).

If the accountant terminates a statutory audit engagement in the interim, the accountant must inform the AFM and state the reason for this termination ([Article 2:393](#) of the Dutch Civil Code and [Article 13\(3\) of the Bta](#)).

In addition, the accountant must bear in mind throughout the audit that a notification to the FIU will be required if there is a suspicion of unusual transactions.

Finally, the accountant also evaluates whether a corruption case must be reported to the AFM in the context of [Article 21](#) of the Wta and [Article 32](#) of the Bta.

# 8 Possible consequences for the auditor's report

This chapter in brief

- Evaluating the outcomes of the procedures regarding corruption risks or indications of corruption is a matter of professional judgment;
- An unqualified opinion will be possible if the accountant has sufficient and appropriate audit evidence and the client has adequately disclosed the (inherent) residual risk and the associated uncertainty in the annual accounts;
- A disclaimer of opinion will follow if the client asserts that particular transactions are not related to corruption, the client fails to disclose this in the annual accounts, the accountant is unable to verify this assertion in the absence of sufficient and appropriate audit evidence, and the lack of sufficient and appropriate audit evidence has a profound impact.

## 8.1 Introduction

The accountant aims – briefly put – to check whether financial statements as a whole are free from material misstatement due to fraud or error. In this light, the accountant evaluates the outcomes of the audit procedures performed in connection with corruption risks and indications of corruption.

The accountant must bear in mind that both quantitative and qualitative materiality limits play a part in cases of corruption. If the auditor detects a misstatement or is unable to collect sufficient and appropriate audit evidence about a corruption risk or indication of corruption, this could be material in qualitative terms (Standard 320), even if the extent is below the materiality limit for the financial statement as a whole.

## 8.2 The accountant's opinion

Evaluating the outcomes of the procedures regarding corruption risks or indications of corruption is very much a matter of professional judgment. The auditing accountant's opinion depends inter alia on the answers to the following questions:

- to what extent is there uncertainty in the financial reporting in relation to a corruption risk or indication of corruption?  
What matters here is what internal control measures and/or actions management has taken to address a corruption risk or indication of corruption, and the extent to which management discloses any uncertainty in the annual accounts;
- does the accountant have sufficient and appropriate audit evidence about a corruption risk or an indication of corruption?
- to what extent can the accountant concur with the disclosure (or lack thereof) in the annual accounts of a corruption risk or indication of corruption?

Therefore, the starting point is what management reports. The accountant expresses an opinion on the account provided by management. Various scenarios are conceivable in this context. Two scenarios which often occur in practice are explained below. It would go too far to discuss all scenarios here. Standard 700 sets out to what extent the accountant should modify the opinion in the auditor's report in line with the circumstances.

## 8 Possible consequences for the auditor's report

### Example 1

It happens in practice that the accountant identifies a corruption risk. Although management has an adequate internal control system to address the corruption risk, there is an (inherent) residual risk. In that case, management is unable to state with certainty that no corruption has occurred. Logically, the accountant cannot establish this either.

The accountant can issue an unqualified opinion on the financial reporting if management sufficiently discloses the risk in the annual accounts. Because of the adequate disclosure, the annual accounts will present a true and fair view, while the accountant can obtain sufficient and appropriate audit evidence about the assertions. The accountant might consider an explanatory section in the auditor's report to highlight specific matters.

The above scenario can be illustrated with the following example:

A company in a corruption-sensitive sector pays amounts to an intermediary (hereafter: agent) who is based in a country with a low CPI score. Based on the audit procedures, the accountant establishes among other things that:

- the client's due diligence procedures in respect of the agent are adequate;
- a government authority is involved, and permits/licences are required in order to carry out activities;
- the extent of the payments and the resulting revenue flow is material in the context of the audit of the annual accounts;
- the contract with the agent was drawn up in accordance with a fixed template, providing among other things that the agent must confirm that they perform the activities in conformity with the anti-corruption

laws and regulations;

- the information in the agency contract, the invoices for the agency commission and the commission payments are consistent with each other;
- no substantiation can be found for the agent's activities other than the contractual agreements;
- the agency commission paid is high compared with commissions paid to agents in other countries;
- the client adequately discloses the payments to the agents/intermediaries and the associated money flow in the annual accounts.

In this example, a residual (inherent) corruption risk may manifest itself outside the client's sphere of influence. This is because the activities performed by the agent have not been further substantiated.

The (inherent) residual risk that the agent used the commission for corruption is outside the client's sphere of influence. What matters here is that management adequately discloses the residual risk. The accountant can therefore issue an unqualified report if the above questions have been answered satisfactorily, based on sufficient and appropriate audit evidence.

### Example 2

It may happen that a client believes that it has done everything in its power, that the residual risk is outside its sphere of influence and that there is no uncertainty in the reporting.

In other words, the client asserts that the agency commissions paid are not related to corrupt activities and management does not include a disclosure in the annual accounts. In that case, the accountant will evaluate



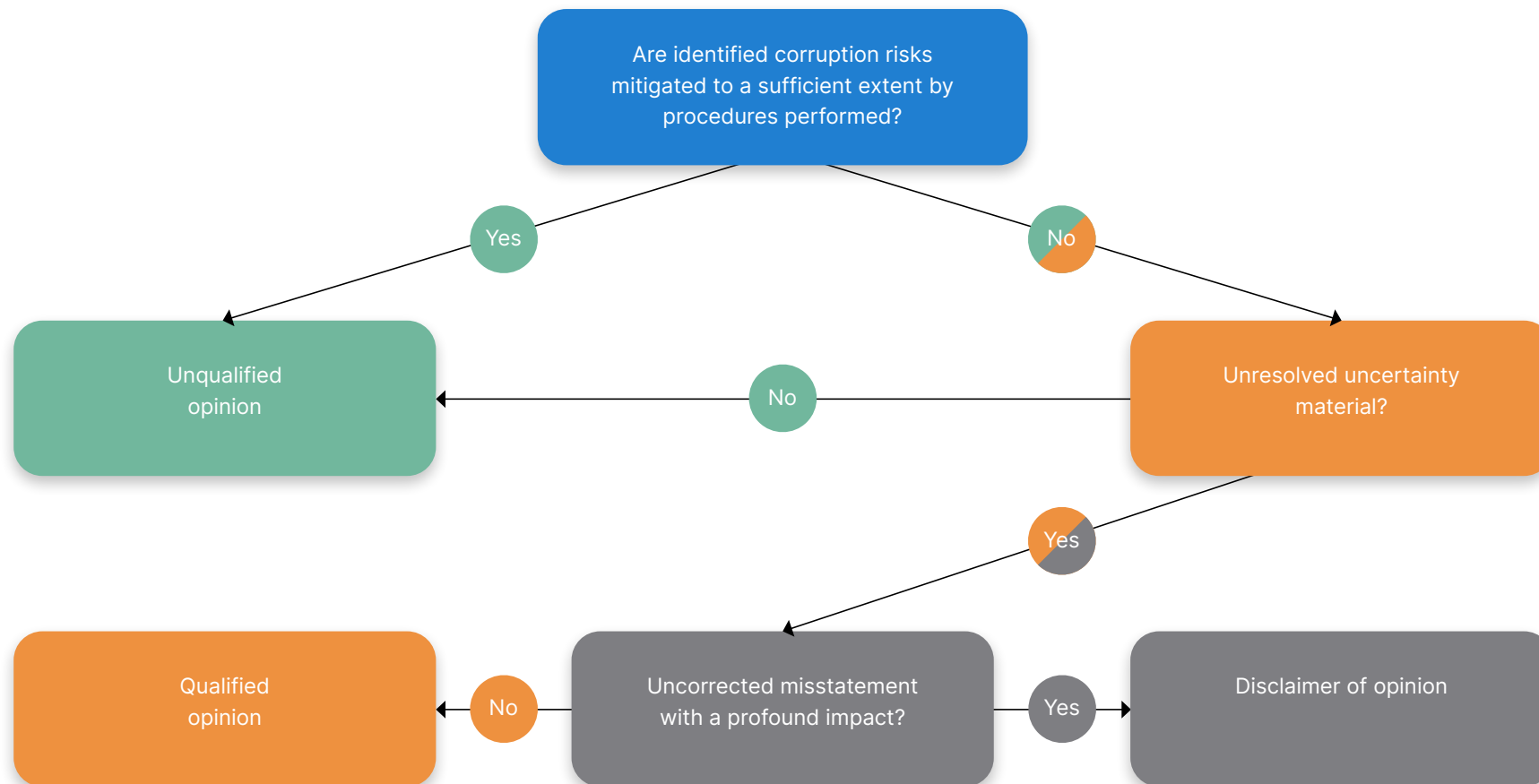
## 8 Possible consequences for the auditor's report

whether he can concur with this position of management based on sufficient and adequate audit evidence. If this is not the case, the accountant will issue a qualified report or a disclaimer of opinion. The accountant will opt for the second variant if the (potential) consequences of the residual risk have a profound impact on the financial statements. If they do not, the accountant will opt for a qualified report.

Below is a schematic representation of the evaluation if the accountant cannot obtain sufficient and appropriate audit evidence.

# 8 Possible consequences for the auditor's report

Evaluation of the impossibility to obtain sufficient and appropriate audit evidence



# 8 Possible consequences for the auditor's report

In practice, the accountant may encounter numerous variants of the situations described above. It is therefore stressed once again that the accountant will use professional judgment in evaluating the outcomes of the procedures regarding corruption risks or indications of corruption.

Please note: Significant deficiencies in internal control in combination with the impossibility to obtain sufficient and appropriate audit evidence via other (substantive) procedures cannot be resolved with a disclosure by the client in the annual accounts.

## 8.3 Fraud section, key audit matters and other matters

As well as expressing an opinion, the auditor's report also provides other opportunities for communicating on findings. For example, the accountant may consider including the following in the auditor's report, and in certain situations is obliged to do so:

- a separate section on 'Audit approach to fraud risks' (Standard 700);
- key audit matters (Standard 701);
- a separate section to emphasise (other) matters (Standard 706).

Standard 700 (29B) provides that, in statutory audits, the accountant must indicate in a separate section of the auditor's report on the 'Audit approach to fraud risks' how the accountant responded to fraud risks that may result in material misstatement. Furthermore, Standard 700 (A41B) provides the option to include an indication of the outcome of the procedures and/or to comment on significant findings.

Standard 701 contains two criteria to determine which 'key audit matters' must be stated in the auditor's report of public-interest entities (PIEs):

- matters that were of most significance in the accountant's professional judgment;
- a selection from the matters communicated with those charged with governance.

However, the accountant may not include these passages in the event of a disclaimer of opinion. In this context, also see Guide 1150, 'Reporting in the section "Audit approach to fraud risks" in the auditor's report'. Appendix 8.1 to Guide 1150 contains a visual step-by-step plan of reporting scenarios based on the accountant's fraud risk analysis. Appendix 8.2 contains a visual step-by-step plan of reporting scenarios based on indications or suspicions of fraud.

# 9 Corruption, procedures during compilation engagements

This chapter in brief

- Corruption and fraud;
- Which costs and cost items may be an indication of fraud?
- Ask further questions in case of doubt about (the correctness and completeness of) the information supplied by the client and whether transactions are usual or unusual;
- Check whether specific laws and regulations, such as the Wwft and the NV NOCLAR, prescribe particular actions;
- If there is a suspicion of corruption, press for amendments to the annual accounts where necessary.

## 9.1 Introduction

Bribery in the Dutch SME sector is certainly not rare, as appears from the selection of practical examples in [Appendix A](#). Even smaller entities, which are not subject to a statutory audit, must prepare and file annual accounts. If management engages an accountant for this purpose, this accountant will have to abide by Standard 4410 in performing the procedures. The NBA Guide 1136, 'Standard 4410 regarding compilation engagements' helps the accountant with this.

It often happens in practice that the accountant performing the compilation procedures for the annual accounts also provides other services to the client in question, for example administrative services and preparation of a company's corporate income tax returns. Because of these procedures, which do not fall under Standard 4410, the accountant will have extensive knowledge of the client's business or organisation. In compiling the annual accounts, the accountant may in principle proceed from the data supplied by the client. The accountant is therefore

not required to actively look for indications of corruption. Likewise, the compiling accountant is not required to perform a corruption risk analysis – after all, a fraud risk analysis is not mandatory. However, the accountant may not ignore information that may be indicative of corruption.

While performing the compilation procedures, the accountant may come across information that can be an indication of corruption. Using the so-called fraud triangle described in [section 4.2](#), the accountant is more likely to notice unusual matters and possible indications of corruption. The fraud triangle is a tool; Standard 4410 does not prescribe its use. The fraud triangle has three elements: pressure, rationalisation and opportunity.

Pressure refers to financial, emotional or other circumstances that may induce a client to commit fraud, for example private debts or an extra bonus if a large customer is secured.

Rationalisation refers to the arguments which a client devises to justify fraud, such as: it is customary in the sector to bribe parties, or: without backhanders I cannot get my fresh produce across the border in time.

Opportunity refers to the circumstances that enable fraud. These could be vulnerabilities in the internal control environment, such as lack of supervision and flawed security measures.

# 9 Corruption, procedures during compilation engagements

Standard 4410 provides that if, in the course of the compilation engagement, the accountant becomes aware that the records, documents, explanation or other information provided by management, including significant judgments, are incomplete, inaccurate or otherwise unsatisfactory, the accountant must bring this to the attention of management. This expressly also includes identified or suspected fraud or non-compliance with laws and regulations. In that case, the accountant must ask for additional or corrected information. Where necessary, the accountant presses for adequate follow-up of identified or suspected fraud or non-compliance with laws and regulations (Standard 4410.32 and A47).

If the accountant suspects that a transaction may be related to money laundering or terrorist financing, the Wwft prescribes notification. Unusual transactions must be reported immediately to FIU-NL also during a compilation engagement; see [section 6.3](#). If necessary, consult NBA Guide 1124 - 'Guidelines on the interpretation of the Wwft'.

## 9.2 Corruption and fraud

Standard 4410 is partly about fraud, but not about corruption as such. In this Guide, corruption is regarded as a form of fraud. Therefore, the provisions regarding fraud in Guide 1136 for compilation engagements also apply if the accountant suspects corruption; see [section 9.3](#).

Standard 240 ('The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements') defines fraud as: "An intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage."

The accountant is not required to establish whether a situation constitutes fraud or non-compliance with laws and regulations from a legal perspective. This is to be decided by a court or other judicial authority (Standard 4410.A24).

Just like fraud, 'corruption' is a collective term for a range of behaviours. The definition of corruption is addressed in more detail in [section 1.2](#). [Chapter 2 of this Guide](#) describes the various forms of corruption; this Guide limits itself to bribery, kickbacks and facilitation payments, see [section 10.5](#). The information in this chapter is also relevant for accountants who perform compilation procedures. In [Chapter 3](#) – about the accountant's role in the event of corruption – reference is made to Standard 4410 for compilation engagements. Chapter 3 also explains what fundamental principles are relevant if there is a suspicion of corruption. In the event of possible or imminent breaches of laws and regulations "which are relevant and clearly more than insignificant", the obligations of the NV NOCLAR apply; see [section 9.4](#).

Examples of costs that may an indication of corruption can be found in [section 9.5](#).

# 9 Corruption, procedures during compilation engagements

## 9.3 Standard 4410 and Guide 1136

Standard 4410 is about the accountant's responsibilities during a compilation engagement. Guide 1136 provides a practical clarification of Standard 4410.

In accepting or continuing an engagement, the accountant examines the client's integrity in line with Standard 4410.23b and 4410.A31.

As already indicated in section 9.1, Standard 4410.32 provides that the accountant must bring (suspected) corruption to the attention of management. In that case, the accountant must request management to provide additional or corrected information.

Under Standard 4410.34, the accountant must propose appropriate amendments to management if the accountant becomes aware in the course of the engagement that:

- the historical financial information compiled does not adequately describe or refer to the applicable financial reporting framework (see para. A53);
- amendments to the historical financial information compiled are required for the historical financial information not to be materially misstated (see paras. A54, A55 and A56); or
- the historical financial information compiled is otherwise misleading – including suspected fraud or suspected non-compliance with laws and regulations. (See para. A54).

Where necessary, the accountant presses for adequate follow-up of the identified or suspected bribery or facilitation payments; see [section 10.5](#). How the accountant does so is described in more detail in section 6.4.1 of [Guide 1136](#) ('Fraud or non-compliance with laws and regulations'). If the

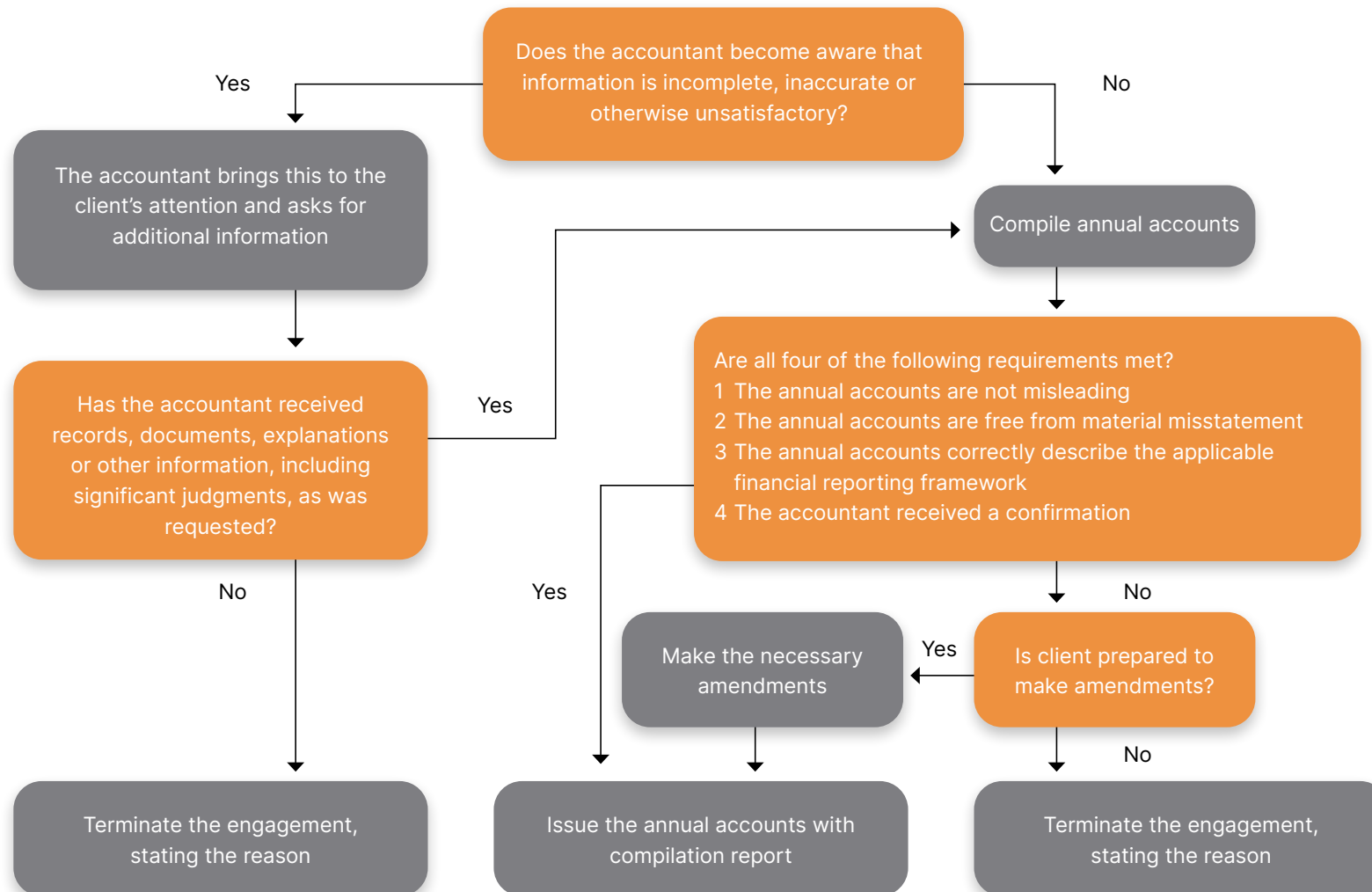
accountant suspects corruption, he will consult an external expert where necessary.

In most cases, the accountant will have to report suspected or identified corruption pursuant to the Wwft. If the accountant considers making a notification, the fundamental principle of due care may entail that the accountant requests additional information from management and the non-executive directors (if any) associated with the client. However, the accountant may not tell the client that a notification is being considered or will be made. Alerting the client is in contravention of the Wwft (see [Guide 1124](#), section 7.9.1, p. 114, second paragraph).

After consultation, the accountant takes appropriate measures. This could be a notification to a competent authority if the entity's management is obliged to make a notification but fails to do so.



# 9 Corruption, procedures during compilation engagements



# 9 Corruption, procedures during compilation engagements

If the backhanders and/or facilitation payments are recognised correctly and transparently in the annual accounts, this no longer involves forgery of documents. However, the payments will still constitute a criminal offence and are therefore in contravention of the laws and regulations. In that case, the accountant completes [the NV NOCLAR step-by-step plan](#). The obligations laid down in the NV NOCLAR and the Wwft apply to all accountants and all procedures.

## 9.4 Steps in case of a suspicion of fraud

[Section 9.2](#) states that an accountant who suspects corruption while performing compilation procedures must take the same actions that are required if there is a suspicion of fraud. These actions are described in Standard 4410 and explained in more detail in Guide 1136. In summary, these steps are as follows:

1. The accountant suspects fraud/corruption (4410.32);
2. If management does not provide additional information or refuses to amend the annual accounts, the accountant considers terminating the engagement; if the accountant terminates the engagement, he will explain why (4410.35);
3. The accountant checks whether steps are required under the Wwft or the NV NOCLAR (see Guide 1136, with reference to Guide 1124);
4. The accountant records the steps, procedures and findings in the file (Guide 1136). In case of doubt, please contact the NBA helpdesk or another expert.

## 9.5 Costs that may be an indication of corruption (and fraud)

In the event of bribery – which is the focal point of this Guide, together with [facilitation payments](#) – the person bribed usually receives the backhanders in a private capacity. The accountant is less likely to come across indications when performing procedures for the bribee, especially not during compilation procedures.

This chance is greater during procedures which the accountant performs for the briber. This is because the briber sometimes recognises the monies, goods, services or favours provided in the accounts. In this context, the amounts paid are often disguised as operating costs.

Examples include:

- unnecessary travel expenses (example [A.4](#)), expensive trips to distant countries);
- expensive gifts (car, fur, watch, television, see example [A.4](#));
- renovations (kitchen, bathroom, extension, maintenance work, see example [A.4](#));
- "smaller" gifts (car parts or maintenance, fuel pass, rent of a home, garden maintenance services or premium payments towards an annuity policy, "scholarship" for the contract awardee's child, credit card spending – possibly not backed up with evidence – by a non-staff member);
- payments not related to the business, see example [A.4](#);
- contributions to third parties, such as organisations or charities endorsed by government officials;
- sponsorship of a sports club of which the contract awardee is a board member;
- [sponsorship](#) of a project developer's car-racing son;

## 9 Corruption, procedures during compilation engagements

- a “company” party which is actually the wedding of the son or daughter of the contract awarder/decision-maker;
- payment of salaries to persons not working at the company;
- provision of unusual personal benefits such as cars to persons not working at the company;
- “consultancy fees” (false invoices for services not provided; see examples A.1 and A.2).

Particularly conspicuous are invoices which a company pays in respect of **out-of-sector goods or services** that are supplied to **third parties**.

An example would be a construction company that has a Rolex or jacuzzi delivered to a private person who is not on its payroll. In such cases, the delivery address is not the same as the billing address.

Indications of corruption also include:

- excessive commissions/fees;
- **commissions/fees without an underlying contract or invoice**;
- kickback fees.

If the accountant has indications of corruption, this will pose a threat to compliance with the fundamental principle of integrity laid down in the VGBA. Because the accountant has indications that the information received may be incorrect or incomplete, he will have to examine this information in more detail.

# 10 In-depth information

## 10.1 Privileged information

This section in brief

- A client regularly has suspicions of corruption investigated under a lawyer's supervision. In order to obtain sufficient and appropriate audit evidence, the accountant will want to have access to the investigation findings;
- How can the accountant examine information that falls under the lawyer's right of non-disclosure and protect the confidentiality of privileged information?
- To what extent can the accountant rely on the lawyer's findings?

A client that receives signals indicative of possible corruption will probably engage a lawyer. Not only in order to issue advice on the client's legal position and procedural viewpoints, but also to investigate what actually happened and whether the indications, notifications or allegations are true or false. In addition, the client may give follow-up to an indication of corruption by having the facts investigated under a lawyer's supervision. The client may have an interest in keeping (incriminating) facts secret under the right of non-disclosure. An auditing accountant always needs sufficient and appropriate audit evidence in order to form an opinion and will therefore want to examine the findings of the factual investigation.

### Confidentiality versus completeness

Lawyers and accountants have a statutory duty of secrecy. Unlike accountants, however, lawyers can invoke their right of non-disclosure, which means that they are not required to surrender information entrusted to them by the client to supervisory bodies, detectives, public prosecution officers, judges and counsels. This legal privilege is intended not so much for the lawyer as for the client. The latter should be able to request confidential advice about its legal position, without the informa-

tion ending up with authorities or external parties.

Therefore, the right of non-disclosure protects the confidential communication between litigants and their lawyer.

If, in the context of the advisory process, the lawyer investigates the facts or has them examined by an external lawyer or accountant, the investigation report may provide audit evidence that is relevant for the auditing accountant. In that case, the auditing accountant will ask for this information. It may happen, however, that lawyers refuse to share findings with the accountant because of the right of non-disclosure. In that case, the accountant will be unable to examine all the facts and circumstances he needs in order to collect sufficient and appropriate audit evidence.

Before requesting information from the client's lawyer, the accountant must know what information exactly he needs.

In this way, the accountant can specify the request and explain to the lawyer why this information is relevant for the audit.

### Assessing competence and objectivity

Based on the information received, the accountant decides whether the work performed by the lawyer – as the expert engaged by management – is adequate to serve as audit evidence. In doing so, the accountant also checks whether the lawyer was able to examine all the relevant facts and circumstances.

Because lawyers are required under their rules of professional conduct and practice to promote their client's interest, special consideration must be given to the objectivity safeguards. Sometimes the accountant will have to perform additional procedures to make sure that the accountant can use the lawyer's information.

In assessing the objectivity, it makes a difference whether the lawyer conducts the investigation as the audit client's advisor or as an independ-

# 10 In-depth information

ent external investigator. According to the disciplinary court for lawyers, different norms apply in this context. The accountant must therefore ask the lawyer in what capacity the latter is investigating the facts. If the purpose of the investigation is to provide advice to the client, partiality and confidentiality will be core values for the lawyer. If the lawyer indicates that this is an independent investigation, the investigation should be objective as well as independent, and the core value of confidentiality will 'not apply in full', according to [the disciplinary court for lawyers](#). The lawyer's capacity will depend on how they present themselves, for example in the engagement letter. Whether the investigation report is intended for external or internal use is not the decisive factor in this connection.

## Audit approach

In determining the nature, timing and extent of the audit procedures, the following factors may play a part (Standard 500.8):

- the competence, capabilities and objectivity of the expert and/or the other experts engaged by the expert (see above);
- the accountant's legal knowledge and experience;
- the nature and complexity of the corruption case: if management is involved in the corruption, the accountant must set higher requirements for the lawyer's work and perform more procedures himself;
- risks of material misstatement: the greater the risks, the more procedures will be required in order to determine whether the lawyer's work is suitable as audit evidence;
- the availability of alternative audit evidence;
- whether the lawyer's report is made public.

## Examining privileged information

The accountant can examine privileged information if the client lifts the secrecy. The accountant can ask the client to lift the secrecy, because a lack of sufficient and appropriate audit evidence may be an impediment to issuing an unqualified report.

There are various ways in which the accountant can examine privileged information while respecting the right of non-disclosure:

- the accountant is permitted to examine the report in confidence, including the underlying documentation, and record notes in the audit file; these notes can subsequently be submitted to the lawyer or the client for discussion;
- the lawyer temporarily grants the accountant (electronic) access to the privileged material, on the understanding that the accountant will not make copies of that information and may not (yet) share it with third parties; the accountant may prepare a written report of the procedures and, where required, submit that report to the lawyer;
- the lawyer explains the results of the investigation verbally, if possible on the basis of a written presentation, so that the exact content will remain unknown to third parties; if the accountant prepares a report of the meeting, the accountant may submit this to the lawyer for assessment and, where required, for signature;
- as well as providing a verbal explanation, the lawyer may grant the accountant inspection of a part of the documentation underlying the factual findings, so that the accountant can check whether the investigation is adequate.

## Protecting confidentiality in the audit file

Through the audit file, the accountant must be able to demonstrate at all times:

- that the accountant's opinion has a proper basis;
- how the accountant reached that opinion, and based on what information and considerations.

In order to protect the confidentiality of privileged information, the accountant should not include more in the audit file than strictly necessary for the audit. Privileged information must be marked as such. The audit team may keep the privileged information separate from the

# 10 In-depth information

rest of the audit file and give a limited number of audit team members access to this information.

The conclusions drawn from the privileged information are not kept separate from the audit file. Regardless of how the audit evidence is stored, it pertains in full to the accountant's audit file. Confidential information should not be attached as an appendix to other documents such as (consultation) memos. Other documents may refer to confidential information, however.

## Restriction, disclaimer, termination

If restrictions prevent the accountant from obtaining sufficient and appropriate audit evidence, the accountant may consider the possibility of conducting his own investigation. If the accountant, despite the efforts discussed above, was given no or insufficient access to the information required, the accountant may have to modify the auditor's report. In that case the accountant will, for example, issue a qualified report or a disclaimer of opinion. The accountant assesses what the denied or restricted access means for the audit approach and for other audit procedures (already performed or still to be planned).

If the accountant concludes that the client – whether of its own accord or at the lawyer's suggestion – imposes restrictions on the audit, the accountant will take this into consideration when continuing the client relationship and examine whether the engagement should be terminated.

## 10.2 Corruption risks in international group structures

This section in brief

- The group auditor must have insight into the identified corruption risks occurring at the level of a group entity;
- Unlawful payments to foreign agents may constitute a significant corruption risk;
- Together with the component auditor, the group auditor must adequately address corruption risks at the parent company or subsidiaries of the audit client.

### 10.2.1 General

Dutch companies may be exposed to corruption risks via foreign parent companies or subsidiaries. The accountant checks first of all whether there are corruption risk factors.

The accountant can do so among other things by establishing whether:

- there are activities in countries with an enhanced corruption risk;
- transactions are conducted via intermediaries/agents;
- the transactions are complex transaction between related or non-related parties;
- business is done with government authorities.

Corruption risks which occur at a foreign subsidiary may also affect the Dutch parent company if the latter incorporates the subsidiary's data into the consolidated annual accounts. In addition, the accountant needs to be mindful of the possible extraterritorial effect of Dutch law. This is because Dutch anti-corruption law may also apply to Dutch entrepreneurs that bribe a party in another country.

When accepting the engagement, the accountant performs a client due diligence review based on the obligations under the Wwft. If the group structure is complex, an enhanced due diligence review might be required.



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The accountant uses the information from the review when auditing the annual accounts, for instance in order to identify possible corruption risks.

Because unlawful payments may be concealed via related parties, the audit requires an understanding of:

- the related parties which are on the list drawn up by management;
- the related parties which the accountant comes across during the audit;
- the transactions they conduct with each other.

The accountant gives special consideration to related parties not disclosed by management (Standard 550.22). In doing so, the accountant examines why management did not disclose these parties and is especially critical of transactions with these parties.

The group auditor must have insight into the identified corruption risks occurring at component level. In addition, both the group auditor and the component auditor must adequately address the corruption risks. The group auditor takes the lead in determining which audit procedures are required.

## **Disagreement with the component auditor**

*No matter how much a group auditor relies on the work of local and component auditors, it is the group auditor who remains ultimately responsible for the audit, as is demonstrated by a case of fraud. Therefore, the audit file must show that the group auditor sufficiently evaluated the component auditors' work and that sufficient and appropriate audit evidence is available.*

*During an audit of the international furniture chain Steinhoff, the group auditor paid insufficient attention to the investigations by the*

*German authorities into possible balance sheet fraud and tax evasion at a German component. The group auditor ignored a letter from a law firm, which the Accountancy Division regards as a 'red flag'. The group auditor should have discussed this significant issue with the component auditor, or with management at group level.*

*The group auditor was unable to explain the inconsistencies to the disciplinary court, because, following a disagreement, the component auditor refused to give the group auditor access to his audit file. The Accountancy Division did not consider this an excuse; a group auditor must ensure that his own file is in order.*

*"5.1. (...) The person concerned was remiss on essential points in conducting the group audit. In this sense, the auditor's report issued lacks a proper basis.*

*The person concerned failed to obtain sufficient and appropriate audit evidence. Furthermore, he failed to use sufficient professional scepticism in assessing the procedures and findings of the component auditor ..."* (Accountancy Division 20/1814 Wtra AK).

Unlawful payments to foreign agents may put the auditing accountant in a tight spot if they are disguised. For example, an audit firm in 2013 reached a **settlement** with the Public Prosecution Service, because the firm had "deliberately conducted the audit in a manner which enabled the concealment of payments by Ballast Nedam to foreign agents and of the associated parallel accounts". The Public Prosecution Service argued that the firm had given insufficient follow-up to the signals it had received on this point.

# 10 In-depth information

## 10.3 Transactions via agents and intermediaries

This section in brief

- Working with agents or intermediaries entails risks, but is sometimes unavoidable;
- The client may be liable under criminal law for the acts (or omissions) of the agent used;
- A commission percentage of 5% is often wrongly regarded as ‘customary for the sector’;
- Always consider the economic reality: what is done in return for the commission and what activities do the agents/intermediaries need to carry out?

Working with agents or intermediaries entails risks. However, sometimes the clients of accountants have no choice and use them:

- in order to acquire new contracts;
- in order to arrange the requisite permits; or
- in the performance of the operating activities.

Agents or intermediaries are often indispensable in order to do business at the right level, especially in relation to (potential) transactions in other countries. They have the network to establish contact with ‘the right persons’ or can see to the preconditions (such as permits) required for carrying out activities in the country concerned. It may also happen that local regulations prescribe the use of (local) third parties, as explained inter alia in example [A.10](#).

The use of agents and intermediaries may result in corruption risks for the client. According to [Transparency International](#), 75% of foreign bribery cases involve an intermediary. Normally speaking, the work of a local agent consists of legitimate tasks. But because the agents are given the authority to act on the company’s behalf and often work very discreetly,

the company does not always have insight into their activities. Moreover, an agent’s activities fall outside the company’s direct sphere of influence and internal control environment.

If the client engages an agent, the client may be liable under criminal law for the agent’s acts (or omissions). Under [Article 51](#) of the Dutch Criminal Code, companies, other legal entities and partnerships are liable for acts and omissions of someone who works for the legal entity, either in an employment or otherwise. A notorious example of bribery via agents is SBM Offshore, which in 2014 paid a total of USD 240 million to the Public Prosecution Service in the context of a mega-settlement. In [the press release](#) on this settlement, the Public Prosecution Service writes about the payments:

### **“Equatorial Guinea**

*Early in 2012, SBM Offshore learned that one of its then commercial agents might have presented certain goods to various government officials in Equatorial Guinea. This reportedly involved one or more cars and a building. In the opinion of the Public Prosecution Service and the FIOD, SBM Offshore’s then commercial agent passed on a significant part of the commissions paid to him to third parties, who in turn paid on parts of these amounts to one or more government officials in Equatorial Guinea. Other payments were made as well, for example to cover training and medical expenses. In the opinion of the Public Prosecution Service and the FIOD, such (onward) payments were made with the knowledge of then staff members of SBM Offshore, including a then member of the Board of Directors. During the period from 2007 to 2011 inclusive, SBM Offshore paid the commercial agent concerned a total of USD 18.8 million in respect of Equatorial Guinea.*

### **Angola**

*During the period from 2007 to 2011 inclusive, SBM Offshore also used several commercial agents in Angola. These commercial agents*

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received commissions for providing services in connection with particular projects in Angola. In the opinion of the Public Prosecution Service and the FIOD, money was paid to persons related to at least one of these commercial agents, who were either Angolan government officials themselves or could be associated with them. There were also other payments to one or more Angolan government officials or their relatives, for example to cover travel or study expenses. In the opinion of the Public Prosecution Service and the FIOD, payments were made with the knowledge of then staff members of SBM Offshore also in respect of Angola. During the period from 2007 to 2011 inclusive, SBM Offshore paid its commercial agents USD 22.7 million in commissions in relation to Angola.

## **Brazil**

With regard to Brazil, the internal investigation carried out on the instructions of SBM Offshore revealed a number of 'red flags' in respect of the principal commercial agent. These red flags concerned aspects such as:

- the level (in absolute terms) of the commissions paid to the commercial agent and his companies;
- the fact that the commission payments to the commercial agent were split between his Brazilian and offshore entities; and
- documents which indicated that the commercial agent held confidential information of a Brazilian contract awardee.

The internal investigation by SBM Offshore did not produce any concrete evidence which would show that payments were made to one or more government officials in Brazil. During the period from 2007 to 2011 inclusive, SBM Offshore paid its commercial agents USD 139.1 million in commissions in relation to Brazil. During the FIOD's investigation under the supervision of the Public Prosecution Service, it was found pursuant to a request for mutual assistance that payments had been made by the Brazilian agent's offshore

companies to Brazilian government officials. These findings are the result of investigation methods not available to SBM Offshore."

The client must therefore take appropriate measures before doing business with an agent or intermediary. Thereafter the client must monitor how the agent complies with laws and regulations and performs his activities. The specifics of these measures depend on the agent's activities and the identified risks.

From the [Instruction on the Investigation and Prosecution of Foreign Corruption](#) it appears, among other things, that Dutch businesses and organisations should be critical in respect of the activities of and payments to agents and intermediaries. Accountants must therefore have a sharp eye for what agents and intermediaries actually do for their money. To this end, the accountant thoroughly examines how the client structures transactions and which parties receive a fee for acting as intermediaries in the formation of a transaction.

Accountants frequently regard a commission percentage of 5% as being 'customary for the sector'. This is expressly not the case. After all, a percentage in itself says nothing about the acceptability of the payments to an agent or intermediary. Therefore, the accountant always considers the economic reality: what is done in return for the commission and what activities do the agents/intermediaries need to carry out? In this context, 1% of a large amount may already be far too high and thereby an indication that this in fact involves bribery. Corruption indicators relate to the agent himself, the transaction and the money flow.

Whether the agency of a third party effectively results in a corruption risk depends on the accountant's analysis. The accountant can perform this analysis in accordance with the aspects of the fraud triangle (pressure,

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opportunity, rationalisation) and conclude on the basis thereof whether the identified inherent risk actually results in a corruption risk.

For the substantive procedures regarding agents and intermediaries, see 5.3.3. See also the example of [Commissions for agents in Nigeria](#).

## 10.4 Right to audit

This section in brief

- In order to control the corruption risk, the audit client can include a *right-to-audit* clause in the contracts with the agents and intermediaries it uses;
- The absence of such a clause may be a deficiency in internal control;
- This section explains how the accountant can assess the effectiveness of this internal control measure and what the impact on the auditor's report may be if the lack of effectiveness results in insufficient audit evidence.

### Introduction

If the client uses agents, intermediaries or other third parties, it is the responsibility of the company's board of directors to design internal control in such a way that the corruption risk is mitigated. One of the measures to manage the corruption risk is the inclusion of a so-called *right-to-audit* clause in the contracts with the agents and intermediaries. The accountant subsequently checks whether this clause is complied with.

The *right to audit* gives the accountant's client the contractual right to:

- obtain information from the staff of the agent, intermediary or third party;
- analyse the records and associated documents.

The scope of the right to audit may differ per contract and/or contracting party. However, in essence it is an important instrument to gain an understanding of the contracting party's actual activities and of the acceptability of the remuneration. In this way, the client may find indications that kickback payments or facilitation payments have been made. The clause can also be used by the partners in a joint venture or consortium for the purpose of obtaining insight into each other's records. In some cases this is even advisable. See examples [A.9](#) and [A.10](#).

**If the client uses third parties, the accountant will design the risk analysis and the audit approach accordingly. The accountant will need sufficient and appropriate audit evidence inter alia in order to determine whether commission payments and associated transactions are free from material misstatement due to corruption.**

**A part of this audit evidence might be collected by examining the audit outcomes if the customer exercised the *right to audit*.**

### Importance of right-to-audit clause

The importance of a *right-to-audit* clause depends on the situation. The clause need not be enforced if the client can determine in a straightforward manner that the performance delivered by the third party is commensurate with the commission paid. For instance, a *right-to-audit* clause will be unnecessary in the case of an insurance agent who is based in the Netherlands, is active in the Netherlands and has his commission paid into a Dutch bank account.

The market for insurance agents is relatively transparent, which means that the accountant can see in a fairly straightforward manner that the commissions paid are in line with the market and are reasonably commensurate with the agent's performance or services. As example [A.9](#) shows, however, a Dutch intermediary need not necessarily be trustworthy.

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There may also be circumstances in which the accountant considers it necessary that the client invokes the clause. If the organisation has not included such a clause in the contracts with third parties, or does not enforce this clause, this could mean a deficiency in internal control. The accountant will notify the director and major shareholder, the board of directors, the shareholders, the non-executive directors or internal supervisory bodies of this flaw. Furthermore, the accountant will evaluate what this means for the audit. In 4.2.2.3 this is discussed in more detail.

The accountant may press for an audit by or on behalf of the client, stating that the lack of sufficient and appropriate audit evidence would prevent an unqualified report; see also below.

## Implementation of clause and accountant's procedures

An organisation can implement the *right-to-audit* clause by:

- itself performing audit procedures; or
- engaging an expert.

If the accountant wants to assess the effectiveness of the clause, the accountant can take steps such as the following (derived in part from Standard 500.8):

- examine the scope of the clause, if necessary in consultation with the internal legal department of the audit firm or the external legal expert or lawyer;
- peruse the work plan;
- evaluate the competence, capabilities and objectivity of the implementer of the business plan (staff member or hired expert);
- gain an understanding of the work performed;
- evaluate the appropriateness of the work performed as sufficient and appropriate audit evidence;
- evaluate the impact of the audit findings on the audit approach.

When evaluating the proposed and implemented work plan, the account-

ant must be alert to the nature and depth of the activities. The accountant must be aware of the risk that third parties will try to conceal corrupt transactions, for instance via investments, loans, complex structures or private payments. Among other things, the accountant can check:

- from which staff member(s) of the third party the expert requested information;
- to what extent the expert also performed verification activities;
- to what extent the expert ensured that all incoming and outgoing money flows were evaluated;
- to what extent the expert evaluated transactions between the third party and related parties;
- whether the expert performed any other activities apart from evaluating the accounting records, such as obtain information from other parties;
- to what extent the expert gained an understanding of the third party's private records.

## Engagement of an expert

If the client asks the accountant to implement the *right-to-audit* clause, the accountant will generally refuse this. This is because there is a field of tension between the client and the agent, which may give rise to particular discussions when the client exercises the *right to audit*. This entails risks and challenges for the accountant in terms of the latter's independence. For the same reason, it is not recommended to have these procedures performed by a colleague (Standard 500.8).

## Right to audit not exercised; lack of sufficient and appropriate audit evidence

Sometimes the *right to audit* is not exercised even though the accountant wishes otherwise, because:

- the clause is absent from the contract;
- the client is unable or unwilling to exercise the right to audit.

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It is important to check why the client does not exercise the right. In this way, the accountant can determine whether this involves a limitation imposed by the organisation. Even if the accountant can obtain sufficient and appropriate audit evidence in other ways, the accountant evaluates why the right is not exercised. This is because the imposition of a limitation may have implications for aspects such as the assessment of the corruption risk (Standard 705.A9). In addition, the absence of such a clause may result in a deficiency in internal control.

Obviously, the client can also exercise the right without this producing sufficient and appropriate audit evidence, for instance because of the manner in which the audit was carried out. In that case, the accountant can ask the client to extend the audit.

If the accountant concludes that it is not possible to obtain sufficient and appropriate audit evidence about the commission payments to one or more third parties, the accountant will evaluate the impact of this on the auditor's report, see 8.2 and 8.3.

## 10.5 Facilitation payments

This section in brief

- Making facilitation payments is a criminal offence in the Netherlands;
- Since 2020, small facilitation payments are no longer excepted from prosecution by the Public Prosecution Service;
- The audit is aimed in part at identifying the risk of possible facilitation payments;
- When compiling annual accounts, the accountant brings the criminality of facilitation payments to the attention of the board of directors and presses for correct recognition in the records and annual accounts.

Facilitation payments are small payments to (minor) officials for routine acts that are permitted in themselves. The difference with bribery is that facilitation payments primarily involve smaller payments in order to accelerate the official's usual activities, such as customs clearance of goods or the issue of visas and work permits. The brochure [Doing business honestly, without corruption](#) discusses this topic in depth and contains various examples.

Not all countries have criminalised facilitation payments. The [OECD Anti-Bribery Convention](#) does not regard small payments being made 'to grease the wheels' as a payment 'to obtain or achieve a business advantage or any other undue advantage'.

This principle underlying this chapter is that Dutch law does regard facilitation payments as a criminal offence. Until the end of 2020, it was Public Prosecution Service policy not to prosecute facilitation payments. By issuing the 2020 [Instruction](#) on the Investigation and Prosecution of Foreign Corruption, the Public Prosecution ended this policy. Because this kind of payments is often a criminal offence also in the countries where officials are bribed, the Public Prosecution Service wants to discourage such payments and – in its own words – 'send a clear signal'. In 2024, the Public Prosecution Service further tightened its investigation and prosecution policy. During the risk analysis, the accountant assesses the relevant corruption risk factors, including the factors relating to facilitation payments (such as the country and sector in which the company operates in particular, but also culture and conduct). This may result in the finding that facilitation payments constitute a fraud risk at a client. Subsequently the accountant gives adequate follow-up to this (as described in [Chapter 5](#)).



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Accountants must evaluate whether facilitation payments are unusual transactions. According to the Accountancy Division, facilitation payments may be unusual from a Dutch perspective. Accountants who come across such payments may therefore have to report this to FIU-NL because of their obligations under the Wwft.

## Risk analysis

If the accountant finds that the client performs activities with an enhanced chance of facilitation payments, this will be a corruption risk factor. [See 1.3](#) and [4.2](#). In that case, the accountant assesses whether this factor also constitutes a corruption risk. [See Chapter 4.4](#) for the explanation how the transition is made from a corruption risk factor to a corruption risk.

## Procedures

If an accountant has identified a corruption risk as a result of facilitation payments, the accountant can perform various substantive audit procedures, such as:

- checking (a part of) the staff expense claims (also in the form of credit card withdrawals or bonuses for foreign trips), in particular of staff members who are active abroad in sales, procurement or logistic handling;
- checking petty cash payments, in particular if these payments are made abroad, including tests of detail and reconciliation of the underlying invoices, expense claims and associated documentation;
- checking import/export costs, costs of permits and transport levies, including tests of detail in respect of the underlying invoices, expense claims and associated documentation to identify potential facilitation payments;
- checking travel and representation expenses, as well as business gifts, including tests of detail in respect of the underlying invoices, expense claims and associated documentation, in particular if these payments are made abroad;

- if necessary, asking for a list of licences and permits, and checking how these were obtained; checking whether the costs incurred in order to obtain these licences or permits suggest that facilitation payments were made.

## Evaluating indications

In the situation where the accountant establishes that the client made facilitation payments, the accountant will perform additional procedures. Even if the client recorded the facilitation payments in a transparent manner and the organisation has an adequate policy on preventing or at least limiting facilitation payments, the client will still have breached the law. After all, facilitation payments are a criminal offence under the Dutch Criminal Code. In that case, the accountant follows the [NV NOCLAR step-by-step plan](#).

If the facilitation payments were not recognised transparently in the records, or if they were not included in the records in full, there will be a risk of concealment. The accountant treats this as an indication of fraud and follows the steps of Standard 240. See [Step-by-step plan for external accountants conducting audit engagements](#) and [Step-by-step plan for external accountants conducting non-audit engagements](#).

The accountant also re-evaluates the risk assessment in accordance with Standard 240 and Standard 315 and subsequently adjusts the audit approach accordingly. In every situation, furthermore, the accountant evaluates facilitation payments in the context of the Wwft and takes account of the NV NOCLAR, since this involves a breach of laws and regulations. See [Chapter 6](#) and [Chapter 7](#) in respect of the follow-up.

One of the questions to be addressed in evaluating indications of fraud is whether the fraud is material. In this context, the accountant will consider both qualitative and quantitative factors, based on professional judgment. Examples of aspects which the accountant can evaluate when determining the materiality of the indications of fraud include:

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- Making the facilitation payments is not a choice on the part of the organisation but a **necessity** because of a threat to the life, bodily integrity and freedom of a staff member or others carrying out work;
- The facilitation payments and the advantage obtained are not quantitatively material in terms of size;
- It is not the client's policy (does it happen occasionally or structurally) to make facilitation payments and management does not exert pressure to do so;
- There is an approval procedure with associated policies for those cases in which facilitation payments are necessary.

Using professional judgment, the accountant evaluates whether there is a suspicion of corruption as a result of the facilitation payments detected.

If the accountant finds that facilitation payments were made, that these involve small amounts and that management opted to do so as part of its policy without there being any necessity, this will raise doubts about management's integrity. After all, management deliberately chooses to breach the law. In that case, the accountant will evaluate the impact of this on the audit.

### Examples

In this subsection, two examples are worked out based on the steps described above.

#### **Medical necessity**

*A staff member of an international construction company, which is active on a remote building site in a country with limited medical facilities, sustains serious injuries as a result of an accident. The local hospitals are not equipped to provide the treatment required. Emergency evacuation to a neighbouring country with better medical facilities is essential. During transport to the border, however, the*

*medical team is delayed at customs. The customs officials demand a 'facilitation' payment for a quick passage.*

*Confronted with a life-threatening situation and after approval by head office, the client makes a payment. Head office agreed because of the urgency of medical care and the minimal amount of the payment.*

If the facilitation payments are limited to this kind of situations, the accountant may find that there is no corruption risk in respect of facilitation payments. This opinion is based on the exceptional circumstances, the small amount of the payment and the fact that such payments are not normal company policy. Moreover, the necessity and urgency of the payment are supported by a clear approval process and documentation. This situation may still involve a potential breach of laws and regulations, however, which means that the accountant will perform the requisite procedures under the NV NO-CLAR and the Wwft, irrespective of whether a fraud risk is identified or not.

#### **Transport company**

*A transport company that specialises in carrying perishable goods to a country with notorious delays at the border faces an ethical dilemma. The company's drivers are confronted with long queues at the border, but can speed up border passage at a cost by paying customs officials. The transport company's management is aware of these practices and encourages quick deliveries, thereby (indirectly) encouraging bribery of public officials. The company records these payments as travel and subsistence expenses. Although the total amount of the backhanders is not material in quantitative terms, this raises serious questions about management's integrity. As a result, the conditions for facilitation payments are no longer fulfilled. These structural facilitation payments are effectively stimulated by management and are not recorded in a transparent manner as facilitation payments. This means that these payments can also be imputed to management.*

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The accountant may conclude that although the payments are not material in quantitative terms, they *are* material in qualitative terms. After all, management is aware that staff members are bribing public officials. The bribery is rationalised by pointing at the amount of time saved.

In this situation, the accountant has an indication of fraud and there is a suspicion of fraud. The accountant presses for an investigation and remediation by management and asks management to include the correct disclosures in the annual accounts. If management complies with the accountant's requests, the accountant evaluates the impact of this on the opinion.

In this case, the audit firm will also make a Wwft notification and evaluate whether a fraud notification must be made to the National Police Service pursuant to Article 26 of the Wta.

## 10.6 Overview of notification requirements

This section in brief

- To help the accountant decide whether a notification requirement exists, and if so, which one, this section presents step-by-step plans for three types of accountants:
- external accountants conducting an audit engagement;
- external accountants conducting a non-audit engagement;
- accountants in business.

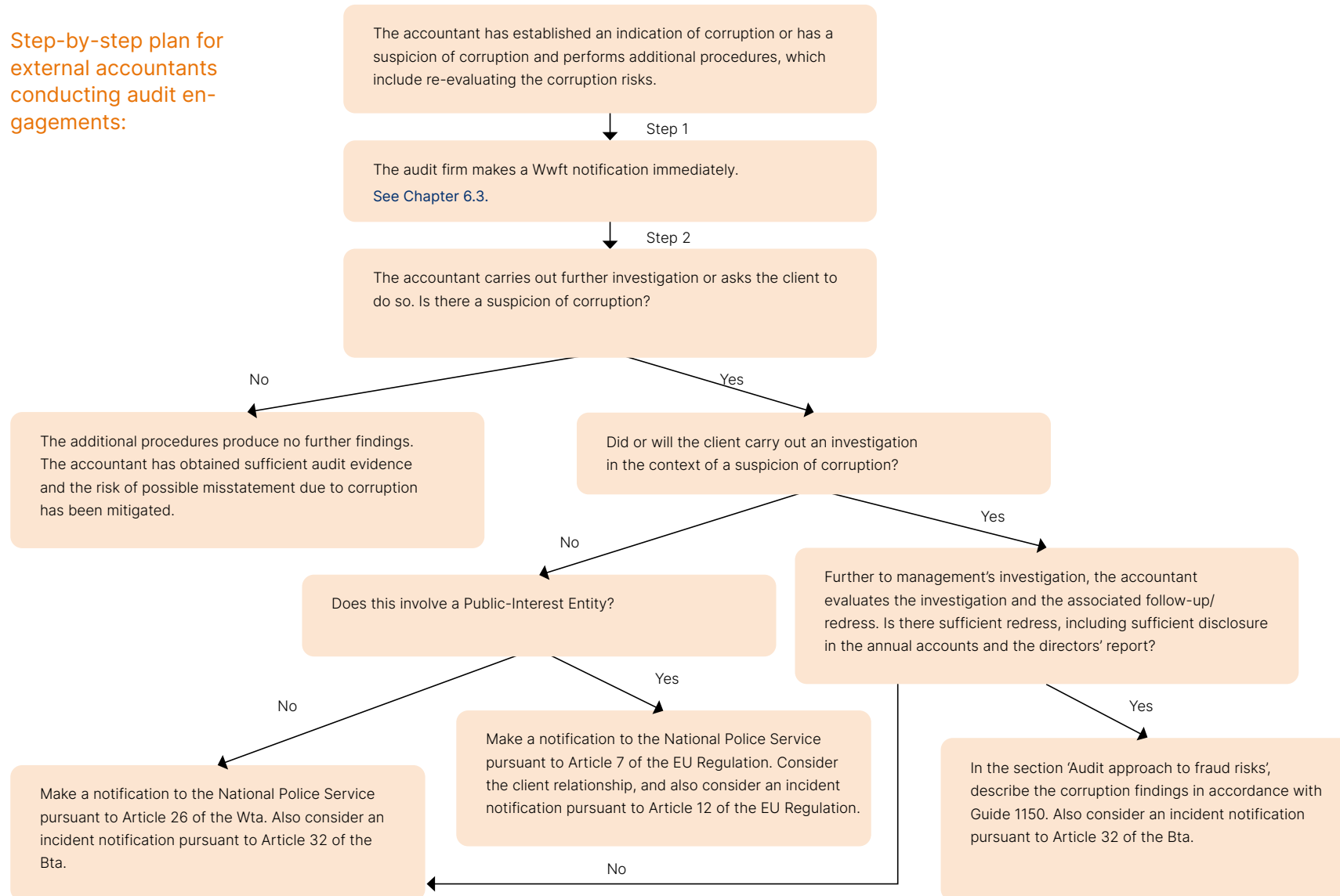
There are various kinds of notification requirements for accountants.

Below are three different step-by-step plans, which may serve as a tool in deciding which notification requirements apply:

1. a step-by-step plan for external accountants conducting an audit engagement;
2. a step-by-step plan for external accountants conducting non-audit engagements; and
3. a step-by-step plan for accountants in business.

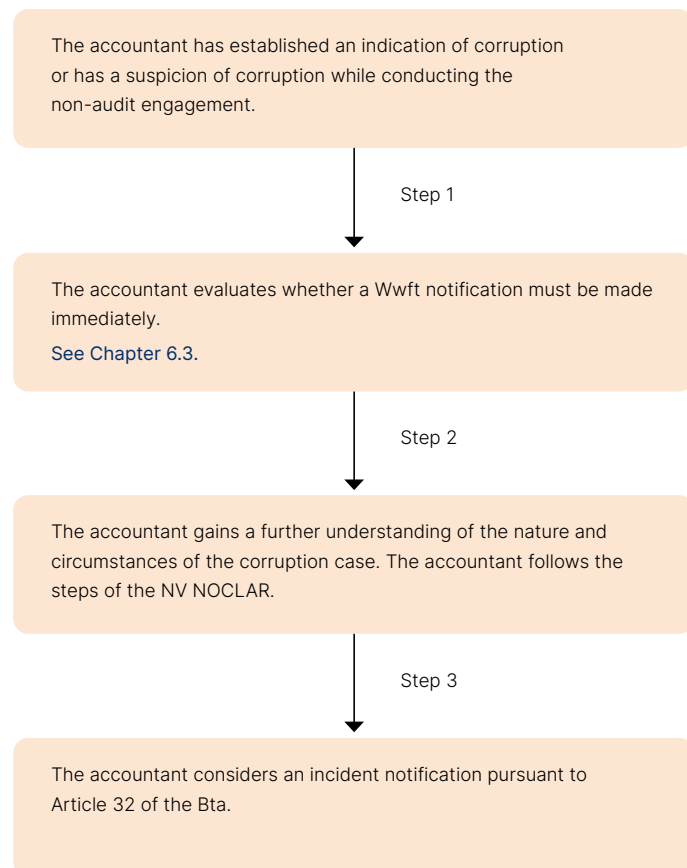
# 10 In-depth information

Step-by-step plan for external accountants conducting audit engagements:

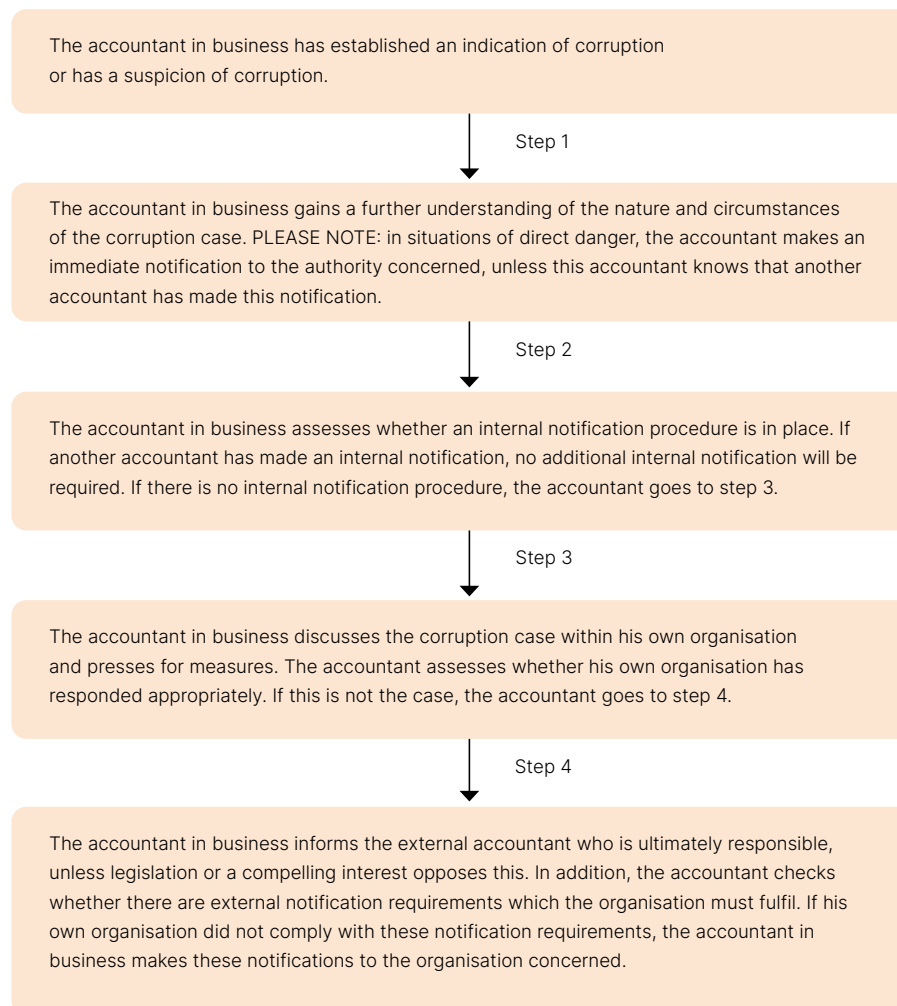


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## Step-by-step plan for external accountants conducting non-audit engagements



## Step-by-step plan for accountants in business:



# Appendix A

## Practical examples

### A.1 Invoices for ‘consultancy services’

During the credit crunch, SNS Bank had to restructure its property arm SNS Property Finance (SNSPF). The bank outsourced the project to an external management consultant. This project leader subsequently hired several interim managers. These interim managers billed the bank €225 per hour, of which they paid €75 to the project leader. The project leader sent the interim managers invoices for hundreds of thousands of euros made out in the name of his Czech company. The invoices stated ‘consultancy services’. One of the interim managers alone was charged €618,587.67.

This interim manager in turn engaged other interim workers, who also received invoices for consultancy services. In this way, this interim manager’s business ‘earned’ back around half of the brokerage fees. This kickback conspiracy involved ten persons in total, most of whom received suspended prison sentences of three months and community service orders ranging from 180 to 240 hours. The project leader and the interim manager each received a two-year prison sentence. In all cases, non-official bribery and forgery of documents were proved. Whether the bank ultimately paid too much or not, as the defence argued, was irrelevant. The bribers and bribees did not disclose the kickbacks to SNSPF.

One of the persons sentenced was a chartered accountant in business, who was given 180 hours of community service by the Court of Appeal of Arnhem-Leeuwarden. The accountant sent the project leader copies of the bills he had submitted to SNSPF. The project leader’s Czech company sent the accountant invoices for ‘consultancy services’ at €75 per hour. The accountant offset this amount against the brokerage fee of €7.50 per

hour which he had received for introducing two consultants to SNSPF. The accountant offset the latter fee against the brokerage fee of €75 per hour by in turn sending invoices for ‘consultancy services’ to the Czech company.

The NBA filed a disciplinary complaint against the accountant. According to the Accountancy Division, the accountant should have asked the project leader to clarify the – non-itemised – invoices from the Czech company in order to assess whether those invoices could be misleading. By failing to do so, the accountant breached the fundamental principles of integrity, professional competence and due care, and of professional conduct.

*“The foregoing leads the Accountancy Division (...) to conclude that the combination of the facts, being that the person involved received invoices from a person working for SNSPF, made out in an incorrect name, with a description of the activities not corresponding with reality and, as appeared at the hearing, without identifying the person for whom the payment was actually intended, should have given the person involved cause to wonder for what reason the invoices were presented as they were presented and, as a safeguard, should in any case have asked for an explanation (...) in order to subsequently assess for himself whether the invoices had been drawn up correctly and were not misleading, and thus ensure that he would not be acting in contravention of the fundamental principles of integrity, professional competence and due care, and of professional conduct (as detailed in sections A-110, A-130.4 and A-150).”*  
(ECLI:NL:TACAKN:2015:114)

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Another example of ‘consultancy services’ concerns the payments made by SHV subsidiary Mammoet Salvage BV to an Iraqi member of parliament into his Swiss personal account. The intention was to establish contact via the member of parliament with the Iraqi Minister of Oil in order to resolve a conflict with an Iraqi state oil company. In this context, SNV Holdings NV agreed a settlement with the Public Prosecution Service in April 2021. According to the Public Prosecution Service, the records of Mammoet Salvage included false invoices made out in the name of the member of parliament’s business “with a description of services that does not correspond with reality”. (see also A.6)

(ECLI:NL:TACAKN2020:41, ECLI:NL:TACAKN2020:42)

(ECLI:NL:GHARL:2018:5175, ECLI:NL:GHARL:2018:5081 and ECLI:NL:GHARL:2014:8710)

### A.2 Unknown parties, out-of-sector providers of ‘consultancy services’

In December 2021, the District Court of The Hague convicted 19 persons and 14 companies of bribery, swindle, forgery of documents and money laundering. Between 2015 and 2018, two employees of the Rotterdam housing association Vestia took bribes from a large number of cleaning and maintenance firms in return for contracts for work.

In some of the tendering procedures, the Vestia staff member selected a relatively ‘expensive’ company and subsequently told one of the defrauding companies up to what price it could compete in order to secure the contract. In those cases, the winning tender was sometimes thousands of

euros higher than the actual costs of the work. In other cases, the Vestia employees bypassed the tendering process and awarded contracts to companies paying them backhanders.

The Vestia employees shared these backhanders among themselves and with the intermediary.

The money flow was concealed through hundreds of false invoices and various conduit companies. In addition, some companies paid in kind: by supplying one of the Vestia employees with building materials or tools, or by paying for a new kitchen or contributing towards the cost of a more expensive car.

Vestia signed the contracts with the defrauding companies and paid the excessive, forged bills, because to the best of its knowledge the procurement rules had been followed.

The Vestia employees and the intermediaries carefully recorded in Excel sheets how much money there was to divide among them, which company had been awarded which contract, and for what contract sum. The records also showed:

- how much the work actually cost;
- how the surplus was to be divided;
- who was still owed what.

(ECLI:NL:RBDHA:2021:14424, ECLI:NL:RBDHA:2021:14425, ECLI:NL:RBDHA:2021:14426, ECLI:NL:RBDHA:2021:14427, ECLI:NL:RBDHA:2021:14430, ECLI:NL:RBDHA:2021:14429, ECLI:NL:RBDHA:2021:14432, ECLI:NL:RBDHA:2021:14433, ECLI:NL:RBDHA:2021:14434)



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### A.3 Project costs and representation expenses

A Roermond alderman received a one-year suspended prison sentence and a two-year disqualification from office for committing passive official bribery by soliciting donations and services from a project developer who was a friend.

Other contractors funded luxury trips for the alderman, for example to football matches abroad and to property trade fairs. The alderman also asked for €1,190,000 towards the campaign fund. He used this money among other things to pay for a billboard along the motorway which bore a larger-than-life picture of a fellow party member standing for election.

According to the Court of Appeal of The Hague, the accused had taken bribes by soliciting and accepting those gifts, “in the sense that he could no longer be as independent in taking decisions in relation to those entrepreneurs as he would have been if he had not solicited and accepted those donations.” The addition in italics suggests that the recipient of the backhanders is not necessarily required to deliver a specific counter-performance in order for bribery to exist. The Court of Appeal also convicted the alderman of laundering the funds which the entrepreneurs had paid to his campaign fund. The Dutch Supreme Court upheld the conviction. ([ECLI:NL:GHDHA:2017:3702](#) and [ECLI:NL:HR:2019:1135](#))

### A.4 Staff costs and invoices for third-party supplies

In October 2022, the District Court of Amsterdam convicted three municipal officials of passive bribery and breach of their duty of secrecy. During a period of less than four years, a 56-year-old work planner received advantages worth over €65,000 via several contractors, who were hoping for preferential treatment in the award of contracts by the municipality of Amsterdam.

According to the court, the work planner abused his position as an official “to shamelessly enrich himself, among other things by having renovations carried out at his partner’s home at these contractors’ expense and by accepting valuable luxury goods, such as televisions, a Rolex and an Apple Watch.” He was also treated to an exclusive dinner and sailed on a party boat at a contractor’s expense. In return, the accused did indeed favour the companies. ([ECLI:NL:RBAMS:2022:5709](#))

During a period of five years, a 58-year-old ‘F programme manager’ received from contractors around €37,000 in kind, such as a home extension, building work to his home and fishing trips to Brazil and Norway. ([ECLI:NL:RBAMS:2022:5710](#))

A 68-year-old project manager had his home extended to the tune of €3,920.01, received Velux windows with Trespa glass, membership of a club including a ten-session ticket with a value of €6,355 and an iPad. ([ECLI:NL:RBAMS:2022:5711](#))

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### A.5 Large commission payments without invoices

An accounting consultant compiled the annual accounts for 2008, 2009 and 2010 for a securities and derivatives dealer. The accountant assisted him with the accounting records and administered the payroll accounts for one employee. The dealer sold shares and derivatives to Vestia and other housing associations.

He paid Vestia's treasurer considerable amounts of commission, without invoices. When compiling the annual accounts for 2008, the accountant asked no questions about the lack of invoices in respect of 'ledger account 7004 "Commission"'. In November 2009, he issued a compilation report on the annual accounts for 2008. In the next two financial years, he did ask questions but still did not receive any invoices. Nevertheless, he again issued a compilation report.

After a complaint from the Public Prosecution Service, the Accountancy Division issued the accountant with a reprimand. The accountant should have established that the data provided was incomplete and/or unsatisfactory because invoices were lacking. The commission payments were made to one of the dealer's most important business contacts and accounted for more than a third of his revenue. The accountant should not have settled for bank statements only. He should have terminated the engagement when he was not given the requested invoices.

According to the Accountancy Division, the accountant should also have made a Wwft notification (after all, audit firms have a notification requirement under the Wwft). This is because the situation matched two examples of the subjective indicator for accountants, being:

- "accounting systems which, because of their design or structure, pro-

vide no adequate opportunity to follow transactions or furnish enough evidence";

- "payments for services rendered which appear excessively large in relation to the services provided (...) payments for unspecified services (...) to consultants".

(ECLI:NL:TACAKN:2015:16)

### A.6 Bonus payments

In April 2021, the Public Prosecution Service agreed a **settlement** for a total amount of €41,621,000 with SHV Holdings NV in relation to official and non-official bribery, forgery of documents and violation of international trade sanctions by its subsidiaries Econosto Mideast BV, Econosto NV, ERIKS, CMK and Mammoet Salvage. According to the Public Prosecution Service, a criminal investigation by the FIOD Anti-Corruption Centre revealed among other things that:

- staff members of Econosto Mideast promised and made commission payments to persons working at or for (potential) customers in the Middle East and Asia;
- in return for the commission, these persons ensured that the companies concerned awarded the contracts to Econosto Mideast;
- a total of 294 incidents of non-official bribery had occurred in the period from 2009 to 2015 inclusive;
- the commission payments and their recipients were recorded in parallel accounts, outside the business records of Econosto Mideast;
- the payments were falsely recorded in the business records as bonus payments to staff members of Econosto Mideast itself;
- management recorded the payments in two false Letters of Representation for the external accountant and in two sets of false annual

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accounts of Econosto Mideast as bonus payments to own staff members, whereas in reality they were bribery payments to third parties. The Accountancy Division reprimanded the accountant of Econosto Mideast, because:

- he had ignored cash payments;
- the controller of Econosto Mideast had pointed out to the accountant that cash payments had been made to third parties in the past;
- two colleagues in Dubai had pointed out to the accountant and the audit team that cash payments were still being made;
- the accountant had been told also in subsequent years that the practice of cash payments to third parties still existed.

“4.8 (...) The Accountancy Division is (...) of the opinion that there were many signals which indicated that, also in the audit years to which this complaint relates, (...) there was a continuing practice of cash payments by way of ‘sales incentives’, into which payments [the component auditor] had no insight.

4.9 In view of the foregoing and with reference to Standard 500.11, the Accountancy Division finds that, since there was inconsistent audit evidence evidence in this case, [the accountant] should in any case have followed up on this. The Accountancy Division establishes that [the component auditor] failed to do so, which is why the Accountancy Division is of the opinion that [the accountant] therefore conducted the audit with insufficient depth.

4.10 In this context, the Accountancy Division also takes into consideration that [the component auditor] advised in respect of the cash payments (...) that these should be made via the bank in the future.

The Accountancy Division establishes that this advice was not followed and that afterwards cash payments were still being made. Furthermore, the Accountancy Division has been unable to establish that [the accountant] performed additional audit procedures on this point.”

In 2021, the audit firm paid the Public Prosecution Service €150,000 in the context of a settlement. The criminal investigation into the role of the firm “shows, in the opinion of the Public Prosecution Service, that the audit firm was culpably involved in the compilation of the annual accounts, which on an essential point do not correspond with reality in qualitative terms. The Public Prosecution Service considers this highly objectionable.” ([ECLI:NL:TACAKN:2020:41](#) and [ECLI:NL:TACAKN:2020:42](#))

### A.7 Conferences, dinners and team building

In mid-2021, Orbus International BV in Hoevelaken paid a fine of €174,000 for bribing Belgian cardiologists. In addition, [the Public Prosecution Service deprived](#) the company of the same amount, which was the profit that Orbus was estimated to have realised on the contracts for the hospitals.

According to the Public Prosecution Service, Orbus had made gifts to Belgian cardiologists during the period from 2011 to 2015 inclusive in return for the contract to supply medical equipment to the hospitals where the cardiologists worked. When supplying the medical equipment, Orbus credited the cardiologists for a part of the sales price. This amount was subsequently spent on organising conferences, team-building activities and dinners. Orbus was favoured as a result of the gifts. The company recorded the gifts using false invoices.

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### A.8 Sponsor money forwarded to foundation

Companies can also conceal backhanders by sponsoring the sports club or a relative of a decision-maker. Early in 2018, for example, the FIOD arrested a project developer and two directors of a construction company. They were suspected of corruption, forgery of documents and tax fraud.

According to the FIOD, the construction company invested at least €500,000 in the racing career of the project developer's son in order to secure a contract. The project developer paid the amount as costs to the construction company, which forwarded the amount as 'sponsor money' to a foundation of the project developer. The FIOD launched the investigation pursuant to the Wwft notification made by an accountant.

### A.9 Transfer of shares in joint venture and 'loan'

A private equity portfolio manager at Delta Lloyd and the director and major shareholder of Provenance Financial Consultancy (PFC), an intermediary, were convicted of non-official bribery and forgery of documents, among other things. In 2015 and 2016, the portfolio manager was involved in the sale of a private equity and hedge funds portfolio to the US investment fund Lexington Partners. This portfolio was worth around €400 million and the intermediary was very keen to pocket the commission on the sale to Lexington.

The intermediary persuaded the portfolio manager by saying that he would share his commission totalling €8 million with him if the deal went ahead. The two devised a construct in which the portfolio manager lent

the intermediary €50,000 and would be repaid this loan in the form of half of the shares in the intermediary's private limited company (BV).

At the end of 2014, the portfolio manager's (by now former) wife incorporated a BV. The company lent €50,000 to PFC. This convertible bond loan could be converted within three years into 50% of the shares in PFC, which in 2016 became the sole shareholder of this BV.

According to *Het Financieele Dagblad*, the intermediary's accountant put a spanner in the works by saying that too much tax would be payable if the debt was converted into shares. What is more, this might alert the Tax and Customs Administration. After all, how can you explain that the shares are first worth next to nothing and are subsequently worth €3 million, without the BV having done anything? A chain of paper property transactions was meant to resolve this.

The District Court of Amsterdam found the portfolio manager, the intermediary and the legal entity guilty of non-official bribery and forgery of documents (false statement in an authentic notarial deed). According to the manager and intermediary, Delta Lloyd was not harmed because the company had paid as much as it would have done without the commission. The court made it clear that the presence or absence of harm made no difference to criminal liability:

"In order for non-official bribery to be declared proven, it is (...) sufficient that it can be established that the performance delivered or to be delivered constitutes a reason for a gift or promise, and that the said performance involves activities carried out in the context of an employment. The law does not require proof that the bribee did something which he

# Appendix A

## Practical examples

would not have done otherwise, or that he caused any harm to the employer, or that what he did should be labelled as unusual.”  
(Het Financieele Dagblad, ECLI:NL:RBAMS:2021:7282, ECLI:NL:RBAMS:2021:7283 and ECLI:NL:RBAMS:2021:7284)

### A.10 Joint venture with unequal input in high-risk sector and region

Most of the cases discussed in this chapter occurred in the Dutch SME sector. However, in some countries entrepreneurs can only do business if the state or a local party is involved. In Namibia, for example, the state or a local firm must hold 51% of the shares in companies which exploit natural resources.

A structure involving a joint venture of Namibian cabinet ministers, a fisheries authority and an Icelandic fisheries company is – in combination with conduit companies in tax havens – an excellent way of hiding back-handers for a fishing licence from view, as [the Fishrot Scandal](#) revealed. However, a [journalistic undercover operation](#) and a whistleblower at the Icelandic fisheries company Samherji ensured that the cooperation was ended and criminal investigations were launched in Iceland and Namibia.



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