

State Measures for Strengthening Business Integrity

In line with a number of resolutions of the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC), including, inter alia, resolutions 5/6, 6/5, 9/6 and 9/8, as well as the commitments made by States parties in the political declaration entitled “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”, adopted by the General Assembly at its special session against corruption held in 2021, the secretariat is seeking information on good practices, practical examples and lessons learned by States parties on the engagement of the private sector and the use of sanctions and incentives to strengthen business integrity in the last decade. The answers provided by States parties will be used to update the 2013 UNODC publication “A Resource Guide on State Measures for Strengthening Corporate Integrity” ([English](#) - [Spanish](#) - [Russian](#)) and to develop an e-learning tool that will further support States parties’ efforts to strengthen business integrity.

The Resource Guide provides a catalogue of measures that States parties can adopt to promote business integrity and the reporting of corruption involving the private sector. The Resource Guide features three chapters: i) The United Nations Convention against Corruption and the private sector, which describes the articles of the Convention that frame State interaction with the private sector; ii) Engaging the private sector, which outlines the business case for countering corruption with an emphasis on governance and other factors that can drive business integrity; and iii) Using sanctions and incentives, which describes the range of sanctions and incentives that have been developed to prevent and address corruption involving the private sector.

The secretariat invites States parties to disseminate this questionnaire among relevant stakeholders, with a view to identifying internal measures adopted by private sector organizations to prevent and counter corruption. Respondents may choose to answer the whole questionnaire or only sections that are applicable and relevant to a State party. The secretariat would especially welcome the provision of illustrative examples.

Respondents’ contact details will be kept confidential, but submissions will be made public unless a State party requests otherwise. The secretariat may contact a respondent to seek additional information.

To facilitate the process of providing information, the Government may wish to complete the [online questionnaire](#) (English only). Alternatively, the Government may wish to submit the questionnaire to the secretariat by email to florian.lair@un.org and sabrina.dandrea@un.org at its earliest convenience but no later than **31 October 2022**.

Questionnaire

Chapter 1 – The United Nations Convention against Corruption (UNCAC) and the private sector

Background: It is important that States' legislative and other measures contain sufficient detail to inform the private sector of their requirements and scope of application. In line with the principle of legal certainty, it is important to have clear provisions outlining prohibited conducts and consequences to the private sector.

1(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote business integrity and/or reporting of corruption in the private sector in line with the United Nations Convention against Corruption.

A. The Ministry of Corporate Affairs (MCA), Government of India, released a set of guidelines in 2011 called the National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business (NVGs). This was expected to provide guidance to businesses on what constitutes responsible business conduct. In order to align the NVGs with the Sustainable Development Goals (SDGs) and the 'Respect' pillar of the United Nations Guiding Principles (UNGP) the process of revision of NVGs was started in 2015. After, revision and updation, the new principles are called the **National Guidelines on Responsible Business Conduct** (NGRBC). As with the NVGs, the NGRBC has been designed to assist businesses to perform above and beyond the requirements of regulatory compliance.

Principle 1 & 7 suffice the aforesaid question which are given below;

(i) Principle-1: Businesses should conduct and govern themselves with integrity, and in a manner that is ethical, transparent, and accountable.

This Principle recognizes that ethical behavior in all operations, functions and processes, is the cornerstone of businesses guiding their governance of economic, social and environmental responsibilities. It emphasizes that disclosures on business decisions and actions that impact stakeholders form the fundamental basis of operationalizing responsible business conduct and should be accessible to all relevant stakeholders. It recognizes that businesses are an integral part of society and that they will hold themselves accountable for the effective adoption, implementation, and the making of disclosures on their performance with respect to the Core Elements of these Guidelines. It further emphasizes that the governance structure of the business should ensure this, in line with SDG 16.

(ii) Principle 7: Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.

This Principle recognizes that businesses operate within specified national and international legislative and policy frameworks, which guide their growth and also provide for certain desirable restrictions and boundaries. It recognizes the legitimacy of businesses to engage with governments for redressal of a grievance or for influencing public policy. It emphasizes that public policy advocacy must expand public good.

B. The disclosure mechanism emanating from the NVGs was called ‘Business Responsibility Report (BRR)’. In 2012, the Securities and Exchange Board of India (SEBI) mandated the top 100 listed companies by market capitalisation to file Business Responsibility Reports (SEBI-BRRs/ BRR) through the Listing Agreement. The requirement for filing BRRs was extended to the top 500 listed companies by market capitalisation from the financial year 2015-16. In December 2019, SEBI extended the BRR requirement to the top 1000 listed companies by market capitalisation, from the financial year 2019-20. Simultaneously, in March 2019, the updated NVGs were released as the ‘National Guidelines for Responsible Business Conduct’ (NGRBCs). The BRR format needed to be modified to reflect the NGRBC and encourage companies to take on leadership roles in practices and disclosures and accordingly, . The new format is called as Business Responsibility and Sustainability Report (BRSR) which was made public in August, 2020. The SEBI adopted the BRSR format disclosure and announced that BRSR will be applicable to the top 1000 listed entities (Market Capitalisation), for reporting on a voluntary basis for FY 2021-22 and on a mandatory basis from FY 2022-23.

C. Section C of the BRSR is titled *“Principle wise Performance disclosure”* indicates that how a company is performing in respect of each Principle and Core Element of the NGRBCs. This section requires companies to demonstrate their intent and commitment to responsible business conduct through actions and outcomes. The questions in this section have been divided into two categories:

- **Essential:** Those that are mandatory for all companies.
- **Leadership:** Those that are voluntary and which provide an opportunity for companies to present their impacts and outcomes.

D. The relevant questions (both from Essential and Leadership) as contained in Section C of the BRSR format are as below:

a) For Principle 1, under Essential Indicators, for question at point no. 6 is reproduced below:

Number of complaints /Cases of bribery/corruption received/ registered in the financial year

	<i>Current Financial Year</i>	<i>Previous Financial Year</i>
Number of complaints /cases of bribery, corruption registered with law enforcement agencies against the company or lodged with the company internally		

b) For Principle 1, under Leadership Indicators, for question at point no. 4 is reproduced below:
‘Provide details of such instances (up to 3) where corrective measures were taken on the complaints / cases of corruption and conflicts of interest. (Text Box)’

c) For Principle 7, under Essential Indicators, for question at point no. 2 is reproduced below:

2. Details of adverse judicial or regulatory orders for anti-competitive conduct by your company in the current Financial Year				
Adjudicating Authority (Drop Down List as per data required to be entered in services.ecouts.gov.in - Supreme Court & case Type, case Number & year; High Court & bench District Court & State, District & Court Complex.	Name of the opposing party (Text Box)	CNR No (Text Box)	Brief of the Judgement/ Award (Text Box)	Has an appeal been preferred? (Yes/No) (Radio Button)
(Insert more rows)				

d) For Principle 7, under Leadership Indicators, for question at point no. 1 and 2 is reproduced below:

Leadership Indicators					
1. Details of public policy positions advocated by the company:					
S. No.	Public Policy advocated (Text Box)	Method resorted for such advocacy (Text Box)	Whether information available in public domain (Yes/No) (Radio Button)	Frequency of Review (Annually / Half yearly/ Quarterly) (Drop Down List)	Web Link (Text Box)
(Insert more rows)					
2. Details of corrective action for anti-competitive conduct by the company taken based on adverse orders from regulatory authorities. (Ref. Q 2 in Essential Indicators)					
Case Name (Pre-fill from Principle 7, Essential indicator Q.2)			Compliance with and Corrective action taken (Text Box)		
(Insert more rows)					

1(b) What challenges (if any) did you encounter in developing and/or enforcing such measures?

1(c) Please describe the steps you took to overcome such challenges (if any).

Guidance on 1(a) and 1(b): Measures could, for example, include policies and/or laws and regulations designed to achieve the following:

- Prevent bribery of national public officials, bribery of foreign public officials and officials of public international organizations, and bribery in the private sector
- Promote private sector transparency
- Promote cooperation between law enforcement agencies and private entities
- Promote cooperation between national authorities and private entities
- Prevent trading in influence
- Prevent conflicts of interest
- Prevent embezzlement of property in the private sector
- Promote the development of standards and procedures to safeguard the integrity of companies
- Ensure that companies have sufficient internal auditing and controls to assist in preventing and detecting acts of corruption
- Introduce or strengthen the liability of legal persons
- Promote public-private communication, cooperation and partnership (e.g., with business associations, networks, individual companies, small and medium-sized enterprises)

Chapter 2: Engaging the private sector

Background: Anti-corruption programmes, commonly referred to as compliance programmes, are a primary tool used by companies to advance ethical business practices. They provide a framework for articulating the values, policies and procedures used by a company to educate its employees and to prevent, detect and counter corruption in its business operations.

2(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote integrity through anti-corruption programmes in the private sector.

2(b) Please describe (cite or summarize) good practices and/or examples of measures you have used to encourage transparency, public reporting and/or public participation through your anti-corruption programmes (both for the public and private sectors).

(i) Regarding to prevent bribery, it is submitted that every listed company and other class of companies prescribed through rules are required to establish a vigil mechanism (whistle blowing mechanism) for directors and employees to report genuine concerns in the specified manner. The said mechanism is required to provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. The details of establishment of such mechanism are required to be disclosed by the company on its website, if any, and in the Board's report. (Section 177(9)/(10)). More details in this regard have been provided in Companies (Meetings of Board and its powers) Rules, 2014 (Rule 7).

(ii) The Ministry of Corporate Affairs (MCA) has also introduced the Companies (Auditor's Report) Order, 2020 ("CARO 2020") with the objective of strengthening the corporate governance framework. CARO 2020 necessitates enhanced due diligence and disclosures on

the part of auditors to bring in greater transparency in the financial state of affairs of the companies. Pursuant to this Order, the auditor is required, inter alia, to disclose to the members every year whether he has considered whistle-blower complaints, if any, received during the year by the company.

2(c) What was the impact of the measures described above (2a and 2b)?

2(d) What challenges (if any) did you encounter in implementing the measures above (2a and 2b)?

Guidance on 2(a) and 2(b): Measures and good practices could, for example, include those designed to:

- Raise awareness of business integrity
- Encourage the private sector to establish anti-corruption policies, procedures and/or programmes
- Promote training and education on anti-corruption in the private sector
- Provide trainings or guidance, or develop model anti-corruption programmes or policies for companies to use and adapt
- Provide appropriate reporting channels
- Encourage public reporting of efforts to prevent and counter corruption in the private sector

Chapter 3: Using sanctions and incentives

Background: While effective sanctions for corruption offences are required under the United Nations Convention against Corruption, the Convention also recognizes the essential role of incentives that encourage and reward corporate self-reporting and preventive efforts.

Part A - Sanctions

3(a) Please describe (cite or summarize) good practices and/or examples of sanctions used to strengthen business integrity and/or reduce corruption in the private sector in your country.

(i) The Companies Act has a robust structure to take legal action in case of non-compliances with the provisions of the Act by any company (legal entity) or its officers in default (OID). For serious offences, higher punishment (fine or imprisonment or both) has been provided. The more serious offences (including those connected with fraud) are punishable with “fine and imprisonment” and are non-compoundable. For procedural and technical defaults, the in-house adjudication mechanism exists for levying civil/monetary penalties on the defaulting company or its OIDs. The term “officer in default” has been defined in section 2(60) of the Act and covers “key managerial personnel”, whole-time director and other directors/officers of the company, as provided in the text of such definition. In the exercise undertaken in 2018-2020 for decriminalisation of minor/procedural offences under the Act, the more serious offences (non-compoundable) have been kept without any change.

3(b) What were the main challenges (if any) your country faced in enforcing these sanctions?

3(c) What steps did you take to overcome those challenges (if any)?

Guidance on 3(a): Sanctions could, for example, include any of the following:

- Monetary sanctions for legal persons (companies) liable for the participation in an offence of corruption
- Incarceration or other criminal sanction of natural persons (individuals) who have committed an offence of corruption acting on behalf of a company
- Confiscation of proceeds of corruption for both companies and individuals who acted on their behalf
- Contract remedies and other means to communicate and enforce anti-corruption contractual provisions
- Suspension and/or debarment of contractual partners from government processes
- Denial of government benefits (fiscal or otherwise)
- Liability for damages and compensation of victims of corruption
- Reputational damages to hold wrongdoers publicly accountable
- Any other type of sanctions not listed above

Part B - Incentives

3(d) Please describe (cite or summarize) good practices and/or examples of incentives used to strengthen business integrity and/or reduce corruption in the private sector in your country.

3(e) What is the main impact of such incentives?

Guidance on 3(d): Incentives could, for example, include any of the following:

- Penalty mitigation – encourages self-reporting of offences, credits companies' preventive efforts
- Procurement preference – rewards good practice through procurement preference
- Preferential access to benefits – rewards good practice with preferential access to government benefits and/or services
- Reputational benefits – encourages good practice through public recognition
- Whistle-blower protection and awards – encourages reporting of potential violations by individuals
- Any other types of incentives not listed above

Part C - Additional measures

3(f) Please describe (cite or summarize) good practices and/or examples of any other additional measures used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(f): Additional measures could, for example, include any of the following:

- Integrity pacts – written agreements between government agencies and companies to strengthen integrity in public procurement, usually overseen by an independent monitor
- Collective action – collaborative initiatives that bring companies and other relevant stakeholders together to prevent and counter corruption and raise standards of business integrity
- Public sector reform – civil service and/or regulatory reforms that reduce the opportunities for corruption
- Public education – activities that raise public awareness of corruption and its harmful effects

Additional information

Is there any other information that you wish to share which has not been addressed by the previous questions?