

A Code of Conduct for the Private Sector



Botswana Confederation of Commerce
Industry & Manpower



Directorate on Corruption & Economic Crime

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Foreword

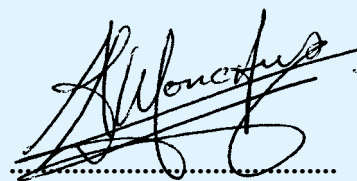
It is a pleasure to provide the members of the private sector with this first Code of Conduct for the Private Sector, which has received input as well as final approval of Botswana Confederation of Commerce, Industry and Manpower (BOCCIM) and Directorate on Corruption and Economic Crime (DCEC).

Since other countries have developed and adopted a Code of Conduct or ethical principles for the guidance of private sector in its business activities, this Code constitutes a significant step forward in the process of harmonizing the ethical conducts of our own private sector.

The promulgation of this Code is also done as a gesture of goodwill and in recognition of the concerns that have been raised, from time to time, by members of the business community and the general public about the declining standards of conduct and integrity in the private sector, which in turn may lead to unethical business activities.

It is envisaged, therefore, that this Code of Conduct will guide the Private Sector directors, managers and employees away from situations where their personal integrity can be compromised and the name of their business brought into disrepute.

Finally, I wish to record my appreciation to Maphanyane & Associates Economists & Management Consultants for its assistance in bringing this Code to fruition. I also wish to express my deepest gratitude and appreciation to the reference group and members of the private sector for their positive contributions and cooperation in our effort to develop this Code of Conduct. Let me state our profound gratitude for the sponsorship of this document by the Commonwealth Business Council. A sponsorship that saw Botswana become the first country in the Southern Africa region to develop a Code of Conduct for the Private Sector.



Alex L. Monchusi
BOCCIM PRESIDENT

Acknowledgements

The consultancy team that prepared these codes comprised Emang Motlhabane Maphanyane of Maphanyane & Associates assisted by Abednego Batshane Tafa of Tafa and Company.

Many individuals contributed their time and effort to the success of the study either by providing guidance to the consultants as members of the reference group, submitting to interviews for their input or guiding and managing the project. The consultants are most grateful to all those who contributed in this way to the success of this project. The names of members of the reference group are contained in Appendix 1 and the list of the individuals interviewed and the organization they represent are in Appendix 2. Special thanks must go to Mr E. M. Dewah of Botswana Confederation of Commerce Industry and Manpower (BOCCIM), Mr A. C. Hirschfield, Ms. R. N. Tsiane and Ms. B. Makgekgenene of Directorate on Corruption and Economic Crime (DCEC). Additional and special thanks must go to Botlhale Makgekgenene who patiently coordinated this study and ensured that it was completed despite the many problems that were encountered.

We would have preferred to canvas the views and opinions of many more people as part of the formulation of these codes of conduct. However arranging the interviews and getting the relevant individuals to agree to a meeting proved quite a challenge. This was done through workshops in which all the stakeholders discussed the code of conduct and provided their input. Further it is our expectation that these codes should become living documents which will be changed and updated on the basis of practice and experience on the ground.

The consultants thank both BOCCIM and DCEC for the opportunity to undertake this study and to formulate the codes of conduct contained in this report. Our thanks also go to the financial sponsors of the project, the British High Commission in Botswana, the Commonwealth Business Council and DEBSWANA.

E. M. Maphanyane
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Gaborone, August 2006

1.0 Introduction

The codes of conduct for the private sector represent commitments voluntarily made by companies, associations and other entities, which contain standards and principles for the conduct of business activities in the market place.¹ The benefits of such codes to the business are to gain competitive advantage through the strengthening of customer loyalty and confidence in using its product or service, to engender employee loyalty, as well as general good corporate citizenship. The reputation of an enterprise is its greatest asset. The lack of attention to ethics therefore leaves a business open to a situation where the conduct of a single employee can topple even a well established corporation. One only has to consider the demise of Enron Corporation and WorldCom and before them the Barings Bank, to appreciate the extent to which ethical problems can bring even mighty companies to their knees.

Similarly overemphasis on immediate gains can cascade down the organisation, sending an implied message to all staff that cutting corners and generating a strong cash flow supersedes all other objectives, including personal integrity. Such a message will carry more weight than verbal declarations of the business values, codes of conduct etc. Each firm or business shall ask itself how it would react faced with a choice between standing up for ethical principles and taking actions that although unethical, improve the bottom line. According to Margaret Flaherty of the World Business Council for Sustainable Development (WBCSD),

‘developing and implementing a code of conduct is a costly endeavour and will rarely show immediate results in any standard accounting measurement.’ But that ‘over the long term however there are benefits for employees, especially if the code is anchored within a strategic framework linked to business objectives.’

The codes of conduct reinforce the standards set in the criminal law of the country dealing with dishonesty and corruption². Hence the breach of certain provisions of the code will amount to a criminal offence. Other provisions reflect terms of employment, the breach of which constitutes a disciplinary offence under the business’s code of conduct and discipline.

The essence of the code is to guide private sector directors, managers and employees away from situations where their personal integrity can be compromised and the name of their business brought into disrepute. The code of conduct will not address the issues of corporate governance which are adequately covered extensively in the King I, II and III reports in South Africa and the Cadbury Reports in the United Kingdom. This code also assumes that all enterprises and companies have respect for the sanctity of the rule of law. It also assumes that the enterprise is properly established with a functioning system of checks and balances based on full disclosure, management accountability, separation of responsibility and sound internal controls. It also assumes

¹ (OECD) 1 Adapted from ‘Codes of Corporate Conduct: Expanded Review of their Contents.’ Organisation of Economic Co-operation and Development

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that the boards fully play their oversight roles and that the management monitors the performance of their companies including the observance of the code of conduct or ethics.

Companies affect the welfare of societies in which they operate and society expects them to hold themselves to the same level of good citizenship as all other good citizens, otherwise called 'corporate responsibility.' The public also has concerns about such issues as product quality, value for money, impact on the environment (littering, site restoration, etc.) welfare of employees, non-discrimination, etc. Unless companies can demonstrate that they hold themselves to high standards of corporate responsibility they will attract the suspicions of the ordinary citizens which will damage the business's reputation and the loyalty of its customers and create bad long-term prospects for the business. Corporate responsibility therefore goes beyond simply giving financial assistance to communities, sponsoring sports programmes or donating to charities.

This code of conduct is general in nature. There may well be factors that require the adaptation of this code to specific industry concerns such as those of mining operations and their impact on the environment, for instance. A code can also be firm specific. The various sectors such as mining, banking, trade, etc., can come together and develop a code of conduct that would apply to the entire sector and any new entrants. It has to be noted however, that the reputation of such a code *will rest with the poorest performer*.

Indeed there already exist codes governing the conduct of professions such as accountants, engineers, lawyers, doctors, property professionals, etc.

Codes may cover general principles of public commitments, guidelines for suppliers and business partners and guidelines for employees, hence various enterprises can use a generic code such as the one proposed below.

Some of the provisions in these codes will require changes in the relevant legislation such as the Corruption and Economic Crime Act (1994) and the Public Procurement and the Asset Disposal Act (2001) and institutional structures. The changes will be necessary for such provisions to become effective.

For an enterprise to live by sound business standards and ethical practices it, must foster a culture of high standards of integrity. This effort must be led by senior management, board members and key stakeholders, by ensuring the following:

- That a code is prepared and disseminated within the enterprise to all employees;
- That employees are trained on business ethics and integrity;
- That proper conduct is encouraged; sanctions are applied against improper conduct; and that an ethics office or function is created to advice, educate and provide confidential counselling for employees;
- That internal controls are well established in the business;
- That there is regular monitoring and evaluation of the continuing integrity of business systems and processes;

This code covers the following areas:

- Definition of key concepts
- Fundamental principles;
- Business ethics;
- Conflict of interest;
- Solicitation, offering and acceptance of bribes;
- Business with commission payments;
- Customer service;
- Political interference;
- Political party funding;
- Procurement and tendering procedures;
- Conduct of the Private sector in acquiring services such as residence and work permits;
- Recruitment and disciplinary processes of personnel;
- Intimate relations at the work place;
- Accreditation of private businesses such as private schools and Professional practices;
- Protecting shareholder value;
- Community service; and
- Penalties for non-compliance.

This code for the private sector is divided into the fundamental principles and specific provisions dealing with the various aspects of ethical conduct in the day to day operations of a business. The code can never anticipate all situations that the individual employee in a business might encounter, but it provides a guide to enable employees to demonstrate the right culture and take the kind of decisions and actions that will make them and their employer proud. Each employee must be individually responsible for abiding by the code of conduct and must be encouraged to discuss his/her concerns about illegal or unethical acts with their superiors. Superiors are expected to provide leadership in the execution of the business's ethical standards and open two-way communication with their subordinates. Managers and supervisors must always be on the look out for unethical conduct and take action as necessary. It shall also be made clear that failure to abide by the code will lead to swift disciplinary action, up to and including dismissal.

2.0 Definition of Key Concepts³

The section gives a definition of some key concepts, lists common conditions under which corruption will thrive and outlines the key concerns to be covered in the individual codes.

Corruption is defined in the literature as the ‘*misuse of public powers, office and authority for private gain through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement.*’ Another definition is: ‘*An abuse of entrusted power by politicians or civil servants for personal gain.*’⁴ Similar definitions can also be found in the pamphlet entitled ‘Combating Corruption in Botswana’ by Andrew Briscoe and H C L Hermans. The implication of these definitions is that in all cases of bribery, a public office or official will be involved.

A **Code of Conduct** is defined as a ‘*system of rules and regulations governing human behaviour in a particular environment. It defines what may or may not be done and stipulates processes for commissioning acceptable behaviour in the context of the environment.*’ Codes of conduct are based on ethical values ----.⁵

Ethics is defined as a ‘*system or set of moral principles and rules of conduct recognised in respect to a particular class of human actions or governing a particular group or culture.*’⁶

A code of conduct must therefore reflect both the ethical standards and laws of the country. There is however, a real possibility that there will be a gap between what is ethical and what is legal. This is a dilemma that affects all societies as it is impossible to legislate for every eventuality. Much depends on societal values and ethical standards of what is wrong or right. The code of conduct is primarily a consensus, to the extent that it can be established, on what Botswana considers to be its values and ethical standards.

The issue of ‘*intimate relations in the work place*’ has been raised in the context of a code of conduct for the private sector. This has been interpreted to include sexual harassment, the demand for sexual favours in return for appointment or promotion or securing a contract.

3.0 Conditions Under Which Corruption Will Thrive

There is a consensus in the literature with regard to conditions under which corruption will flourish and these include:

- weak institutions of governance leading to the marginalisation of other pillars of the state such as Parliament, the judiciary, civil society, the private sector and the media, by the executive branch;

3 There is no definition of corruption in the Corruption and Economic Act. What can be considered as a definition is contained in Part IV Offences Paragraphs 23 -34

4 Anti-corruption Mechanisms and Strategies in Southern Africa by Philliat Matsheza and Constance Kunaka.

5 Ditto

6 Ditto

- the inadequate or inefficient supply of public services and supplies forcing desperate customers to pay to access these services or to avoid waiting in lengthy queues such as business and vehicle licensing, land allocation, among others;
- the existence of monopolies in the supply of essential services such as water and power which create opportunities for unscrupulous staff to offer favours to users in exchange for payment;
- a patronage driven political and economic system which favours political allies of the top leadership in the allocation of resources and appointments and hence posing a threat to meritocracy;
- lack of rules and regulations to make officials accountable for their actions;
- the prevalence of unfettered discretionary powers vested in individual officials without the corresponding accountability procedures; and
- weak leadership at all levels to instil an anti-corruption value system in society.

In addition, and according to international experience the following activities are most susceptible to corruption:

- public procurement and disposal of assets;
- procurement and disposal of assets in local government contracts;
- the allocation of land, rezoning and land use concessions;
- revenue collection and;
- appointments to senior positions.

In Botswana the processing of work and resident permits shall be added to this list.

These are also areas where the public and private sector do business and represent a confluence of the interests of officials, politicians and the private sector. In Botswana the government and its institutions command by far the largest purchasing power and is the largest consumer of goods and services. To a large extent many businesses depend on government to survive. Obviously this creates a keen competition for government business which in turn facilitates an environment where unethical business practices and corruption could take root.

4.0 Fundamental Universal Guiding Principles

- 4.1 A commitment to uncompromising integrity, thus staying true to the declared business ethics and adherence to honesty, fairness, doing right morally even when circumstances make it difficult, as well as going beyond the requirements of the law.
- 4.2 Freedom of association and the right of workers to organise and engage in collective bargaining, as well as access to relevant information to enable workers to arrive at informed positions as a basis for collective bargaining.

- 4.3 Respect for all, treating others with dignity, as well as abiding by the principles of non-discrimination along the lines of race, ethnic origin, religion or gender.
- 4.4 Adequate compensation of workers and reasonable working hours, provision of training and reasonable use of casual labour.
- 4.5 Strict observance of the national laws particularly those addressing bribery and corruption, consumer protection, taxation, minimum wage and other statutory wages, working hours, worker compensation and the protection of the environment.
- 4.6 Observance of labour standards as promulgated by national laws and in International Labour Organisation (ILO) conventions.
- 4.7 Protection of employees that report ethics violations or non-compliance with the law or business policy.
- 4.8 Concern about the welfare of local communities.
- 4.9 Formal induction on codes inclusive of business ethics training programmes and periodic refresher courses to be offered.

5.0 Business Ethics

Business ethics is a statement of its key beliefs or core values on how it conducts business to provide guidance to both its employees and business partners and aimed at establishing trust with the customers, the community in which it operates and other stakeholders. A business ethics statement must go beyond paper declarations to become living documents that are acted on and part and parcel of its way of doing business. This requires that such ethics are effectively communicated to all of the business's stakeholders (employees, business partners, customers and the general public) as standards a business and its employees would want to be judged by. It also means that ethics must be part of regular reviews, refresher courses and management reports. Furthermore, that all new employees joining the business shall be inducted on the ethics as part of their orientation.

6.0 Conflict of Interest

Decisions and actions will be based on the best interest of the business and shall not be motivated by personal considerations or relationships such as relationships with prospective or existing suppliers, contractors, customers, competitors, etc. All employees are required to disclose any situation that may appear to be a conflict of interest. When in doubt it is best to disclose. Below are listed common situations that may cause a conflict of interest:

6.1 Outside Employment

Employees may not work or receive payments for services from a competitor, customer, and distributor or supplier of the business without approval in accordance with any business policy. Any outside activity must be strictly separated from employment and shall not harm job performance. Skills learned and used in the business must not be used in a way that could hurt the business.

6.2 Board Membership

Membership of boards of an outside business or government agency requires advance approval in accordance with business policy. However serving in boards of community and not-for-profit organisations is encouraged and does not require prior approval.

6.3 Family⁷ Members and Close Personal Relationships

Personal influence and relationships or close family membership will not be used to get business with another business or entity in which close family members or friends have interest. All relationships that make it appear an employee could favour another business to the detriment of the employer must be disclosed.

6.4 Investments

Employees may not allow their investments to influence, or appear to influence their independent judgement on behalf of their employer. This could happen in many ways but most likely the appearance of a conflict of interest will occur when the employee has an investment interest in a competitor, supplier, customer, distributor and their decision could have a business impact on the outside entity. If in doubt of how such an investment will be perceived it shall be disclosed.

6.5 Gifts

6.5.1 Each business shall have a policy on the acceptance and offering of gifts but as a general rule:

6.5.2 Employees shall not accept 'kick backs', lavish gifts or gratuities. Gifts of nominal value can be accepted such as promotional items bearing the other business's name and other details.

6.5.3 Any gift that appears will have the effect of compromising the judgement of the employee shall not be accepted or shall be declared and handed over to management. No employee will accept special or reduced rates for personal loans as a result of their position as employees of the business except with the written permission of management.

⁷ In this connection a close family member for the purpose of this code mean immediate members such as a spouse, parents, sons, aunts and uncles, cousins and nephews and nieces and other relationships with a similar status.

6.5.4 Some business situations call for the giving of gifts. Such gifts shall be legal, reasonable and approved by management.

6.5.5 Under no circumstances shall employees of business pay bribes. No gift shall be given if it is prohibited by law or the policy of the recipient organisation. For instance there are rules under which employees of the government may receive gifts.

6.6 Entertainment

In this context entertainment will involve the presence of a business employee and that of the customer or supplier at an event.

6.6.1 Entertainment of Business Employees

Employees may accept entertainment that is reasonable in the context of the business and that advances the business's interests. For example, inviting a business associate to a meal, sporting event etc, would be acceptable in most cases.

However entertainment that is frequent and lavish will appear to influence independent judgement. Accepting an entertainment that seems to be inappropriate shall be discussed with management in advance, if possible. Otherwise the affected employee must either turn down the offer or have the employer pay for the value of the entertainment.

6.6.2 Entertainment by Employees of a Business

Employees of a business may provide reasonable entertainment in the context of doing business. Concerns about whether such entertainment will be appropriate shall be discussed with management in advance. The entertainment of government officials is usually prohibited⁸ and prior management approval must be sought in every case.

6.6.3 Travel

6.6.3.1 Acceptance of travel expenses

Employees of business may accept travel expenses provided by third parties if the trip is for business and is approved in advance by the employee's supervisor. All travel expenses accepted shall be recorded in the business records.

⁸ See the Code of Conduct for the Public Service and the Employee Code of Conduct for the Botswana Revenue Service which strictly prohibits officers from anything of real value or promise inclusive of entertainment.

6.6.3.2 Offer of Travel

Unless prohibited by law or the policy of the recipient organisation, the business may pay travel expenses incurred by customers, agents or suppliers if it is for a legitimate business purpose and it is approved by management in advance.

All business sponsored travel to government officials or officials of a public entity must be approved in advance by management and must be in accordance with the government/public entity regulations for such sponsored travel.

7.0 Solicitation, Offering, Acceptance and Promising of Bribes

- 7.1 With regard to solicitation, offering, acceptance and promising of bribes the private sector will abide by specific principles which will promote high standards of integrity in business transactions whether between the enterprises themselves or between the enterprises and public entities. The private sector will object to all forms of extortion and bribery including those involving politicians and senior officials.
- 7.2 All businesses will therefore subscribe to the following rules:
- 7.2.1 No one will, directly or indirectly demand or accept a bribe;
 - 7.2.2 No enterprise will directly or indirectly offer or give a bribe and any demands for such a bribe must be rejected and reported to the superior authorities.
 - 7.2.3 Enterprises will take measures within their power to ensure that any payment made to an agent represents no more than an appropriate remuneration for legitimate services rendered by such an agent; that no part of any such payment is passed on by the agent as a bribe or otherwise in contravention of these principles;
 - 7.2.4 All financial transactions must be properly and accurately recorded in the appropriate books of account and available for inspection by the board of directors as well as the auditors. Enterprises must establish independent systems of auditing to bring out any transactions that contravene these principles whereupon the appropriate corrective action will be taken;
 - 7.2.5 The board of directors will periodically review compliance with these principles and take appropriate action against any director or employee who acts in a manner inconsistent with them;

- 7.2.6 Contributions to political parties or individual politicians must be made only in accordance with the law and the applicable requirements for public disclosure of contributions to political parties and their candidates.

8.0 Business with Commission Payments

Purchasing decisions must be made solely on the basis of the best interest of the business and based on product and service quality and suitability. Specifically on:

8.1 Agents and Consultants

Trade discounts/commission rates or fees paid to dealers, distributors, agents or consultants must be reasonable in relation to the value of the product or the work that has been done and consistent with the law, policy and local practice. Commissions or fees shall not be paid as a cover for bribes.

8.2 Subcontractors

Subcontractors play a very visible role in fulfilling the obligations of the main contractor. Hence the sub-contractors must act in such a way as to preserve the good image of the main contractor and in a manner consistent with the business's code of conduct.

8.3 Joint Ventures and Alliances

Companies shall only enter into joint ventures and alliances with others that share their commitment to high standards of ethical conduct and consistent with their own code of conduct.

8.4 Cross-border Trade

Businesses shall conduct their cross border trade and purchases in a transparent manner and in accordance with national law or applicable policy and regulations.

9.0 Customer Service

Customer service shall aim to achieve commercial success through meeting customer needs by the provision of high quality, good value products with exceptional and courteous service and relevant information which enables the customer to make an informed and responsible choice. Specifically:

9.1 Development and Display of Customer Care Standards

Companies shall develop written customer care standards and display them prominently for the attention of customers

9.2 Product Quality and Safety

Businesses shall build their reputation around meeting and maintaining high standards of quality and safety of their products and shall not deal in products that do not live up to these standards.

9.3 Sales and Marketing

9.3.1 Companies shall build long term relationships with their customers by demonstrating high standards of honesty and integrity. Their advertising and marketing shall be accurate and truthful and shall avoid deliberately misleading messages, omissions of important facts or false claims about competitor's products;

9.3.2 All business shall be obtained legally and ethically. Bribes and kick backs are unacceptable.

9.4 Protection of Customer Information

Customer information that is confidential, private and sensitive must be as protected as if it is the business's own. Only those who have a legitimate need to know must have access to such information.

9.5 Government and other Public Entities as Customers

All businesses and any of their associates must take special care to comply with the legal and contractual obligations in dealing with the government and other public entities specifically their procurement laws and regulations which have been formulated to protect the public interest and avoid any action or conduct that may be viewed as improperly influencing objective decision making.

9.6 Suppliers and contractors as customers

9.6.1 The suppliers and contractors shall be treated with honour and integrity with a view to developing and maintaining long term relationships;

9.6.2 The purchase of goods or services will be based solely on price, quality and service;

9.6.3 Suppliers and contractors will be paid on time and in accordance with the agreed terms.

9.7 Fair Competition

Competition here refers to avoidance of actions which adversely affects competition in the market place through unreasonable refusal to deal, discriminatory pricing, predatory behaviour toward competitors, etc. Specifically the following activities will not be allowed:

- 9.7.1 Agreements with competitors that harm the customer, including price fixing, bid rigging or agreements not to compete for customers and contracts;
- 9.7.2 Agreements that unreasonably limit the freedom of a customer or supplier to sell a product, including establishing a resale price of a product or service or improperly conditioning the sale of products, technologies or services on an agreement to buy other products and services;
- 9.7.3 Attempts to monopolise by abusing a dominant position in the market unfairly to prevent others from competing.
- 9.7.4 Specifically business enterprises shall ensure that they comply with the Competition Policy and Law.

10.0 Political Interference

- 10.1 In the private sector context, political interference will normally occur where a politician who holds a public office uses his or her influence to obtain favourable treatment for a business in the award of contracts or to win a tender. Such 'influence peddling' usually follows solicitation by the business with the understanding that such a politician will receive a consideration should the business succeed in winning the contract or tender. The politician can also be acting on behalf of a business in which he/she has an interest. In either case merit is thrown out of the window and the country and economy become the silent victims;
- 10.2 Members of the private sector who subscribe to this or any other code of conduct shall condemn such practice and not be party to such unethical practices.

11.0 Political Party Funding

- 11.1 Political party funding may be important for companies because it brings into play important economic, social and ethical issues ranging from the right of people and organisations to take part in politics to their right to defend their interests and protect the business from harmful political actions. In exercising this right the business must take certain ethical precautions, specifically such a decision must be taken by a person with the right to represent the business and shall not impinge on the freedom of the companies owners and employees to support another party and the contribution shall not be interpreted to mean that the business becomes the permanent financial sponsor of the political party.

- 11.2 The end and means of such a contribution shall be ethically correct and shall not be for the purpose of bribing party leaders or the individual candidates to improperly carry out the duties of their office in order to benefit the business or to prevent it from incurring a situation which adversely affects its interests or discriminates unfairly against a competitor.
- 11.3 Business shall also turn down any request for funding made by a party or its candidate in return for a favour or an incorrect performance of their duties once the party or its candidates are elected.

12.0 Procurement and Tendering Procedures

- 12.1 This is primarily public procurement and tendering by government and other public entities such as parastatals and local authorities. Few areas offer opportunities for unethical conduct than the area of public procurement and tendering, particularly the large public sector procurement and tendering such as found in this country. Governments and other governmental entities purchase goods and services at amounts that defy comprehension.⁹
- 12.2 The public procurement rules may seem complicated with in-built checks but the very determined and the unethical collaborators on both the public sector and the private sector side can find ways of corrupting them for personal gain. The situation is exacerbated by the fact that those carrying out the procurement process are spending government money and not their own. Such is the importance of public procurement that the Government of Botswana found it prudent to come up with the Procurement and Asset Disposal Act of 2001. The 1994 South Africa constitution gives it special attention which provides that¹⁰:
 - 12.2.1 The procurement of goods and services for any level of government shall be regulated by an act of Parliament and the Provincial Laws, which shall make provision for the appointment of impartial tender boards to deal with such procurements; The tendering system referred to in subsection (1) shall be fair, public¹¹ and competitive, and tender boards shall on request, give reasons for their decisions to interested parties.
 - 12.2.2 No organ of the state and no member of any organ of the state or any person shall improperly interfere with the decisions and operations of the tender boards.
 - 12.2.3 All decisions of the tender boards shall be recorded.
 - 12.2.4 Entities that participate in the tender shall be given feed-back on the performance of their bids.

⁹ Summarised from Transparency International(TI) Source Book 2000, Chapter 22, obtained from a TI website

¹⁰ TI Source Book 2000

¹¹ Members of the private sector expressed concern that the award of tenders in Botswana is very often not transparent and lacks the kind of feedback that would enable the losing entities to improve their prospects the next time they prepare tenders

- 12.3 There are several ways in which procurement can be corrupted at the various stages of the process:
- 12.3.1 Tailor specifications to favour particular suppliers;
 - 12.3.2 Restrict information about contracting opportunities;
 - 12.3.3 Claim urgency as an excuse to award to a single contractor without competition;
 - 12.3.4 Breach the confidentiality of suppliers' offers;
 - 12.3.5 Disqualify potential suppliers through improper prequalification; or
 - 12.3.6 Simply take bribes.
- At the same time suppliers can:
- 12.3.7 Collude to fix prices;
 - 12.3.8 Promote discriminatory technical standards;
 - 12.3.9 Interfere improperly with the work of the evaluators; and
 - 12.3.10 Offer of bribes.
- 12.4 Lastly competitive bidding can be distorted at the stage of the bid evaluation and comparison of bids. Performed ethically, this is an objective analysis of how each bid has responded to the requirements of the bidding documents and a determination of which of the bids is the best. If the intention is to steer the process to award the tender to a favoured bidder the evaluators, given an opportunity, can invent entirely new criteria for deciding what is best and then apply it subjectively to get the 'right' result. This is often aided by the issuance of bid documents which are deliberately vague about the requirements to be met and how the selection decisions will be made.
- 12.5 In all cases, there will be two parties to the unethical conduct, the purchaser who is always the public official and the sellers who are always members of the private sector. It will be a mistake to think that the buyers are the guilty parties as they are the ones being corrupted by the sellers, although often after solicitation and with little resistance. The truth is that it is the sellers, members of the private sector that can encourage the buyers or public officials to take any of the actions described above.
- 12.6 According to the TI Source Book 2000, Chapter 22, the most serious and costly forms of corruption may actually take place after the contract has been awarded and during the implementation phase. It is then that the procurer of goods and services may:

12.6.1 Fail to enforce quality standards, quantities or other performance standards of the contract;

12.6.2 Divert delivered goods for resale or for private use and

12.6.3 Demand other private benefits such as trips, school fees, gifts etc;

For their part the unethical contractor or supplier will:

12.6.4 Falsify quantities or standards certificates;

12.6.5 Over or under invoice; or

12.6.6 Pay bribes to contract supervisors.

12.7 In addition, if the sellers have paid bribes to win the contract or have offered unrealistically low bid prices in order to win the contract, the opportunity to recover these costs is during contract performance in the manner described above.

12.8 As indicated in the Section on Conflict of Interest some 'gifts' can be given with a view to create a 'sense of obligation' and an anticipation of favourable consideration in the award of a procurement contract or tender. Such gifts will ordinarily be seen to be grossly excessive. An example of such an excessive 'gift' is an all expenses paid trip to Disneyland for the purchasing officer and his or her spouse. Persistent small gifts can also ultimately ensnare and create a sense of obligation in the public official.

12.9 Most members of the private sector will be very familiar with the situation described here which shall be avoided under this code of conduct or any other code. It is therefore incumbent upon members of the private sector to foreswear engaging in the above activities as part of this code or their own code.

12.10 Another avenue for corrupt and unethical practice in public procurement and tendering is the practice of companies offering post retirement employment to senior public servants with whom they have had official dealings. In as much as it will not be very practical or reasonable to ban such officials from engaging in commercial activity or holding senior positions in the private sector, care shall be taken to ensure that such employment is not a bribe and contrary to the public interest.

12.11 For the private sector, companies that subscribe to this code of conduct shall foreswear engaging in such a practice. In this regard the public sector shall put in place a provision in the Public Service Act that enables the Government to vet such employment to ensure that it has no potential to harm the public interest.

12.12 In addition, feedback shall regularly be given on the tenders that have failed and the procedure for appeals shall be included in the tender documents.

13.0 Conduct of the Private Sector in Acquiring Services such as Residence and Work Permits

It is acknowledged that the application for services such as licenses, residence and work permits take too long to be processed. Such delays create an environment for corrupt activities. This situation notwithstanding:

- 13.1 Members of the private sector will make all applications to acquire services such as residence and work permits, business or vehicle licenses in a manner consistent with the law and desist from unethical conduct such as paying a bribe to get the service they are entitled to.
- 13.2 Work and residence permit applications will be used solely for the purpose of bringing into the country skills that are currently not available and will not be used to frustrate the national localisation policy or to discriminate against the employment of citizens.
- 13.3 Where the importation of skilled expatriates is justified the concerned companies will put in place plans to train citizens to take their place in the shortest possible time.

14.0 Employee Relations

- 14.1 Employee Relations shall be guided by the following principles:¹²
 - 14.1.1 Due regards for the Botswana constitution and labour laws;
 - 14.1.2 Compliance with occupational and safety standards;
 - 14.1.3 Non-discrimination in the recruitment, training, compensation and promotion of employees on the basis of race, gender, colour, national origin or disability or in any other form;
 - 14.1.4 Allow workers to engage in union activities and to engage in collective bargaining;
 - 14.1.5 Clearly stated and transparent policies relating to compensation, benefits, promotions, training and other employment conditions;
 - 14.1.6 Enterprises shall have policies for insurance, contributions to pension plans and strict protection of the integrity of business-sponsored pension plans;

¹² See also Basic Guidelines for Codes of Business Conduct by Igor Y. Abranov of the US Department of Commerce at Igor.Abranov@ita.doc.gov.

- 14.2 These principles shall not be interpreted to limit the right of any enterprise to enforce discipline among the work force or to terminate the employment of workers in accordance with the law.
- 14.3 The employees must understand that the business's property and products belong only to the business and do not belong to them. If any employee takes business property or products for his/her own use he/she commits theft and is liable to disciplinary action in line with the business's rules and regulations.
- 14.4 Specifically employee relations will provide for:

Harassment

Abusive, harassing or offensive conduct is unacceptable, whether verbal, physical or visual. Examples include derogatory comments based on racial or ethnic characteristics. All employees are encouraged to report such behaviour by co-workers, when they occur.

14.4.2 Sexual Harassment at the work place

a) This has been interpreted to refer to sexual harassment which refers to 'unwanted unsolicited and/or repeated verbal or sexual advances, sexually derogatory statements or sexually discriminatory remarks made by a director, manager or employee of a business in respect of another employee whether inside or outside the premises of the business, which are offensive or objectionable to the recipient or which cause the recipient discomfort or humiliation¹³. It also covers recruitment based on demand or offers of sexual favours.

b) All the companies which subscribe to this policy undertake to have a code of conduct on sexual harassment which encourages employees to report such activities including the right of employees to give confidential reports to their supervisors or a member of management. Such codes shall provide for timely investigation of such reports and severe penalties against repeated offenders.

14.4.3 Employee Privacy and Confidentiality of Employee Records

All the companies are committed to respecting the privacy rights of all employees and to implement security measures to protect such information. It is the responsibility of all employees to respect the privacy of fellow employees and any access to employee information is limited to only that which is required to do the job.

14.4.4 HIV/AIDS

No business will discriminate against any employee on the basis of their HIV/AIDS status whether in recruitment or consideration of promotion, training and development.

13

A definition adopted from the Sexual harassment, Policy and Procedures of the University of Botswana.

14.4.5 The Protection of Whistle Blowers

- a) Generally ordinary staff know more about what is really going on in the business than the auditors. Yet most '*whistle blowers*' are given little or no protection if they proceeded to challenge management. It is therefore rare for a staff member to approach the Board directly to raise ethical concerns about senior management. 'Conspiracy of silence' places a business at significant risk, yet they are common place.
- b) Any employee who sees possible unethical or illegal conduct is expected to report his/her concerns. Confidentiality of any employee who reports concerns will be respected.
- c) Any retaliation against any employee who honestly reports their concern to the business about an illegal or unethical conduct will not be tolerated. Similarly it is unacceptable for employees to file a report of an alleged unethical or illegal conduct knowing it to be false.
- d) The Corruption and Economic Crime Act shall be amended to provide for 'whistle blowing'.

14.4.6 Appointment of an Ethics Officer

Each business organisation will designate a senior staff member as an Ethics Officer to ensure that the code of ethics is observed and to act as a point of reference on matters relating to the code of conduct.

15.0 Issuance of Health Certificates, Land Allocation, Licensing and Accreditation of Private Businesses

- 15.1 There are clearly laid down procedures and standards for the issuance of health certificates, land allocation, licensing and accreditation of private businesses such as private schools and professional practices, etc.
- 15.2 The private sector will abide by these procedures and standards and will desist from offering any bribe or doing anything that will undermine the integrity of the accreditation system.

16.0 Protection of Shareholder Value

- 16.1 The aim of the business is to achieve maximum growth in the earnings of its shareholders and to maximise shareholder value. In this regard shareholders are entitled to get the necessary information to be able to evaluate the performance of their investment and hence are entitled to accurate information on the management of the business, its financial position and future plans.
- 16.2 The business will therefore maintain complete and accurate records and accounts and present them in accordance with professional accounting standards and national law.
- 16.3 The employees of the business will not use insider information for their personal gain.

17.0 Responsibility to the Community

- 17.1 The private sector is committed to sustainable development and will aim to manufacture, handle and dispose off materials in compliance with the law and in a responsible manner to minimise risk to human health and the environment.
- 17.2 The private sector encourages directors, managers and employees to participate in community activities and civic affairs.
- 17.3 All companies are encouraged to support and contribute to charitable organisations and directors, managers and employees are encouraged to do the same.

18.0 Penalties for Non-Compliance

The penalties can be divided into two categories; those that can be taken at the individual firm level and those that can be taken at the level of the entire private sector.

- 18.1 Penalties which shall be taken at the business level
 - 18.1.1 Each business will establish a committee to determine whether violations of the code of conduct have occurred and determining the disciplinary measures to be taken against any employee which shall include, and not limited to counselling, oral or written reprimand, warnings, suspension without pay, demotion, reduction in salary or termination of employment;

18.1.2 Disciplinary measures shall be taken, in addition to the direct violator, against persons who fail to exercise reasonable care to detect violation of the codes, persons who withhold material information, supervisors who condone the violation or who retaliate against employees for reporting violations or violators.

18.2 Penalties to be taken at the Level of the Private Sector

18.2.1 The Procurement Act specifies who gets a contract. It is proposed that there should be a provision in the Act which stipulates that only firms that subscribe to and abide by the code of conduct for the private sector shall be eligible to participate in tenders for the public procurement of goods and services at all levels of Government. The Botswana Confederation of Commerce Industry and Manpower (BOCCIM) will keep a list of firms that subscribe to the code as part of the effort to get the private sector to regulate itself.

18.2.2 Further that the Standard Bidding Documents and Contract Forms shall include requirements for:

a) Full disclosure of ownership and performance history of each bidder involving both the main contractors and subcontractors;

b) Details of previous arrests and convictions but also the payment of any bribes or participation in any fraud or bid rigging or association with organised crime;

c) A commitment to a code of conduct;

d) A certification that all this information is true and correct.

18.2.3 Furthermore the Standard Bidding and Contract Documents shall provide for severe penalties if the contractor provides false information including the termination of a contract and the forfeiture of money received for work already completed and the blacklisting of such a firm.

18.2.4 The DCEC shall facilitate the performance of any necessary background checks by the relevant authorities on the affected companies and whenever concerns arise any bidder or contractor to can be summoned to answer questions under oath.

18.2.5 BOCCIM shall be represented in the structures that adjudicate tenders for all public entities, central and local government and parastatals.

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Appendices

Appendix 1: List of Members of the Reference Group

R. N. Tsiane	DCEC
B. Makgekgenene	DCEC
C. Gaolathwe	DCEC
B. Matlhare	DCEC
K. K. Kemoeng	BNSC
B. S. Maswibili	BCP
P. Kgare	DLGSM
E. Moseki	DPSM
T. T. Moleka	BTU
O. M. Lepodise	Office of the Ombudsman
F. Molao	BDP
E. M. Dewah	BOCCIM
L. Ketlaleka	BOCCIM
K. N. Sebonego	Modern Refrigeration
B. Eaton	IEC

Appendix 2: List of Individuals Interviewed

Government Institutions

T. G. G. Seeletso	Secretary, IEC
M. J. Sayed	Deputy Secretary, IEC
T. M. Katlholo	Director, DCEC
P. C. Manthe	Chairman, Kweneng District Council

The Private Sector

C. Chileshe	Private Sector, Francistown
M. Maphanyane	Director, MISA
S. Mpuchane	Managing Director, The World Group
R. Muzila	Private Sector, Francistown
N. Sparrow	Managing Director, Metsef
Tlhako M	Private Sector, Francistown
E. Van de rest	BOCCIM, Francistown

Parastatal Organizations

V. Lionjanga	Chairman, PPADB
S. T. Mokone	Director, Services, PPADB

Non - Governmental Organizations

C. Moarabi	Administrative Secretary, BCSA
K. Kgasa	Secretary General, BTU
G. Motswaledi	Executive Secretary, BTU
O. Mokalake	Assistant Executive Secretary, BTU
R. Ketshabe	Projects Coordinator, BTU

Political Parties

B. Balikani,	President, BPP
L. Setsahwaelo	President, BAM
T. Luca	Publicity Secretary, BCP
M. Morwadi	Executive Secretary, BCP
B. C. Serema (Dr)	Executive Secretary, BDP

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