

Designing a High Level Reporting Mechanism for Business – A Guidance Note for Governments

A High Level Reporting Mechanism (HLRM) is a tool that can:

- Provide a constructive approach for companies and governments to deal with bribery solicitation;
- Improve the prospects for foreign direct investment;
- Create trust and transparency for business;
- Be adapted to different legal or institutional contexts, making it a swift and flexible method to obtain practical results.

The HLRM concept was originally developed by the Basel Institute on Governance, OECD and Transparency International together with a group of international companies seeking alternatives to cumbersome and slow judicial processes: The HLRM is not a legal mechanism, and functions alongside law enforcement institutions.

HLRMs have been further specified and tested in a joint Basel Institute – OECD programme to put into operation the call made by businesses to G20 governments in 2012 to “*establish appropriate forms of ‘high level reporting mechanisms’ to address allegations of solicitation of bribery by public officials*”. In 2013, the G20 adopted guiding principles encouraging the establishment of “*easily accessible channels for companies and individuals that have been solicited to report to public authorities*”, and the B20 in 2014 and 2015 continues to promote the establishment of HLRMs in G20 member countries.

The Basel Institute and OECD offer support to governments to ensure an efficient approach to developing HLRMs which may include identifying relevant domestic stakeholders, evaluating different institutional and legal options in a given jurisdiction, as well as accompanying the development, implementation and monitoring of the HLRM to get it up and running in a reasonable time frame.

This document, which is non-prescriptive in its approach, provides general guidance to governments on how to develop and manage a HLRM. The note consolidates knowledge regarding similar mechanisms from various sources, including preliminary lessons drawn from practical experience in establishing two such mechanisms in Colombia and Ukraine.

Background

Companies around the world are frequently confronted with explicit or implicit requests for bribes in their dealings with government administrations, for example in the context of public procurement procedures, business permits and licenses or tax audits. Companies may also have to contend with unfair treatment creating uncertainty in the business context that could lead to a situation in which a bribe might be paid. Specific, rapid actions are required in such cases as companies face serious legal consequences if they resort to bribery, or they may risk losing business or face obstructions if they refuse to pay bribes. In some circumstances, local and foreign companies will disengage from government business, or leave a country entirely where lack of transparency and corruption levels make acting with integrity too difficult.

In such situations, a solution is required that allows companies to make complaints safely through a dedicated channel that does not involve the agency that is the subject of the complaint, and obtain swift remedial action. This kind of mechanism is all the more critical in countries with weak governance structures, and or, an inadequate judiciary due to concerns about the efficiency or independence of these institutions, and where existing reporting mechanisms have failed to provide rapid, impartial and constructive responses that are needed by businesses when faced with extortion or they are treated unfairly. It is these concerns that the concept of a High Level Reporting Mechanism seeks to address.

What is a High Level Reporting Mechanism?

An early recourse for companies. A HLRM is an in-country process for receiving, assessing, and quickly resolving complaints from companies confronted with bribery solicitation or other similar concerns in specific administrative processes or public projects. The primary purpose is to provide an early and independent point of recourse to companies and to propose, wherever possible, a ‘quick fix’ before the situation escalates.

An alternative and complement to other dispute resolution systems. A HLRM offers companies an alternative to legal or administrative systems or public accountability mechanisms, or national and international mediation/arbitration. HLRMs differ from these forms of dispute resolution in that they offer a simplified, faster way to settle issues, while still recognizing the right of companies to take their grievances to courts or other mechanisms, as HLRMs do not provide legal remedies. They are also distinct, as - unlike many other legal or quasi-judicial mechanisms - they do not require the company to show a breach of standards.

A mechanism built on principles that can be adapted to each jurisdiction’s particular context: The HLRM is not a rigidly defined mechanism: There is no one-size-fits-all approach, and a HLRM can take different forms. For example, a single HLRM can respond to a broad cross-section of industries, or it can be tailored to a specific industrial sector, or serve the requirements of business in relation to a particular public process (e.g. business licensing, customs/tax clearance, public procurement). A HLRM can also start out on a small scale as a pilot, before being rolled out more broadly. Whichever form and scope it takes, it should however embody a set of principles and functionalities:

- **A focus on bribe solicitation.** A HLRM is specifically designed to address the “demand side” of bribery by responding rapidly to incidences – explicit or indirect requests - faced by companies in their dealings with public officials. The focus of the mechanism is substantiated by the fact that companies are directly, and in some cases significantly, affected by solicitation of bribes or extortion but often lack viable options for raising their concerns through more formal structures such as the courts. A HLRM provides a readily accessible means for businesses to address bribery-related issues – directly, rapidly, and informally.
- **A mechanism that fits into the broader anti-corruption system.** HLRMs are intended to be complementary to other anti-corruption efforts. They are not intended to replace other reporting mechanisms

nor to undermine existing legal processes but rather to complement them by providing an avenue to companies that seek a more informal and trusted platform through which to address their grievances and obtain a speedy response to resolve issues. A HLRM should thus not inhibit access to judicial recourse or other accountability mechanisms. Businesses must be clearly informed of their rights to use alternative remedies if they choose to do so without turning to the HLRM or if they are not content with its response. For the same reason, it should be made clear that any grounded suspicion of bribery or other criminal, administrative matters will be referred to the authorities.

- **Legitimacy and strong commitment from the highest levels of government.** The HLRM must have clear, transparent and sufficiently independent governance structures to ensure that no party to the complaint can interfere with the fair conduct of the resolution process. As a prerequisite for this, the HLRM should offer a reporting channel that is above and independent of the agencies whose employees are alleged to be soliciting bribes. Participation of all stakeholders early in the mechanism design process can also help ensure greater trust and buy-in from them. Without strong commitment from the top levels of state authorities, the HLRM is however likely to be ineffective or underutilized.
- **Appropriate protection: A mechanism that prevents retaliation.** A HLRM will only work when companies are encouraged to share their concerns freely, without fear of retribution. Coming out with a complaint concerning bribery can pose risks for companies. A HLRM should incorporate ways to prevent harm. These precautions may include a policy of non-retaliation, measures to ensure confidentiality, safeguarding of personal data collected in relation to a complaint, and an option for complainants to submit anonymous complaints where necessary.
- **Engaging all parties: A Mechanism based on dialogue.** One of the strengths of a HLRM is its power to use informal means for quick problem solving. The power to initiate a dialogue with the complainant company in formal and informal settings, including where possible (i.e. when there is no fear of retribution for openly voicing complaints) with managers from the agency about which the complaint has been made, is important as a means of resolving disputes expeditiously. It may also help prevent a conflict from escalating.
- **A dedicated and thorough follow-up.** The HLRM is dedicated to follow-up to any pertinent matter that is reported. Whenever possible, a resolution will be sought by the mechanism's implementing institution itself. When law requires for the matter to be transferred to another competent authority, the HLRM will continue to follow the resolution process to ensure swift and appropriate outcomes.

How does a High Level Reporting Mechanism Benefit Companies and Governments?

Stop solicitation promptly and without prolonged delays to the concerned process. Where other accountability mechanisms are slow or untrusted, a mechanism that is tasked with responding swiftly and impartially to cases of solicitation or extortion should satisfy business expectations for a 'quick fix'. For example swift response to extortion when it occurs in the context of obtaining customs clearance is critical for businesses.

Demonstrate that a government is concerned about reducing bribery and a well-functioning business-related services sector. A HLRM can play a role in creating an environment conducive to investment. Businesses may have greater confidence in investing in a country if they know that, when solicited to pay bribes, they will be able to take their grievances to a dedicated body for quick resolution. A HLRM can also help create a "level-playing field for commerce", as unscrupulous competitors who act unfairly will ultimately be held accountable.

Mitigate or prevent adverse impacts on public projects and processes caused by corruption. For example in the context of procurement, a prompt response may prevent financial damages linked to early repair costs to maintain corrupt investments or adverse environmental impacts. In the context of tax inspections, a quick fix may prevent reputational damage to tax authorities that could be caused by lingering suspicions of impropriety.

Improving investor climate and credit rating. For a country considering a HLRM, the incentives for so doing include the likelihood of favourable responses by country credit rating agencies as well as international companies considering direct investments, and positive reputation repercussions.

Provide valuable feedback to governments. A HLRM can serve as an early warning system for wider problems; yield insights from individual complaints that spotlight changes that might be needed to the concerned agency's operations or management systems; or indicate possible systematic changes that may be required.

Complaints Management Process

Process steps. A HLRM should have a robust process in place for addressing complaints. Although the detail of actual processes for complaints resolution may vary from one country to another according to national context, it should include in its simplest form four steps: (i) receiving and screening the complaint; (ii) assessing the complaint; (iii) selecting a resolution approach; and (iv) settling the issue.

Admissibility criteria: Who can raise complaints? A HLRM may consider complaints from directly affected companies only or from third parties such as business associations, NGOs or individuals who may be aware of improprieties. In all cases, the HLRM should be available to all businesses, domestic and foreign.

Screening. Clear eligibility criteria should be established. Eligible complaints may include those where the complaint pertains to the project; the complainant has standing to file; the complaint falls within the scope of issues the HLRM has authority to address. To be most effective, the Mechanism should be open to a broad range of concerns, as solicitation encompasses many situations. For example, if a company questions whether the fees it is asked to pay to secure a sanitation clearance upon application for business permit are legitimate, the HLRM should address these concerns given that they may be disguised bribe payments.

Reviewing, investigating and settling complaints. For a HLRM to work, complaints should be promptly handled. For example, in the case of bidding, the timing of the Mechanism should allow resolution prior to the awarding of the tender. Process should also focus on dialogue and engagement. Specifically, in order to inform the process, HLRM staff responsible for handling complaints should involve managers from the departments/agencies whose activities have resulted in claims. Such inclusion may serve as a basis for the concerned agency's prompt response, or for a set of recommendations or a decision – which can be binding or non-binding- issued by HLRM senior managers. Recommendations or non-binding decisions can be both powerful and compelling, especially if the Mechanism benefits from top political commitment and relies on a transparent process that allows for the possibility of social pressure for voluntary compliance with its outcome.

Specific case where there are reasonable grounds to suspect a violation of the law. In such situations, deferral to competent enforcement authorities is likely to be necessary. Wherever possible, the entity whose employees have allegedly committed unlawful acts should be expected to take temporary corrective actions (e.g. suspending the effect of the decision taken by its staff) until a thorough assessment is received from the competent authorities. If it appears that suspicion persists, they will decide what subsequent action should be taken. Wherever possible, the identity of the complainants –if known- should be made anonymous in the report filed with the authorities, provided that they will be able to contact them without delay. In any event, complainants should have an opportunity to make an informed decision about how they wish to proceed.

Remedies: What kind of response companies can expect from the Mechanism? One of the potential advantages of a HLRM is its flexibility. As such, it should provide a set of possible remedies appropriate for different types of complaints. Remedies may include altering or halting harmful activities through, for example,

moving the public official whose behaviour is suspicious, delaying the awarding of a public contract, amending the requirements for customs clearance, or revising the concerned agency's policy.

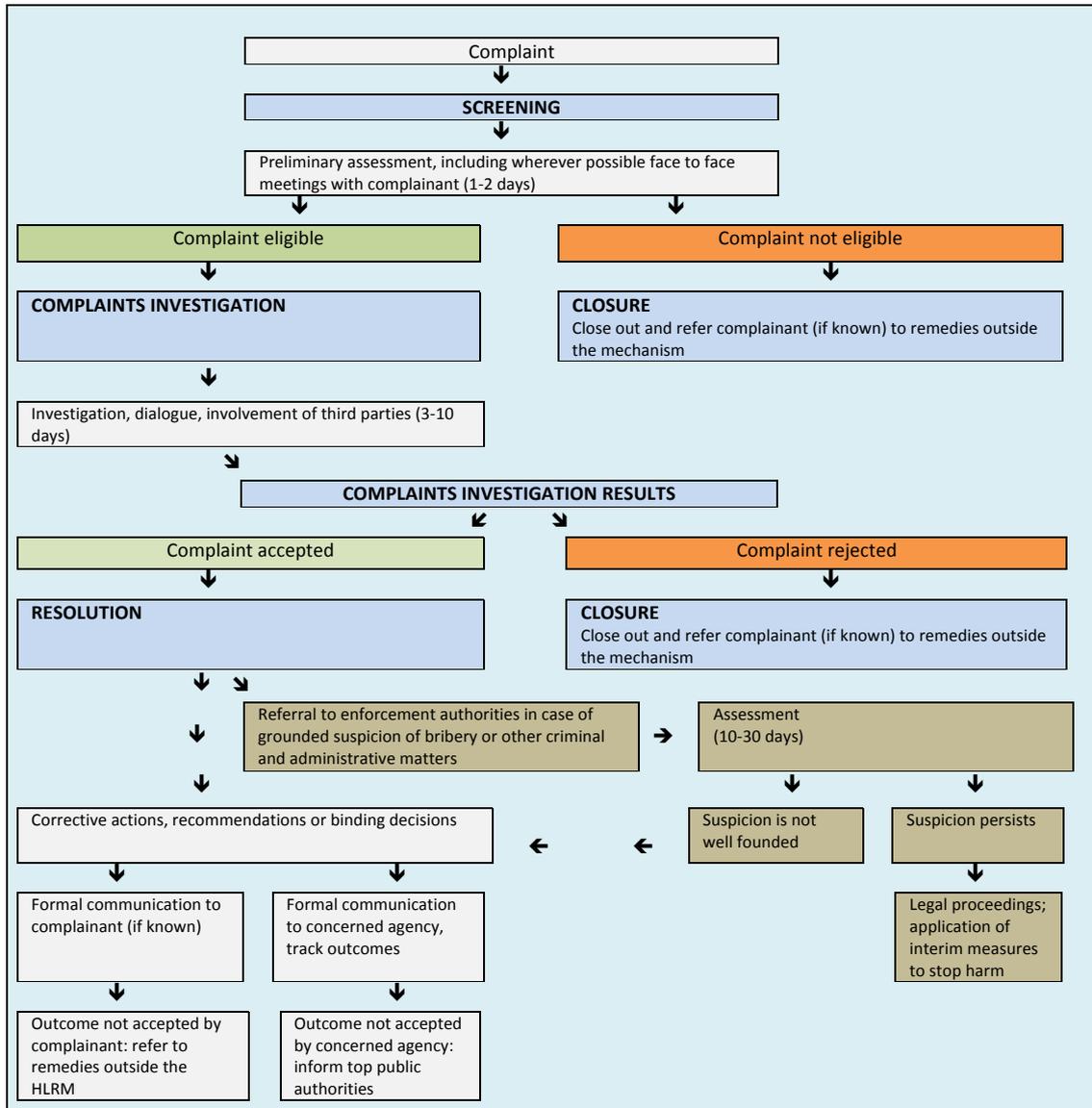


Figure 1. Basic High Level Reporting Mechanism Process (with suggested timelines)

Governance

Finding a home for the Mechanism. Where the HLRM resides and who is responsible within the Mechanism will send a strong signal to all stakeholders about the government's commitment to combat solicitation. While the HLRM's home should be in a prominent place in the hierarchy of public authorities and high-level personnel should be assigned to manage it, its activities should be mainstreamed in the work of government. If responsibility for resolution of complaints is assigned to a specific ministry, this entity may not have the authority to secure effective resolutions from other government agencies subject to its control. Similarly, the effectiveness of the

HLRM is likely to be compromised if it is totally disconnected or only loosely linked to government, which is often the source of a complaint and therefore needed to be engaged in resolution. In that case, the HLRM should have a clear legal basis for obtaining the necessary inputs and cooperation from government agencies.

Involving third parties. Involving third parties – such as academics, NGOs, experts- in the Mechanism may help increase the level of trust from businesses as well as overcome certain limitations of the HLRM such as possible conflict of interest and biases, provided that they themselves are perceived to be unbiased and impartial relative to both the companies and the concerned public agencies. Their role may include reviewing complaints; acting as advisors for the resolution of conflicts; helping safeguard the fairness of the system through oversight functions; and advising on long-term systemic reform.

Funding. The functions of a HLRM are intrinsic to the actions that a state should undertake to prevent corruption and for this reason it should ideally be financed publicly. But given current pressures on public finances in many countries of the world, it should not be excluded that its costs be borne partly or fully by the business community from which the HLRM’s work arises or are covered on the basis of a mixed financing model (public-private or/and donor funding). Each strategy nevertheless presents risks. Where companies are to be major funders, this may raise potential conflicts of interest. On the other hand, too great a share of donor financing can erode the Mechanism’s legitimacy. Donor policies also change and may decide to disengage, especially if they are not content with the performance of the Mechanism.

Accessibility, Transparency and Accountability

Publicizing the Mechanism. Companies can only access the HLRM if they know about it, and where to find it. As part of this requirement the HLRM should have a website, which would also allow the complainant to submit a complaint online. Any HLRM should also have a published procedure that is clear and simple while providing details about how the Mechanism works, who can access it and how. It is also crucial to make sure that appropriate public agencies are aware of process and know when and how companies can refer to it. It is also important that companies raise awareness about the Mechanism among their employees.

Reporting back to stakeholders. Information about the outcomes of the Mechanism should be provided as this knowledge can contribute towards a greater understanding by all parties. The Mechanism should thus provide regular feedback to stakeholders to clarify expectations about what it does and does not do; to encourage companies and individuals to use the Mechanism; to report on results; and to gather observations to improve it. Information reported back may include the nature and volume of complaints and the responses thereto, and the way the complaints have influenced public policies, procedures, operations, and the Mechanism itself.

Monitoring, evaluating and improving the Mechanism. Accountability is an essential condition for continuous trust in the HLRM. Regular monitoring is necessary to safeguard its credibility and sustainability. Credibility of the process and trust between companies and exposed public authorities will be enhanced if an oversight group with advisory authority, composed of business, civil society, and government representatives is set up to monitor and evaluate the performance of the Mechanism. Clear evaluation criteria may include: general awareness of the Mechanism; whether it is used and by whom; the types of issues addressed; its ability to resolve complaints early and constructively; and outcomes (impacts, benefits).

Using the Mechanism as a vehicle of change. HLRMs should not just be accountability mechanisms but also vehicles of change. In addition to protecting businesses from abuse, a HLRM is an opportunity for identifying systematic regulatory risks and promoting policy changes and improved public service delivery. The Mechanism should thus have power to advise the government on the systematic causes of bribe solicitation or to submit proposals on how to improve administrative processes.