

Anti-Corruption Clauses in Transnational Petroleum Contracts: A Taxonomy

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ABSTRACT

In a world where corruption persists despite global anti-corruption efforts and legal frameworks, this article looks at how Transnational Corporations (“TNCs”) can lead the fight against corrupt practices. With growing operations in different territories, TNCs can establish internal governance frameworks that align with anti-corruption standards, while demonstrating their commitment to combatting corruption across borders through their employees, agents, and projects. The holistic anti-corruption approach employed by TNCs encompasses both traditional and innovative mechanisms. This article specifically focuses on a recent corporate innovation: contractual anti-corruption clauses designed as an additional due diligence tool for contracting parties. The main purpose of these clauses is to mitigate the potential risks of corruption that are likely to arise among contractors, third parties, intermediaries, and sub-agents. Despite the increasing prevalence and endorsement of anti-corruption clauses in different jurisdictions, such as the UK and the US, their in-depth examination remains limited. Through an analysis of 1,164 transnational petroleum contracts, this article proposes the categorisation of anti-corruption clauses into two general types: (i) direct clauses, specifically intended for anti-corruption purposes; and (ii) indirect clauses, not originally designed for anti-corruption purposes. The article further describes their distinct characteristics and proposes sub-categories for each type. It will be argued that, while direct clauses clearly commit parties to anti-corruption standards, indirect anti-corruption clauses enable parties to enforce anti-corruption commitments in the absence of direct clauses. Recognising their potential to drive normative shifts towards enhanced anti-corruption measures, this article introduces a Standard Clause, encompassing both direct and indirect types, to be adopted as an industry standard practice in contracts.

Keywords: anti-corruption clauses, petroleum contracts, transnational law, anti-corruption laws, anti-corruption compliance

I. INTRODUCTION

Despite the rise of global anti-corruption movements and the strong emergence of international and national anti-corruption laws, corrupt practices remain prevalent in most places,

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and countries still struggle to translate these laws into practice.¹ On the other hand, in most countries, political and economic elites resist anti-corruption reforms that could jeopardise their interests and disrupt the existing status quo.² In situations where internal actors lack the motivation for such initiatives, external actors, such as other states, international organisations, and transnational actors, enter the scene by offering incentives and disincentives to mitigate the allure of corrupt practices for internal actors. Among these external actors, Transnational Corporations (“TNCs”) can develop their own regime-like framework to govern their internal activities. Through this, they can contribute to the standards established by state actors to solve transnational issues. Among various standards, TNCs may choose to comply with the transnational anti-corruption legal regime to avoid the cost of non-compliance with anti-corruption laws.³ As a result, TNCs decide to strengthen their anti-corruption compliance as they expand into new overseas markets. Such a decision extends anti-corruption standards among their employees and third-party agents and within their projects across countries.

TNCs have embraced a comprehensive anti-corruption toolkit to better address the challenges posed by corruption, including substantial fines, imprisonment, and civil or administrative penalties that impact their reputation and future eligibility for public contracts. This toolkit consists of a set of mechanisms, such as codes of conduct, anti-corruption training, whistleblowing mechanisms, and audits, designed to assist companies in preventing and detecting corrupt behaviour among their employees and third-party agents.⁴ In addition to the traditional anti-corruption toolkit, this article explores a more recent and innovative corporate mechanism that companies can embrace to mitigate the risk of corrupt practices in their business relationships: contractual anti-corruption clauses. These clauses function as an additional due diligence tool for the contracting parties to reduce potential risks associated with corrupt conduct involving the other parties, third-party intermediaries, and sub-contractors. Significantly, the incorporation of such clauses is endorsed by several jurisdictions and anti-corruption enforcement agencies, such as the Serious Fraud Office in the UK, which is responsible for enforcing the UK Bribery Act 2010 (‘UKBA 2010’), and both the US Department of Justice (‘DOJ’) and the US Securities and Exchange Commission, which are entrusted with enforcing the Foreign Corrupt Practices Act 1977 (‘FCPA 1977’).⁵

Despite the increasing prevalence of anti-corruption clauses in contracts, there have been few attempts to study them.⁶ This article seeks to address this gap by examining anti-corruption clauses in the specific context of transnational petroleum contracts. The article recognises that each sector and country have their own unique types and norms of corruption, making it untenable for one-size-fits-all anti-corruption remedies to be universally successful

¹ In the Corruption Perception Index 2023, conducted by Transparency International to assess the perceived level of corruption on a scale from 0 to 100, the average score among 180 countries was 43, and the majority of states showed minimal or no progress in their efforts to combat corruption over the past few years. See ‘Corruption Perceptions Index 2023’ (*Transparency International*) <www.transparency.org/en/cpi/2023> accessed 25 May 2024.

² Anna Persson, Bo Rothstein and Jan Teorell, ‘Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem’ (2013) 26 *Governance* 449, 462.

³ Heiko Pleines and Ronja Wösthelrich, ‘The International–Domestic Nexus in Anti-Corruption Policy Making: The Case of Caspian Oil and Gas States’ (2016) 68 *Europe-Asia Studies* 291, 292.

⁴ See for example OECD, ‘Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change’ (OECD Publishing 2020) <www.oecd.org/corruption/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf> accessed 25 May 2024.

⁵ Foreign Corrupt Practices Act, 15 USC § 78dd–1 *et seq* (1977) (‘FCPA 1977’).

⁶ See generally Jeffrey R Boles, ‘The Contract as Anti-Corruption Platform for the Global Corporate Sector’ (2019) 21 *University of Pennsylvania Journal of Business Law* 807.

across all sectors and countries. Therefore, adopting a sector-based or country-based approach can help to select and adopt appropriate anti-corruption remedies. Corruption risks persist across different business sectors. However, the extractive sector stands out as one of the largest contributors to transnational bribery, with almost one in five bribery cases occurring in this sector.⁷ The oil and gas sector poses the highest risk in terms of FCPA matters,⁸ with companies within this sector frequently being expected to engage in bribery, closely trailing those in construction, utilities, and real estate.⁹ The complexity of projects and substantial investments within this sector create opportunities for individuals to exploit public funds for private gains through different forms of corruption across different stages of the industry. Moreover, the presence of numerous TNCs in the petroleum sector adds another layer of complexity. For example, reports reveal that major oil companies have made significant financial investments in misleading climate-related branding and lobbying strategies.¹⁰ Collectively, these factors transform the petroleum sector into a fertile ground for various types of corrupt practices, making it an appropriate subject for research on corruption and anti-corruption measures.

Therefore, this article aims to examine anti-corruption clauses in the petroleum sector and to propose a taxonomy of such clauses based on the review of actual contracts within the sector. The aim of this investigation and the proposed taxonomy is to provide a comprehensive understanding of how anti-corruption commitments are integrated into contractual clauses within the petroleum industry, which further allows for the identification of patterns, trends, and variations in the language and structure of these clauses in real-world practices.

This article refrains from providing a specific definition of corruption in the petroleum sector, as there is no universal definition that can cover all types and forms across regions and countries. When using the term ‘corruption’, this article specifically refers to its most prevalent types in the petroleum sector, including bribery, embezzlement, conflicts of interest, different types of favouritism, fraud, and money laundering.¹¹

The investigation leading to a proposed taxonomy will be split into four sections. First, the methodology will be outlined in Section II. Following this, Section III will provide an overview of anti-corruption clauses by exploring their origins and dynamics, citing their endorsement in key domestic anti-corruption laws and international anti-corruption standards. Subsequently, Section IV will propose a classification system for these clauses according to their level of commitment, derived from the review of actual petroleum contracts. It primarily categorises anti-corruption clauses into two broad groups: direct and indirect anti-corruption clauses. Within each category, it specifies further subcategories along with their distinct characteristics, while providing examples of existing clauses discovered within petroleum contracts. Upon reviewing the number of anti-corruption clauses in 1,164 contracts, the results of which are detailed in Annex I, this article concludes in Section V that parties have indeed begun to incorporate such clauses into their contracts. However, it will be suggested that there is a need for a more extensive inclusion and adoption of anti-corruption clauses in contracts.

⁷ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* (OECD Publishing 2014) 21.

⁸ ‘Industry Classifications of FCPA Matters’ (*Foreign Corrupt Practices Act Clearinghouse*) <fcpa.stanford.edu/statistics-analytics.html?tab=9> accessed 25 May 2024.

⁹ Deborah Hardoon and Finn Heinrich, *Bribe Payers Index 2011* (Transparency International 2011) 18.

¹⁰ ‘Big Oil’s Real Agenda on Climate Change 2022’ (*InfluenceMap*, September 2022) 3 <<https://influencemap.org/report/Big-Oil-s-Agenda-on-Climate-Change-2022-19585>> accessed 25 May 2024.

¹¹ See generally OECD, *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives* (OECD Publishing 2016).

To address this need, a Standard Clause—which is a comprehensive anti-corruption clause found in an actual contract¹²—will be proposed to serve as a model that covers almost all types of anti-corruption clauses that are discussed in this article. This Standard Clause is attached in Annex II.

II. METHODOLOGY

Examining actual petroleum contracts helps to document the prevalence, adoption, and variation of anti-corruption clauses. The inclusion or absence of these clauses can act as indicators of adherence to legal and ethical standards. Moreover, the diversity in petroleum contracts across different jurisdictions may result in the implementation of different types of anti-corruption clauses. Hence, this article, which is part of a larger thesis project at McGill University's Faculty of Law, employs an empirical methodology not only to identify the existence of these clauses in petroleum contracts but also to categorise them systematically.

A major challenge encountered was the confidentiality clauses present in many petroleum contracts that restrict public access to terms and conditions. However, in line with the Extractive International Transparency Initiative, certain companies and states have initiated the publication of contracts in an online repository, the Resource Contracts Portal. As of April 2023, this portal has published 1,807 petroleum contracts categorised as 'hydrocarbons'.¹³ From this pool, 1,000 original contracts were selected for examination, comprising 81 model contracts and 919 actual contracts, along with their 164 amendments. Thus, a total of 1,164 petroleum contracts underwent study. The selection process involved studying hydrocarbon contracts from all countries, except those from Tunisia (totalling 258) and approximately one-third of Colombian contracts (113 contracts). This decision was made because of their disproportionately large number compared to contracts published from other countries, which could potentially impact result accuracy. Regarding contract language, 640 contracts were in English (either in the original version or with an English translation), 375 contracts were in Spanish, 136 contracts were in French, 11 contracts were in Portuguese, and two contracts were in Polish. For contracts not in English or French, relevant provisions and clauses were reviewed using Google Translate.

Another challenge arose due to the extensive length of petroleum contracts, with some exceeding 100 pages. To address this issue, a Python code was used. Python is a computer programming language often used to build websites and software, but it has also proven to be useful for data analysis. A specific list of keywords, including terms like corruption, bribery, gift, and ethics, alongside their equivalents in other languages, was compiled for the code.¹⁴ The code scanned the text of the contracts for these keywords and, if any were found,

¹² Unitization and Unit Operating Agreement covering the Jubilee Field Unit located offshore the Republic of Ghana (13 July 2009) (Jubilee Agreement) 99-102, arts 21.1-21.4 <<https://resourcecontracts.org/contract/ocds-591adf0771447862/view#/>> accessed 25 May 2024.

¹³ See 'Contracts for Hydrocarbons' (*Resource Contracts*) <<https://resourcecontracts.org/resource/Hydrocarbons>> accessed 25 May 2024.

¹⁴ The following keywords were used in the code: corrupt, bribe, fraud, misrepresent, misuse, conflict, prohibit, false, illicit, illegal, abuse, fault, launder, facilitat(e)/tion, transparency, donat(e)/tion, contribution, gift, social responsibility, ethics, economic order, culpa, suborn, *soudoyer*, *dolo*, *éticos*, *responsabilidad social*, *détournement*, *blanchiment*, *cadeau*, train, formation, *formação*, *entrenamiento*, *capacitación*, *formación*, audit, inspect, account, *contabilidad*, surveil, verification, third party, assign, transfer, cession, *sous-traitant*, sub-contract, breach, termination, cancel, material breach, *défaillance*, penalty, *terminación*, *résiliation*, applicable law, laws and regulations, compl(y)/iance), *diligent(ce)/()*, governing law, industry practice, *cumpla*, *buenas prácticas*, *eis aplicável*, *loi/ley applicable*, and *droit applicable*.

it displayed their repetition numbers. Upon identification of any specified keyword, a detailed review of relevant clauses was conducted. In addition to keywords, specific clauses in all contracts covering aspects such as compliance, assignment, guarantees, audits, training, terminations, and breaches, were thoroughly examined. All identified clauses were compiled into an Excel sheet and initially categorised. A second review was undertaken to ensure the accuracy and consistency in categorisation across all 1,164 contracts. Once all identified clauses were double-checked, an analysis was conducted on these clauses, and a proposed classification of anti-corruption clauses was developed based on their types of commitment.

It should be noted that the findings and classifications proposed in this article are based on the examination of a limited sample of 1,164 petroleum contracts, which may impact the generalisability of the results to the entire petroleum industry. Moreover, the uneven availability of contracts in the database results in a disproportionate representation of certain countries with more published contracts. Therefore, further research is required to investigate thoroughly the realm of anti-corruption clauses and their efficacy, particularly within a broader spectrum of sectors and countries.

Having outlined the methodology, this article will proceed to introduce anti-corruption clauses and their origins and dynamics in Section III, followed by a proposal for a classification system in Section IV.

III. USING CONTRACT LAW FOR DUE DILIGENCE IN ANTI-CORRUPTION COMPLIANCE

The large presence of third parties in the operations and business activities of TNCs increases the liability risks associated with compliance with anti-corruption laws.¹⁵ These third-party affiliates usually serve a TNC's business partners, including consultants, sales and marketing agents, lawyers, suppliers, distributors, brokers, as well as contractors and sub-contractors. Statistics from reported FCPA cases as of May 2024 show that approximately 90 per cent of FCPA-related enforcement actions (296 out of 332 cases) were connected to the involvement of third parties and intermediaries.¹⁶

Given the widespread occurrence of corruption among third-party agents, the FCPA 1977, the UKBA 2010,¹⁷ and the Corruption of Foreign Public Officials Act 1998 (Canada)¹⁸ all mandate that companies establish internal control policies to prevent corruption among their agents and intermediaries. For example, the 'FCPA Resource Guide' specifies that a company bears responsibility 'when its directors, officers, employees, or agents, acting within the scope of their employment, commit FCPA violations intended, at least in part, to benefit the company'.¹⁹ The UKBA 2010 further introduces a new form of corporate liability for

¹⁵ David Hess and Thomas W Dunfee, 'Fighting Corruption: A Principled Approach; The C Principles (Combating Corruption)' (2000) 33 *Cornell International Law Journal* 593, 622, stating that '[a]gents, particularly those assisting with sales and marketing, often have been the conduits through which firms have made payments. In some circumstances, firms may not have known whether the marketing agents have used part of their commissions and fees to make improper payments to public officials.'

¹⁶ 'Third-Party Intermediaries Disclosed in FCPA-Related Enforcement Actions' (*Foreign Corrupt Practices Act Clearinghouse*) <<https://fcpa.stanford.edu/statistics-analytics.html?tab=4>> accessed 25 May 2024.

¹⁷ UKBA 2010, ss 7(1), 8(1).

¹⁸ Corruption of Foreign Public Officials Act, SC 1998, c 34, s 3(1).

¹⁹ Criminal Division of the US Department of Justice and the Enforcement Division of the US Securities and Exchange Commission, 'A Resource Guide to the US Foreign Corrupt Practices Act' (2nd edn, US Department of Justice, July 2020) ('FCPA Resource Guide') 28 <<https://www.justice.gov/criminal/criminal-fraud/file/1292051/dl>> accessed 25 May 2024.

commercial organisations regarding their failure to prevent bribery of ‘associated’ individuals, including their employees and third-party agents.²⁰ In addition to these domestic regulations, several international and transnational organisations recommend that companies establish effective anti-corruption compliance programmes to oversee the activities of their third-party agents.²¹ Consequently, TNCs may conduct due diligence when engaging third parties and may regularly conduct thorough examinations of their business partners to mitigate the risks associated with third-party corruption.²²

Although codes of conduct and other anti-corruption compliance tools can help TNCs to hold their employees to anti-corruption standards, these tools cannot guarantee that contracting partners and third-party agents will conduct their business activities without engaging in corrupt practices. As a result, TNCs are consistently exposed to liability risks regarding the corrupt behaviour of other individuals or businesses with whom they enter into contracts, as well as the corrupt behaviour of their third-party agents when conducting activities on their behalf abroad. In such situations, contract law offers a viable solution as a risk reduction strategy, in the form of a ‘contractual anti-corruption clause’.²³ In other words, TNCs can ensure that anti-corruption safeguards govern their contractual relationships by incorporating anti-corruption commitments into their contract terms with business partners and third-party agents.

Anti-corruption clauses, functioning as due diligence tools, offer protection to TNCs against the involvement of business partners and third-party agents in corrupt practices and further promote global anti-corruption standards among businesses. These clauses allow parties to establish a contractual commitment to exclude corrupt practices throughout the agreement, including all phases from negotiation to post-conclusion.²⁴ As a result, such clauses equip companies with a mechanism to minimise the risk of potential corruption in their interactions with other parties, while also acting as a shield against civil and administrative penalties.²⁵ This section will briefly discuss the identified anti-corruption clauses proposed by different initiatives and will also highlight key jurisdictions that endorse their incorporation in contracts.

The inclusion of anti-corruption clauses in contracts is a recent, yet important, development in the anti-corruption toolkit.²⁶ International law lacks a standardised approach to such clauses. However, the International Chamber of Commerce (‘ICC’) introduced a model

²⁰ UKBA 2010, s 8. For further information on the corporate liability for commercial organisations, see F Joseph Warin, Charles Falconer and Michael S Diamant, ‘The British Are Coming!: Britain Changes Its Law on Foreign Bribery and Joins the International Fight Against Corruption’ (2010) 46 *Texas International Law Journal* 1, 27–28.

²¹ For a non-exhaustive list of these instruments, see Asia-Pacific Economic Cooperation, ‘APEC Code of Conduct for Business’ (September 2007) <www.apec.org/Publications/2007/09/APEC-Anticorruption-Code-of-Conduct-for-Business-September-2007> accessed 25 May 2024.

²² OECD, ‘Good Practice Guidance on Internal Controls, Ethics, and Compliance’ (18 February 2010) (‘OECD Good Practice Guidance’) para 6 <<https://www.oecd.org/daf/anti-bribery/44884389.pdf>> accessed 25 May 2024.

²³ See generally Boles (n 6).

²⁴ David Hess and Thomas W Dunfee’s C2 principles include that companies need ‘[t]o require all agents of the firm to affirm that they have neither made nor will make any improper payments in any business venture or contract to which the firm is a party’ and ‘[t]o require all suppliers of the firm to affirm that they have neither made nor will make any improper payments in any business venture or contract to which the firm is a party’: Hess and Dunfee (n 15) 621.

²⁵ Boles (n 6) 810.

²⁶ Nicola Bonucci, Philippe Bouchez El Ghozi and Nicolas Faguer, ‘Anti-Corruption and Contractual Relations: Beyond Words, Legal Consequences’ (*Paul Hastings*, 22 May 2020) <www.paulhastings.com/insights/client-alerts/anti-corruption-and-contractual-relations-beyond-words-legal-consequences> accessed 25 May 2024.

anti-corruption clause in 2012, which is available for adoption by companies of all sizes.²⁷ This model provides parties with three options for incorporating the clause into their contracts:

1. Referring to Part I of the ICC Rules on Combating Corruption ('ICC Rules') in the contract;
2. Incorporating the text of Part I of the ICC Rules into the contract; or
3. Referring to a corporate anti-corruption compliance programme, as described in article 10 of the ICC Rules.²⁸

The first two options require a commitment from the parties, their employees, and third parties under their control or influence to refrain from participating in any corrupt practices detailed in Part I of the ICC Rules,²⁹ both during the contract term and after. Part I of the ICC Rules advises companies to prohibit unconditionally corrupt practices in all circumstances and types and further defines these practices to 'include Bribery, Extortion or Solicitation, Trading in Influence and Laundering the proceeds of these practices'.³⁰ Alternatively, the third option obliges parties to implement a corporate anti-corruption compliance programme, as outlined in article 11 of the ICC Rules,³¹ throughout the contract's term. These proposed clauses also address instances of non-compliance: should one party become aware of the other party's failure to comply with Part I of the ICC Rules or identify material deficiencies in their compliance anti-corruption programme, they are required to notify the non-compliant party promptly. This notification provides the party accused of violating the clause with an opportunity to remedy the situation.³² Failure to take the necessary remedial measures in all three scenarios provides the other party with the right to suspend or terminate the contract.³³

In addition to the ICC's model anti-corruption clause, the 2004 'Partnering Against Corruption: Principles for Countering Bribery' suggest that 'the agent, advisor or other intermediary should contractually agree in writing to comply with the enterprise's [anti-corruption compliance] Programme',³⁴ with non-compliance granting the company the 'right of termination'.³⁵ Similarly, the OECD 'Good Practice Guidance' recommends that companies inform other parties of their commitments to comply with anti-corruption standards and request 'reciprocal commitment[s]' from third parties.³⁶ Moreover, in its 'Anti-Corruption Programme

²⁷ ICC Commission on Corporate Responsibility and Anti-Corruption and the Commission on Commercial Law and Practice, *ICC Anti-Corruption Clause* (ICC Publication No 740E, ICC 2012) (*ICC Anti-Corruption Clause*).

²⁸ *ibid* options I-III.

²⁹ ICC Corporate Responsibility and Anti-Corruption, 'ICC Rules on Combating Corruption' (first published 1977, ICC 2011) <www.edc.ca/content/dam/edc/en/non-premium/ICC-Rules-on-Combating-Corruption-2011.pdf> accessed 25 May 2024 ('ICC Rules'). The ICC Rules were recently revised in 2023: see ICC, 'ICC Rules on Combating Corruption: 2023 Edition' (ICC, 11 December 2023) <<https://iccvbo.org/wp-content/uploads/sites/3/2023/12/2023-ICC-Rules-on-Combating-Corruption-1.pdf>> accessed 25 May 2024.

³⁰ ICC Rules (n 29) 5.

³¹ Article 11 further provides a list of measures that a company can take against corruption in its specific circumstances: see *ibid* 9-11.

³² *ICC Anti-Corruption Clause* (n 27) options I(3), II(3), III(2).

³³ *ibid*.

³⁴ World Economic Forum, Transparency International and the Basel Institute on Governance, 'Partnering Against Corruption: Principles for Countering Bribery' (World Economic Forum, October 2004) 10 <https://media.corporate-ir.net/media_files/irol/70/70435/PACL.pdf> accessed 25 May 2024.

³⁵ *ibid*.

³⁶ OECD, 'Good Practice Guidance' (n 22) para 6.

for Organisations', the Global Infrastructure Anti-Corruption Centre ('GIACC') advises companies to include anti-corruption policies in their contract terms.³⁷ The GIACC offers two contractual options: a 'simple anti-corruption prohibition' or a 'more comprehensive' set of anti-corruption provisions. The former suggests that, 'as far as is reasonable, all contracts between the organisation and the business associate should contain a prohibition of corruption'.³⁸ On the other hand, the latter option allows companies to integrate more inclusive anti-corruption terms, such as training, audit, investigation, and indemnification, into their contracts.³⁹ Moreover, Transparency International has introduced a distinct, yet conceptually related, tool for preventing corruption in public contracting since the 1990s. This instrument, known as an Integrity Pact, 'is both a signed document and [an] approach to public contracting which commits a contracting authority and bidders to comply with best practice and maximum transparency'.⁴⁰ Usually, a third party, often a civil society organisation, oversees the entire process and the commitments made by all involved parties.

Beyond these voluntary initiatives, this article has identified only one state that mandates anti-corruption clauses in its petroleum sector, which is Indonesia. The Indonesian Government enforces an audit clause in procurement contracts that requires subcontractors to adhere to international anti-corruption laws. The origin of this approach dates back to 2014 when SKK Migas, the Special Task Force for Upstream Oil and Gas Business Activities, took steps to rebuild its reputation following the arrest of its chairman on corruption charges.⁴¹ The new chairman introduced measures to enhance transparency and accountability, including granting SKK Migas and contractors the authority to conduct audits on vendors to ensure compliance with the FCPA 1977, the UKBA 2010, and the Corruption Eradication Act (Indonesia).⁴² In other words, rights-holders are given the right to audit their subcontractors to ensure compliance with transnational anti-corruption norms.⁴³

Several jurisdictions endorse the inclusion of anti-corruption clauses in contracts. In the US, for example, the 'FCPA Resource Guide', which provides guidance on successor liability, recommends measures such as requiring third-party distributors and agents to 'complete training, and sign new contracts that incorporate FCPA and anti-corruption representations and warranties and audit rights'.⁴⁴ In another section, when addressing risk management in the context of hiring consultants, the Guide suggests that companies should ensure, amongst other measures, 'training Consultant on the FCPA and other anti-corruption laws; requiring Consultant to represent that he will abide by the FCPA and other anti-corruption laws; including audit rights in the contract (and exercising those rights)'.⁴⁵ Furthermore, the

³⁷ 'Anti-Corruption Programme for Organisations' (GIACC, 10 April 2020) <<https://giaccentre.org/programme-organisations/>> accessed 25 May 2024.

³⁸ 'Contract Terms' (GIACC, 10 April 2020) <<https://giaccentre.org/contract-terms/>> accessed 25 May 2024.

³⁹ These obligations will be elaborated on in greater detail later. For a complete list of suggested provisions, see *ibid.*

⁴⁰ 'Integrity Pacts' (*Integrity Pacts*) <<https://www.transparency.org/en/tool-integrity-pacts>> accessed 25 May 2024.

⁴¹ Michael Buehler, '“Try to Be More Like Norway on a Sunny Day!” Regulatory Capitalism and the Challenges of Combatting Corruption in Indonesia's Upstream Oil and Gas Sector Supply Chains' (2020) *Oil, Gas and Energy Law* 15–16 <<https://www.ogel.org/article.asp?key=3904>> accessed 25 May 2024.

⁴² Law No 31 of 1999 on Corruption Eradication.

⁴³ Buehler (n 41) 16.

⁴⁴ 'FCPA Resource Guide' (n 19) 32, 34.

⁴⁵ *ibid.* 63.

DOJ, in its Opinion Procedure Releases⁴⁶ and Deferred Prosecution Agreements,⁴⁷ calls upon companies to incorporate anti-corruption provisions into third-party contracts as part of their anti-corruption compliance programme.

Moreover, the incorporation of anti-corruption clauses into contracts represents a crucial step in mitigating the risks associated with third-party liability, provided that these clauses are properly inserted, enforced, and compliant with relevant regulations and guidelines. While an anti-corruption clause cannot absolve TNCs of criminal liability, it may shift the liability risk to third parties if TNCs can demonstrate the proper integration and enforcement of these clauses in their respective contracts with third parties, in harmony with their anti-corruption compliance programmes.⁴⁸

For example, in the US, the ‘Principles of Federal Prosecution of Business Organizations’ in the ‘Justice Manual’ provide prosecutors with guidelines for investigating corporations, considering charges, and negotiating agreements.⁴⁹ These principles emphasise the importance of the adequacy and effectiveness of the corporation’s compliance programme at the time of the offence and charging decision, as well as the corporation’s remedial efforts to enhance their compliance programme.⁵⁰ The US ‘Sentencing Guidelines’ also consider the presence of an effective compliance programme when determining organisational criminal fines.⁵¹ Moreover, as part of third-party management in the DOJ’s ‘Evaluation of Corporate Compliance Programs’, designed to assist prosecutors in assessing the effectiveness of a corporation’s compliance programme at the time of the offence, the document advises prosecutors to evaluate the company’s ‘Appropriate Controls’ and ‘Management of Relationships’.⁵² Accordingly, policies are deemed necessary to document the company’s effective management of third parties. Contractual anti-corruption clauses, as a documented commitment, serve as crucial evidence in case of inquiries from a DOJ officer. Having these clauses readily available can significantly influence the DOJ’s decision when prosecuting corrupt actions.

⁴⁶ See for example US Department of Justice, *FCPA Opinion Procedure Release 2008-02* (13 June 2008) <www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/04/11/0802.pdf> accessed 25 May 2024. The first reference of the DOJ to anti-corruption clauses is related to the ‘Consent and Undertaking of Metcalf & Eddy, Inc’ in *United States v Metcalf & Eddy, Inc*, No 99-CV-12566-NG (D Mass 1999) para 4(i), stating that the compliance programme shall include ‘in all contracts and contract renewals... with agents, consultants, and other representatives... that no payments of money or anything of value will be offered, promised or paid’.

⁴⁷ See for example the Deferred Prosecution Agreement in *United States of America v Panalpina World Transport (Holding) Ltd*, No 4:10-CR-00769 (SD Tex 2010) para 12, stating that, ‘[w]here necessary and appropriate, Panalpina will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the anti-corruption laws, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the anti-corruption laws’.

⁴⁸ Gordon Kaiser, ‘Corruption in the Energy Sector: Criminal Fines, Civil Judgments, and Lost Arbitrations’ (2013) 34 *Energy Law Journal* 193, 209, stating that, ‘[a]ccording to the [US Department of Justice] and the [US Securities and Exchange Commission], contractual provisions that are reasonably calculated to prevent anti-corruption violations may be important in assessing the company’s liability’.

⁴⁹ US Department of Justice, ‘Justice Manual’ (2024) s 9-28.000 <<https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations>> accessed 25 May 2024.

⁵⁰ *ibid*.

⁵¹ United States Sentencing Commission, ‘Guidelines Manual’ (2018) §§ 8B2.1, 8C2.5(f), 8C2.8(a)(11).

⁵² US Department of Justice, ‘Evaluation of Corporate Compliance Programs’ (March 2023) 6-7 <<https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl?inline>> accessed 25 May 2024.

In the UK, the UKBA 2010 imposes strict liability on companies for bribery committed by their ‘associated’ persons,⁵³ which may include third parties.⁵⁴ However, the Act provides a full defence to companies if they can demonstrate that they ‘had in place *adequate procedures* designed to prevent persons associated with [the company] from undertaking such conduct’.⁵⁵ The UKBA Guidance offers insights into the procedures that commercial organisations can implement to prevent individuals associated with them from engaging in bribery.⁵⁶ In supply chains and projects involving a prime contractor and multiple sub-contractors, commercial organisations are advised to address bribery risks ‘by employing the types of anti-bribery... (e.g. risk-based due diligence and *the use of anti-bribery terms and conditions*) in the relationship with their contractual counterparty, and by requesting that counterparty to adopt a similar approach with the next party in the chain’.⁵⁷ The adoption of an anti-corruption clause can be seen as a step towards fulfilling these requirements for adequate anti-corruption procedures.

This article has so far established the role of anti-corruption clauses in contracts as due diligence tools, which are endorsed in international anti-corruption standards, such as the ICC’s model anti-corruption clause, and recognised in key domestic anti-corruption laws, notably in the US and the UK. This global and domestic recognition signifies the incorporation of anti-corruption commitments into contractual agreements. The next section will introduce the various types of such clauses that are incorporated in petroleum contracts.

IV. FROM VERBIAGE TO ACTION: EXPLORING DIFFERENT TYPES OF ANTI-CORRUPTION CLAUSES

Contractual anti-corruption clauses may vary in the degree to which they commit the contracting party to specific anti-corruption measures. This offers the parties a broad range of options to select from when integrating preferred clauses into their contracts.⁵⁸ Depending on their due diligence policies, the parties may choose to incorporate these clauses into all contracts, into contracts exceeding a specific value threshold, or into contracts involving businesses and individuals categorised into distinct risk levels.⁵⁹ Tailoring clauses for different parties requires risk assessment procedures to classify business partners into low, medium, and high potential corruption risk groups, with each group having its own customised anti-corruption clauses, ranging from minimal to comprehensive, based on their risk categorisation.⁶⁰ Some parties

⁵³ UKBA 2010, s 7(1).

⁵⁴ See generally Ejike Ekwueme, ‘Decelerating Corruption and Money Laundering: Distilling the Positive Impact of UKBA 2010 from a Holistic Perspective’ (2022) 29 *Journal of Financial Crime* 128, 132–33.

⁵⁵ UKBA 2010, s 7(2) (emphasis added).

⁵⁶ UK Ministry of Justice, ‘The Bribery Act 2010: Guidance’ (UK Ministry of Justice, March 2011) (‘UKBA Guidance’) <<https://www.gov.uk/government/publications/bribery-act-2010-guidance>> accessed 25 May 2024.

⁵⁷ *ibid* 16, para 39 (emphasis added).

⁵⁸ Boles (n 6) 823.

⁵⁹ *ibid* 835, explaining that, through a specific model of risk assessment, companies categorise ‘agents into risk bands by reference to specific objective criteria and [apply] different levels of due diligence and internal controls to such agents according to the criteria’.

⁶⁰ Examples of low-risk partners include individuals and companies that have adopted anti-corruption compliance programmes. On the other hand, long-term contracts, complex contracts, acquisition contracts, or companies with operational activities in countries with high levels of corruption are usually identified as high-risk partners: Neil McInnes, ‘Addressing the Bribery Act in Your Contracts: A Tiered Approach’ (*Practical Law Construction Blog*, 13 June 2012) <[constructionblog.practicallaw.com/addressing-the-bribery-act-in-your-contracts-a-tiered-approach/](https://www.practicallaw.com/addressing-the-bribery-act-in-your-contracts-a-tiered-approach/)> accessed 25 May 2024.

prefer to adopt anti-corruption clauses following a risk-based approach, as it can prevent unnecessary costs and potential burdens in relationships with partners categorised as having low corruption risks.⁶¹ On the other hand, others advocate including anti-corruption clauses ‘wherever possible’ as a universal standard of behaviour, recognising that corruption risks might not always align with a straightforward risk assessment.⁶²

Furthermore, anti-corruption clauses can refer to different phases in the life of a contract: the pre-contractual phase, the execution phase, the post-implementation phase, or all three stages. For example, in a Production Sharing Agreement (‘PSA’) concluded between the Agência Nacional do Petróleo de São Tomé e Príncipe and ERHC Energy EEZ, Lda, clause 29 extends the anti-corruption commitment to the period preceding the contract conclusion:

29.1 The Contractor represents and warrants that *it did not engage* any person, firm or company as a commission agent for purposes of this Contract and that *it has not given or offered to give* (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of significant value...

29.2 The Contractor further represents and warrants that *no loan, reward, offer, advantage or benefit of any kind has been given to any* [public] Official or any person for the benefit of such [public] Official or person or third parties...⁶³

This clause extends the anti-corruption commitment to the pre-contract phase with the goal of preventing corruption during the contract negotiation period, including the bidding or proposal process. Such requirements generally call for the disclosure of any past or present relationships that could result in conflicts of interest or jeopardise the fairness and ethical standards of the contract negotiations. However, most anti-corruption clauses, aiming to prevent ambiguity by delineating the boundaries of the parties’ contractual obligations, restrict the prohibition of corrupt practices to the contract period to ensure that all contracting parties are aware of their obligations to comply with anti-corruption laws and regulations. For example, a PSA between the Government of the Republic of Mozambique, ExxonMobil Moçambique Exploration and Production, Lda, RN Zambezi South PTE Ltd, and Empresa Nacional de Hidrocarbonetos, EP (‘Z5C EPCC Agreement’), states that:

32.2 No offer, gift, payments or benefit of any kind, which constitutes an illegal or corrupt practice pursuant to applicable law of the Republic of Mozambique, shall be given or accepted, either directly or indirectly, as an inducement or reward *for the execution of this EPCC* or for doing or not doing any action or making any decision in relation to this EPCC.⁶⁴

⁶¹ *ibid*; see also Boles (n 6) 836.

⁶² Boles (n 6) 836, fn 154, citing Colin R Jennings, ‘Avoiding Criminal Liability for Corrupt Practices Abroad Through Effective Corporate Compliance’ in *International White Collar Enforcement: Leading Lawyers on Cooperating With Enforcement Agencies, Understanding New Laws, and Constructing Compliance Programs* (12th edn, Aspatore 2011).

⁶³ Production Sharing Contract for Block ‘11’, concluded between the Democratic Republic of São Tomé and Príncipe, represented by Agência Nacional do Petróleo de São Tomé e Príncipe and ERHC Energy EEZ, Lda (23 July 2014) 38 <[https://resourcecontracts.org/contract/oecd-591adf-3122094392/view#/>](https://resourcecontracts.org/contract/oecd-591adf-3122094392/view#/) accessed 25 May 2024 (emphasis added).

⁶⁴ Exploration and Production of Petroleum Concession Contract, concluded between the Government of the Republic of Mozambique, ExxonMobil Moçambique Exploration and Production, Limitada, RN Zambezi South PTE Ltd, and

Finally, certain clauses further extend the commitment to the post-contract period. For example, in a concession agreement between the Republic of the Congo and Congo Iron SA, article 34.8 states that '[t]he obligations resulting from this Article *shall continue to have effect upon the expiry of this Agreement*'.⁶⁵ This post-contract requirement obliges the parties to maintain compliance with anti-corruption standards even after the contract has concluded to ensure the timely identification and resolution of any issues or concerns. In summary, parties can include anti-corruption clauses at various stages of a contract, including before, during, and after the contract, to prevent corrupt practices.

Furthermore, when it comes to incorporating anti-corruption clauses into contracts, parties have a wide range of options regarding the types of anti-corruption commitments. Although there is no universally accepted standardised anti-corruption clause tailored specifically for the petroleum sector, some states and relevant stakeholders have introduced template anti-corruption clauses in their publicly available contract templates. For example, Offshore Energies UK developed a series of industry-standard contracts, known as LOGIC (Leading Oil and Gas Industry Competitiveness), to streamline contract negotiations in the UK. In LOGIC's Onshore Offshore Contracts Template, dated 2019, the anti-corruption clause is as follows:

28. Anti-Bribery and Corruption

28.1 Each PARTY warrants and represents that in negotiating and concluding the CONTRACT it has complied, and in performing its obligations under the CONTRACT it has complied and shall comply, with all APPLICABLE ANTI-BRIBERY LAWS.

28.2 The CONTRACTOR warrants that it has an ABC PROGRAMME setting out adequate procedures to comply with APPLICABLE ANTI-BRIBERY LAWS and that it will comply with such ABC PROGRAMME in respect of the CONTRACT.⁶⁶

The LOGIC anti-corruption clause falls short of the comprehensive coverage expected for a standard, as it may not address various types of corruption and potential scenarios where they could occur. On the other hand, in the analysis of 1,164 petroleum contracts conducted for this article, a joint venture ('JV') agreement between Tullow Ghana Limited, Kosmos Energy Ghana HC, Anadarko WCTP Company, Sabre Oil & Gas Holdings Limited, and EO Group Limited (the 'Jubilee Agreement'),⁶⁷ has stood out for its exceptionally comprehensive anti-corruption clause, detailed in Annex II. This article designates the clause as the 'Standard Clause' and will refer to it as a model throughout.

Sections IV.A and IV.B aim to present how contractual anti-corruption commitments and obligations are integrated and vary from one contract to another, based on the findings

Empresa Nacional de Hidrocarbonetos, EP (October 2018) ('Z5C EPCC Agreement') 40-41, art 32.2 <<https://resourcecontracts.org/contract/ocds-591adf-3738262397/view#/>> accessed 25 May 2024 (emphasis added).

⁶⁵ Convention d'Exploitation Minière Relative au Gisement de Fer du Mont Entre, concluded between the Republic of the Congo and Congo Iron SA (29 April 2016) 47-48, art 34.8 <<https://resourcecontracts.org/contract/ocds-591adf-2949159236/view#/>> accessed 25 May 2024 (translated by author) (emphasis added).

⁶⁶ LOGIC, 'General Conditions of Contract (Including Guidance Notes) for Services On-and Off-Shore' (4th edn, LOGIC 2019) 22.

⁶⁷ Jubilee Agreement (n 12).

derived from the review of 1,164 petroleum contracts. These subsections will present a proposed taxonomy that categorises anti-corruption clauses into two primary groups: ‘direct anti-corruption clauses’ and ‘indirect anti-corruption clauses’. The comprehensive scale of this taxonomy is depicted in Figure 1 below, with each of its subdivisions being explored in corresponding subsections. Overall, this study argues that, although direct anti-corruption clauses impose a direct commitment on parties to adhere to anti-corruption standards, indirect anti-corruption clauses enable parties to enforce anti-corruption commitments in the absence of direct clauses.

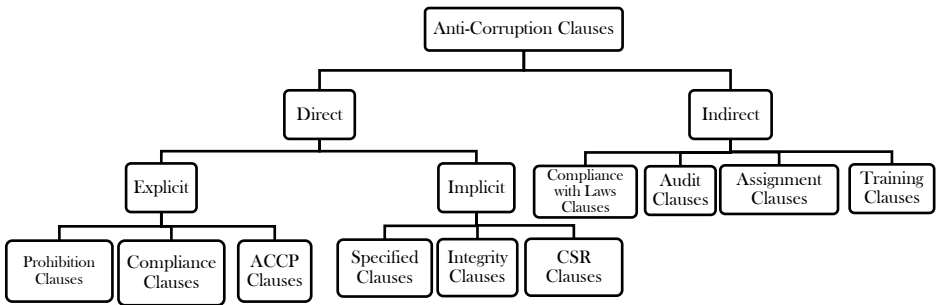


Figure 1: Classification of anti-corruption clauses in petroleum contracts

A. DIRECT ANTI-CORRUPTION CLAUSES

Direct anti-corruption clauses are contractual clauses that establish specific anti-corruption obligations or conditions for one or both parties involved. These clauses can either clearly refer to (anti-)corruption matters or leave room for interpretation by the parties. This article further categorises these direct clauses into two types: ‘explicit direct clauses’ and ‘implicit direct clauses’. The distinction serves to provide a more nuanced understanding of how these clauses operate within contracts and the different ways in which anti-corruption obligations are established or addressed in contractual agreements. Explicit direct clauses impose clear anti-corruption obligations on parties by either prohibiting corruption in a broad sense, mandating compliance with specific anti-corruption laws, or requiring the implementation of anti-corruption measures. By contrast, implicit direct anti-corruption clauses may address specific forms of corruption, encourage the adoption of measures to prevent corrupt practices, or emphasise corporate social responsibilities. The extensive study of petroleum contracts underpinning the findings of this article suggests that explicit anti-corruption clauses have a more pronounced role in imposing anti-corruption commitments. This is because they consistently require a clearer anti-corruption commitment when compared with implicit clauses, which may not always be subject to consistent interpretation by the parties for anti-corruption purposes.

(i) Explicit Anti-Corruption Clauses

Explicit direct anti-corruption clauses are contractual clauses that straightforwardly mention ‘(anti-)corruption’ within their language when imposing anti-corruption commitments on one or both parties. These explicit clauses can be further categorised into three main types: prohibition clauses, compliance clauses, and clauses requiring the adoption of anti-corruption compliance programmes (‘ACCP clauses’). The following subsections will describe each of these types.

(a) Clauses with a ban on corruption (‘Prohibition Clauses’)

The first type of explicit direct clause is a standalone anti-corruption clause that visibly prohibits corrupt practices and imposes direct obligations on one or both parties not to engage in corrupt practices in general. In these clauses, the parties request guaranties from each other, certifying either or both that they themselves or their associated individuals have not been involved in corrupt practices and that they will not engage in such practices in the future. These clauses serve the purpose of creating a corruption-free environment in matters related to the contract. These clauses can be drafted in various formats.

At a basic level, parties may incorporate a straightforward clause that prohibits corruption between the parties, their employees, and third parties. For example, in a PSA between the Government of the Republic of Mozambique, Sasol Petroleum Sofala, Lda, and Empresa Nacional de Hidrocarbonetos, EP, article 36 states that ‘[t]he Government of the Republic of Mozambique and the Concessionaire agree to cooperate in *preventing acts of corruption*’.⁶⁸ This clause broadly requires the parties to take effective measures against corruption while outlining a general obligation to fulfil this commitment. Some prohibition clauses may go a step further by providing a precise definition or scope of corruption or by describing acts that could be considered corruption. For example, in a service contract between Petrobell Inc and Grantmining SA, article 34.6 states:

34.6 Commitment Against Corruption

The Contractor declares and assures that it has not made or offered and that it undertakes not to make or offer payments, loans or gifts of money or valuables, directly or indirectly to (i) an official of authority any competent public or employees of the Secretariat or the Ministry; (ii) a political movement or party or member thereof; (iii) any other person, when the Party knows or has had reason to know that any part of said payment, loan or gift will be delivered or paid directly or indirectly to any public official or employee, candidate, political party or member thereof; or (iv) to any other Person or entity, when such payment would violate the laws of any relevant jurisdiction.⁶⁹

⁶⁸ Contrato de Concessão Para Pesquisa e Produção Para OS Blocos 16 & 19, concluded between the Government of the Republic of Mozambique, Sasol Petroleum Sofala, Limitada, and Empresa Nacional de Hidrocarbonetos, EP (1 June 2005) 107, art 36 <<https://resourcecontracts.org/contract/ocds-591adf1495612293/view/#/>> accessed 25 May 2024 (translated by author) (emphasis added).

⁶⁹ Contrato Modificatorio a Contrato de Prestación de Servicios para la Exploración y Explotación de Hidrocarburos (Petroleo Crudo), en el Bloque Tivacuno de la Región Amazónica Ecuatoriana, concluded between the Republic of Ecuador, Repsol YPF Ecuador SA, Overseas Petroleum and Investment Corporation, Amodaini Oil Company Ltd, and CRS Resources (Ecuador) LDC (22 February 2011) 127, art 34.6 <<https://resourcecontracts.org/contract/ocds-591adf9671561394/view/#/>> accessed 25 May 2024 (translated by author).

By defining corrupt practices, these clauses aim to provide clarity in understanding, and consistency in interpreting, what constitutes corrupt behaviour. This clarification can be crucial for transnational contracts, where the definition of corruption may differ among the jurisdictions of the contracting parties.

Lastly, prohibition clauses may also specifically prohibit the act of bribery rather than addressing corruption in general. Although often used interchangeably, corruption and bribery are distinct concepts.⁷⁰ This interchangeability arises because bribery probably constitutes the most common form of corruption⁷¹ and is the most frequently cited corrupt practice in international and regional anti-corruption conventions, as well as in national anti-corruption regulations.⁷² For example, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions primarily focuses on the criminalisation of bribery and considers corruption in relation to the act of bribery.⁷³ Accordingly, some companies incorporate clauses into their contracts that forbid employees or contractors from offering, soliciting, or accepting bribes. An example of this can be found in a PSA between the Government of the United Republic of Tanzania, Songas Limited, PAE PanAfrican Energy Corporation, and CDC Group PLC:

CDCPLC represents that *it has not paid or received, or undertaken to pay or receive, any bribe, pay-off, kick-back, or unlawful commission and has not in any other way or manner paid any sums, whether in Tanzanian Shillings or foreign currency and whether in Tanzania or abroad, given or offered to pay any gifts and presents in Tanzania or abroad, to any Person to procure this Agreement.*⁷⁴

This clause contains a warranty from one party to the other that it has not been involved in any acts related to bribery.

⁷⁰ Some international conventions, when defining the term ‘corruption’, limit it to the act of bribery: see for example Civil Law Convention on Corruption (signed 4 November 1999, entered into force 1 November 2003) ETS No 174, art 2: ‘[f]or the purpose of this Convention, “corruption” means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof’.

⁷¹ See for example UN Office on Drugs and Crime (UNODC), ‘The Anti-Corruption Toolkit’ (UNODC) 13-14 <https://www.unodc.org/documents/treaties/corruption/toolkit/toolkitiv5_foreword.pdf> accessed 25 May 2024.

⁷² See for example Convention drawn up on the basis of Article K.3 (2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union [1997] OJ C195/2, arts 2-3; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (signed 17 December 1997, entered into force 15 February 1999) (‘OECD Convention’), art 1; Criminal Law Convention on Corruption (signed 27 January 1999, entered into force 1 July 2002) ETS No 173, arts 2-11; Civil Law Convention on Corruption (n 70) art 2; SADC Protocol Against Corruption (signed 14 August 2001, entered into force 6 July 2005), art 1; ECOWAS Protocol on the Fight Against Corruption (signed 21 December 2001, not yet in force), art 6; Additional Protocol to the Criminal Law Convention on Corruption (signed 15 May 2003, entered into force 1 February 2005) ETS No 191, arts 2-6; African Union Convention on Preventing and Combating Corruption (signed 11 July 2003, entered into force 5 August 2006), art 1; United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41 (‘UNCAC’) arts 15, 16, 21; Arab Anti-Corruption Convention (signed 21 December 2010, entered into force June 2013) art 4.

⁷³ OECD Convention (n 72).

⁷⁴ Amended and Restated Implementation Agreement Relating to the Songo Songo Gas-To-Electricity Project, Dares Salaam, Tanzania, concluded between the Government of the United Republic of Tanzania, Songas Limited, PAE PanAfrican Energy Corporation, and CDC Group PLC (30 April 2003) 21, art 4.3(g) <<https://resourcecontracts.org/contract/oecd-591adf-3212507685/view#/>> accessed 25 May 2024 (emphasis added).

In the Standard Clause, article 21.1(A) on Public Anti-Corruption Provisions outlines the expected conduct of the parties involved in the agreement, with a primary focus on anti-corruption measures when dealing with government officials (see Annex II). However, the clause does not stop here; article 21.3 on Private Anti-Corruption Provisions goes further, establishing a commitment from each party and its affiliates to refrain from participating in any corrupt behaviour between the contracting parties and their affiliates (see Annex II). Thus, the clause prohibits both public and private corruption by providing a comprehensive definition of corruption, including its various types and purposes. It further requires parties to warrant that they have not engaged in, and will abstain from, any form of corrupt behaviour.

(b) Clauses requiring compliance with anti-corruption laws ('Compliance Clauses')

The second type of explicit direct anti-corruption clause requires parties to respect and comply with anti-corruption standards by specifically referring to particular anti-corruption laws. Some clauses demand that parties comply with certain regional or international anti-corruption laws. For example, in a service agreement between Yacimientos Petrolíferos Fiscales Bolivianos, Total E&P Bolivie, and Tecpetrol de Bolivia SA, the parties are obligated to comply with the United Nations Convention Against Corruption ('UNCAC')⁷⁵ and the Inter-American Convention Against Corruption.⁷⁶ Integrating international anti-corruption laws into the contract framework provides a foundation for addressing cross-border corruption, which ensures that companies and individuals operating across different jurisdictions adhere to consistent anti-corruption standards.

Anti-corruption clauses may also reference specific national anti-corruption laws, including those of the host state, the home state, or the anti-corruption laws of other countries, often the FCPA 1977 and the UKBA 2010. An example of clauses mandating compliance with the host and home states' laws can be found in a PSA concluded between the Government of the Republic of Mozambique, Eni East Africa SPA, and Empresa Nacional de Hidrocarbonetos, EP, in which the parties are required to prevent corruption that violates:

- (i) the applicable laws of the Republic of Mozambique;
- (ii) the laws of the country of formation of the Concessionaire or of its ultimate parent company (or its principal place of business); or,
- (iii) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions... and the Convention's Commentaries.⁷⁷

In this example, the first item relates to the anti-corruption laws of the host state, whereas the second item refers to the anti-corruption regulations of the home state. An example of anti-corruption clauses that necessitate parties to adhere to domestic laws extending beyond their

⁷⁵ UNCAC (n 72).

⁷⁶ Inter-American Convention Against Corruption (adopted 29 March 1996, entered into force 6 March 1997) OAS Treaty Series B-58; Republica de Bolivia Contrato de Operacion, concluded between Yacimientos Petrolíferos Fiscales Bolivianos, Total E&P Bolivie (Sucursal Bolivia), and Tecpetrol de Bolivia SA (2006) 34, cl 27.2 <[https://resourcecontracts.org/contract/oeds-591adf-5978990122/view#/>](https://resourcecontracts.org/contract/oeds-591adf-5978990122/view#/) accessed 25 May 2024.

⁷⁷ Exploration and Production Concession Contract for Area 4 Offshore of the Rovuma Block, concluded between the Government of the Republic of Mozambique, Eni East Africa SPA, and Empresa Nacional de Hidrocarbonetos, EP (2006) 96, art 31.2(c) <[https://resourcecontracts.org/contract/oeds-591adf-2561344209/view#/>](https://resourcecontracts.org/contract/oeds-591adf-2561344209/view#/) accessed 25 May 2024.

respective jurisdictions is found in a PSA between the Kurdistan Regional Government of Iraq and WesternZagros Limited (the ‘Garmian Agreement’), where corrupt practices laws are defined as:

- (a) the Kurdistan Region Laws and the Laws of Iraq in respect of bribery, kickbacks, and corrupt business practices;
- (b) the *Foreign Corrupt Practices Act of 1997 of the United States of America* (Pub. L. No. 95-213 §§ 101-104 *et seq*), as amended;
- (c) the *Corruption of Foreign Public Officials Act of Canada*;
- (d) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997, which entered into force on 15 February 1999, and the Convention’s Commentaries;
- (e) the *Bribery Act 2010*; and
- (f) any other Law of general applicability relating to bribery, kickbacks, and corrupt business practices.⁷⁸

Here, the clause requires the parties to comply with US, UK, and Canadian anti-corruption laws, regardless of whether these laws are ‘actually applicable or in effect’ for the contracting party, which, in this case, is a Cypriot company operating in Iraq.⁷⁹

Finally, some clauses go further by mandating parties to comply with *all applicable anti-corruption laws*. For example, in the Z5C EPCC Agreement, in addition to requiring parties to adhere to the host state’s applicable laws, the laws of the country of incorporation or principal location of the parent company and subcontractors, and the OECD Convention, the anti-corruption clause also obliges the parties to adhere to ‘any other applicable anti-corruption laws’.⁸⁰ Such a requirement is intended to reinforce compliance with all relevant national, regional, or international laws.

The Standard Clause incorporates a compliance clause by making a number of references to ‘Anti-Corruption Legislation’ and the ‘OECD Anti-bribery Principles’ within the clause itself. Additionally, it provides detailed definitions for these terms in its article 1 Definitions (See Annex II). The clause not only covers the national laws of both the host and the home states but also references international and foreign laws, such as the OECD Convention, the UKBA 2010, and the FCPA 1977, as well as any other implementing legislation.

- (c) Clauses requiring the adoption of anti-corruption compliance programmes (‘ACCP Clauses’)

When adopting a more rigorous approach, the anti-corruption clause, in addition to prohibiting acts of corruption, can include more comprehensive contractual terms that mandate the parties to implement additional anti-corruption measures, thereby consolidating their commitment to anti-corruption efforts. An example of ACCP clauses can be found in a JV

⁷⁸ Production Sharing Contract on the Garmian Block, Kurdistan Region, concluded between the Kurdistan Regional Government of Iraq and WesternZagros Limited (2011) (‘Garmian Agreement’) 12, art 1.1 <<https://resourcecontracts.org/contract/ocds-591adf-9205170350/view/#/>> accessed 25 May 2024 (emphasis added).

⁷⁹ *ibid*.

⁸⁰ Z5C EPCC Agreement (n 64) 41.

agreement between the National Hydrocarbons Commission, Pemex Exploración y Producción, and Cepsa EP México. Within this agreement, the clause not only prohibits corruption and mandates compliance with any applicable anti-corruption laws but also requires the parties to ‘create and maintain adequate internal controls for compliance with the provisions of this Clause’.⁸¹ This type of explicit clause specifically calls for the implementation of a corporate anti-corruption compliance programme to ensure the company’s adherence to applicable anti-corruption laws.⁸²

With respect to ACCP clauses, the Standard Clause prompts parties to adopt further measures to reinforce their anti-corruption commitments (see Annex II). Articles 21.1(D) and 21.1(F) require the implementation of control and audit procedures regarding the actions of the parties, their affiliates, and their subcontractors. Paragraph (E) further mandates the completion of annual certifications in which the parties, on a regular basis, affirm their dedication to anti-corruption, confirm that they have not engaged in corrupt practices, and verify that they have no knowledge of any corrupt practices conducted by their employees.

(d) Overview: explicit anti-corruption clauses

Table 1 summarises different types of explicit anti-corruption clauses and their various forms identified in the studied contracts. Among the three types of explicit clauses, the ACCP clause imposes more extensive anti-corruption commitments on the parties, as it requests the adoption of measures in practice, in addition to anti-corruption commitments. On the other hand, there is no fixed order of priority between prohibition clauses and compliance clauses, as both types of clauses impose anti-corruption commitments on the parties.

<p>Prohibition Clauses</p>	<p>Basic: Straightforward prohibition of corruption</p> <p>Enhanced: Include precise definitions and scope</p> <p>Bribery-Specific: Focus on prohibiting bribery</p>
<p>Compliance Clauses</p>	<p>Regional/International Laws: Require compliance with specific anti-corruption conventions</p> <p>National Laws: Reference to host/home state laws and other regimes, such as the FCPA 1977 and the UKBA 2010</p> <p>Comprehensive Laws: Mandate compliance with all applicable anti-corruption laws</p>

⁸¹ Contrato para la Exploración y Extracción de Hidrocarburos Bajo la Modalidad de Producción Compartida en Aguas Someras, Área Contractual G-Tmv-04, concluded between Comisión Nacional de Hidrocarburos, Pemex Exploración y Producción, and Cepsa EP México, S de RL de CV (27 June 2018) 80, cl 33.2 <[https://resourcecontracts.org/contract/ocds-591adf-5375757628/view#/>](https://resourcecontracts.org/contract/ocds-591adf-5375757628/view#/) accessed 25 May 2024 (translated by author).

⁸² See for example *ICC Anti-Corruption Clause* (n 27) option III.

ACCP Clauses	Comprehensive Commitment: Require additional anti-corruption measures
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Table 1: Classification of explicit direct anti-corruption clauses in petroleum contracts

(ii) Implicit Anti-Corruption Clauses

Implicit direct anti-corruption clauses are those that establish an anti-corruption obligation for one or both parties without explicitly mentioning the term ‘(anti-)corruption’ in the exact wording of the clause. Indeed, while anti-corruption commitments are not explicitly stated in such clauses, they are implied by the expectations of the parties involved. Based on its review of the studied contracts, this article proposes to categorise further three types of clauses that include implicit contractual obligations in a contract: Integrity Clauses; Specified Clauses; and Corporate Social Responsibility Clauses.

(a) Clauses enforcing ethical standards (‘Integrity Clauses’)

Implicit clauses with integrity requirements aim to discourage corrupt practices in contractual relationships while promoting ethical business conduct, which includes moral principles and values governing business activities.⁸³ One type of such clauses prohibits improper payments in business dealings to prevent bribery or other unethical practices that could confer a business advantage. For example, in a PSA between Myanma Oil and Gas Enterprise and Total Myanmar Exploration and Production, section 27.4 states that ‘[t]he CONTRACTOR warrants that no gift or reward has been made, nor will be made, to any officials or employees of the Government of the Union of Myanmar’.⁸⁴ These restrictions on the exchange of gifts, donations, commissions, and similar payments are intended to deter potential corrupt behaviour, such as bribery, conflicts of interest, and undue influence, in contractual relationships.

Another category of integrity clauses includes clauses that prohibit the inclusion of false statements in contracts. Although distinct from corruption, false statements or misrepresentation could serve as a means for parties to involve themselves in corrupt practices. Thus, these clauses are incorporated to ensure the accuracy and truthfulness of information exchanged between parties in the course of business and to prevent deceptive practices that could potentially lead to corrupt behaviour. For example, a PSA executed among Sociedade Nacional de Combustíveis de Angola, Empresa Pública, Vaalco Angola, Inc, Sonangol Pesquisa e Produção, SA, and Interoil Exploration and Production ASA states that ‘Sonangol may terminate this Contract if Contractor Group:... (c) intentionally submits false information to the [Executive Power] or to Sonangol’.⁸⁵ In most cases, deliberate misrepresentation in a

⁸³ For more details on business ethics, see for example John Nkeobuna Nnah Ugoani, ‘Business Ethics’ in Robert Brinkmann (ed), *The Palgrave Handbook of Global Sustainability* (Springer 2023) 1763.

⁸⁴ Production Sharing Contract for Appraisal Development and Production of Petroleum in the Moattama Area, concluded between Myanma Oil and Gas Enterprise and Total Myanmar Exploration and Production (1992) 67, s 27.4 <<https://resourcecontracts.org/contract/oeds-591adf-6716589315/view#/>> accessed 25 May 2024.

⁸⁵ Production Sharing Agreement in the Area of Block 5/06, concluded between Sociedade Nacional de Combustíveis de Angola, Empresa Pública (Sonangol, EP), Vaalco Angola (Kwanza), Inc, Sonangol Pesquisa e Produção, SA, and Interoil Exploration and Production ASA (2006) 31–32, art 39.1 <<https://resourcecontracts.org/contract/oeds-591adf-3664745125/view#/>> accessed 25 May 2024.

contract constitutes a material breach of the agreement, giving the aggrieved party the right to terminate the contract.⁸⁶

Finally, specific integrity clauses mandate parties to uphold transparency requirements within the contract. These requirements guarantee that parties disclose all relevant information and that there is no hidden or undisclosed influence, favouritism, or conflict of interest. For example, a PSA between the National Oil Company of Liberia and Anadarko Liberia Block 10 Company stipulates that '[t]he Parties agree that all payments made under this Contract shall be made in accordance with protocols laid down by the Extractive Industries Transparency Initiative ("EITI").'⁸⁷ The disclosure of payments under the EITI—a global standard promoting transparency and accountability in the extractive sector—not only facilitates the detection and deterrence of corruption but also establishes clear decision-making and monitoring processes, ultimately promoting integrity, accountability, and trust in contractual relations.

Articles 21.1(A) and 21.3 of the Standard Clause includes integrity clauses multiple times by forbidding parties to 'pay, make, offer, give, promise or authorise, either directly or indirectly, by it or any of its Affiliates, of any... gift (other than promotional and marketing gifts of nominal value), loan, fee, reward, travel, entertainment or transfer of anything of value' (see Annex II). By prohibiting improper payments and other transfers of value, the clause sets clear boundaries and expectations for the parties involved, aiming to prevent behaviours that could lead to corruption.

(b) Clauses prohibiting a form of corruption ('Specified Clauses')

The second category of implicit clauses includes those that describe corrupt practice without explicitly employing the terms 'corruption' and 'bribery' or that specify another specific type of corruption, such as conflicts of interest or fraud. An illustrative example of clauses specifying a form of corruption can be found in clause 27.2 of a service contract between Yacimientos Petrolíferos Fiscales Bolivianos and Empresa Petrolera Andina SA, which states:

Parties declare and guarantee to the other Parties that neither it nor any of its employees, agents or representatives, directly or indirectly, have offered, promised, authorised, paid or given money or anything of value to any public official for the purpose of influencing their actions or decisions, or gaining undue advantage, in connection with this Agreement or any of the activities to be carried out under it and for the term of the Agreement undertakes not to offer, promise, authorise, pay or give money or anything of value to any public official in order to influence their acts or decisions, or to gain undue

⁸⁶ See for example Model Gas Service Development and Production Contract for gas field, concluded between North Oil Company of the Republic of Iraq (2009) 16, art 8.1(a) <[https://resourcecontracts.org/contract/ocds-591adf-4049230261/view#/>](https://resourcecontracts.org/contract/ocds-591adf-4049230261/view#/) accessed 25 May 2024, stating that 'NOC may terminate this Contract... if Contractor commits a breach of a material obligation of this Contract, including but not limited to: (i) Contractor knowingly submits a false statement to NOC which is of material consideration for the execution of this Contract'.

⁸⁷ Production Sharing Contract for Block LB-10, concluded between the National Oil Company of Liberia (NOCAL) on Behalf of the Republic of Liberia and Anadarko Liberia Block 10 Company (23 July 2009) 40, art 19.5 <[https://resourcecontracts.org/contract/ocds-591adf-3001376476/view#/>](https://resourcecontracts.org/contract/ocds-591adf-3001376476/view#/) accessed 25 May 2024.

advantages, in connection with this Contract or with any of the activities that will be carried out according to it.⁸⁸

In this example, the clause describes the act of bribery without explicitly using the term ‘bribery’. Using broader language instead of precise terms such as ‘corruption’ or ‘bribery’ can be an effective strategy to ensure that the clause covers a wide range of potentially corrupt or unethical behaviour. Such an approach proves particularly advantageous in situations where different cultural or linguistic interpretations may affect the understanding or usage of these terms. For example, the aforementioned clause could also be interpreted to prohibit facilitation payments, in addition to bribery, even in jurisdictions where such payments are permitted, such as the US.

Among the clauses that prohibit specific types of corrupt practices, reference can be made to those addressing conflicts of interest in contracts. An example is a JV agreement signed between Perenco Oil and Gas (Cameroon) Ltd, Kosmos Energy Cameroon HC, and Société Nationale des Hydrocarbures, which prohibits conflicts of interest in clause 19.2.⁸⁹ A conflict of interest occurs when an individual or company has competing interests that could impact their decisions or actions in a specific situation. Conflicts of interest are considered to be a form of corruption if they are not properly disclosed and managed.⁹⁰ Incorporating clauses that address the disclosure and management of conflicts of interest into contracts can help companies prevent these situations from leading to other unethical behaviours, ensure that transactions are conducted fairly and transparently, and ensure that all parties act in the best interests of the contractual relationship.

The other types of clauses that prohibit certain types of corrupt practices are those that bar parties from engaging in fraudulent behaviour. For example, in a farmout agreement⁹¹ between ERHC Energy Kenya Limited and Cepsa Kenya Limited, both farmor and farmee are held liable for losses ‘as a direct result of or arising out of, resulting from, attributable to, or connected with... any event of fraud by [either the farmor or farmee] in connection with the transaction’.⁹² Likewise, a PSA signed between the State Oil Company of the Republic of Azerbaijan, SOCAR Oil Affiliate, and BP Exploration (Azerbaijan) Limited prohibits tax fraud, which it defines as ‘any illegitimate and repeated action or omission of the Contractor Party expressed in deliberate, intended and premeditated cases of failures for the purpose of

⁸⁸ República de Bolivia Contrato de Operación, concluded between Yacimientos Petrolíferos Fiscales Bolivianos and Empresa Petrolera Andina SA (28 October 2006) 40, cl 27.2 <<https://resourcecontracts.org/contract/ocds-591adf-3967759096/view#/>> accessed 25 May 2024 (translated by author).

⁸⁹ Agreement on the Management of Petroleum Operations (JOA) Covering the Kombe-Nsepe Permit, concluded between Perenco Oil and Gas (Cameroon) Ltd, Kosmos Energy Cameroon HC, and Société Nationale des Hydrocarbures (March 2008) 56, cl 19.2 <<https://resourcecontracts.org/contract/ocds-591adf-5424836511/view#/>> accessed 25 May 2024.

⁹⁰ World Bank, OECD and the UNODC, ‘Preventing and Managing Conflicts of Interest in the Public Sector: Good Practices Guide’ (July 2020) 3 <<https://www.unodc.org/documents/corruption/Publications/2020/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.pdf>> accessed 25 May 2024.

⁹¹ A ‘farmout agreement’ is the assignment of natural resources, such as minerals mining, oil, and gas, to a third party, also known as ‘the farmee’, for exploration, extraction, and development. In exchange for the outsourced activities, the farmee pays royalties to the property owner, also known as ‘the farmor’. For more information on oil and gas farmout agreements, see Kendor P Jones, ‘Something Old, Something New: The Evolving Farmout Agreement’ (2010) 49 *Washington Law Journal* 477.

⁹² Farmout Agreement Relating to Block 11A, Kenya, concluded between ERHC Energy Kenya Limited and Cepsa Kenya Limited (7 October 2013) 31–32, cl 6.7 <<https://resourcecontracts.org/contract/ocds-591adf-1934720031/view#/>> accessed 25 May 2024.

evasion from Taxes by means of concealing information on Taxes or prevention of submission or collection thereof.⁹⁰ These anti-fraud clauses are designed to ensure that parties act in good faith and to prevent them from engaging in deceitful actions, particularly considering that corruption often thrives in environments where practices such as falsifying financial statements to conceal bribes or securing contracts through deceptive means go unchecked.

As the Standard Clause explicitly names ‘corruption’ and ‘bribery’ within its text, it does not include a specified clause that describes a type of corruption. However, it does contain a specified clause that names a specific type of corruption: conflicts of interest. Article 23.4 establishes the obligation of each party to avoid conflicts of interest in dealings with suppliers, customers, and other entities, with specified exceptions for compliance with local laws and transactions with affiliates (see Annex II).

(c) Clauses referring to corporate social responsibility (‘CSR Clauses’)

The final category of implicit anti-corruption clauses is linked to clauses within the framework of corporate social responsibility (‘CSR’). CSR includes activities that internalise costs for externalities resulting directly or indirectly from corporate actions, or processes and actions to consider and address the impact of corporate actions on affected stakeholders, driven by a recognised moral or ethical duty to society beyond the corporation’s owner or shareholders.⁹¹ CSR standards have a range of public objectives and address different social issues, including human rights, labour rights, public health, environmental protection, and the fight against corruption. Today, the rejection of corruption is integral to any company’s CSR, as corruption is seen as incompatible with sustainable development due to the social, economic, and environmental damages associated with corrupt practices.⁹² Studies show that a company with strong CSR commitments is more likely to implement robust anti-corruption measures.⁹⁶

Through a CSR clause, the parties obligate or encourage each other to adhere to CSR standards, including anti-corruption measures. These clauses can either broadly refer to CSR as a general term or delineate responsibilities within its purview. For example, a concession agreement between the Colombian National Hydrocarbons Agency and Unión Temporal Repsol Ecopetrol states that ‘the Contractor undertakes to maintain during the execution of this contract, the legal, financial, economic, technical, operational, environmental and *corporate social responsibility* capacities, accredited for the signing of this Contract’.⁹⁷ By contrast,

⁹⁰ Agreement on the Exploration, Development and Production Sharing for the Shafag-Asiman Offshore Block in the Azerbaijan Sector of the Caspian Sea, concluded between the State Oil Company of the Republic of Azerbaijan, BP Exploration (Azerbaijan) Limited, and SOCAR Oil Affiliate (7 October 2010) 50, art 12.1(c) <<https://resourcecontracts.org/contract/ocds-591adf-1835848694/view/#/>> accessed 25 May 2024.

⁹¹ Gerlinde Berger-Walliser and Inara Scott, ‘Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening’ (2018) 55 *American Business Law Journal* 167, 214–15.

⁹² Manuel Castelo Branco and Catarina Delgado, ‘Business, Social Responsibility, and Corruption’ (2012) 12 *Journal of Public Affairs* 357, 357.

⁹³ See for example Indira Carr and Opi Outhwaite, ‘Controlling Corruption through Corporate Social Responsibility and Corporate Governance: Theory and Practice’ (2011) 11 *Journal of Corporate Law Studies* 299.

⁹⁴ Contrato de Exploración y Producción de Hidrocarburos No 03, Área Costa Afuera Gua Off-1, concluded between Agencia Nacional de Hidrocarburos and Unión Temporal Repsol Ecopetrol (2 April 2019) 3 <<https://resourcecontracts.org/contract/ocds-591adf-1092840377/view/#/>> accessed 25 May 2024 (translated by author) (emphasis added).

a PSA between the Government of the Republic of Malawi and RAK Gas MB45 Limited provides detailed information on the content and implementation of the CSR plan.⁹⁸

In addition, certain CSR clauses require companies to establish CSR standards, while others impose an obligation to adopt such standards voluntarily. In the latter case, the clause acts as a non-binding standard, relying heavily on company self-regulation.⁹⁹ An example of such a clause is found in the Malawi Block 4 Agreement,¹⁰⁰ which uses the term ‘shall’—an ambiguous term indicating a future intention—in its language.¹⁰¹ On the other hand, an example of the former is clause 21.7 of Brazil’s 2018 Model Concession Contract, which stipulates that ‘[t]he Concessionaire must have a Social Responsibility and sustainability management system in line with the Best Practices in the Oil Industry’.¹⁰² Through the use of ‘must have’, the contract directly imposes an obligation on the party concerning its CSR requirements.

Some CSR clauses may also invoke the principles of good corporate citizenship (‘PGCC’) and request the parties to adhere to these principles. PGCC entails a company’s overall responsibility to act ethically and in the best interests of society, which also includes compliance with CSR. An example is the Garmian Agreement, which states that ‘[t]he CONTRACTOR has... represented that it has a record of compliance with *the principles of good corporate citizenship*’.¹⁰³ Here, the term ‘record’ refers to a company’s documented history of ethical and socially responsible business practices adopted to promote social and environmental responsibility, including anti-corruption measures.

Finally, some contracts include ethics clauses, which oblige the parties to act in accordance with certain ethical standards or principles.¹⁰⁴ Although these ethics clauses may not specifically address corrupt practices, they can be interpreted to require parties to refrain from engaging in such practices as bribery, conflicts of interest, and other forms of corruption. An example of an ethics clause is included in the Lebanon Block 9 Agreement, where article 41 begins by stating that ‘[t]he Right Holders, their Affiliates and their respective personnel shall act, at all times, in a manner which is consistent with the highest *ethical standards*’¹⁰⁵ and then proceeds to list other anti-corruption commitments.

(d) Overview: implicit anti-corruption clauses

Table 2 provides an overview of implicit direct anti-corruption clauses and their different types as explained thus far. The inclusion of these clauses in contracts demonstrates a commitment to preventing corruption and promoting responsible business conduct, without a specific order between them.

⁹⁸ Production Sharing Agreement, Republic of Malawi, Block 4, concluded between the Government of the Republic of Malawi and RAK Gas MB45 Limited (12 May 2014) (‘Malawi Block 4 Agreement’) 56–57, cl 35 <[https://resourcecontracts.org/contract/ocds-591adf-6422560237/view#/>](https://resourcecontracts.org/contract/ocds-591adf-6422560237/view#/) accessed 25 May 2024.

⁹⁹ Carr and Outhwaite (n 96) 315–16.

¹⁰⁰ Malawi Block 4 Agreement (n 98).

¹⁰¹ See for example *PM Law Ltd v Motorplus Ltd* [2018] EWCA Civ 1730.

¹⁰² Contrato de Concessão Para Exploração e Produção de Petróleo e Gás Natural (2018) 48, cl 21.7 <[https://resourcecontracts.org/contract/ocds-591adf-1309539708/view#/>](https://resourcecontracts.org/contract/ocds-591adf-1309539708/view#/) accessed 25 May 2024 (translated by author) (emphasis added).

¹⁰³ Garmian Agreement (n 78) 6 (emphasis added).

¹⁰⁴ See for example Louise Vytopil, ‘Contractual Control and Labour-Related CSR Norms in the Supply Chain: Dutch Best Practices’ (2012) 8 *Utrecht Law Review* 155, 167.

¹⁰⁵ Exploration and Production Agreement for Petroleum Activities in Block 9, concluded between the Republic of Lebanon, Total E&P Liban SAL, Eni Lebanon BV, and NOVATEK Lebanon SAL (29 January 2018) 119, art 41 <<https://resourcecontracts.org/contract/ocds-591adf-1121032259/view#/pdf>> accessed 25 May 2024 (emphasis added).

Specified Clauses	Description of Corrupt Practices Naming specific types of corruption
Integrity Clauses	Prohibition of Improper Payments Prohibition of False Statements Transparency Mandates
CSR Clauses	CSR Standards Principles of Corporate Citizenship Ethics Obligations

Table 2: Overview of implicit direct anti-corruption clauses in petroleum contracts

B. INDIRECT ANTI-CORRUPTION CLAUSES

There is a possibility that contracts, especially those predating contemporary anti-corruption awareness, may lack clauses specifically addressing corruption. In such instances, parties might resort to alternative clauses in contracts to impose anti-corruption commitments, even if these commitments are not explicitly stated in the contract’s language or are implicit in its wording. This article argues that, in the absence of direct anti-corruption clauses, parties can use clauses related to audit rights, assignment or sub-contracting requirements, training programmes, and compliance with certain laws to impose anti-corruption commitments on each other. These clauses, which will be referred to as ‘indirect anti-corruption clauses’, differ from direct anti-corrupt clauses in that they were not originally intended for anti-corruption commitments or designed to target corrupt practices. Nevertheless, the parties can interpret and apply them to enforce anti-corruption requirements on each other. The use of these indirect anti-corruption clauses allows parties to exercise additional due diligence with respect to the other party and their associated persons. Accordingly, the subsections in Section IV.B introduce and provide examples of compliance with certain laws clauses, audit clauses, assignment or sub-contracting clauses, and training clauses, all within the context of anti-corruption goals.

(i) Compliance With Laws Clauses

Many contracts include ‘compliance with laws clauses’ that oblige parties to be bound by the laws of the jurisdiction specified in the clause and to carry out their operations in accordance with such laws, whether they are national or international. For example, in an Indonesian model PSA, it is stipulated that the contractor must ‘[c]omply with all applicable laws of Indonesia. It is also understood that the execution of the Work Program shall be exercised so as not to conflict with obligations imposed on the Government of the Republic of Indonesia by international laws.’¹⁰⁰ This broad obligation to comply with both domestic and international laws can be interpreted to include anti-corruption laws. Today, almost all states have anti-

¹⁰⁰ Indonesian Model PSC Bilingual: Production Sharing Contract General Terms (2013) 22–23, art 5.2.19 <<https://resourcecontracts.org/contract/ocds-591adf-4388317328/view#/>> accessed 25 May 2024.

corruption regulations in place, criminalising common types of corrupt practices in their domestic laws.¹⁰⁷ Given that anti-corruption laws are considered integral to the legal framework of many countries and jurisdictions, clauses requiring compliance with applicable domestic laws can generally be understood to encompass anti-corruption laws. Furthermore, anti-corruption standards form part of an international legal framework through the emergence of conventions and treaties to address corruption on a global scale.¹⁰⁸

Compliance with laws clauses are sometimes drafted within a broader ‘applicable law clause’.¹⁰⁹ For example, a PSA for Blocks LB 11 and 12, between the National Oil Company of Liberia and Oranto Petroleum Limited, in its Applicable Law article, states that ‘[t]he laws and regulations in force in the Republic of Liberia and the provisions of international law as may be applicable to International oil and gas activities shall apply to the Contractor, to this Contract and to the Operations which are the purpose thereof, unless otherwise provided by the Contract’.¹¹⁰ In their own right, applicable law clauses determine the law applicable to the parties’ contractual obligations, which can impact the parties’ rights and obligations in relation to corrupt practices depending on the legal regime chosen.¹¹¹ If the parties opt for arbitration, they might even refer directly to transnational legal regimes and any encompassing anti-corruption obligations thereof, such as the *lex petrolea*, as the governing law.¹¹²

Finally, many contracts include clauses requiring parties to align their operations with ‘universally accepted practices in the petroleum industry’, also commonly referred to as good oil field practices or best international petroleum industry practices.¹¹³ For example, a PSA between National Oil Corporation, Verenex Energy Area 47 Libya Limited, and Medco International Ventures Limited specifies that, ‘[i]n addition to all other obligations of Operator set forth elsewhere in this Agreement, Operator shall have the following obligations: (a) to conduct Petroleum Operations in the Contract Area in a manner consistent with Good Oil-field Practices’.¹¹⁴ These practices represent widely recognised standards that advocate for the safe and efficient exploration, production, and transportation of petroleum resources. Through such clauses, parties can introduce anti-corruption commitments into their agreements, as anti-corruption measures are integral components of good oil field practices. This

¹⁰⁷ Rachel Brewster, ‘Interesting Legal Spaces: International Trade Law and Anticorruption Law’ in Carol J Greenhouse and Christina L Davis (eds), *Landscapes of Law: Practicing Sovereignty in Transnational Terrain* (University of Pennsylvania Press 2020) 55, explaining that ‘[a]lmost all states have agreed—in principle—to adopt domestic anticorruption rules (from the UNCAC), and several states have a binding obligation to adopt these rules (from the OECD Anti-Bribery Convention)’.

¹⁰⁸ See the conventions cited in n 72.

¹⁰⁹ For further details on governing law or choice of law clauses in petroleum contracts, see Carmen Otero García-Castrillón, ‘Reflections on the Law Applicable to International Oil Contracts’ (2013) 6 *Journal of World Energy Law & Business* 129.

¹¹⁰ Production Sharing Contract for Blocks LB 11 and 12, concluded between the National Oil Company of Liberia (NOCAL) on Behalf of the Republic of Liberia and Oranto Petroleum Limited (2006) 49, art 23 <<https://resourcecontracts.org/contract/ocds-591adf-3922793692/view/#>> accessed 25 May 2024.

¹¹¹ For example, if the parties have elected that the contract is governed by English law, the contract is voidable if it was procured through an act of corruption by the election of the innocent party. See for example *Honeywell International Middle East Ltd v Meydan Group LLC* [2014] EWHC 1344 (TCC), [2014] BLR 401.

¹¹² See further Otero García-Castrillón (n 109) 135–40; Deeksha Malik and Geetanjali Kamat, ‘Corruption in International Commercial Arbitration: Arbitrability, Admissibility and Adjudication’ (2018) 5 *The Arbitration Brief* 1, 14–15.

¹¹³ See generally Alex Wawryk, ‘Petroleum Regulation in an International Context: The Universality of Petroleum Regulation and the Concept of *Lex Petrolea*’ in Tina Hunter (ed), *Regulation of the Upstream Petroleum Sector: A Comparative Study of Licensing and Concession Systems* (Edward Elgar Publishing 2015) 20.

¹¹⁴ Exploration and Production Sharing Agreement, Contract Area 47, concluded between National Oil Corporation, Verenex Energy Area 47 Libya Limited, and Medco International Ventures Limited (12 March 2005) 14, art 5.5 <<https://resourcecontracts.org/contract/ocds-591adf-5545997817/view/#>> accessed 25 May 2024.

connection is substantiated by industry standards and regulations requiring petroleum companies to establish effective anti-corruption policies and procedures. For example, the EITI mandates participating countries and companies to disclose information on payments within the petroleum industry. These reporting requirements specifically target high-risk areas of the petroleum sector, positioning the EITI as a key contributor to anti-corruption efforts in this sector.¹¹⁵ Likewise, the International Petroleum Industry Environmental Conservation Association, a global industry association for the petroleum sector, has formulated guidelines to address corruption risks in the industry. These guidelines offer practical counsel to petroleum companies on creating effective anti-corruption policies and procedures, including conducting risk assessments, training employees and contractors, and monitoring compliance.¹¹⁶

In the Jubilee Agreement, alongside the Standard Clause, there are additional provisions mandating compliance with laws. The Agreement includes a compliance with laws clause,¹¹⁷ an applicable law clause,¹¹⁸ and a clause on universally accepted practices in the petroleum industry.¹¹⁹ Therefore, the Agreement indirectly addresses anti-corruption matters by emphasising legal compliance, providing mechanisms for dispute resolution, and aligning with industry best practices that inherently include ethical considerations.

(ii) Audit Rights Clauses

The inclusion of ‘audit rights clauses’, also referred to as ‘monitoring clauses’, serves as a potent anti-corruption tool that allows parties to monitor each other’s compliance with anti-corruption measures.¹²⁰ Through these contractual clauses, parties establish a framework to ensure that their counterparts keep accurate financial records and books and maintain an effective internal control mechanism.¹²¹ According to the ‘FCPA Resource Guide’, audit rights are identified as a form of ‘ongoing monitoring of third-party relationships’.¹²² While general audit rights clauses are standard in most contracts, parties can incorporate audit rights that explicitly address corruption issues. For example, the GIACC, in its ‘Sample Anti-Corruption Contract Commitments’, provides a template for audit rights clauses specifically tailored to address corruption matters.¹²³ The Standard Clause also includes an audit rights clause specifically addressing corruption. Article 21.1(C) requires the parties to maintain a ‘system of internal controls and record keeping’ accessible to all parties, while paragraph (D) grants the

¹¹⁵ For further details on the role of EITI in fighting corruption, see Alexandra Gillies, ‘The EITI’s Role in Addressing Corruption’ (Discussion Paper, Extractive Industries Transparency Initiative, October 2019) <https://eiti.org/sites/default/files/attachments/eitis_role_in_addressing_corruption_en.pdf> accessed 25 May 2024.

¹¹⁶ ‘Preventing Corruption: Promoting Transparent Business Practices’ (*IPIECA*, 23 April 2012) <www.ipicca.org/resources/preventing-corruption-promoting-transparent-business-practices/#> accessed 25 May 2024.

¹¹⁷ Jubilee Agreement (n 12) 95, art 20.1.

¹¹⁸ *Ibid* 95, art 20.2.

¹¹⁹ *Ibid* 38, art 7.2(B).

¹²⁰ See generally Boles (n 6) 829, 830.

¹²¹ Daniel J Grimm, ‘Traversing the Minefield: Joint Ventures and the Foreign Corrupt Practices Act’ (2014) 9 *Virginia Law & Business Review* 91, 147.

¹²² ‘FCPA Resource Guide’ (n 19) 62. See also *FCPA Opinion Procedure Release 2004-02* (US Department of Justice, 12 June 2004), acknowledging ‘[t]he inclusion in all agreements, contracts, and renewals thereof with all Agents and Business Partners of provisions... allowing for internal and independent audits of the books and records of the Agent or Business Partner to ensure compliance with the foregoing; and... [i]ndependent audits by outside counsel and auditors... to ensure that the Compliance Code, including its anti-corruption provisions, are implemented in an effective manner’.

¹²³ GIACC, ‘Sample Anti-Corruption Contract Commitments’ (10 April 2020) arts 4–8 <giaccentre.org/chess_info/uploads/2019/10/GIACC.WEBSITE.CONTRACTTERMS.SAMPLE.docx> accessed 25 May 2024.

parties the right to audit those records and transactions (see Annex II). The review and verification of financial records and transactions facilitate the identification of potential instances of corruption or financial impropriety.

(iii) Sub-Contracting and Assignment Clauses

Another category of clauses through which parties can impose anti-corruption clauses on each other pertains to sub-contracting and assignment requirements. Sub-contracting clauses outline the conditions for delegating parties' obligations to third parties, while assignment clauses allow parties to transfer their contractual rights, obligations, or ownership to another contracting party, specifying the conditions for such transfers.¹²⁴ These clauses may contain contractual restrictions on the use of sub-contractors or the delegation of obligations to third parties.¹²⁵ Within these clauses, parties can stipulate the need for the other party's approval when hiring a third-party agent or entity, ensuring that the other party verifies the third party's compliance with anti-corruption matters. While many contracts include general sub-contracting or assignment clauses, parties can explicitly refer to compliance with anti-corruption laws in such clauses. For example, in a PSA between the Kurdistan Regional Government of Iraq and Repsol YPF Oriente Medio SA, 'Procurement Procedures', clause 22.3.1 states that '[e]ach contract with Subcontractors must include a provision that obligates such Subcontractor to comply with Corrupt Practices Laws in the Subcontractor's performance at the contract'.¹²⁶ The PSA imposes additional obligations in its assignment clauses:

39.7 A Contractor Entity proposing to Assign all or any part of its rights, obligations, and interests under this Contract shall request the consent of the Government and the other Contractor Entities, and accompany such request with:

- (a) evidence of the technical and financial capability of the proposed third party assignee and its controlling (directly or indirectly) shareholders;
- (b) a letter of representations and warranties from the proposed assignee in form and content acceptable to the Government including a representation that the proposed assignment will not to the knowledge of such Contractor Entity after reasonably diligent investigation violate any Corrupt Practices Laws applicable to the Contractor Entity; and
- (c) a letter of representations from the assignor in form and content satisfactory to the Government, including a representation that the proposed assignment will not to the knowledge of such Contractor Entity after reasonably diligent investigation violate any Corrupt Practices Laws applicable to the Contractor Entity.¹²⁷

¹²⁴ See for example 'Subcontracting Clauses (Delegation of Contractual Obligations to Third Parties)' (*Hall Ellis Solicitors*) <<https://hallellis.co.uk/subcontracting-clause-delegation/>> accessed 25 May 2024.

¹²⁵ Michael Volkov, 'Contracts and Anti-Corruption Compliance' (*Volkov Law Group*, 17 July 2011) <blog.volkovlaw.com/2011/07/contracts-and-anti-corruption-compliance/> accessed 25 May 2024, providing a template clause for use of sub-contractors: 'No Sub-Vendors (without approval): The foreign business partner must agree that it will not hire an agent, subcontractor or consultant without the company's prior written consent (to be based on adequate due diligence)'.

¹²⁶ Production Sharing Contract, concluded between the Kurdistan Regional Government of Iraq and Repsol YPF Oriente Medio SA (2011) 65, cl 22.3.1 <<https://resourcecontracts.org/contract/oeds-591adf-6998213818/view#/>> accessed 25 May 2024.

¹²⁷ *ibid* 99-100.

By including additional requirements in sub-contracting and assignment clauses, the contract ensures that all parties involved in the contract exercise due diligence in selecting third parties and comply with anti-corruption laws.

The Standard Clause also explicitly addresses the compliance of sub-contractors with anti-corruption matters in article 21.1(F) (see Annex II). Furthermore, article 21.6 of the Jubilee Agreement mandates the contract's obligations on successors and assigns, stating that '[s]ubject to the limitations on Transfer and Encumbrances contained in Article 14, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties'.¹²⁸

(iv) Training Clauses

Lastly, anti-corruption commitments can also be incorporated into personnel training clauses. Such clauses may obligate parties to implement training programmes for their staff, aiming to improve their knowledge and professional qualifications in relevant aspects of the industry.¹²⁹ Anti-corruption training can equip personnel to understand what constitutes corruption and the consequences of engaging in corrupt practices. It also offers employees the opportunity to develop skills to recognise and respond appropriately to corrupt requests. Contracts can explicitly address anti-corruption in these clauses. For example, the GIACC, in its 'Sample Commitments', offers a template for anti-corruption training clauses: 'The [business associate] will be required to undertake any relevant anti-corruption training which [organisation] reasonably requires. [Business associate] [Organisation] will be responsible for the costs of any such training'.¹³⁰ Although not specifically designed for anti-corruption, most contracts incorporate training clauses, providing the parties with an opportunity to integrate anti-corruption elements into their training programmes. For example, a PSA signed between Staatsolie Maatschappij Suriname NV and Kosmos Energy Suriname provides that:

32.1.1 During each phase of the Exploration Period... Contractor shall allocate... per Calendar Year to train representatives of Staatsolie or to provide programs of social responsibility. During each Calendar Year after the Exploration Period, Contractor shall allocate... per Calendar Year to train representatives of Staatsolie or to provide programs of corporate social responsibility... The programs of corporate social responsibility shall support community-based development in areas like environment, health, education, culture and sports.¹³¹

Through this clause, the parties may include anti-corruption training as part of their social responsibility training programme.

¹²⁸ Jubilee Agreement (n 12) 103, art 21.6.

¹²⁹ See generally Boles (n 6) 833.

¹³⁰ GIACC, 'Sample Anti-Corruption Contract Commitments' (n 123) art 3.

¹³¹ Production Sharing Contract for Petroleum Exploration, Development and Production Relating to Block 45 Offshore Suriname, concluded between Staatsolie Maatschappij Suriname NV and Kosmos Energy Suriname (13 December 2011) 88, art 32.1.1 <<https://resourcecontracts.org/contract/ocds-591adf-6931392961/view#/>> accessed 25 May 2024.

(v) Overview: Indirect Anti-Corruption Clauses

Figure 2 presents an overview of the types of indirect anti-corruption clauses described above:

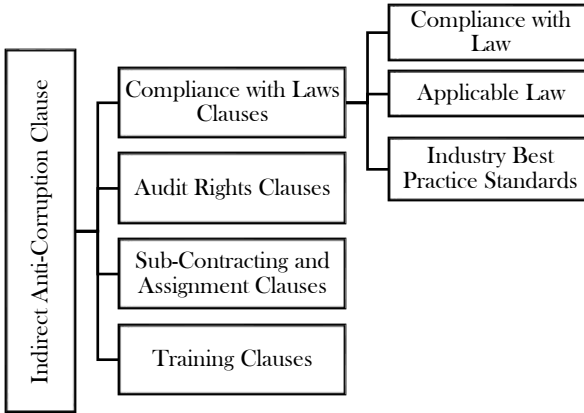


Figure 2: Indirect anti-corruption clauses in petroleum contracts and their order of capability in imposing anti-corruption commitments (from top to bottom)

In Figure 2, the arrangement of the indirect clauses reflects their respective capacity to uphold anti-corruption commitments. This article argues that compliance with laws clauses, which form the core legal framework of the contract, can be interpreted to integrate anti-corruption commitments into the contract, considering that corruption is prohibited in almost all states. Moving to the next tier, audit rights clauses are perceived as more powerful tools than assignment clauses and training clauses for enforcing anti-corruption commitments because audit rights can provide a legally enforceable and objective mechanism for verifying compliance, allowing parties to take immediate action in the case of non-compliance by the other party.¹³² Lastly, the article suggests that, although training clauses play a key role in creating a culture of compliance and increasing awareness, their influence is limited when compared with other indirect clauses that impose compliance with anti-corruption laws.

V. CONCLUDING REMARKS: MOVING TOWARDS THE ADOPTION OF ANTI-CORRUPTION CLAUSES AS AN INDUSTRY STANDARD PRACTICE

Among the different instruments available to TNCs, anti-corruption clauses have emerged as a recent addition to international commercial agreements to fight corruption. Despite their growing usage, there have been few attempts to examine their role and influence. To fill this

¹³² Nick Cooper and Kate McNally, 'I Want It All: The Contractual Effect of Audit Clauses' (2016) 68 *Governance Directions* 288, 289: 'An audit clause can impose a significant compliance burden. Its scope may also be much broader than it initially appears.'

gap, this article has examined anti-corruption clauses in a specific sector where corrupt practices are widespread and endemic—the petroleum industry. By analysing 1,164 actual petroleum contracts, the article has identified and categorised different types of anti-corruption clauses into two major groups: direct and indirect. It has further explored sub-categories and characteristics associated with each type. Annex I provides a summary of the identified direct and indirect clauses in these contracts along with their different subcategories. Considering the data-driven insights obtained during the contracts review, this article concludes that, although parties have initiated the incorporation of these clauses into their contracts, there is a need for their more widespread adoption as a standard industry practice. The article advocates parties, when entering into contracts, to include direct clauses, committing each other directly to anti-corruption measures. Among direct clauses, parties should prioritise explicit clauses—prohibition clauses, compliance clauses, and ACCP clauses—which expressly prohibit corruption, over implicit clauses, that is, integrity clauses, specified clauses, and CSR clauses. Direct anti-corruption clauses commit parties to adhere to anti-corruption standards. Indirect anti-corruption clauses, on the other hand, provide a means for parties to enforce anti-corruption commitments in the absence of direct clauses, especially in older contracts where direct clauses are absent. This article suggests that, when direct clauses are absent in a contract, parties can interpret compliance with laws clauses, audit rights clauses, sub-contracting or assignment clauses, or training clauses to impose anti-corruption commitments upon each other.

The article has also introduced a Standard Clause, detailed in Annex II, as a model that includes nearly all types of anti-corruption clauses. This comprehensive anti-corruption clause, spanning five lengthy pages, goes beyond standard definitions in article 1.16 and prohibitions of corruption under national and international laws. As well as requiring parties to provide warranties against corrupt practices in section (A) of article 21.1 and article 21.3, the clause calls upon parties to adopt further measures to strengthen their anti-corruption commitments in the following sections of article 21.1. These supplementary measures include the implementation of internal control in section (C), audit procedures in section (D), annual certification in section (E), and subcontracting requirements in section (F). Article 23.4 also addresses conflicts of interest, with operators being obliged to avoid situations where their interests conflict with those of other parties. Most importantly, all of these requirements extend to subcontractors. Therefore, this anti-corruption clause includes nearly all of the explicit and implicit clauses. The article introduces this standard anti-corruption clause as a best practice for drafting an anti-corruption clause. It also serves as useful guidance on the key elements that should be included, such as anti-corruption commitments, compliance with anti-corruption laws, addressing different types of corrupt practices, and supplementary measures.

Upon examining petroleum contracts, it becomes evident that contracts within a specific country often employ a uniform anti-corruption clause with identical language for different parties. However, this article suggests that a more effective approach involves initially adopting a standard anti-corruption clause that is sufficiently comprehensive and inclusive in contract templates. Subsequently, after the compliance department conducts due diligence procedures on a specific party and creates a risk profile, they can recommend additional details and commitments if needed.

By incorporating anti-corruption clauses into their contracts, TNCs can contribute to making anti-corruption standards widely recognised. Anti-corruption clauses have the potential to influence the behavioural standards of individuals and entities and to facilitate a normative shift in how corruption is perceived and addressed. Most importantly, anti-corruption

clauses can act as a constraint on corruption in countries with established corruption risks, as well as in countries that may not be strictly obliged to comply with transnational anti-corruption norms. However, the mere incorporation of such clauses is insufficient; companies must fully enforce these clauses and integrate them into their anti-corruption compliance programmes. While this article serves as a starting point, future research is necessary to investigate thoroughly the realm of anti-corruption clauses and their efficacy.

ANNEX I: IDENTIFIED DIRECT AND INDIRECT CLAUSES IN THE REVIEW OF 1,164 CONTRACTS

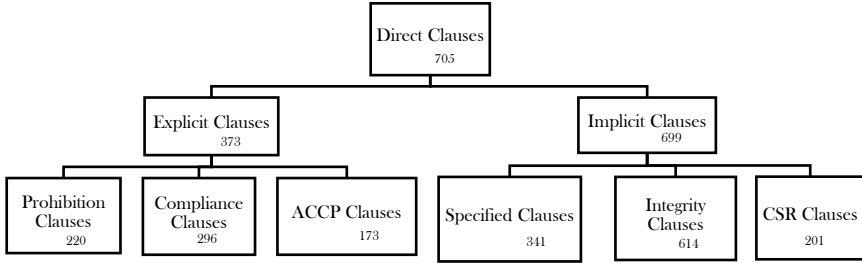


Figure 3: Identified direct anti-corruption clauses in studied petroleum contracts

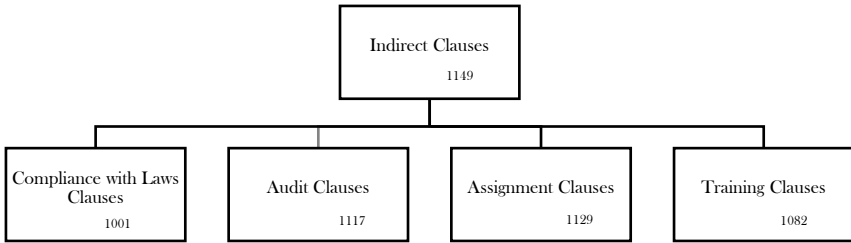


Figure 4: Identified indirect anti-corruption clauses in studied petroleum contracts

ANNEX II: STANDARD CLAUSE

Article 1 Definitions

1.16 *Anticorruption Legislation* means (1) the applicable laws of Ghana; (2) with respect to each Party, the anti-corruption laws of any Home Country Governmental Authority with respect to such Party or any Affiliate of such Party including, as applicable to such Party or its Affiliates, the United Kingdom's anti-corruption legislation, including the Anti-Terrorism, Crime & Security Act 2001, and the U.S. Foreign Corrupt Practices Act; (3) the OECD Anti-bribery Principles; or (4) with respect to each Party, any other implementing legislation with respect to (1), (2) and (3) above.

1.116 *OECD Anti-bribery Principles* means the following principles, which are based on the principles set forth in Article 1.1 and 1.2 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997, and entered into force on 15 February 1999, and the Convention's Commentaries, namely, that:

(a) It is unlawful for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(b) Complicity in, including incitement, aiding and abetting, or authorization of an act of bribery of a foreign public official shall be unlawful. Furthermore, attempt and conspiracy to bribe a foreign public official of a country that is not a Party's Home Country Governmental Authority shall be unlawful to the same extent as attempt and conspiracy to bribe a public official of a country that is a Party's Home Country Governmental Authority.

Article 21 General Provisions

21.1 *Conduct of the parties*

(A) Public Anti-Corruption Provisions

(1) No Party to this Agreement shall knowingly permit or allow, by act or omission, the paying, making, offering, promising, authorizing or causing to pay, make, offer, give, promise or authorize, either directly or indirectly, by it or any of its Affiliates, of any bribe, commission, money, payment, gift (other than promotional and marketing gifts of nominal value), loan, fee, reward, travel, entertainment or transfer of

anything of value, to or for the use or benefit of any Official, of a nature and cost which is not permitted under the Anticorruption Legislation, in connection with this Agreement or the operations associated therewith.

(2) Furthermore and without prejudice to the above, each Party, in recognition of the OECD Anti-bribery Principles represents and warrants that it and its Affiliates have not knowingly, either directly or indirectly, paid, made, offered, given, promised, or authorized and will not knowingly pay, make, offer, give, promise or authorize, in connection with this Agreement or the operations associated therewith, any commissions, money, payment, gift (other than promotional and marketing gifts of nominal value), loan, fee, reward, travel, entertainment or transfer anything of value, to or for the use or benefit of any Official for the purposes of:

- (a) influencing any act, omission or decision on the part of any such Official, in his or her official capacity;
- (b) securing any improper advantage from such Official; or
- (c) inducing any such Official to use his or her influence with another Official or Governmental Authority to affect or influence any official act or to direct business to any Person, or to obtain or retain business related to this Agreement;

where such commission, money, payment, gift (other than promotional and marketing gifts of nominal value), loan, fee, reward, travel, entertainment or transfer of anything of value would violate the Anticorruption Legislation applicable to it.

(3) Each Party further represents and warrants that it and its Affiliates have not either directly or indirectly paid, made, offered, given, promised or authorized, and will not pay, make, offer, give, promise or authorize, in connection with this Agreement or the operations associated therewith, to or for the use or benefit of any other Person, any commissions, money, payment, gift (other than promotional and marketing gifts of nominal value), loan, fee, reward, travel, entertainment or anything of value, if the Party or Affiliate knows, has a firm belief or is aware that there is a high probability that the other Person would use the commissions, money, payment, gift (other than promotional and marketing gifts of nominal value), loan, fee, reward, travel, entertainment or anything of value for any of the purposes prohibited by article 21.1(A)(2).

(4) Each Party further represents and warrants that it and its Affiliates have not either directly or indirectly taken or authorized, and will not

take or authorize, any act in connection with this Agreement or the operations associated therewith that could give rise to either civil or criminal liability for any Original Party under any Anticorruption Legislation applicable to such Original Party.

(B) Indemnity. Each Party shall defend, indemnify and hold the other Parties harmless from and against any and all claims, damages, losses, penalties, costs and expenses arising from or related to, any breach by such first Party of such warranties or covenants under Article 21.1(A) (excluding any Consequential Loss or punitive, multiple or other exemplary damages in accordance with Article 20.3(C)(14)). Such indemnity obligation shall survive termination or expiration of this Agreement.

(C) Internal Controls. Each Party agrees, in connection with this Agreement or the operations associated therewith, to (1) maintain adequate internal controls; (2) properly record and report all transactions; and (3) comply with the Anticorruption Legislation applicable to it. Each Party shall be entitled to rely on the other Parties' system of internal controls and record keeping, and on the adequacy of full disclosure of the facts, and transactions and of financial and other data regarding Unit Operations and any other activity undertaken under this Agreement. No Party is in any way authorized to take any action on behalf of another Party that would result in an inadequate or inaccurate recording and reporting of assets, liabilities or any other transaction, or which would put such Party in violation of its obligations under the Anticorruption Legislation or any other laws applicable in connection with this Agreement or the operations associated therewith.

(D) Audit Rights. During the term of this Agreement and for a period of five (5) years thereafter, each Party shall in a timely manner:

(1) respond in reasonable detail as to itself and its Affiliates after reasonable inquiry and investigation to any notice from any other Party reasonably connected with the representations, warranties and covenants set forth in Article 21.1(A) and Article 21.3;

(2) furnish relevant documentary support for such response upon request from such other Party; and

(3) in general, cooperate in good faith with such other Party in determining whether a breach of the representations and warranties has occurred.

(E) Annual Certification. Each Party shall complete an annual certification attesting that, to its knowledge after reasonable inquiry and investigation, neither such Party nor its Affiliates has breached the terms of Article 21.1(A) or Article 21.3 or committed to any act prohibited by the Anti-

corruption Legislation in connection with this Agreement or the matters which are the subject of this Agreement.

(F) Subcontractors. Unit Operator and each Technical Operator, shall obtain express anticorruption provisions, including where appropriate in the contracting party's opinion, applicable anticorruption legislation provisions, audit rights, termination provisions, and requirements that each Subcontractor obtain similar provisions in any contracts with its subcontractors, in a written agreement with each of its respective Subcontractors retained for the Unit Account.

21.3 Private Anti-Corruption Provisions

Each Party agrees that neither it, nor its Affiliates nor their respective directors, officers and employees or individual contractors or consultants (natural persons) fulfilling a staff role in such Party's organization, will knowingly, whether directly or indirectly, pay, make, offer, give, promise or authorize, or accept, in connection with this Agreement or the operations associated herewith, any bribe, commission, money, payment, gift (other than promotional and marketing gifts of nominal value), loan, fee, reward, travel, entertainment or transfer of anything of value, to or for the use of any directors, officers and employees or individual contractors or consultants (natural persons) fulfilling a staff role, of any other Party, or any of its Affiliates, or any subcontractor of any tier, for the purpose of:

(A) improperly influencing any act, omission or decision on the part of any such other Party, or its Affiliates, or any such subcontractor of any tier, in connection with this Agreement and the operations associated herewith; or

(B) securing any improper advantage from such other Party, or its Affiliates, or any subcontractor of any tier, in connection with this Agreement or the operations associated herewith.

23.4 Conflicts of Interest

(A) Each Operator undertakes that it shall avoid any conflict of interest between its own interests (including the interests of Affiliates) and the interests of the other Parties in dealing with suppliers, customers and all other organizations or individuals seeking to provide goods or services to the Parties in connection with Unit Operations.

(B) The provisions of the preceding paragraph regarding each Operator shall not apply to: (1) such Operator's performance which is in accordance with the written local preference laws or policies of the Government; (2) such Operator's acquisition of products or services from an Affiliate, or the sale thereof to an Affiliate, made in accordance with the terms of this

Agreement; or (3) such Operator's acquisition of goods and services for the benefit of any Tract for which it is Tract Operator.

(C) Unless otherwise agreed by the Parties in writing, the Parties and their Affiliates are free to engage or invest (directly or indirectly) in an unlimited number of activities or businesses, any one or more of which may be related to or in competition with the business activities contemplated under this Agreement, without having or incurring any obligation to the other Parties, including any obligation to offer any interest in such business activities to any Party.