Annex to the Moldova Small Business Code of Ethics

Notes and Definitions by Section

Clause 1: Bribery, Facilitation Payments and Extortion

1A Definition Bribery - Bribery is defined as paying an unofficial and illegal payment to a public official in order to gain business advantage. This includes influencing public procurement, getting special treatment on controls and inspections, etc.

1B Definition Facilitation Payments - Facilitation payments are defined as small payments requested by public officials in order to speed up a routine process. Facilitation payments are “small bribes” often presented as “gifts” or “money for tea” (tips). Companies should default to saying “no” and avoid paying facilitation payments.

1C Definition Extortion - Extortion is the use of threats by public officials against a company or person to demand payment, gifts or in-kind services. Extortion is often not something companies can not simply say “no” to as they fear that the threat will be carried out, or there will be official retribution in some other form. Companies should resist extortion by utilizing “green line” reporting, local police, press and media coverage, or seeking help from business associations. The appropriate response will differ in each circumstance and options are covered in more depth in the Practical Guide.

Clause 2: Taxes

2A Definition Avoidance vs Evasion - It is the fiduciary responsibility of any business owner to “avoid” unnecessary taxes and to use any legal means to assure that the company pays its fair share but not more. “Tax Evasion” is not about optimization but about fraud. It represents a situation where a company does not pay the taxes that it owes in order to bolster profits for owners or shareholders - on or off the books.

2B “Gray Areas” - Moldova’s regulatory structure requires companies to conduct some number of business operations and financial transactions “outside the legal system.” These problems come in many forms but have their common element with the administrative fiscal system - simply put, it is too hard or even impossible to pay for something legally. Whether it is hiring a plumber, painter or independent contractor companies large and small know that there simply isn’t a practical way to hire self employed persons. Further, companies often cannot get facturas, especially for small sums or in rural areas, for every needed purchase. In both these cases companies need to spend “cash” that is off the books.

Gray area workarounds exist in many forms but usually involve legally removing taxed income from the company in order to pay an expense. For example, a company may sell products, pay VAT and profit tax on revenue, and then pay “rent” for a photographer’s camera in order to pay the individual
for an event. In many cases, especially petty cash purchases without facturas, this means the company is paying more in taxes (VAT, etc) because they are not getting to write the payment off as an expense.

2C “Gray Areas” vs “Evasion” - Extra taxes in order to pay for services that antiquated laws never envisioned are undesirable for any company. At the same time, it is critical to guard against temptations to slip into tax evasion by finding unacceptable (illegal) workarounds such as not fiscalizing checks (evading VAT) or using similarly evasive methods to extract cash from the company.

Clause 3: Unloyal Competition

3B “Kickbacks” - Illegal cash kickbacks for preferential business relationships occur at all levels of the economy - with big and small companies. Large companies might offer “discounts” paid in the form of a monthly or yearly % of purchases to their partners in off the books cash. This is done in exchange for a “lock in” contract that keeps competitors away. Small companies also can engage in this behavior, either as a direct agreement with a partner company, or in the form of providing kick-backs to employees of a partner company with purchasing responsibility. Kickbacks in any form are illegal and market distorting.

3C “Salaries in Envelopes“ - Salaries in envelopes are unofficial salaries often paid as a supplement to an official salary in order to evade salary taxes.

3E Calling out Bad Behavior - Whether we are talking about kick-backs or monopoly arrangements nothing will change for the better if it isn’t addressed and confronted. Few small companies have the ability to do this directly, but all companies when faced with unloyal competition should make their voices heard through business associations or other forums to help contribute to positive change.

3F Intellectual Property - Intellectual property theft by SMEs often involves hiring competitor's workers in order to gain access to inside information. Ethical companies should implement policies that assure that neither management nor employees engage in this behavior.

Clause 4: Conflicts of Interest

In Moldovan politics and economics "cumătrism" is a longstanding problem. Ethical companies should be on guard against real or perceived conflicts of interest and take action to properly declare them whenever required by law, or to avoid a perception of wrongdoing and reputational risk. Who you declare a conflict of interest to will depend on the circumstances. Please carefully understand the terms of your company's bid process to know what should be declared and to whom.

Clause 5: Selecting Partners with Integrity
Discuss fixers and the distorting role they play in reform (BMA, etc)

Discuss legal fixers aka mini-monopolies set up by "public servants"

5A “Fixers” - A fixer is someone who a company will hire to assist with a regulatory problem who promises to “fix” the issue by means of their internal connections or relationships. The title “fixer” implies impropriety with a person either leveraging cumătrism or paying bribes in order to complete a process. This is different from hiring an experienced consultant who assists your company in navigating a new process. The line between fixer and consultant is often intentionally obscured but the person fulfilling this role so companies should use their best
judgment in evaluating whether the person or company is operating ethically.

5B Ethical Partners - Quality, mutually beneficial, B2B relationships between small companies are often the key to success and growth. Companies should prioritize partners who share their values when doing business. Shared values create more trust and better long term business relationships
which accrue to the moral and financial benefit of all parties.

Clause 6: Spirit of the Law

6A “Gaps” - When companies encounter “gaps” in the law such as the inability to legally pay an independent contractor they should comply with the “spirit” of the law attempting to pay taxes and maintain all relevant regulatory compliance as much as possible. “Gray areas” to work around legislative gaps does not imply free rein to follow other shortcuts.

6B Innovation - The lack of regulatory frameworks cannot simply put a stop to innovation. If entrepreneurs waited for the government to “ok” a new product every time there simply would not be any new products ever. Companies should seek out legal and ethical workarounds while engaging through business associations and raising their voices individually to push the government to embrace innovative ideas and support the new economy.

Clause 7: Community Citizenship

Companies striving to operate an ethical business must recognize that it is not only about “not doing wrong” but also about doing good. Negative perceptions of businesspeople linger in Moldova, either coming from the Soviet past, or from the 1990’s perception that “business” and “banditry” are synonyms. This means that when compared to other countries entrepreneurs and business owners are more likely to walk softly in their communities and avoid taking positions of community leadership. Ethical companies should seek to challenge negative stereotypes and become leaders in their communities. Ideas on how companies can be good community members are discussed in the practical guide. But it is critical to understand that these ideas are not about how a company can spend money or donate without getting anything back - it’s about how companies can “do well by doing good” and realize the financial as well as ethical benefits of becoming a better member oftheir community.

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