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INTERNATIONAL STANDARDS REGARDING THE LEADERSHIP ROLE OF A LEADER IN PREVENTING AND DETECTING BRIBERY

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Worldwide studies show that society sees a direct link between bribery and a leader, regardless of whether this leader is an official of public law or the head of a private enterprise. Global legal regulations and recommendations of international organisations say that the role of the leader (both at the country level and within an individual organisation) is crucial in the development of an integrity environment within the organisation. The article is devoted to the study of the international concept of "Tone at the Top" or "Leader's Voice" in preventing bribery within an organisation. At the same time, each institution needs an individual approach and establishment of an algorithm for developing an anti-bribery system and implementing a corporate culture based on the principles of ethics and integrity. The study is aimed at systematizing international standards in the field of bribery prevention and determining the role of the leader of each organisation in their implementation. For this, the leader needs to determine the key areas to make an effort in building the bribery prevention system within the organisation. The article summarizes the requirements of international standards, in particular, ISO 37001 "Anti-bribery management systems" and ISO 31000 "Risk Management", the recommendations of international organisations on the development of an effective system to prevent bribery, and defines the priority measures that should be implemented by the leader of the organisation in order to develop an integrity environment and to implement a corporate culture based on the principles of accountability and transparency. The article defines the following mandatory elements of such work: distributing the responsibility for anti-bribery policies of an organisation, establishing an anti-bribery unit and ensuring its activities, researching the anti-bribery context of the organisation and assessing bribery risks; raising awareness of the organisation's anti-bribery policies; fostering a culture of exposing bribery within the organisation; analysing the effectiveness of the organisation's anti-bribery policies.

Such a system is able to provide a number of reputational advantages, the expansion of opportunities for foreign economic activity, the expansion of partnership and most importantly – the prevention of corruption abuse and attention to the organisation and its officials of law enforcement agencies.

Key words: bribery, anti-bribery work, international standards, management in the field of anti-bribery, the role of the leader.

Деркач С.А., Дацко К.П., Ломжець Ю.В. Міжнародні стандарти щодо лідерської ролі керівника у питаннях запобігання та виявлення корупції

Світові дослідження визначають, що суспільство вбачає прямий зв'язок між корупцією та керівником, незалежно від того чи цей керівник є посадовою особою публічного права чи керівник приватного підприємства. Глобальні нормативно-правові акти та рекомендації міжнародних організацій визначають, що роль керівника (як на рівні країни, так і на рівні окремої організації) є ключовою у розбудові добросовісного середовища організації. Стаття присвячена дослідженню міжнародної концепції «Tone at the Top» або «Leader's Voice» у сфері запобігання корупції в організації. Разом з тим, кожна інституція потребує індивідуального підходу та визначення алгоритму розбудови системи антикорупційної роботи та запровадження корпоративної культури на принципах етики та добросовісності. Дослідження спрямоване на систематизацію міжнародних стандартів у сфері запобігання корупції та визначення ролі керівника кожної організації у їх реалізації. Для цього керівнику треба визначити ключові сфери прикладання зусиль у розбудові системи запобігання корупції в організації. В статті узагальнені вимоги міжнародних стандартів, зокрема ISO 37001 «Менеджмент у сфері протидії корупції» та ISO 31000 «Ризик менеджмент», рекомендації міжнародних організацій щодо розбудови ефективної системи запобігання корупції та визначено першочергові заходи, які варто запровадити керівнику організації, з метою розбудови добросовісного середовища та запровадження корпоративної культури на принципах підзвітності та прозорості. Серед обов'язкових елементів такої роботи у статті визначено наступні: розподіл відповідальності за антикорупційні політики організації, створити та забезпечити діяльність антикорупційного підрозділу, дослідження антикорупційного контексту організації та оцінка корупційних ризиків; формування обізнаності щодо антикорупційних політик організації; виховання культури викривання корупції в організації; аналіз ефективності антикорупційних політик організації.

Така система спроможна забезпечити ряд репутаційних переваг, розширення можливостей для зовнішньоекономічної діяльності, розширення партнерства та найголовніше – запобігання корупційним зловживанням та уваги до організації та її посадових осіб правоохоронних органів.

Ключові слова: корупція, антикорупційна робота, міжнародні стандарти, менеджмент у сфері протидії корупції, роль керівника.

Bribery is one of the most acute global problems of our time. The further development of the world community depends on the solution to these problems in general. Tolerance for bribery weakens democracy and public administration that leads to violations of human rights, distorts market mechanisms, worsens the quality of life of people, and contributes to the increase of crime and other threats. It is the most dangerous phenomenon that exists in all countries – large and small, rich and poor.

According to a survey conducted among people from different countries of the world in 2018, 73 people out of 100 believe that there is a direct link between bribery and management. The population is convinced that bribery comes from people in power,

and it is predominantly leaders who have decided to commit illegal activities for their own benefit [1].

In recent decades, the international community has implemented a number of global international regulations to prevent and counter bribery, the analysis of which emphasises the importance of the political will of the countries' governments. High responsibility and awareness by the government ensure the development of effective national anti-corruption standards. However, this is not enough, because such a struggle must take place at all levels within all governmental and non-governmental organisations. The role of the leader of the organisation becomes decisive under such conditions.

The concept of "Tone at the Top" or "Leader's Voice" originates from American audit campaigns, which, in their reports, indicated the importance of the leader's role in ensuring the effectiveness of internal control processes and ethics.

The approval of this concept in the USA at the legislative level took place after a number of bribery scandals and numerous cases of financial fraud, in such companies as Enron, WorldCom etc. This is what contributed to the adoption of the Sarbanes-Oxley Act (SOX) of 2002 [2] in the USA, which popularised the concept of "Tone at the Top".

In accordance with the law, the company's reports shall:

1) determine management's responsibility for establishing and supporting an appropriate internal control structure and financial reporting procedures;

2) contain an assessment, as of the end of the last financial year, of the effectiveness of the internal control structure and procedures of the campaign for drawing up financial reports.

In the USA this law established the key role of the leader in the process of introducing and implementing the control and ethics policies. Today, all companies that have the desire to cooperate with business or conduct their own business in the USA are obliged to comply with the requirements of this law.

The positive American experience contributed to the spread of the "Tone at the Top" concept. International standards and national legislation of various countries have included provisions that place responsibility for the success of internal anti-bribery policies on the leader.

The analysis of these provisions, as well as the practice of their implementation, are also important for Ukraine, where the processes of implementing new anti-bribery policies and reforming the anti-bribery infrastructure have been taking place in recent years. The awareness by leaders of state organisations and private companies of their own responsibility for preventing and countering bribery is one of the determining factors for the success of these changes.

At the same time, leaders of both state organisations and businesses need specific management tools that will ensure the

effectiveness of their actions in developing and ensuring the effectiveness of the system of preventing and countering bribery at the level of an individual institution.

The role of a leader in preventing bribery within an organisation has been studied mainly by foreign scholars: John D. Sullivan, Andrew Wilson, Bailey Bliss, Antonio Silva, Yasser Gomaa, George Kichamu etc.

The need to counter bribery at the global level is recognised in a number of international documents developed by the United Nations, the Council of Europe, the Organisation for Economic Cooperation and Development, the European Union, and the Organisation of American States.

Among them, there are:

– Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997;

– Council of Europe Criminal Law Convention on Corruption dated 27 January 1999 under No. ETS173 (ratified by Ukraine on 27 January 1999);

– Council of Europe Civil Law Convention on Corruption dated 4 November 1999 (ratified by Ukraine on 4 November 1999);

– United Nations Convention against Corruption dated 31 October 2003 (ratified by Ukraine on 18 October 2006).

All of these documents are aimed at uniting the efforts of the governments to establish legal liability for various manifestations of corruption and bribery and develop tools to prevent corruption and bribery at both the national and local levels.

For example, the United Nations Convention against Corruption [3] encourages states to prevent corruption and bribery, not just in the public sector but also in the private sector: *"Each Member State shall take measures, in accordance with the fundamental principles of its domestic law, aimed at preventing corruption and bribery in the private sector, strengthening accounting and auditing standards and, in appropriate cases, establishing effective, relevant and dissuasive civil, administrative or criminal sanctions for failure to take such measures" (Part 1. Article 12).*

With this provision, the Convention recognises that *the state alone will be able to counter corruption and bribery if each institution plays its role in this process and*

becomes a partner of the state on the way to change.

International regulatory documents do not directly define the tools for implementing the leading role of leaders in building an anti-bribery system; their provisions emphasise the importance of political will and recognise the responsibility of the leadership of the state for the effectiveness of implementing such tools at the country level and promoting similar efforts at the level of organisations.

At the same time, the global economic space, in particular the public sector, requires standardisation of approaches to the organisation and functioning of anti-bribery systems at the local level. After all, like every administrative process, the field of anti-bribery requires a systematic approach. International global legal regulations do not contain specific instructions for leaders on how to build an effective anti-bribery system within the organisation.

That is why the world's best anti-bribery practices are based on the rules that include the experience and professionalism of experts from individual institutions or industries as a whole. Such rules are **international ISO standards**. The role of the International Organisation for Standardisation (ISO) is to promote international coordination and standardisation of international standards in various fields.

In the area of anti-bribery, such a standard for both the public and private sectors is **ISO 37001:2016 Anti-bribery management systems** [4]. This is an international standard that most fully defines the principles and tools for effective prevention, detection and counteraction of bribery that should be implemented in the organisation's internal policies. Anti-corruption policies can be adopted independently of or integrated into the organisation's overall management system.

The standard also defines the management's obligations to implement effective anti-bribery policies and to regularly monitor, review and improve them.

The value of ISO 37001 is that it not only defines the management's obligations regarding anti-bribery activities, but also provides real tools that can be used by the leader in the process of implementing an anti-bribery policy. The structure of the

Standard consists of two parts: the first part includes the provisions of the standard, and the second part includes the instructions for the use of the provisions (information guide).

An important component of the organisation's anti-bribery policy is the management of corruption risks that is defined in **ISO 37001**. However, the provisions of this standard are not enough to ensure the effectiveness of this process.

That is why international standards additionally define a set of risk management provisions. Such a guide is **ISO 31000:2018 Risk Management** [5]. This standard is a guideline for managing organisation's risks, including corruption risks.

ISO standards are not legally binding, but they are of great importance for the development of an organisation. At the same time, those campaigns that are certified and implement anti-bribery policies and practice anti-bribery culture in their workplace are more trusted and recognised by foreign investors and partners.

Not only ISO standards require leadership from the leader in preventing corruption within an organisation. In addition to compliance with ISO standards, companies engaged in foreign economic activity are usually required to comply with the anti-bribery policies and guidelines of the international organisations with which they intend to cooperate or receive financial support.

Among such organisations are the United Nations (UN), the World Bank, the Organisation for Economic Cooperation and Development (OECD). The guidelines of these global international organisations have an impact at the level of the above-mentioned international standards and are based on their provisions. Among the specified regulations, the following should be highlighted:

- Anti-Corruption Ethics and Compliance Handbook for Business, UN, 2013;
- OECD Recommendations for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 2021.

These documents supplement and clarify the tools for the management of organisations to ensure the effective functioning of internal anti-bribery policies, but these tools are

most fully defined in ISO 37001 and 31000. The ISO provisions are included in numerous recommendations and guidelines on ethics, integrity and anti-bribery of international organisations, financial institutions and other institutions operating around the world.

That is why the ISO international standards are recognised as the most systematic documentation for use in developing anti-bribery policies of organisations, which are part of the organisation's anti-bribery system that serves to achieve its strategic goals.

Each organisation is unique and therefore requires individual approaches to the anti-bribery system. The analysis of international standards made it possible to determine the key stages of the development and implementation of an effective anti-bribery system for the organisation. The following is an interpretation of the above Standards from the perspective of the role of the leader at all stages of the development of the organisation's anti-bribery system.

Allocation of responsibility for the organisation's anti-bribery policies. The ISO 37001 standard distinguishes between two levels of organisation's management and, accordingly, responsibility for anti-bribery policies, namely:

The first level of responsibility is the "Governing Body"; it is the organisation's management board (supervisory board, board of directors), which is ultimately responsible for the company's activities and for defining its development strategy (*clause 3.7*) The governing body is responsible for determining and ensuring guarantees of the strategic direction of the organisation's anti-bribery activities.

Pursuant to the Standard, the governing body shall demonstrate leadership and commitment with respect to the anti-bribery management system by:

- approving the company's anti-bribery policy;
- ensuring that the organisation's strategy and anti-bribery policy are aligned;
- checking and obtaining information on the effectiveness of anti-bribery policies in reporting periods;
- providing the implementation of the anti-bribery policy with sufficient resources (financial, material and technical, expert, and communication resources) (*clause 5.1.1*).

The second level of responsibility is "Top Management"; it includes hired managers who work in the highest management positions in the organisation (depending on the size of the organisation, it may be one person or a group of people, for example, executive director, director general, operations director and their deputies). This level of leaders is responsible for achieving the strategic goals of the organisation and is accountable to the governing body (*clause 3.6*).

Top Management is responsible for the implementation and effective functioning of the organisation's anti-bribery policies. The role of top management, as operational managers, is defined more broadly and is revealed in the following stages of the development of the organisation's anti-bribery policy (*clause 5.1.2*).

The standard additionally specifies that in the absence of the governing body of the organisation, strategic measures should be carried out by the top management. That is why the provisions of the international standards are relevant for all organisations, regardless of the size of the business and the form of its ownership.

Creating and ensuring the activities of the anti-bribery unit. The leader's obligation to create an anti-bribery unit (or introduce a full-time position – authorised persons for the prevention and detection of bribery, compliance officers, anti-bribery professional) which will be responsible for the anti-bribery direction of the organisation, is defined in ISO 37001 (*clause 5.3.2*).

Part A6.1 of the Standard's explanatory notes states that the leader is obliged to create a staff for the anti-bribery service, taking into account the following features of his/her organisation:

- the size of the organisation and its structure;
- the scale of risks;
- the scope of tasks determined by the organisation's anti-bribery strategy.

Status of the anti-bribery unit.

The standard specifies that the status of the anti-bribery service depends on the leader and he/she is obliged to popularise the anti-bribery direction and policies in general at his/her leadership level.

The status of an anti-bribery professional or unit is achieved through the provision of

the following guarantees by the head of the anti-bribery unit:

- independence in decision-making.

The anti-bribery unit shall be subordinated directly to the head of the organisation and have access to both the top management and the governing body that will guarantee the timely transfer of information in case of detection of violations of the organisation's anti-bribery policy;

- integration of the anti-bribery unit into all directions of the organisation's activities. The head shall introduce anti-bribery employees to the organisation's management and all staff, involve representatives of the anti-bribery unit in collegial bodies of the organisation. Integration is also facilitated by the regular hearing of information from process owners regarding the state of implementing anti-bribery measures in each unit;

- resource provision - the standard stipulates that the leader is obliged to provide the anti-bribery unit of the organisation with sufficient resources for work, namely: workspace and equipment, high-quality information and analytical resources (analytical databases, professional publications), which are often paid for, communication resources to spread anti-bribery policies. This is not an exhaustive list and can be expanded depending on the needs of the anti-bribery unit;

- competence - anti-bribery work requires specialised knowledge and skills of employees from the anti-bribery unit, so the leader shall promote and provide additional training for the staff of the anti-bribery unit (advanced training, specialised training, expert consultations, including from representatives of the expert community and business compliance, high-quality professional information resources).

Leadership in the process of establishing the status and providing guarantees to the anti-bribery unit is expressed in the leader's understanding that anti-bribery work does not bring profit, but it prevents reputational and financial losses that may occur as a result of violations of anti-bribery legislation by employees of the organisation.

Anti-corruption analysis of the context of the organisation and assessment of corruption risks. The ISO 37001 standard

establishes the leader's responsibility for creating and implementing the organisation's anti-bribery policies.

In order to make the anti-bribery policies effective, the leader needs to conduct preparatory work by implementing the following measures:

- research the context of the organisation and understand all its business processes;
- assess the organisation's corruption risks in each of these processes.

The requirement for management to examine the context of the organisation is also defined in the Anti-Corruption Ethics and Compliance Handbook for Business, (Chapter C1) [6]. In order to understand the context of the organisation, the leader should interview each process owner, primarily to understand the process and at the same time to show his or her commitment to the organisation's anti-bribery policies.

ISO 31000:2018 "Risk Management" more fully defines the process of assessing the organisation's risks, including corruption risks.

Development of anti-bribery policies. Anti-bribery policies are able not only to give a clear understanding to partners, international organisations and investors that unethical and dishonest behaviour is unacceptable in the organisation, but also contribute to the integration of anti-bribery principles at all levels - from management to every employee.

The international standards stipulate that the development of anti-bribery policies is the task of the anti-bribery unit. At the same time, the provisions of the standards recognise that management should be involved in the processes of developing anti-bribery policies, which is also reinforced by the provisions of the UN Anti-Corruption Ethics and Compliance Handbook for Business (Chapter C1) [7], namely:

- the management should be involved in developing anti-bribery policies, even if it has delegated this function to an anti-bribery unit or consulting company. This is due to the fact that only the leader can assess the effectiveness of the policy regarding the company's business processes and the peculiarities of its organisational structure;

- the leader shall spread his/her leadership position regarding the need to

comply with the organisation's anti-bribery policy among its employees, management and external stakeholders (public recognition in official statements, concluding agreements, establishing partnerships, communicating with the public, demonstrating by own example the inadmissibility of violating anti-corruption restrictions (receiving gifts, making decisions in conditions of conflict of interest, combining positions and other activities).

The handbook additionally stipulates that top management shall specify the scope and scale of certain elements of the programme, such as:

- the level of public reporting on the results of anti-bribery policy implementation;
- whether the program will undergo any independent (expert) assessment;
- whether the company will participate in voluntary initiatives (such as the UN Global Compact) or participate in collective action initiatives.

The updated OECD Recommendations for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 2021 [8] extend this provision by recommending that the company management make statements in their annual reports or otherwise publicly disclose their internal control, ethics and compliance programmes or measures, including those that contribute to the prevention and detection of corruption. (item iii Section C).

The leader should take into account that anti-bribery policies need to be revised. Clause 5.1.2. ISO 37001 requires continuous improvement of anti-bribery policies through:

1) The governing body shall establish a practice of continuous improvement of the organisation's anti-bribery policies.

2) Top management shall regularly report to the governing body on the effectiveness of anti-bribery policies, and on suspected cases of serious or systematic bribery (if organisations have two levels of management).

Raising awareness of the organisation's anti-bribery policies. Raising awareness and informing about anti-bribery policies is the task of the anti-bribery unit. At the same time, it is the leader who is a model for the majority of employees and the face of the organisation when interacting with external stakeholders. Accordingly, the principles of

integrity extend precisely from the leader to all parts of the organisation.

Two levels of the leader's influence on raising awareness of the organisation's anti-bribery policies can be defined:

1. The Management is the level of top management of the organisation, business current and potential partners, authorities, investors and the public. At this level, the leader communicates through public statements and his/her own specific actions that he/she respects the principles of integrity and the organisation's anti-bribery policy. These may include public statements by the leader at forums, conferences, business negotiations, and other official regulatory events of the organisation.

2. The level of the anti-bribery unit is the entire staff of the organisation and contractors. In order to ensure proper communication of anti-bribery policies both within the organisation and at the level of external relations, in accordance with international standards, the leader shall ensure that the anti-bribery unit has:

– resources to inform qualitatively the campaign staff about the organisation's anti-bribery policies through corporate communication channels, qualitative methodological explanations and printed infographic materials;

– the right to check the organisation's counterparties (partners, contractors, clients) for their compliance with anti-corruption legislation, compliance of their anti-bribery policies with the organisation's policies, and to acquaint all the organisation's stakeholders with the current anti-bribery policies.

Fostering a culture of exposing corruption within the organisation. ISO international standards further define the leader's obligation to promote a culture of exposing corruption and to protect the staff from persecution, discrimination, or disciplinary action for making a credible report of bribery. This is also reinforced by the OECD Recommendations on Further Combating Corruption of Foreign Officials in International Business Transactions for Businesses.

Therefore, in order to foster a culture of exposing corruption within the organisation, the leader shall:

- spread, through public statements, that everyone in the organisation has the right to report credible cases of bribery and that such employees will receive protection at the level of the organisation's management;

- ensure, in particular financially, the operation of reliable and easy-to-use anonymous channels for reporting bribery;

- contribute to raising the awareness of employees regarding the mechanisms for reporting bribery.

A positive (approving) attitude of the leader towards exposing corruption, ensuring anonymity of channels for reporting bribery is a manifestation of leadership in fostering a culture of exposing corruption within the organisation and, accordingly, positively influences the implementation of anti-bribery policies.

Analysis of the effectiveness of the bribery prevention system. The ISO 37001 information guide states that the governing body should be "aware of the content and operation of anti-bribery policies" and "exercise reasonable oversight of the relevance, effectiveness and status of implementation of anti-bribery policies." In addition, the governing body should regularly receive information on the effectiveness of the anti-bribery policy directly from the anti-bribery unit.

ISO 37001 requires leaders to review anti-bribery policies at planned intervals – reporting periods. (clause 9.3).

This can be achieved if:

- the leader defines and articulates the strategic priorities and principles of the organisation's activities;

- coordinates and controls the development of anti-bribery policies by the responsible unit/person;

- at the end of the reporting period, evaluates the activity of the anti-bribery unit/person in monitoring the effectiveness of anti-bribery policies and identifying areas that should be revised;

- develops decisions on improving existing anti-bribery policies after each report of the authorised person together with him/her.

Thus, the analysis of international anti-corruption standards and the interpretation of the role of the leader in the process of

preventing and detecting bribery at the organisational level, ensured the following conclusions:

The international standards of leadership in anti-corruption can be conditionally divided into three levels:

- international standards at the global level (Conventions, International Agreements), which define the obligations of governments of states in the field of anti-corruption that have ratified these international documents;

- ISO international standards in the field of anti-bribery and risk management, as unified approaches to the management of anti-bribery activities, which should be used by organisations of the public and private sectors engaged in foreign economic activity;

- guidelines of international anti-bribery organisations for organisations of the public and private sectors that receive funding from these organisations to achieve their strategic objectives.

The role of the leader in anti-bribery work is end-to-end and is of key importance at all stages of the implementation of the organisation's strategic anti-bribery objectives. These stages are:

- distribution of responsibility for the organisation's anti-bribery policies;

- establishment and operation of an anti-bribery unit;

- research of the organisation's context and assessing corruption risks;

- development of anti-bribery policies;
- raising awareness of the organisation's anti-bribery policies;

- fostering a culture of exposing bribery within an organisation;

- analysis of the effectiveness of the bribery prevention system.

The effectiveness of the organisation's anti-bribery policies depends on the level of interaction and trust between the leader and the anti-bribery authorised person (unit), because in accordance with international standards, the leader shall delegate a significant part of management powers in the field of anti-bribery to him/her/it.

The international standards define the guarantees that a leader shall provide to an anti-bribery specialist or unit:

– Independence, through direct access to the leader of the organisation, in order to be able to resolve issues promptly.

– Integration into all processes of the organisation and support of the status of anti-bribery work.

Adequate resources (separate office space, material and technical facilities, training materials, communication resources and a sufficient budget).

Competence of the anti-bribery unit through specialised training by an anti-corruption specialist, as well as periodic updating of this knowledge.

Thus, the study of international norms and standards has shown that the ISO standards are the most comprehensive and systematic documentation that provides an understanding of how to build an effective anti-bribery system within an organisation. However, for a more complete understanding of whether these norms are sufficient to form real tools for the leader of an organisation that plays a leadership role in preventing bribery, it is worth analysing examples of their implementation in the practical activities of organisations in foreign countries.

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