
Anti-Corruption Guidance for Bar Associations

Creating, Developing
and Promoting Anti-
Corruption Initiatives
for the Legal Profession

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the global voice of
the legal profession™

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INTRODUCTION

The purpose of this Guidance is to encourage bar associations around the world to take affirmative steps to support the legal profession in combating corruption. This Guidance aims to complement the IBA Council's previous resolutions on anti-corruption, in particular the Council's 1995 resolution on Money Laundering and the 2010 resolution on Anti-Corruption.

In the past, the IBA has strongly condemned international corruption through its executive, specialist committees, and the IBA, OECD, UNODC *Anti-Corruption Strategy for the Legal Profession*. Raising awareness of the role that lawyers must play in the fight against international corruption.

The IBA welcomes the measures already taken by bar associations, law firms and individual legal practitioners to guard against corruption at a domestic and international level. However, following a growing enforcement trend, combined with the rapid development of international anti-corruption instruments, and domestic anti-corruption legislation with extraterritorial application, the IBA believes that more can – and must – be done to equip the legal profession to face the challenges of this fast evolving and all-encompassing field of international law.

ANTI-CORRUPTION GUIDANCE FOR BAR ASSOCIATIONS

General commentary

- (1) This Guidance aims to inspire bar associations to promote, launch and develop anti-corruption initiatives that are relevant to practitioners in their jurisdictions. The IBA appreciates that individual bar associations will be best placed to assess the needs of their own jurisdictions, while balancing these needs with the bar association's capacity and available resources.
- (2) The purpose of this document is to encourage bar associations to look at the issue of corruption from two perspectives:
 - (a) to educate lawyers about the risks and threats of corruption in their capacity as legal professionals. This has three elements:
 - i. helping to familiarise legal professionals with international anti-corruption instruments and national anti-corruption legislation, particularly legislation with extra-territorial application;
 - ii. providing information about the circumstances in which lawyers may be at risk from corruption; and
 - iii. providing information about how legal professionals can avoid corruption and the appearance of corruption.
 - b) providing a positive representation of the legal profession and the bar association as a champion of anti-corruption before local and international forums.
- (3) The following articles do not attempt to define every means by which bar associations may wish to help combat corruption in their jurisdiction; the measures suggested are extensive but not exhaustive.

- (4) The IBA understands that national bar associations will be at different stages in their implementation of anti-corruption initiatives. Some bar associations will have already implemented a number of the recommendations set out in this document, while other bar associations may not yet have the capacity to provide certain recommendations – even if they do wish to extend their anti-corruption programme in the future.
- (5) Although this Guidance is addressed to bar associations, the recommendations set forth herein may also be followed by other professional legal organisations, associations of law firms and regulators of the legal profession.
- (6) This Guidance is not a binding document, and should not be seen as such in relation to any bar association. Nor does the Guidance intend to establish a formal anti-corruption compliance obligation on the legal profession.

CHAPTER 1: DEVISING AN INTEGRAL PLAN

Article 1. Organisational structure

To ensure the success of an anti-corruption strategy, bar associations are encouraged to establish a robust organisational structure, which engages all levels of the bar association's management and membership in the fight against corruption.

Commentary

- (1) Article 1 stresses the importance of having in place a clear organisational structure, within the bar association to administrate the implementation of an anti-corruption strategy. Having a strong management structure dealing specifically with the bar association's initiatives on corruption will help to ensure the efficiency and longevity of these programmes.
- (2) Bar associations may wish to develop a 'national anti-corruption strategy' drawing inspiration from the IBA, OECD, UNODC global *Anti-Corruption Strategy for the Legal Profession*. The *Anti-Corruption Strategy for the legal Profession* unites the anti-corruption work of these three international organisations into a mission with a single purpose: focusing on the role lawyers play in international corruption and considering how international instruments and extraterritorial legislation impact upon legal practitioners.

Article 2. Steps for effective implementation

Bar associations who are implementing their own anti-corruption strategies, may wish to consider the following steps:

- (a) setting specific objectives;
- (b) devising a realistic timescale;
- (c) considering the sustainability of the project;
- (d) identifying indicators of success;
- (e) the allocation of responsibility for implementation.

Commentary

- (1) Article 2 lists a number of key procedural issues which bar associations should take into consideration when devising their anti-corruption strategies.
- (2) *Setting specific objectives*: bar associations should identify key objectives which they would like to achieve in terms of anti-corruption, for example: establishing a specialised anti-corruption committee, creating a pilot scheme for an anti-corruption seminar for law students or ensuring that the country's top-20 law firms have a compliance programme in place by a certain date.
- (3) *Devising a realistic timescale*: although corruption is a pressing global concern, bar associations should be realistic in the time frames that they set themselves for implementing their anti-corruption initiatives, and attempt to adhere to that schedule.

However, given the risks which lawyers face from national and international corruption, the management of the bar association should consider giving priority to their anti-corruption activities and initiatives.

- (4) *Considering the sustainability of the project*: corruption presents a long-term challenge to the legal profession. Bar associations should look at their long term as well as their short term goals, and ensure that the anti-corruption initiatives which they put in place are sustainable, with the potential to develop and improve upon them in the future.
- (5) *Identifying indicators of success*: as well as the completion of objectives, bar associations should identify factors which will indicate to them that their anti-corruption programmes are achieving results. This could be done by surveying members or measuring public or client perceptions.

- (6) *The allocation of responsibility for implementation:* assigning the responsibility of implementing the bar association's anti-corruption initiatives to an appointed individual or select group of individuals. Delegating responsibility will ensure that the project is accountable and clearly focused.

Depending on their structure, bar associations are encouraged to create a committee responsible for anti-corruption policies, programmes and compliance. Ideally such a committee should have the full support of the head offices and permanent staff members from the bar.

CHAPTER 2: INFORMATION RESOURCES

Article 3. Raising awareness

Bar associations are encouraged to use whatever information resources they have at their disposal to heighten awareness of corruption amongst their members and stakeholders, and to promote the work that their members are undertaking in the fight against corruption.

Commentary

- (1) Lawyers need to be made aware of the existing international and domestic anti-corruption legal framework, national and professional anti-corruption policies and best practices, as well as their responsibilities and liabilities in regards to specific international anti-corruption instruments, and national anti-corruption legislation with extra territorial application.

In order to raise awareness among the largest number of legal professionals and other stakeholders, bar associations should take advantage of all of their information resources such as publications, websites, blogs, social media pages, etc.

- (2) Bar associations are encouraged to promote the work that they and their members are carrying out in the fight against corruption. It is important to publicly demonstrate the central role that lawyers play in combating international corruption.
- (3) Bar associations should consider allocating specific publications and web resources to their anti-corruption programmes, for example: an anti-corruption newsletter, or an anti-corruption webpage.
- (4) Members should be kept informed of the existence and availability of a national anti-corruption strategy and they should be encouraged to participate in its continuous development.

- (5) Bar associations should include sessions in their meetings and conferences to inform and update members on their anti-corruption programme.
- (6) Bar associations should aim beyond raising awareness among their members and also use their resources to reach the public in general. This can be done through articles in mainstream newspapers, magazines, anti-corruption events and conferences, etc.

Article 4. Sharing examples of best practice

- (1) Bar associations are encouraged to provide a forum through which legal professionals can share examples of best practice and experiences of dealing with corruption. The sharing of knowledge and experience is crucial to creating of a coherent strategy for the legal profession. This exchange of information can be conducted through a number of different information resources, (see example outlined below in Article 4(3)).
- (2) To further the objectives of the Guidance the IBA will be launching a micro-site within the Anti-Corruption Strategy website to help bar associations and international legal practitioners share instances of best practice, and compliance at the international level: www.anticorruptionstrategy.org. Bar associations are encouraged to use and assist in the development and consolidation of this on-line resource, in the following ways:
 - a) submitting examples of bar association initiatives; and
 - b) encouraging practitioners to submit examples of best practice, either directly to the website or through their bar association.
- (3) Bar associations may also wish to create their own fora where members can share information. Bar associations could consider the following formats:
 - a) publications and promotional literature;
 - b) websites and blogs; and
 - c) meetings and conferences.

Commentary

- (1) Article 4 stresses the importance of sharing examples of best practice. An important role that bar associations can play is bringing the legal profession together and enabling lawyers and law firms who have had particular success in combating corruption to advise those institutions who are only beginning to implement a compliance programme or who have been less successful in the past.
- (2) *IBA micro-site*: the IBA has created a series of webpages to help bar associations from around the world share examples of best practice and advice in regards to issues pertaining to corruption.
- (3) As well as encouraging their members to share examples of best practice, bar associations should share experiences, ideas, and best practices with one another when implementing their anti-corruption strategies. Learning from the best practices and challenges faced by other bar associations around the world will improve and strengthen a bar association's anti-corruption programme.
- (4) Article 4(3) provides a number of examples of ways in which bar associations can bring lawyers together to share information and experiences.

CHAPTER 3: EDUCATION

Article 5. The central role of education

Educating current and future legal professionals about the risks of corruption, and the policy and legislative framework to combat corruption, as well as the preventative measures that they can put in place, must be at the heart of the anti-corruption strategy of each bar association.

Commentary

- (1) Article 5 stresses the vital importance of education to the success of any anti-corruption initiative, and in the fight against corruption as a whole.
- (2) All education programmes should include:
 - (a) information about the international and national anti-corruption legal policy framework;
 - (b) highlighting of the specific risks which lawyers face from corruption; and
 - (c) methods and mechanisms for anti-corruption compliance.
- (3) Education programmes should emphasise different aspects of points 2(a)–(c), above, depending on the audience, for example in an education programme for law students there would be a greater emphasis on the legal policy framework, whereas for senior legal practitioners there would be more time devoted to compliance issues.
- (4) Providing open anti-corruption education programmes can be an effective way to promote dialogue between bar association members, clients, regulators and prosecutors – so that stakeholders can also learn from one another.
- (5) Articles 6 and 7 provide more information about how bar associations can go about establishing and improving their anti-corruption educational programmes.

Article 6. Areas of focus for education

Bar associations may consider focusing their education programmes on the following areas:

- (a) educating law students, by promoting educational efforts and initiatives in law schools;
- (b) providing specific anti-corruption training to newly qualified legal practitioners, equipping them with the skills and knowledge that they need to ensure compliance throughout their careers;
- (c) incorporating some anti-corruption training into the continuing professional development training for legal professions; and
- (d) arranging training for senior-level legal practitioners who can influence the culture of an organisation.

Commentary

- (1) Article 6 highlights some areas in which bar associations can consider focusing their anti-corruption training.
- (2) Article 6(a): it is important to make law students aware of the dangers of corruption and the value of anti-corruption compliance before they commence with their legal career.
- (3) Law students will take the information they have learned about anti-corruption into their new place of work, which will constitute a major force in the consolidation of anti-corruption principles and compliance in the legal sector.
- (4) Bar associations can encourage law schools and universities to incorporate anti-corruption training into their syllabi.
- (5) Bar associations can develop their own educational programmes to be conducted in law schools and universities.

The IBA has participated in different initiatives to create academic anti-corruption resources and syllabi, as well as tailor-made seminars for law students. The resources created and piloted as part

of these efforts are accessible to any legal education provider, and are available for consultation.

- (6) The bar association may also consider supporting educational efforts in other faculties and professional associations, for example, business schools, humanities schools, chambers of commerce, associations of accountants.
- (7) Article 6(b): as well as educating law students about corruption, bar associations may consider putting in place training for newly qualified lawyers, or incorporating anti-corruption training into the vocational stage of their legal training where applicable.

This training could look at anti-corruption generally or it could focus more specifically on practical ways in which lawyers can fight corruption, and effectively manage compliance programmes – showing fledgling lawyers how they can tackle corruption and promote integrity throughout their career.

- (8) Article 6(c): many bar associations provide continued legal education for their members. Incorporating anti-corruption education and debate into these programmes is particularly beneficial for two reasons:
 - a) it is easier to incorporate anti-corruption education into an existing course, rather than having to create and organise a new programme; and
 - b) it is a way of reaching out to and educating every level of the legal profession, as generally lawyers receive this training throughout their careers.
- (9) Article 6(d): educating senior-level legal practitioners about the risks of corruption can change the ethos of an organisation.

To implement an effective compliance programme and create an anti-corruption culture in an organisation, leadership from the top is essential.

Article 7. Methods of education

Bar associations can conduct anti-corruption training for law students and legal professionals through a variety of methods:

- (a) providing educational materials, both online and in hard copy;
- (b) holding talks, seminars, workshops and conferences;
- (c) incorporating an element of anti-corruption training into educational programmes that are already in existence, such as in law schools, or continued professional development training programmes; and
- (d) encouraging academic research and publications in the area of anti-corruption.

Commentary

- (1) Article 7 considers different methods for educating law students and the legal profession.
- (2) Bar associations may consider creating a webpage for their members with educational resources and information regarding anti-corruption.
- (3) Talks, seminars, workshops and conferences are a good way of engaging legal professionals with the content of anti-corruption provisions.
- (4) Bar associations might consider inviting international, and national, anti-corruption experts to talk to their members.
- (5) The IBA's Anti-Corruption Committee holds an annual conference, which in past years has proved very popular with our membership.
- (6) As stated above in 9(b), in the commentary for Article 6, a good way to start educating law students and the legal profession may be to incorporate anti-corruption training into an existing educational programme, with a pre-existing structure.

From this the bar association can develop independent anti-corruption courses and educational programmes.

- (7) Bar associations can carry out academic research internally or encourage/sponsor academic institutions to research externally.

CHAPTER 4: ADOPTION OR ADJUSTMENT OF ETHICAL CODES OR DISCIPLINARY POLICIES

Article 8. Reviewing ethical codes of conduct

Bar associations may consider reviewing their ethical codes of conduct and disciplinary rules and policies to reflect their condemnation of lawyers who engage in corrupt practices.

Commentary

- (1) Bar associations should highlight corruption and complicity in corruption as the sort of reprehensible behaviour which will not be accepted amongst members of the legal profession.
- (2) Many bar associations vet the character and conduct of members. Any history of corruption or involvement with corrupt practices should negatively impact upon a bar association's assessment of a potential or current member.
- (3) It is recognised that some bar associations may wish to leave the prosecution of corruption to their criminal justice system.
- (4) However, bar associations are reminded that there are certain forms of corruption, such as facilitation payments, which may not be prohibited or effectively prosecuted under national law, but should still be unacceptable amongst members of the legal profession.
- (5) The IBA recognises that there may be some practical problems for bar associations in investigating alleged corruption amongst members.

CHAPTER 5: CAPACITY BUILDING AND TECHNICAL ASSISTANCE

Article 9. Guidance and technical assistance

Bar associations should consider the ways in which they can provide guidance and technical assistance to support lawyers in their jurisdiction who wish to take affirmative action in fighting corruption.

Commentary

- (1) Article 9 advises bar associations that they should be capable of providing technical support and guidance to lawyers who wish to implement anti-corruption measures.
- (2) Persuading lawyers to take action in combating corruption is half the battle, so it is important that when lawyers decide to take steps towards implementing anti-corruption and compliance measures there is a support structure there to help and guide them and ensure that they have the resources and knowledge to follow through with their plans.

Article 10. Resources

Resources which bar associations can provide to assist the legal profession in their jurisdiction:

- (a) information relating to establishing and maintaining an effective compliance programme;
- (b) a service for monitoring and assessing the success of compliance programmes;
- (c) access to international anti-corruption instruments:
 - i. ensuring that lawyers can access these documents, either online or in hard copy;
 - ii. providing translations of documents if necessary;
 - iii. promoting particularly relevant legislation and documents to the legal profession; and

- (d) an anti-corruption ‘helpline’ for bar association members to report instances of suspected corruption, or to seek advice in matters pertaining to corruption.

Commentary

- (1) Article 10 suggests a number of resources which bar associations can provide to assist their members in establishing and maintaining an anti-corruption programme.
- (2) *Information regarding compliance programmes*: bar associations can openly publicise the work of certain compliance programmes or they can anonymously promote examples of successful compliance programmes in their jurisdiction.
- (3) Bar associations can also provide helpful information and materials with information on how to set-up and maintain a successful compliance programme, for example: the OECD Good Practice Guidance on Internal Controls Ethics and Compliance,¹ or the UK Bribery Act 2010 Ministry of Justice Guidance.²

Bar associations should take particular note of the provisions contained in the OECD Good Practice Guidance on Internal Controls Ethics and Compliance. This is a document endorsed by governments which sets out important internationally agreed principles on ethics and compliance which can be effectively applied to legal practices.

Bar associations may wish to have a member of staff or a team to support the establishment and development of compliance programmes in their jurisdiction, to help them achieve a sufficiently high standard according to their risks and needs.

1 The Recommendation for Further Combating Bribery of Foreign Public Officials (2009) Annex II *Good Practice Guidance on Internal Controls Ethics and Compliance*.

2 The Bribery Act 2010: *Guidance about commercial organisations preventing bribery*.

- (4) It is essential that lawyers are not only aware of international anti-corruption instruments and national anti-corruption legislation with extra-territorial application, but that they have access to these documents – preferably in their own language.
- (5) As a further step bar associations may wish to introduce a ‘helpline’ or a special number which lawyers can call to ask for advice on issues relating to anti-corruption compliance.

CHAPTER 6: RECOGNITION AND INCENTIVES

Article 11. Acknowledgement

- (1) Bar associations could consider publicly acknowledging successful anti-corruption measures taken by legal practitioners in their jurisdiction.
- (2) This acknowledgement could be manifested in a number of forms, for example:
 - (a) providing awards, for outstanding performance or improvement;
 - (b) promoting the work of successful compliance programmes and anti-corruption measures taken by individual lawyers in Bar Association publications;
 - (c) keeping a record, publishing a list of, or providing certification to, lawyers and law firms who comply with a set of anti-corruption provisions set out by the bar association; and
 - (d) giving an ambassadorial role to lawyers at the forefront of anti-corruption so that they can promote and raise awareness of the bar association's programme in different local and international forums.

Commentary

- (1) Article 11 suggests that bar associations publicly acknowledge successful anti-corruption initiatives and compliance programmes.
- (2) Legal professionals may be incentivised by the recognition of their bar association.
- (3) Promoting the work of successful anti-corruption initiatives is closely related to the sharing of best practice as considered above in Article 4.
- (4) Bar associations may consider providing awards to lawyers who have made outstanding achievements in the fight against corruption.

- (5) Bar associations can promote lawyers and law firms who conform to a certain list of anti-corruption provisions.

Bar associations can look to the United Nations Global Compact for inspiration. The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption, and promotes the sharing of best practice. Participant performance is reviewed annually to ensure that they are adhering to the ten principles.

Article 12. Tangible rewards

The provision of tangible incentives is to be made at the discretion of the individual bar association. Incentives could include discounted membership, discounted conference fees, or complimentary publications.

Commentary

- (1) If a bar association feels that it would be beneficial to provide tangible incentives to members then they should be careful to make sure their selection process is transparent.
- (2) Monetary rewards are discouraged.

CHAPTER 7: REPRESENTATION OF THE PROFESSION

Article 13. Representing the legal profession

Once bar associations have established their anti-corruption strategy, they should also assume a role in representing legal professionals in the design and reform of anti-corruption rules and policies before the government, the legislature, and other national and international policy makers, as well as non-governmental organisations and other professional and business associations. This will provide positive representation for the legal profession and assist other academic disciplines and professions in curbing corruption.

Commentary

- (1) The objectives of a bar association include representing the views of the legal profession; this role should be extended to the development of anti-corruption policy, both nationally and internationally.
- (2) Bar associations should provide a contact point between governments, international organisations and the legal profession in their jurisdiction.

Bar associations should be participating in and promoting discussions with governments and international organisations concerning anti-corruption and ethics.

- (3) Bar associations should seek to be actively involved in the development of international and national anti-corruption measures, particularly legislative development, in order to protect the interests of the legal profession.



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