

## **Directive on Preventing and Combating Corruption in the Public Administration of the State of Hesse**

Reference: StAnz. 2019. p. 1357

### **1. Scope of application**

This Directive applies to all employees of the State of Hesse. The Directive applies to judicial staff only to the extent that judicial independence permits. The municipalities, local government associations and other bodies, institutions and foundations under public law subject to supervision by the state are recommended to proceed accordingly. The decree on the prevention of corruption in Hessian local authorities dated 15 May 2015 (StAnz. p. 630) remains unaffected.

### **2. Definition of terms**

#### **2.1 Corruption**

German law does not recognise a legal definition of the term "corruption". In essence, it involves an abuse of the entrusted office for private benefit.

According to the general understanding, corruption includes, among other things, actions or omissions in a decision-making process that are prohibited under criminal law; a material or immaterial benefit is obtained or granted for oneself or a third party on one's own initiative or at one's instigation by abusing an official function. Corrupt practices are characterised, among other things, by the concealment (secretion) of these actions and the deliberate and voluntary cooperation of at least two parties, namely the party that grants the benefit in the context of corruption and the party that claims this benefit for itself or a third party.

Corruption offences only have perpetrators and no direct victims. They undermine and weaken people's trust in government action. Corruption is therefore a latent threat to the rule of law and especially to its public administration. Corruption can occur in all areas of public administration, so this threat can only be countered with the help of employees. They are therefore obliged to be cautious.

The German Criminal Code (StGB) in particular sanctions the wrongdoing associated with corruption in the following offences:

- Section 331 StGB Acceptance of benefits
- Section 332 StGB Corruptibility
- Section 333 StGB Granting of advantages
- Section 334 StGB Bribery
- Section 335 StGB Particularly serious cases of corruption and bribery
- Section 108e StGB Corruption and bribery of public officials

These offences usually occur in conjunction with other criminal offences, the so-called accompanying offences. These include in particular:

- Section 258a StGB Obstruction of prosecution or punishment in public office
- Section 261 StGB Money laundering, concealment of unlawfully obtained assets
- § 263 StGB Fraud
- Section 264 StGB Subsidy fraud
- Section 265b StGB Credit fraud

- Section 266 StGB Embezzlement
- Section 267 StGB Forgery of documents
- Sections 298 ff. StGB Offences against competition
- Section 348 StGB Making false records in public office
- Section 353b StGB Breach of official secrecy and special obligation of secrecy
- Section 370 Fiscal Code (Abgabenordnung) Tax evasion

### **Work areas susceptible to corruption**

A work area is susceptible to corruption if the behaviour of employees or a decision made by them results in others (e.g. individuals, commercial enterprises, associations, societies, partnerships, corporations, other institutions) receiving material or immaterial benefits or being relieved of a burden, or if third parties can confer a benefit on employees to which they are not entitled. Others or third parties within the meaning of sentence 1 may also be municipalities and local government associations or corporations, institutions and foundations subject to supervision by the federal state.

Whether there is a **particular susceptibility to corruption** beyond this must be determined on a case-by-case basis by the respective area of responsibility, department. The following may be considered as indicators of a particular susceptibility to corruption:

- frequent external contact – including through monitoring and supervisory activities – with a specific group of people who can expect benefits or disadvantages from the decisions of the respective employee (including decisions regarding permits, concessions, licences or similar, decisions with an impact on pecuniary benefit or disadvantage or with an impact on the professional and economic existence of another person, conclusion of contracts, setting or levying of charges and fees),
- management of budget funds on a larger scale,
- awarding of public contracts or subsidies, grants and allowances,
- processing of transactions involving internal government information that is not intended for third parties, but is likely to be beneficial or disadvantageous to them.

The assessment of whether a work area is susceptible to corruption applies regardless of the respective job holder. It must be based solely on objective, task-related characteristics.

## **2.2 Signs of corruption**

Corruption can take many forms. A number of indicators can serve as warning signals for the existence of a risk of corruption or the existence of corruption.

This is particularly the case if they are very pronounced or occur more frequently or in combination. The existence of indicators does not necessarily indicate misconduct, so their appraisal must be performed with great care. Examples include the following:

## **Personal indicators**

- Personal issues (addiction, excessive debt, frustration, etc.),
- lack of identification with the task,
- targeted bypassing of controls, of necessary participation within the authorities and/or of the official channels; compartmentalisation of individual areas of responsibility,
- use of corporate facilities, leisure facilities, holiday homes or, unless technically necessary, events organised by an applicant or bidder,
- inexplicably high standard of living,
- constant indispensability (e.g. waiver of holidays, presence during illness),
- abuse of discretionary powers,
- noticeably divergent processing times for transactions,
- presence in the authority at unusual times without a discernible official reason,
- private contact with applicants, especially involving consultancy/expert contracts, equity investments.

## **Task-related indicators**

- Conspicuously accommodating treatment of applicants, – avoidance of obtaining comparative offers,
- significantly or repeatedly exceeding the planned order values,
- conspicuously frequent calculation errors, reworking of tender specifications, costly additional work,
- secondary employment or applications for approval of secondary employment involving companies that are simultaneously contractors or applicants to the public administration,
- frequent business trips to certain companies (especially if overnight stays are incurred that are not actually required).

## **System-related indicators**

- Very high concentration of tasks on one person,
- inadequate controls, very weak supervisory and technical oversight,
- regulations that are difficult to understand.

## **Passive indicators**

- Smooth administrative processes in areas where conflicts would typically be expected,
- absence of official reactions.

## **3. Organisational measures against corruption**

### **3.1 Multiple-eye principle**

The multiple-eye principle aims to reduce the risk of errors and abuse in decision-making. It results in important decisions not being made by a single person. In these cases, there is participation or a

review is performed by other persons or via suitable automated control options.

### **3.2 Transparent file management**

Files must permit the individual processing steps to be fully, comprehensibly and permanently identified. Oral explanations and information relevant to the process must be documented in writing. Further details can be found in the rules of procedure applicable to the respective authority as well as in the Decree on file management in the authorities of the State of Hesse dated 14 December 2012 (StAnz. 2013 p. 3).

Explicit reference is made to the documentation requirements in procurement procedures.

### **3.3 Supervisory and technical oversight, management responsibility**

Supervision and monitoring are highly important in effectively combating corruption. Supervisors must consistently exercise their supervisory and technical oversight within the scope of their management responsibility. This includes active, forward-looking personnel management and targeted monitoring. Attention must therefore not only be paid to the indicators according to subsection 2.2, supervisors' management responsibility also extends to the reduction of corruption risks depending on the situation. Supervisors serve as role models. Their integrity represents a high barrier against corruption. They must endeavour to create a climate in public authorities that enables employees to point out structures that are susceptible to corruption and, as necessary, suspicions of corruption. The information sheet ("**Guidelines for supervisors and heads of authorities**") attached to the Directive as Annex 1 must be distributed to supervisors.

### **3.4 Documentation of particularly susceptible work areas**

An investigation must be conducted at regular intervals and on special occasions to identify work areas that are particularly susceptible to corruption (see subsection 2.1). The results are to be collated in a document listing particularly susceptible work areas. This is intended to provide information on the degree of susceptibility to corruption in the affected work areas taking into account the existence of measures to prevent corruption. The contact person for corruption prevention (see subsection 3.5) as well as the personnel and organisational units can be considered as investigating bodies. The following compilation procedure is recommended:

#### **3.4.1 Risk assessment**

As a first step, all work areas should be reviewed using a risk assessment to determine whether there may be a particular susceptibility to corruption. Any particular susceptibility to corruption should be determined on a case-by-case basis.

#### **3.4.2 Risk analysis**

In a second step, those work areas that are particularly susceptible to corruption should be analysed using a risk analysis to determine the actual degree of vulnerability and to classify or rank them. The existing process, monitoring and security systems should be included in the review. Any deficiencies found should be promptly rectified.

Given the results of the risk analysis, a review should be conducted as to whether and, if so, how the procedural and organisational structures and/or personnel allocation should be altered.

### **3.4.3 Employees in work areas particularly susceptible to corruption**

The results of the risk analysis must be discussed with the employees whose work areas were classified as particularly susceptible to corruption.

### **3.5 Contact person for corruption prevention**

A contact person for corruption prevention must be appointed in each authority by the respective authority manager. A deputy must be appointed in the same manner. Police officers, public prosecutors and district attorneys must be excluded from being appointed as contact persons for corruption prevention. In substantiated cases, for example in the case of authorities with a small number of employees, the contact person for corruption prevention and their deputy can even be appointed centrally at the level of the highest state authority or in the subordinate area at one authority acting for several authorities. The decision is to be made by the department management. The task can even be assigned to a person who is not part of the state administration.

The contact person for corruption prevention is to report directly to the authority manager and is directly subject to his or her supervisory and technical oversight in the performance of their duties. The tasks of the contact person for corruption prevention include in particular:

- acting as contact person for employees and authority managers, even without following official channels, as well as for citizens,
- providing advice and support to authority managers and information to employees (e.g. through regular information events),
- participation in further training,
- observation and assessment of signs of corruption,
- preparation of any necessary documentation relating to particularly susceptible work areas.

Files containing personal data that are created by the contact person for corruption prevention must be treated in the same way as personnel files with regard to technical and organisational measures. They must be kept under lock and key and treated confidentially. Notwithstanding the regulations on file segregation, they must be destroyed if the individual files are no longer required for the purposes of preventing and combating corruption.

#### **3.5.1 Prohibition on the transfer of disciplinary powers**

The contact person for corruption prevention may not be given any disciplinary powers; he or she shall not act as an investigator in disciplinary proceedings relating to corruption.

#### **3.5.2 Procedure given reasonable suspicion of a corruption offence**

Should the contact person for corruption prevention become aware of facts that give rise to reasonable suspicion of a corruption offence, he or she shall inform the relevant authority manager and accordingly submit proposals relating to internal investigations, measures to counteract concealment and notification to the law enforcement agencies. The authority manager shall then decide on the steps required to clarify the facts of the case.

If there is reasonable suspicion of a corruption offence, the authority manager must ensure that the law enforcement agencies are notified pursuant to subsection 5.4. Depending on the department-specific regulations, the internal audit unit may also need to be notified and take appropriate action.

### **3.5.3 Duty of confidentiality**

The contact person for corruption prevention must maintain confidentiality regarding the personal circumstances of employees that come to their attention, even after the end of their term of office. This does not apply to the responsible authority manager or the responsible personnel manager if they have knowledge of facts that substantiate reasonable suspicion of a corruption offence. This confidentiality does not furthermore apply to law enforcement agencies. The statutory provisions remain unaffected.

### **3.6 Internal auditing**

Audits conducted by the internal audit unit form part of corruption prevention. The "Recommendations on Standards for Internal Audits in the Hessian State Administration", as amended, provide further details.

## **4. Personnel measures in combating corruption**

### **4.1 Code of conduct, instruction and raising awareness**

#### **4.1.1 Code of Conduct**

The Code of Conduct against Corruption reproduced as Annex 2 is binding for all employees. It draws employees' attention to susceptible situations that could inadvertently involve them in corruption. It also contains information on how to react appropriately in such situations.

#### **4.1.2 Instruction**

Employees must be made aware of the susceptibilities to corruption and instructed about the consequences of corrupt behaviour. Employees must be provided with a copy of this Directive and its annexes or sent an email copy. Receipt must be confirmed by an acknowledgement of receipt (Annex 3), which must be added to the personnel files. This also applies to new recruits.

#### **4.1.3 Ongoing awareness raising**

Supervisors are obliged to discuss the regulations and issues relating to corruption with employees at regular intervals – at least once a year for example at staff meetings – to continuously raise awareness of the topic. These must be documented. When working in areas where there is a particular susceptibility to corruption, employees should receive in-depth, workplace-related and needs-based instruction. The departmental manager shall determine which line managers are responsible for these tasks.

### **4.2 Personnel selection**

Filling a position or post that involves an area of work which is particularly susceptible to corruption requires particular attention to be paid to the personal suitability and reliability of the applicant

with respect to this susceptibility to corruption. A review is generally limited to assessment of any documented anomalies:

- criminal or disciplinary investigations,
- internal investigations into suspected corruption,
- over-indebtedness, disorderly financial circumstances,
- social issues, in particular addictive behaviour (e.g. alcohol, drug or gambling addiction).

### **4.3 Organisational measures**

A long period of employment with the same scope of duties and unchanged responsibilities can increase the risk of corruption in work areas that are particularly susceptible to corruption. An expedient organisational measure to prevent corruption can therefore be to limit the period of employment in a specific area of responsibility that is particularly susceptible to corruption. Experience has shown that a period of five years can be considered as a guideline.

Limitation of the period of employment can be achieved either by transferring the employee concerned (staff rotation) or by transferring the work area particularly susceptible to corruption and the individual activities in that work area to another workplace/post or by changing responsibilities (task rotation).

Rotation must be structured in terms of content, time and organisation in such a way that it does not result in unreasonable disadvantages regarding the functionality of the affected area.

### **4.4 Training and continuing professional development**

The topic of corruption must be given a permanent place in basic training and continuing professional development to impart the forms, signs and effects of corruption and its consequences under criminal, civil service and labour law.

Separate training courses on preventing and combating corruption must be offered and organised for employees, their supervisors and contact persons for corruption prevention in areas particularly susceptible to corruption. Targeted training is intended to raise awareness of the dangers of corruption and how to prevent it. The ability of employees and supervisors to recognise corruption and manipulation must be trained, as must their knowledge of the relevant regulations. In the case of supervisors, the exercise of systematic supervisory and technical oversight as a management tool should also be included in the continuing professional development programme. Participation in continuing professional development is mandatory.

An e-learning programme on corruption prevention is provided to all employees in the Hessian state administration in a version for employees and a version for managers. Participation in this programme is mandatory for all employees and must be repeated at appropriate intervals (at least every three years). Participation in other suitable advanced training courses on preventing and combating corruption is possible as an alternative. The decision on this is the responsibility of the respective area of responsibility/department.

#### **4.5 Secondary employment**

The contact person for corruption prevention shall be involved in the approval process on a case-by-case basis as deemed necessary. Since an approval to take on a secondary occupation must be limited to a maximum of five years, a shorter period may also be set at the discretion of the competent authority. Any approval granted must be revoked if it subsequently becomes apparent that it is detrimental to official interests. This must be reviewed in each individual case in the event of reassignments or transfers to an area of work that is particularly susceptible to corruption.

#### **4.6 Acceptance of rewards and gifts**

The acceptance of rewards, gifts and other benefits by employees within the scope of this Directive is governed by the Administrative regulation for state employees on the acceptance of rewards, gifts and other benefits of 13 December 2017 (StAnz. p. 1497).

#### **4.7 Public tendering and procurement procedures**

Ensuring that the principles of economic efficiency, competition, transparency and equal treatment are observed in public procurement procedures requires strict compliance with budgetary and procurement regulations. The awarding of public contracts must be regularly scrutinised by an internal control system (e.g. by random sampling) to investigate impermissible influencing factors.

### **5. Measures in the event of suspected corruption**

#### **5.1 Notification obligations**

Employees are obliged to notify their supervisors if they receive tangible indications of corrupt behaviour. Facts that give rise to suspicion that the supervisor or superior (head of authority) is involved in criminal offences must be reported to the next higher superior or a superior authority. The information can also be provided to the contact person for corruption prevention. Supervisors are obliged to promptly inform the contact person for corruption prevention if there are any indications of corrupt behaviour. If department-specific regulations so provide, the information may also be given to the internal audit unit or the supervisor must promptly notify the internal audit unit.

The contact person for corruption prevention in the highest administrative authority must be notified anonymously of each case of suspected corruption within the department, the measures taken in this regard and their results. Personal case data must not be transmitted. The contact person for corruption prevention shall maintain an overview of all cases in the area of responsibility/department. A deletion note must be added if the suspicion is not upheld or if there is a prohibition on use.

#### **5.2 Disciplinary measures**

The offences listed within subsection 2.1 generally constitute serious breaches of official duty. Conduct that is not covered by criminal law and which involves a breach of duty in the form of mismanagement of administrative actions can moreover constitute a breach of official duty. Violations of official duties in this area generally result in the following consequences for civil servants:

disciplinary proceedings may be initiated and employees may be subject to sanctions under labour law, including dismissal without notice.

### **5.3 Claims for damages and restitution**

Claims for damages and restitution against employees and third parties shall be consistently enforced.

### **5.4 Investigations by law enforcement agencies**

If there are reasonable grounds to suspect the existence of a corruption offence, the law enforcement agencies must be notified and supported by the authorities in their investigative work – in particular in their preparation for searches and seizures and the evaluation of seized material. The authorities must refrain from doing anything that could jeopardise the investigations of the law enforcement agencies. Depending on the department-specific regulations, these obligations may also affect the internal audit unit.

## **6. Contract drafting**

### **6.1 Anti-corruption clause**

When awarding public contracts, an anti-corruption clause must be included in cases where it appears appropriate, for example in framework agreements. An exemplary sample is attached as Annex 4. Such a clause must be included in the tender documents. An anti-corruption clause is not required in cases where VOB/B is agreed.

### **6.2 Commitment Act**

If private companies or freelancers are involved in the performance of public sector tasks, the individuals and employees of these companies must as necessary be obliged to conscientiously fulfil their obligations arising from the contract in accordance with the legal aspects concerning confidentiality. A corresponding note must be included in the tender documents.

## **7. Special measures and existing regulations**

Where necessary, authorities may take further measures that go beyond the Directive.

Existing regulations of the areas of responsibility remain unaffected insofar as they go beyond the regulations of this Directive.

## **8. Final provisions**

### **8.1 Expiry**

The Decree on preventing and combating corruption in the remit of the Ministry of the Interior and Sport dated 3 February 2014 (StAnz. p. 453, 482) shall expire on the day following publication of this Directive.

### **8.2 Entry into force**

This Directive shall enter into force on the day following its publication.

Wiesbaden, 18 November 2019

**Hessian Ministry  
of the Interior and Sport**

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## **Guidelines for supervisors and local authority managers**

As a supervisor and as an authority manager, you act as a role model and have a duty of care for the employees reporting to you. Your management tasks also include counteracting susceptibility to corruption and acting accordingly in suspected cases.

Your behaviour and also your attention are highly important in corruption prevention. You should therefore practise active, forward-looking personnel management and monitoring. In particular, you should ensure clear rules of responsibility and transparent task descriptions for employees as well as an appropriate level of monitoring.

Weak points and gateways for corruption include:

1. inadequate supervisory and technical oversight;
2. blind trust in long-term employees and specialised employees;
3. character weaknesses of employees in areas susceptible to corruption;
4. negative example set by superiors when accepting gifts;
5. lack of consequences after manipulation is uncovered; therefore no deterrent.

You can counteract such weak points with the following measures:

### **1. Instruction and raising awareness**

Use the "Code of Conduct against Corruption" (see Annex 2) to discuss with your employees at regular intervals the regulations and issues relating to corruption and the obligations arising from the prohibition on accepting rewards and gifts.

### **2. Organisational measures within the scope of your powers**

Ensure clear definitions and as necessary restrictions on the scope for decision-making. Discuss the delegation structures, the limits of discretionary powers and the need for co-signatory obligations.

In work areas that are particularly susceptible to corruption, ensure that the processing of transactions is made more flexible according to numerical or letter systems by

- a) critical review of the processing pursuant to these systems; b) individual allocation at random or
- c) by repeatedly changing the number or letter responsibilities of individuals.

If at all possible, implement the principle of dual monitoring in your area of responsibility. It may be a good idea to form working teams or groups / clusters. Check whether it is necessary for individual employees to be accompanied by other employees to on-site appointments, on-site inspections, etc. or to set up "transparent offices" for handling visitor traffic so that the authority's external contacts are only implemented according to the multiple-eyes principle. Where this is not possible due to the actual

circumstances, organise reviews at intervals that are suitably frequent.

Use human resources management tools.

In areas where there is a particular susceptibility to corruption, an expedient measure could be to limit the period of employment (rotation), usually after a period of five years.

If it is not unusual in your authority for rooms to be occupied by two people, you should also use this to prevent corruption in areas of work that are particularly susceptible to corruption, for example by sporadically changing the room occupancy (even without changing the employees' tasks).

### **3. Care**

In areas of work that are particularly susceptible to corruption, preventing corruption also requires increased care for your employees.

- a) Always consider the increased susceptibility of individuals.
- b) Constant dialogue is also a means of caring.
- c) Be aware of your employees' work-related and private issues.
- d) Take remedial action, for example by relieving an employee of duties, if you become aware of conflicts of interest due to secondary employment or the activities of affiliates. In the case of secondary employment requiring authorisation, the possibility of revoking the authorisation (cf. Section 73 (3) sentence 2 HBG) or, in the case of secondary employment not requiring authorisation, the possibility of providing written information and prohibition (cf. Section 74 (3) and (4) HBG) should also be examined. The provisions on secondary employment under civil service law apply *mutatis mutandis* to employees.
- e) Particular vigilance is required when individuals are recognisably overstretched or understretched.
- f) Your increased attention is required if you become aware of personal weaknesses (e.g. addiction problems, a penchant for expensive hobbies that are difficult to finance) or excessive debt; employees whose financial circumstances are not in order should not be deployed in procurement or in posts where they are particularly exposed to the risk of unfair influence by third parties.
- g) Finally, you must also be particularly vigilant in cases of open dissatisfaction with the employer and try to counteract this.

### **4. Supervision; management style**

Realise that there is no such thing as a complainant in cases of corruption and that corruption prevention therefore depends largely on your awareness and that of your employees. This also requires your supervisory and technical oversight. A misunderstood co-operative management style or a "laissez-faire" attitude can be disastrous in areas of work that are particularly susceptible to corruption.

Therefore try to:

- a) optimise process control, for example by incorporating control mechanisms (resubmissions, etc.) into the business process,
- b) avoid isolating or making individual employees independent,
- c) pay particular attention to the occurrence of corruption indicators,
- d) randomly review compliance with the stipulated discretionary powers.

## **5. Signs of corruption, warning signals**

According to the findings of an investigation by the Federal Criminal Police Office (hereinafter BKA), a number of behaviours can be signs or warning signals, i.e. indicators of the existence of susceptibility to corruption or the existence of corruption. They can be more or less pronounced or occur in combination with others. Their evaluation is made more difficult by the fact that some indicators are considered neutral or even positive, although they have subsequently proven to be "reliable signals" in cases of corruption. Viewed in isolation, they do not necessarily indicate misconduct. The assessment of indicators must always be conducted with the utmost care in individual cases. If, based on statements or observations, a behaviour is conspicuous and appears to be outside the norm, you must check whether the occurrence of an indicator, together with the environmental conditions, indicates susceptibility to corruption. According to the BKA's investigations, this often includes an unusually high standard of living and/or the display of status symbols. A further exemplary list of indicators can be found under subsection 2.2 of the Guideline on Preventing and Combating Corruption in the Hessian State Administration.

## **6. Suspicion**

Tangible and verifiable indications of suspected corruption must be promptly notified to the contact person for corruption prevention.

Remember that corruption is not a "trivial offence" and covering it up is also damaging to your reputation.

If you breach your duties, you may be guilty of an official offence and liable to prosecution.

## **7. Your responsibility as a supervisor or manager**

Be aware of your special responsibility and fulfil your obligation to take advantage of the professional development opportunities relating to preventing and combating corruption. Ensure that your employees also fulfil their obligations to participate in professional development courses relating to preventing and combating corruption.

## **Code of Conduct against Corruption**

### **1. Demonstrate through your behaviour that you neither tolerate nor support corruption!**

Every employee is obliged to comply with the applicable laws and to fulfil his or her duties conscientiously.

All employees must therefore fulfil their duties impartially and fairly. Corrupt behaviour contradicts these obligations and damages the reputation of the public service.

### **2. Fend off attempts at corruption immediately and inform your line manager or the contact person for corruption prevention without delay!**

In external contacts, for example with applicants or during inspection activities, you must create clear conditions from the outset. Signal to everyone in no uncertain terms that you are not corruptible. Any attempt at corruption must be fended off immediately. Never give the impression that you are open to gifts.

Do not be afraid to reject a gift or send it back, asking for understanding of the regulations that apply to you. Observe the administrative regulations on combating corruption in the state administration, here: Administrative regulations for state employees on the acceptance of rewards, gifts and other benefits dated 13 December 2017 (StAnz. p. 1497).

Inform your line manager or the contact person for corruption prevention immediately if you are asked by a third party for a dubious favour.

### **3. Work in such a way that your work can be reviewed at any time!**

Your working methods should be transparent and comprehensible to everyone. A successor or substitute should be able to familiarise themselves at any time. You should avoid using ancillary files to avoid any impression of dishonesty from the outset.

### **4. Consult your superior if you suspect that someone is trying to ask you for preferential treatment in breach of your duties!**

If you fear or suspect that a dubious request might be made of you, you should not face this situation alone.

### **5. Keep work and private life strictly separate!**

#### **Check whether your private interests and plans could lead to a conflict with your official interests.**

Attempts at corruption often begin with a third party extending the official contact to private contacts. It is notoriously difficult to refuse a favour if you get on extremely well in private and you or your family are offered benefits and perks (e.g. concert tickets, invitations to dinner, discounted holidays together, etc.).

In the case of private contacts, you should therefore make it clear from the outset that you must maintain a strict distinction between business and private life in order to avoid being suspected of accepting benefits.

In each procedure for which you are jointly responsible, check whether your private interests, those of your affiliates or even of organisations with which you are associated could lead to a conflict with your main official obligations. Ensure that you do not give anyone cause for concern about bias.

Notify your superior or the contact person for corruption prevention if in the course of a specific official task you detect a potential conflict between your official duties and your private interests or the interests of third parties to whom you are connected. Only then can you react appropriately and, for example, be released from activities in specific individual cases.

In cases of **secondary employment** there must also be a clear separation between the performance of duties and the secondary employment.

The provisions on secondary employment under civil service law apply *mutatis mutandis* to employees.

Remember that:

- Secondary employment that does not require approval (Section 74 HBG) must be notified before commencing the activity if the requirements of Section 74 (2) HBG are met!
- Secondary employment requiring approval must be submitted for approval prior to acceptance!

Failure to do so may have consequences under civil service or employment law.

## **6. Support your authority in identifying incorrect organisational structures!**

Procedural processes can also give rise to situations in which corruption is possible. These can, for example, be procedures in which only one employee is responsible as a specialist. Work processes designed in such a way where only a single person can oversee them and making them difficult to check are also fundamentally risky. This can be remedied by changing the organisational structures. Talk to your supervisor or, if necessary, the contact person for corruption prevention!

## **Support your authority in detecting and investigating corruption!**

### **7. If there are any indications of corrupt behaviour, inform your superior or the contact person for corruption prevention.**

Corruption can be tackled effectively if every employee feels responsible for the authority in which they work.

The common goal of all is to avoid corruption!

If corruption is perceived among colleagues, they must not be protected in their behaviour and thus supported. Criminal offences, such as corruption, must be reported.

Don't make yourself partly responsible by looking the other way! Do not therefore participate in cover-up attempts. If the behaviour of colleagues gives you tangible and verifiable indications that they could be corrupt, you should not be afraid to speak to your superior or the contact person for corruption prevention!

A number of indicators can be warning signals for corruption if, for example, they are very pronounced, occur more frequently or occur in combination with others.

On their own, these indicators are of little significance. They do not necessarily indicate misconduct. Examples include the following:

### **Personal indicators**

- Personal issues (addiction, excessive debt, frustration, etc.),
- lack of identification with the task,
- targeted bypassing of controls, of necessary participation within the authorities and/or of the official channels; compartmentalisation of individual areas of responsibility,
- inexplicably high standard of living,
- constant indispensability (e.g. waiver of holidays, presence during illness),
- abuse of discretionary powers,
- noticeably divergent processing times for transactions,
- presence in the authority at unusual times without a discernible official reason,
- private contact with applicants, especially involving consultancy/expert contracts, equity investments.

### **Task-related indicators**

- Conspicuously accommodating treatment of applicants, – avoidance of obtaining comparative offers,
- significantly or repeatedly exceeding the planned order values,
- conspicuously frequent "calculation errors", reworking of tender specifications, costly additional work,
- secondary employment or applications for approval of secondary employment involving companies that are simultaneously contractors or applicants to the public administration,
- frequent business trips to certain companies (especially if overnight stays are incurred that are not actually required).

### **System-related indicators**

- Very high concentration of tasks on one person,
- inadequate controls, very weak supervisory and technical oversight,
- regulations that are difficult to understand.

### **Passive indicators**

- Smooth administrative processes in areas where conflicts are typically to be expected,
- absence of official reactions.

### **8. Engage in training and continuing professional development dealing with the topic of corruption!**

If you work in an area that is particularly susceptible to corruption, you are obliged to take advantage of the opportunities offered by the authority to receive training and continuing professional development regarding the manifestations, susceptibility situations, preventive measures, criminal law and the consequences of corruption under civil service or employment law. You will learn how to react if you are corrupted or discover corruption in your working environment. Education and training will make you confident to deal with the issue of corruption in the proper law-abiding manner. In this context, please refer to the e-learning opportunity "Corruption prevention for employees" and "Corruption prevention for managers", available at: <http://fortbildung.e-learning.hessen.de> for further information.

**Name:**

**Unit:**

**Declaration of Acknowledgement**

I have taken note of the Directive on Preventing and Combating Corruption in the Public Administration of the State of Hesse dated (StAnz. p. ) with its annexes.

I understand that this Declaration of Acknowledgement will be placed in my personnel file.

\_\_\_\_\_  
(Place/date)

\_\_\_\_\_  
Signature

## **Sample anti-corruption clause**

(1) The contracting parties declare their firm intention to counteract any form of corruption.

(2) The procurement office is entitled to withdraw from the contract for good cause if an advantage has been granted (Section 333 StGB) or a bribe has been given (Section 334 StGB). Other important reasons are the submission of tender bids based on agreements restricting competition within the meaning of Section 298 of the Act against Restraints of Competition (GWB) and participation in unauthorised restrictions of competition within the meaning of the GWB, in particular an agreement with third parties on the submission or non-submission of tender bids, on prices to be charged, on the payment of compensation for losses (profit sharing or other charges) and on the fixing of recommended prices.

The procurement office further reserves the right to exclude companies from future awards for a certain period of time in the event of corresponding violations in accordance with the Joint Circular of 12 December 2017 (StAnz. 2018 p. 15) regarding the exclusion of applicants and bidders due to serious misconduct that calls their reliability into question.

(3) Should the procurement office withdraw from the contract in accordance with paragraph 2, it shall be entitled to return previous deliveries. The value of deliveries not returned or services already used shall be reimbursed to the contractor on a pro-rata basis in line with the contract price. In the case of returned deliveries, the contractor shall reimburse the procurement office for any payment already made.

(4) The contractor shall compensate the procurement office for all damages incurred directly or indirectly as a result of withdrawal from the contract. Such withdrawal shall not entitle the contractor to any rights other than claims to remuneration with respect to deliveries and services used. Only Sections 347 to 351 and 354 BGB remain unaffected by the statutory provisions regarding the right of withdrawal.

(5) If there is a reason for withdrawal pursuant to paragraph 2, the contractor shall pay the procurement office a contractual penalty, irrespective of whether the procurement office exercises its right of withdrawal pursuant to paragraph 2 in whole or in part. The amount of the contractual penalty shall be 50 times the value of the gifts or other benefits offered, promised or granted in cases of corruption, up to a maximum of 10 per cent of the agreed contract price excluding VAT. If a value within the meaning of sentence 1 cannot be determined, the contractual penalty shall be 10 per cent of the total order value excluding VAT. Claims for damages shall remain unaffected.