



# SUPPLY SIDE OF CORRUPTION FROM A BUSINESS PERSPECTIVE

MAY 2019





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# EXECUTIVE SUMMARY AND RECOMMENDATIONS

The aim of this report is to increase the awareness of key actors within the business community in Kosovo on importance of respecting ethical principles in doing business in order to reduce corruption and bribing from businesses side (supply side of corruption) through exercising zero tolerance for corruptive practices. The report has been prepared based on desk research related to identification of legislation gaps in addressing this issue and in exploring international experiences and also based on the outcomes of a survey with 500 businesses as well as interviews with representatives of Kosovo Judicial Council and Kosovo Anti-Corruption Agency.

In engagements against corruption in Kosovo, supply side of corruption was neglected, especially supply side from business sector. Overall, respondents (business owners and managers) agree that corruption in Kosovo is widespread, that it presents serious problems for doing business especially related to public procurement and obtaining licenses. However, they reduce this perception significantly when it comes to assess the situation in the sector they work, or their own experiences. They also consider that corruption is mainly fueled by narrow interest groups of connected political groups. Businesses are aware about the negative consequences related to a range of distortions in the market such

as negative impact on the volume and destination of public investment and economic growth, stimulates tax evasion, it erodes country's image and credibility and reduces investment in health and education, it fuels unemployment, inequality, and poverty. As for the responsibility for the current situation created, respondents consider that this is primarily the responsibility of public officials, however, they also state that corruption is also influenced by readiness from the business side to accept the request for bribe or offer a bribe in exchange for lucrative profit or contract. Surveyed business leaders, expressed high readiness to sign the Business Anti-corruption Code and develop internal measures and regulations against corruption. However, businesses still do not have the confidence that judicial system engages seriously and rigorously to fight this negative phenomenon.

Although basic legal framework addressing corruption is in place, based on experiences from other countries, survey outcomes and desk research, we consider that there is a gap in legislation in addressing the responsibility of the company involved in corruptive practices and also in terms of monitoring implementation of public procurement contracts regarding quality and quantity of goods and services delivered.

Based on research outcomes, the following RECOMMENDATIONS are offered:

- Business Associations and business leaders should engage in developing internal policies, procedures that serve as codes of conduct for employees in which the commitment of owners, executives and all employees toward integrity standards are clearly stated. Standards such as: doing business fairly, honestly and openly for a Clean Business Environment.
- Business Associations should engage actively in preparing, signing and implementing of Business Anti-Corruption Code during this year. Each businesses association should create a task force that is responsible to monitor the implementation of Business Anti-Corruption Code by businesses that are members in respective Associations.
- Government and Kosovo Assembly should engage in amending the Law on Suppression of Corruption so that it requires companies to implement effective internal controls and discourage corrupt practices. The law should

contain also: (1) Offences addressing commercial bribery; (2) Under the Law, a company should be found guilty of a bribery offence if it fails to prove that it has in place adequate procedures designed to prevent its employees from committing bribery (3) Penalties should include debarment from public contracts for the companies involved in corruption for the period of 5-10 years and also confiscation order; (4) The Law and other regulations should clearly state that there should be mechanism in place to monitor implementation of public procurement contracts ( e.g. above 500,000 Euros) in terms of delivering quantity and quality of products and services specified in tender dossier.

- The Judiciary system, Prosecutors and Courts should develop their capacities and demonstrate serious commitment to increase their outcomes in harder punishments towards individuals that are engaged in corruptive practices. They should improve perception and increase confidence of businesses and opinion on judiciary through punishing corruption effectively.



# 1. INTRODUCTION

Riinvest Institute for Development Research, with the support of 'Civil Society Programme for Albania and Kosovo', financed by the Norwegian Ministry of Foreign Affairs and managed by Kosovar Civil Society Foundation (KCSF) in partnership with Partners Albania for Change and Development (PA), is implementing the project titled "Business Anti-Corruption Code and Coalition BACCC" aiming at raising awareness of key actors within the business community in Kosovo on importance of developing ethical principles to reduce corruption and bribing from businesses (supply side of corruption). One of the key outcomes of this project is expected to be the approval of the Anti-Corruption Code, signed by key Business Associations and business leaders and establishment of a Steering Comity to stimulate and follow implementation of this Code.

The value added of this project is that it will, for the first time in Kosovo, approach the corruption phenomenon from the supply side, especially the businesses side in bribing and corrupting officials. It will contribute to a more complex approach to address corruption including business ethics and corporate social responsibility. Through identifying the perceptions of business leaders regarding this issue, through exploring experiences in other countries, and analyzing how legislation is addressing supply side of corruption and whether there are necessary improvements, this project if focused in increasing awareness and as a result initiate mobilization of business associations and business leaders against fueling corruptive practices from the supply side.

This Research Report has been prepared based on desk research related to identification of legislation gaps in addressing the supply side corruption issue and in exploring international experiences. It has been also prepared based on results received from a survey with 500 businesses operating in the whole region of Kosovo and interviews conducted with officials at Kosovo Judicial Council, and Kosovo Anti-Corruption Agency.

This report is structured as follows: the second section includes a short overview of nature and consequences of supply side of corruption based on literature evidence; the third section covers the legislation analysis; the fourth section covers relevant international experiences; the fifth section survey methodology; the fifth section presents detailed survey findings, arranged into subsections that cover specific areas of study; finally, the last section contains the concluding remarks from the analysis and also present potential key provisions of Business Anti-Corruption Code.

Following this Report and its presentation at the conference, the Business Anti-Corruption Code will be developed which is expected to be signed by business associations and business leaders. Key stakeholders in this project are Kosovo Chamber of Commerce, Manufacturer Club and Corporate Social Responsibility Network. The team expect that during the project life other business associations as well will be engaged in implementation of its activities.

The activities of this project, especially signing of Business Anti-corruption Code and establishment of a Steering-Committee that will follow up on the activities semi-annually, will contribute towards the sustainability of efforts and achievements. Also increased awareness about the need to tackle corruption from supply side is expected to initiate projects and activities in this area from business associations, NGOs and governmental institutions. Riinvest Institute intends to follow up and evaluate

project impact two years after its completion. It is expected that also donators will pay more attention and support more activities in this field of the battle against corruption. It is important that new projects are focused to activate business associations in specific sectors e.g. food processing, construction, trade etc. Also, legislation initiatives and monitoring of their implementation should contribute to strengthening of project sustainability.



## 2. THE SUPPLY SIDE OF CORRUPTION AND ITS CONSEQUENCES

The level of corruption in Kosovo is perceived as the second major problem in Kosovan society (UNDP, 2018) and it is ranked only after unemployment. International ratings rank Kosovo in the middle of the list of 180 countries (93), with a CPI (Corruption Perception Index) of 37, quite similar to other countries in the region, similar to Serbia, Albania, B&H and Macedonia with CPI 36-39 (Transparency International, 2019). Most of countries in Western Balkans except Macedonia have worsened their CPI. Kosovo worsened its position for two index points. Courts, customs, government are perceived with highest prevalence regarding large scale of corruption (UNDP, 2018).

Although during last three years modest improvement in terms of CPI were noticed in Kosovo jumping from 33 (2015) to 37 (2019), still, as UNDP Public Pulse (2018) shows, the level of corruption is perceived as a severe problem and it is hindering developments in strengthening rule of law, in improving business climate and investment attractiveness of the country.

Legal framework and institutional bodies were established to prevent and also to punish corruption. Civil society and public opinion are concerned and are debating about this issue. But on the other side, Judicial system has not been seen as successful in addressing cases against corruption, and key governmental institutions still fail to address properly this issue. The lack of political willingness to seriously fight corruption in addition to still inadequate

capacities to implement Rule of Law are seen as a key problem. The pressure of opinion, media and civil society has not yet achieved critical mass to increase intolerance of the society over corruptive practices. In overall activities and policies for combatting corruption so far mark modest achievements.

Almost every state prohibits the use of corrupt practices to secure government contracts and considerable efforts have been made to regulate the conduct of government officials associated with the procurement process. Despite the legal framework in place and existing infrastructure to fight corruption there is also pressure of segments in society especially from private sector to gain lucrative contracts originating from the appetite for extra profit. And this severely limits the results of the anti - corruption activities (Sikka & Lehman, 2015). Corporations engage in corrupt practices for three major reasons: to maintain higher prices, to maintain a market for outdated products, and to remain in the field of competition, especially if further sales can be secured at a later date (Moody-Stuart, 1997). In the absence of effective moral constraints, any deal is considered to be acceptable as long as it is profitable. Corporations need to accept that they were created to serve society and must have legal responsibilities wider than the simple pursuit of private profits. Without this, programs of surveillance and internal controls may achieve marginal success, but are unlikely to make a significant difference in reducing corrupt practices. Use

of market prices as benchmarks to detect artificial and inflated prices is one of the possibilities for an accord to fight corruption from the supply side.

The focus of different stakeholders in Kosovo in addressing corruption problem so far has been on the demand side – procurement, local and central governments officials, public enterprises, courts, health and educational sector. They have been seen as a key actor that generate corruption. That is true, but only to certain extent. It is obvious that in overall engagements against corruption in Kosovo, supply side of corruption was neglected, especially supply side from business sector, respectively bribes given by companies to governmental officials and managers of POEs. This is a situation when certain number of companies orchestrate waste of corruption to gain competitive advantage and exceptional returns. They gain benefits for themselves and in account of the vast majority of businesses. Other business and society as a whole are victims.

Unfair competition was considered a major obstacle, from a list of 14 barriers, in doing business for years by businesses (Riinvest annual SMEs surveys since 2001). Unfair competition originates mainly from corruption and bribes during procurement and to certain extent from informal sector. Companies themselves so far are condemning the behavior of actors in the demand side of corruption, but they have neglected to address the corruptive elements and behavior of business sector and business organizations that behave unethically and are “creative” to find a way to avoid fair competition. Thus, it is about time that business associations and businesses address this issue and mobilize their community to eliminate or at least reduce unethical behavior in doing business. This is an issue that has been addressed in many countries and there is a solid literature evidence and lessons to be learned. In Kosovo so far activities in this sector are absent.

Following this situation Riinvest Institute considers of key importance to initiate activities in cooperation with key business associations and business leaders to shed light in this phenomenon aiming also to develop a form of business coalition against corruption. It is obvious that in addition to institutional capacities and political willingness to fight corruption there is another complementary seg-

ment to achieve more results. It is a creation of critical mass of awareness in a society that condemns corruption and actively engages to identify and punish corruption.

Current situation in Kosovo is characterized mainly by critique in media from civil society, but in the other side there are parts of the Kosovo society, amongst others the business community, that have taken a passive attitude towards this issue. Even worse, some segments of the society in their passivity reflect a situation when corruption is taken as a fact to live with. There is an ultimate need that key stakeholder in the society create critical mass of active intolerance against corruption and change these attitudes. Clientelism and links between political and business interest groups that orchestrate also corruption in public procurement are amongst key elements of captured state. The critical mass of awareness and action of the society against corruption should compromise and defeat these links, amongst others, but not limited to, through elections.

As such, it is more than necessary to make aware the citizens and businesses about the huge costs of corruption on democratic processes, on hindering investment and on slowing economic development. Corruption inhibits economic growth and affects business operations, employment and investments. It also reduces tax revenue and the effectiveness of various financial assistance programs. The wider society is influenced by a high degree of corruption in terms of lowering of trust in the law and the rule of law, education and consequently the quality of life access to infrastructure, health care (Sumah, 2018). Corruption negatively impacts the optimal allocation of capital through distorted market conditions. This is because corruption leads to the best-connected contractors and those more likely to give bribes being chosen above those offering the best product (Australian Institute, 2018). A negative impact that has been shown is slowing tempo of economic growth rates in certain empiric studies for about up to 50% (Wei, 2001). To a similar conclusion have come up also studies commissioned by DIFID (2015) and GTZ (2008), through evidence of empirical studies and research in different parts of the world. “One decrease in corruption incidence form the level found in Azerbaijan(high) to that

prevailing in Estonia (quite low) is associated with increase in probability of foreign investment from 9 -14%” (GTZ 2008). This study presents sound arguments that the level of corruption is negatively correlated with investment in education, health and environment.

In overall, corruption creates a range of distortions in the volume and destination of public investments, in tax evasion, it erodes the country’s image and credibility and reduces growth rates, stimulates unemployment and inequality, respectively poverty. According to a DFID study and OECD report (2013) corruption increases the cost of doing business in average by 10% at the firm level. But in some parts of the world, the percentage that firms are expected to give to officials are much higher. In a long run corruption could hinder the motivation and interest of the businesses to increase their competitiveness capacities, innovation and productivity as they damage fair competition and firms are not in a pressure to be more competitive

as some of them increase sales through bribing. Furthermore, DePaul University Chicago study of 300 large companies indicated that those companies “which made an explicit commitment to follow ethical standards provided more than twice the values to shareholders that companies that did not” (CSIS - SFPA, 2005).

Taking all this into consideration, there should be much more civic society activism and organized efforts of different stakeholders in society such as media and business associations that would educate and increase awareness on overall costs of corruption for the society. And that this not an issue only for persecutors, courts, but equally for citizens, for SMEs, for Parliament Members as everyone pays the costs of corruption through less new jobs, less investment in education and health, more poverty and in less competitive businesses. Than this should result on “zero” tolerance for corruption and demonstrated also in local and national elections.



## 3. LEGAL ASPECTS AND GAPS

In technical terms, Kosovo has built a solid legal framework, comparable to other countries in the region and other democratic countries, to fight corruption and prevent corruption. According to the laws in force in the Republic of Kosovo, fighting and preventing corruption is defined for official persons and official duties, and is based on punitive measures. Criminal Code of Kosovo sanctions requesting and offering a bribe, gifts or other favors by an individual as serious criminal offenses. Within the framework of Chapter XXXIV - Official Corruption and Offenses against Officials, Articles 414-430 of the Criminal Code of Kosovo (No. 06/L-074, 14 January 2019), a number of illegal acts of officials are sanctioned as criminal offenses, ranging from a fine for minor offenses, up to a term of imprisonment ranging from 6 months to 12 years in prison for serious criminal offenses, including confiscation of property that was unlawfully obtained. Also, in these articles giving/promising to give a bribe or other favors to an official person in exchange for any action or inaction that is contrary to the official duty, is punishable, ranging from a fine to a prison sentence up to 5 years.

Besides the Criminal Code of the Republic of Kosovo, within the Kosovo legal framework for combating and preventing corruption the Law no. 2004/34 on Corruption and Law on Anti-Corruption Agency no. 65/05 are included as well. The Anti-Corruption Law in force was approved by the provisional institutions in year 2004.

However, although the legal infrastructure for fighting and preventing corruption in Kosovo can be considered solid, it is not enough to prevent and combat this phenomenon that is damaging to socio-economic and democratic development of Kosovo society. On the other hand, the lack of readiness and political will to detect and address cases of corruption, a very small

number of cases judged by final court decisions, mild penalties in relation to the weight of offenses, prescribed cases, etc. aggravate even more the business climate, attraction of foreign direct investment, and weaken the efforts to strengthen law and accountability.

Provisions of the Criminal Code of Kosovo regarding corruption offenses apply mainly to public officials, which is somewhat logical since this category is most exposed towards offers to engage in criminal corruptive practices. On the other hand, corporate officers, companies, business associations and the business community in general are less directly exposed to the legal provisions of the Code for their eventual engagement in corruptive practices, except in cases of offering a bribe or giving a bribery during public procurement process or to get any other favor for their companies or businesses.

The Law on the Prevention of Conflict of Interest in Discharge of a Public Functions (No. 06 / L-011) in its provisions prohibits the actions of a public official that in any way contravene the principles and ethics of the public official. The obligation for the prevention and resolution of the conflict of interest, Article 8 of this law, obliges a person who, by taking on the duty of a public official and while exercising the duty, has the obligation to prevent and to choose the most effective way possible to resolve any situation of conflict between his or her public and private interests. The function of this legal provision is to prevent a public official, being in conflict of interest with certain persons or entities, to be exposed to situations that favor him for misusing his official position, luring him for corruption, taking bribery or other favors to the detriment of private persons or businesses.

In the Criminal Code of Kosovo (CCK), it is not clearly stipulated that the responsible persons of a business organization are penalized in cases when they receive gifts or other benefits in direct violation of the law in order to damage their organization when reaching a business agreement. This does not mean that in such cases, the responsible persons in business organizations should not be held accountable for their corruptive actions, as with the provisions of the CCK, such cases may be included in the framework of those provisions that sanction official persons, although it is not specified whether it is about public or private official.

In general, from the analysis of the legal framework of Kosovo it appears that the provisions related to the supply side of corruption need clarification, supplementation and tightening of sanctions. For example, the Criminal Code of Slovenia (CCS) addresses in a more qualitative and inclusive way criminal offenses as a result of corruptive practices in and during business activities in business organizations (See Articles 244-249). Its provisions specify that whomever during his/her business activity requires or accepts for himself or for somebody else any gift or other benefit in violation of the law in order to harm his or her organization or any other party with his or her actions, on the occasion of reaching a business agreement shall be punished with imprisonment of six months to five years (Article 247 of the Criminal Code of Slovenia).

Albania's Criminal Code (2016) sanctions active corruption in the private sector through Article 164/a and passive corruption (Article 164/b). The promise, proposal or giving, directly or indirectly, of any irregular benefit, for himself or for other persons, to a person exercising a function in a business organization or working in any position in the private sector to perform or not perform an action in violation of his duty or function, is punished by imprisonment from three months to three years (Article 164/a).

Passive corruption in the sector also foresees punishment with a fine as a major punishment, in addition to a prison sentence. Requesting or receiving, directly or indirectly, any kind of improper benefit or promise for benefit, for himself or for other persons, or acceptance of an offer or a promise arising out of improper profit, by a person exercising a managerial function or who works in any position in the private sector to commit or fail to act contrary to his duty or function, is punished

by imprisonment of six months to five years (Article 164/b).

The promise, proposal or giving, directly or indirectly, of any irregular benefit to a person exercising public function, for himself or for other persons, in order to commit or fail to perform an act relating to his or her function shall be punished by imprisonment from six months to three years. The promise, proposal or grant, directly or indirectly, of any irregular benefit to senior state officials or local elected officials for themselves or for other persons to perform or not perform an act related to his or her function, are sentenced to one to five years in prison.

The Law on the Protection of Whistleblowers, which is estimated to provide a safer protection and environment for individuals who report corruption, including the private sector, by encouraging private businesses to signal corruption cases in their sector. A whistleblower or a person close to him who may have consequences due to signaling has the right to judicial protection. The law provides full protection and anonymity for the whistleblowers, namely reporters of corruption cases in the private sector, including the protection from punishment, retaliation or blackmail by their superior and employer.

In addition to the justice and police system, the Kosovo Anti-Corruption Agency (NR 03/L-159) as an independent and specialized body deals with the implementation of state policies on fighting and preventing corruption in Kosovo. According to KACA estimates, businesses only report corruption when their rights have been violated, meanwhile they do not report it at the moment the official requires a bribe. Further, the "black list", in which businesses involved in corruptive practices would be included, has still not become a practice used by Kosovo public institutions.

The Kosovo Anti-Corruption Agency does not have any methodologies in place for addressing statistical evidence of corruption claims and cases by certain sectors, as well as those considered as offers by business representatives. The Agency is mainly focused on preventing and initiating legal procedures of corruption cases of public officials. In the Kosovo Judicial Council (KJC) the data are in the process of digitization and are believed to be available by the end of 2019. However, the KJC does not have accurate data on the

number of businesses involved in court cases related to corruption because in the current database that they have there is no separation between individuals and businesses who have committed the offense of involvement in corruptive practices.

In Italy, rather than trying to prevent corruption in its origin, more importance is given to the rigorous monitoring of the implementation of the terms of contracts of economic operators with government institutions. Monitoring strictly, the implementation of the contracts originating from public procurement might reduce incentive for bribing. In cases where contract is granted to the bidder which offers lowest prices, that in given market conditions quite often does not ensure any positive margin, the only explanation of rationale behind this could be that during the implementation of the contract, the operator will not provide required quality standards with specifications or will reduce quantity delivered. Monitoring and control and audit of contract implementations has not been practice so far. This needs to be tackled by law or regulations at last for contracts above certain value (e.g. 500,000 euros).

Whilst the legal framework against corruption in Kosovo is considered to have created the basic prerequisites for combating corruption, it has some obvious shortcomings and needs to be improved. Improvements should be made towards the creation of a monitoring system especially in the implementation of public procurement contracts. Also, sanctions should be tightened for business organizations and their leaders in case of involvement in corruptive practices. Sanctions in addition to material punishment could also include their exclusion from the opportunity to participate in tenders related to public procurement (5-10) years and putting those businesses in a type of blacklist. The sanctions should also include persons responsible by the management.

### 3.1 LEGAL FRAMEWORK IN REGIONAL COUNTRIES

In Serbia, companies may be acquitted from punishment if it detects and reports the criminal offense before learning that criminal proceedings have been instituted, or when it removes incurred detrimental consequences on a voluntary basis without delay (GAN, 2017). The legislation also covers whistle-blowers. The Law on the Protection of Whistle-blowers regulates procedures, rights of whistle-blowers, obliga-

tions of the state authorities and other authorities and organizations in relation to whistleblowing. Companies are required under the law to implement various measures to facilitate whistleblowing (GAN, 2017). Serbia is party to the United Nations Convention Against Corruption (UNCAC) (GAN, 2017).

In Macedonia, Law on Prevention of Corruption and the Criminal Code, criminalize active and passive bribery, extortion, bribing of a foreign public official, attempted corruption, trading in influence and money laundering. Anti-corruption provisions apply to all individuals in public or private sectors, and companies can be held criminally liable for corruption offenses committed by their representatives. Facilitation payments are prohibited, and gifts may be considered illegal depending on their value, intent or benefit (Gan, 2018). The Law on Protection of Whistle-blowers is regarded as one of the strongest laws in the region (SECWP 2017). The Law provides protections for private and public employees to report misconduct confidentially and protects them from criminal prosecution and other types of liability (SECWP 2017). Macedonia has ratified the United Nations Convention against Corruption (UNCAC) (Gan, 2018).

In Montenegro, The Criminal Code applies to individuals in public and private sectors and makes illegal active and passive bribery, abuse of office, trading in influence, fraud and abuse of authority in business. The Law on Criminal Liability of Legal Entities makes companies liable for criminal offences committed by their representatives (GAN, 2015). Montenegro has ratified the United Nations Convention against Corruption (UNCAC).

In Croatia, the Criminal Code applies to domestic and foreign investors and covers acts such as trading in influence, abuse of official functions, active and passive bribery, embezzlement of public and private property, and money laundering. Private sector bribery is criminalized as well (GAN, 2017). Giving and accepting a bribe in business activities is illegal in Croatia. Companies as entities can be held liable for acts of corruption and penalties can include seizure of the benefit obtained (CMS 2016). There is no specific law that protects whistle-blowers. Regarding international conventions, Croatia has signed the United Nations Convention Against Corruption (UNCAC). However, it has not signed the OECD Anti-Bribery Convention (GAN, 2017).



## 4. RELEVANT INTERNATIONAL EXPERIENCES

Supply side corruption is an issue that has been addressed in many countries and there is a solid literature evidence and lessons to be learned. The most prominent example is United Kingdom (UK). The country has built up a regulatory framework which requires companies to implement effective internal controls and discourage corrupt practices. This includes a variety of laws such as the UK's Fraud Act 2006, Companies Act 2006, and the Bribery Act 2010 (Sikka & Lehman, 2015). The Bribery Act 2010 is regarded as one of the most powerful anti-corruption laws in the world. The Act contains offences addressing commercial bribery. Under the Act, a company is guilty of a bribery offence if it fails to prove that it had in place adequate procedures designed to prevent its employees from committing bribery. Penalties include debarment from public contracts and confiscation order. The Bribery Act provides specific guidance for establishing and operating an anti-bribery management system. The Act specifies standards such ISO 37001 which specifies requirements and provides guidance for establishing, implementing, maintaining, reviewing and improving an anti-bribery management system. It is the first G20 country to establish a public register of domestic company beneficial ownership, and the first G7 country to undergo an IMF fiscal transparency evaluation (HM Government, 2017).

In South Korea, the Improper Solicitation and Graft Act was enacted in late 2016 in order to eliminate chronic corruption. The new Act provides that if an employee makes an improper solicitation or offers money or other valuables in relation to his or her duties, not only the employee but also his

or her employer will face sanctions. However, in cases where the employer has not been negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation, such sanctions may be exempted. Employers must therefore make voluntary efforts to prevent corruption pursuant to this Act. Otherwise, they risk facing punishment as a consequence (Anti-Corruption & Civil Rights Commission, 2016). Further, South Korea has also enacted the Act on the Protection of Public Interest Whistleblowers. The Act stipulates that if an employee discloses the details of the report including the personal information of a public interest whistleblower, gives disadvantages to a public interest whistleblower, or impedes or forces cancellation of an instance of public interest whistleblowing, the employee will not only face punishment, but also the employer will be fined (Anti-Corruption & Civil Rights Commission, 2016). In such cases, however, the employer may be exempted from sanctions if he or she has not been negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation.

As such, corporate anti-corruption activities are not a matter of choice, but a requirement (Anti-Corruption & Civil Rights Commission, 2016). Legal responsibilities have been placed on corporations to actively supervise and prevent any offenses of their employees. The new measures have resulted in a change in corporate culture in Korea resulting in an increasing number of corporations no longer tolerating offenses occurring in the performance of business activities, regardless of the scale of the offenses, and they recognize that legitimate and

ethical business activities will ultimately lead to larger profits (Anti-Corruption & Civil Rights Commission, 2016).

The United States (US) through the Foreign Corrupt Practices Act 1977 applies a standardized ethics program to the government, affiliated organizations, corporations, schools, and other organizations. How effective the anti-corruption compliance programs a company has established and operated is one of the most significant elements in considering the prosecution and sentencing of the employer (Anti-Corruption & Civil Rights Commission, 2016).

Another example is presented from Lithuania, an OECD member country, where the country has enacted the National Anti-corruption Programme of the Republic of Lithuania for 2015-2025 (Vilnius, 2015). As a result, the country has drafted the Inter-institutional Action Plan 2015-2019 for the implementation of the programme. As part of the implementing measure, the Anti-Corruption Handbook for Business was drafted. The purpose of the Handbook is to help in creation of corruption free business environment.

In Bosnia, in response to corruption in public procurement, in 2009 the managers and owners of private companies that participate as bidders in public procurement formed the Citizens' Association Tender. The association has been created as an NGO and is committed to promoting cooperation with all legal entities in the public and private sectors, in strengthening the role and capacity of civil society in the fight against corrupt practices in public procurement (Regional Academy of the United Nations, n.d.).

Another good example of a country that has done a good job in fighting corruption is Georgia. The country has criminalized active and passive, strengthened money laundering legislation, introduced a general code of ethics for civil servants, and asset disclosure and whistleblower protection provisions for public officials (Transparency International, 2015). The government has also drafted the Anti-Corruption Strategy and its Action plan, which includes a business integrity section that was prepared in cooperation with the private sector (OECD, 2016). The Anti-Corruption Strategy also includes

a section on prevention of corruption in the private sector. The strategy among other things foresees raising public awareness of business integrity issues.

The European Union in 2003 has taken a Council Framework Decision 2003/568/JHA which requires member states to introduce effective, proportional and dissuasive criminal penalties for active and passive bribery. Along these lines, France in its Criminal Code defines corruption-related offences, such as active and passive bribery of domestic and foreign public officials, trading in influence, extortion by a public official and embezzlement, as well as bribery in the private sector. It also protects whistle-blowers through introducing a specific provision into the Labor Code (European Parliamentary Research Service, 2017). Further, the 2016 Law on transparency, fight against corruption and modernization of the economy requires big companies to put in place internal channels for reporting misconduct as part of broader mandatory corruption detection and prevention measures, including corruption risk-mapping and internal prevention mechanisms, such as codes of conduct (European Parliamentary Research Service, 2017). In Germany, the Anti-Corruption Law has been amended in 2015 and the amendments have allowed to extend the application of corruption-related laws to include cases in which corrupt practices lead to a violation of employees' duties (European Parliamentary Research Service, 2017).

International organizations such as Organization for Economic Co-operation and Development (OECD), the World Bank, and the United Nations Office on Drugs and Crime (UNODC) have also dedicated a good amount of attention towards supply side corruption. The three organizations have jointly drafted a handbook in order to help G20 governments to practically implement the 2010 G20 Anti-Corruption Action Plan which focused on Combating Corruption, Promoting Market Integrity, and Supporting a Clean Business Environment. This Plan recognises the integral role the private sector plays in the fight against corruption and calls for greater public-private partnership in this effort. The handbook has been developed with the intention to serve as a useful, practical tool for companies seeking to find easy compliance advice (OECD & UNODC & World Bank, 2013).

OECD has also adopted an international convention on Combating Bribery of Foreign Officials in International Business Transactions. By signing the transaction, OECD country members were required to enact enabling legislation that strengthened penalties and fines for corrupt practices. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the ratification of which is one of the preconditions for membership in the OECD, establishes the enforcement of the extensive liability of legal persons for the bribery of foreign public officials, immediate and effective mutual legal assistance in criminal investigations brought by a Party concerning offences (OECD & UNODC & World Bank, 2013). The Convention has been incorporated into the laws of 37 countries which have signed up to the Convention (the 30 OECD members, plus Argentina, Brazil, Bulgaria, Chile, Estonia, Slovenia and South Africa). Countries that have signed the Convention agree to make bribing foreign public officials in international business transactions a criminal offence. To ensure the effective implementation of the Convention and the revised Recommendation, signatory countries adopted an ongoing monitoring process based on the OECD's peer review principles (OECD, 2008). The OECD Anti-Bribery Convention provisions on the "supply" side of bribery are very detailed and its standards are tough.

The United Nations Convention against Corruption (UNCAC) entered into force in 2005. Member states have participated in its Implementation Review Mechanism, a peer review process whereby the implementation of UNCAC by each State party is reviewed by experts from two other States parties (Transparency International, 2008). Through the Convention's Implementation Review Mechanism, States are able to demonstrate and report on the extent to which they have succeeded in implementing the Convention and its provisions. Article 12 of the United Nations Convention against Corruption, states that each state must take measures to prevent corruption in the private sector (Transparency International, 2008).

Transparency International in 2002 introduced the Business Principles for Countering Bribery. These principles were first applied to large companies, however, later on an edition of Business Principles for small and medium sized businesses were also developed. These Principles have been revised at least twice since they have been introduced and become recognized as a leading anti-bribery standard and a model for anti-bribery programmes (Transparency International, 2008).



## 5. BUSSINES PERCEPTION ON CORRUPTION IN GENERAL AND SUPPLY SIDE IN PARTICULAR

### 5.1. SURVEY METHODOLOGY

This section provides a general description of the methodological approach used in this study. In order to analyze supply side corruption, specifically identify businesses' attitudes on corruption from the supply side and readiness to participate in activities to implement anti bribery ethical principles, Riinvest research team used primary data gathered through a survey of businesses operating in Kosovo. Moreover, the team has also used literature review and comparative analysis of qualitative data as a combination of research techniques to provide the most comprehensive research results.

The core data were collected through a survey including businesses throughout Kosovo. The sample was constructed based on the database of active businesses in Kosovo and stratified according to municipality. To ensure that this research study produces representative data, the overall sample has included 500 respondents throughout Kosovo, who were selected randomly. Geographically, the sample of businesses surveyed reflects an approximation of the actual distribution, as reported by the Kosovo Business Registration Agency (KBRA). The highest percentage of businesses are concentrated in the Pristina region, followed by the regions of Prizren, Gjilan, Ferizaj and Peja. The geographic distribution of the enterprises is depicted in Table 1.

**TABLE. 1 DISTRIBUTION OF BUSINESSES BY REGION**

Region	Percentage
Prishtine	37%
Gjilan	8%
Peje	10%
Ferizaj	12%
Prizren	16%
Mitrovice	7%
Gjakove	10%

SOURCE: AUTHORS' CALCULATIONS

The questionnaire was composed in respective sections following project objectives and academic and policy research conducted by Riinvest research team. The questionnaire contains generic questions regarding the profile of the businesses, more specifically questions on the ownership and business activity. The main part of the questionnaire consists of questions aimed at obtaining information (quantitative as well as qualitative) regarding awareness about corruption and perception, experience of businesses with corruption, the behavior of businesses against corruption and the willingness to implement ethical principles against corruption.

The survey was conducted by engaging our experienced enumerators who were trained on the specifics of the survey. All enumerators underwent a three-day training, where they were informed about the content and importance of the survey; were trained on the survey methodology (contact with the respondent, ways of gathering information, ways of completing the questionnaire); and were tested on their ability to conduct surveys by simulating a sample survey.

Before the start of the survey, the questionnaire was tested by Riinvest research team to ensure the efficiency of time and a logical sequence of questions. Small groups of 2 to 5 enumerators have worked under the supervision of one team leader. Besides monitoring the enumerators in the field and conducting logical control, verification of the surveys was also done through phone calls made by the research team and the project leader. Around 40 percent of the survey questionnaires, selected randomly, were re-verified by the research team, who contacted the respondents to make sure that the answers correspond to those that were filled in by enumerators. In addition, each questionnaire has been verified by the researchers to ensure correctness of questionnaire completion and to see if it contains any non-logical response. This methodology improves the quality of data and helps avoid potential defects within the survey.

Once collected, the data was encoded by experienced researchers using the operating software especially designed for the purposes of the project. Next, the data were analyzed and pre-interpreted using SPSS to identify responses outside of expected ranges, including potential inconsistencies across variables. Changes were made as appropriate. Additionally, periodic

checks were made by the project leader, primarily through comparing variable means and distributions across files, to ensure that the data have not been altered, intentionally or otherwise. The research analyses in this report are predominantly based on descriptive statistics using cross tabulation techniques. Once the data was tabulated and cross-tabulated, the experienced research team has been engaged in interpreting and analyzing the findings.

## 5.2. DATA PRESENTATION AND ANALYSES

This section describes and analyses the output of the quantitative part of the study, the survey conducted with 500 businesses operating in the seven (7) regions of Kosovo. Subsection 5.2.1 portrays the general profile and overview of the enterprises. Subsection 5.2.2 analyses the awareness and perception of Kosovo businesses regarding corruption. Subsection 5.2.3 analyses awareness on consequences of corruption. Subsection 5.2.4 depicts the origin (sources) of corruption. Subsection 5.2.5 presents the experiences of businesses with corruption and subsection 5.2.6 analyses the behavior of businesses towards corruption and willingness to implement ethics principles.

### 5.2.1 Profile of businesses

Companies that were interviewed for the purposes of the survey were mainly based in Prishtina region (37%), followed by Prizren region (16%), Ferizaj with 12%, Peje and Gjakove with 10%, Gjilan 8% and Mitrovica 7%. This coincides with the overall picture of businesses operating in Kosovo as majority of them are located in Prishtina region. Further, most of respondents were owners (68%) and managers (23%). Along the same lines, 77% of companies are managed by the owners themselves, 11% by the manager and 12% are managed by together by the owner and manager. This is mainly due to the fact that majority of businesses operating in Kosovo are micro and small enterprises which are managed usually by the owners. The vast majority of businesses are individually owned (78%), 15% are limited liability company, 3% are general partnerships. The average number of employees in a company is 6.96. Compared to previous years, the average number has slightly decreased as in 2016 the average number of employees was 8.5 (Riinvest Institute, 2017).

### 5.2.2 Awareness and perception of Kosovo businesses regarding corruption

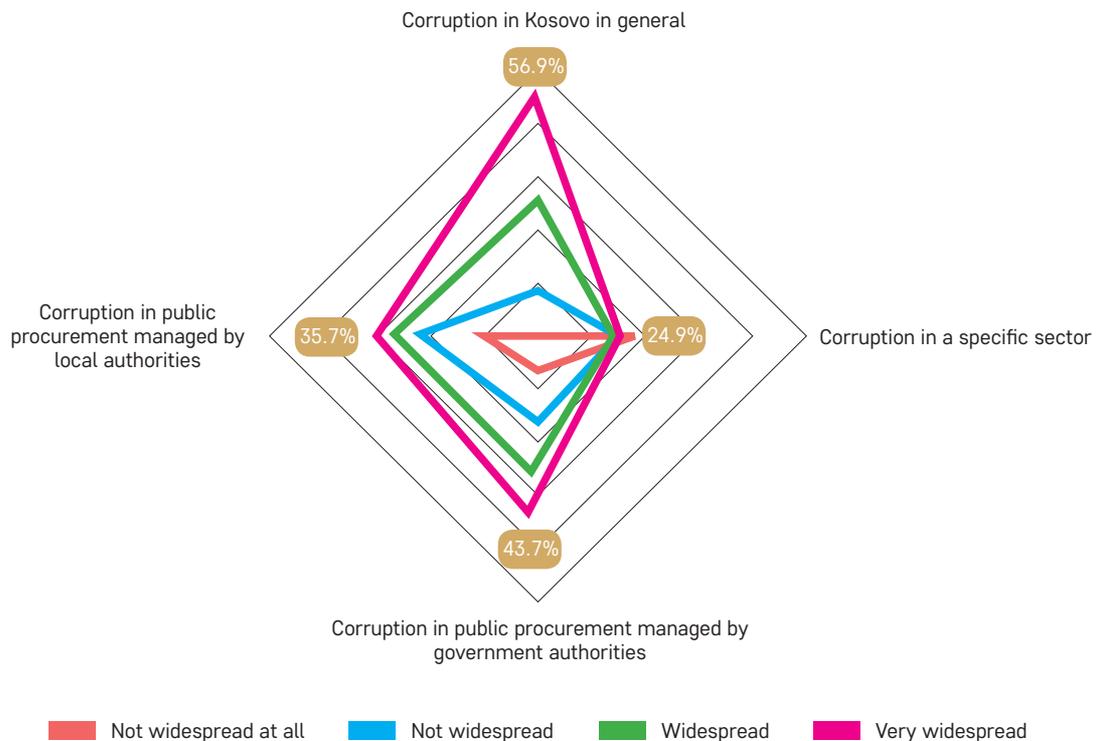
This section will present the perception of businesses regarding corruption in Kosovo. Further the section will also elaborate on the level of awareness of businesses regarding corruptive practices in Kosovo.

When asked about to what level do they think that corruption is spread in Kosovo in general, around 91% of businesses think that it is either widespread or very widespread and 9% think that it is not widespread (see Fig. 1 for details). Such results show that almost all businesses think that corruption is quite widespread in Kosovo. When asked about how widespread they think corruption is in their respective sector, the results are almost equally spread with 48% thinking that it is widespread or very widespread and 52% thinking that it is not widespread (see Fig.1 for details). Such results show that when comparing corruption in Kosovo

in general to corruption in a specific sector, businesses tend to think that corruption is more widespread in Kosovo in general. This might be due to the fact that corruption tends to be considered more at the government level rather than business level. Also, this shows that there is lack of awareness from business side regarding corruption that prevails in the private sector.

This is backed up by results which show that 78% of businesses think that corruption is widespread or very widespread at the public procurement that is managed by government authorities. Meanwhile 22% think that it is not widespread (see Fig.1 for details). Around, 68% think that corruption is widespread or very widespread at the public procurement that is managed by local authorities. (see Fig.1). As such, a slightly higher percentage of businesses think that corruption is widespread at the public procurement that is managed by central government authorities versus the one managed by local authorities.

**FIGURE. 1 PERCEPTION OF CORRUPTION**



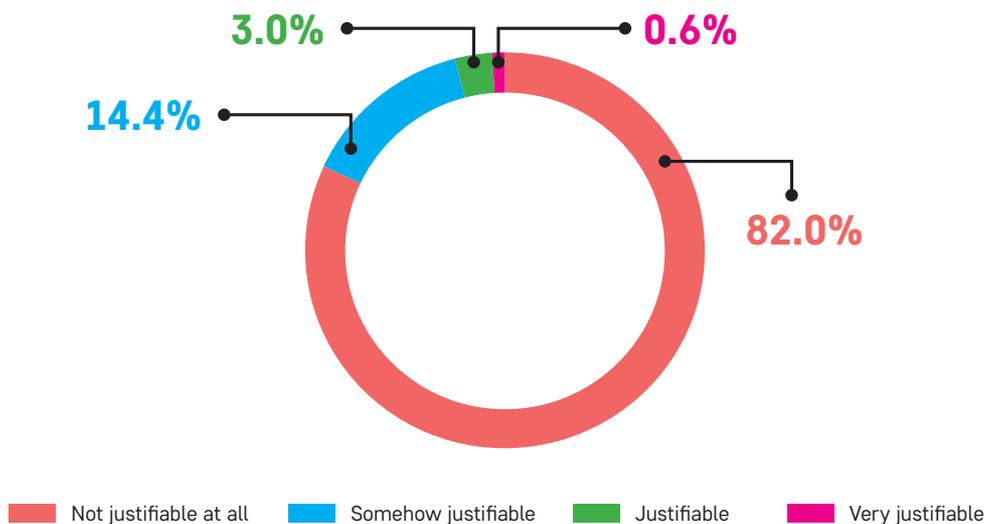
SOURCE: AUTHORS' CALCULATIONS

Around, 65% of respondents either agree or agree to some extent with the statement that no service that is related to public institutions can be received without giving bribes. More specifically, 19% agree while 46% agree to some extent and the rest do not agree. Roughly 59% either agree or agree to some extent with the statement that no service that is related to public institutions can be received without giving gifts (16% agree and 43 agree to some extent). Such results show that business have the perception that paying bribes is a slightly more prevalent than giving gifts.

When asked whether it is justifiable to give bribes or gifts to public officials to complete a job related to their business, 82% of businesses stated that it is not justifiable at all, 14% think that it is somehow justifiable, and only 3.6% believe that it is justifiable (see

Fig.2). This shows that businesses are aware that giving bribes in order to get something done is not a justifiable act. Meanwhile an assessment of corruption conducted by Riinvest Institute (2016) has shown that almost one in two citizens in Kosovo would accept some type of a corrupt practice, showing a high level of tolerance towards administrative corruption. A country-comparison reveals that acceptability of corruption in Kosovo is high relative to the acceptability of corruption in the other countries in South-eastern Europe (Riinvest Institute, 2016). Comparing the results, it can be seen that at business level the level of tolerance toward corruptive practices is lower. When the question was cross tabulated with company size, no differences could be observed. No matter the size of the business, 82% of businesses think that it is not justifiable at all to give bribes or gifts to public officials to complete a job related to their business.

**FIGURE. 2 GIVE BRIBES OR GIFTS TO PUBLIC OFFICIALS**

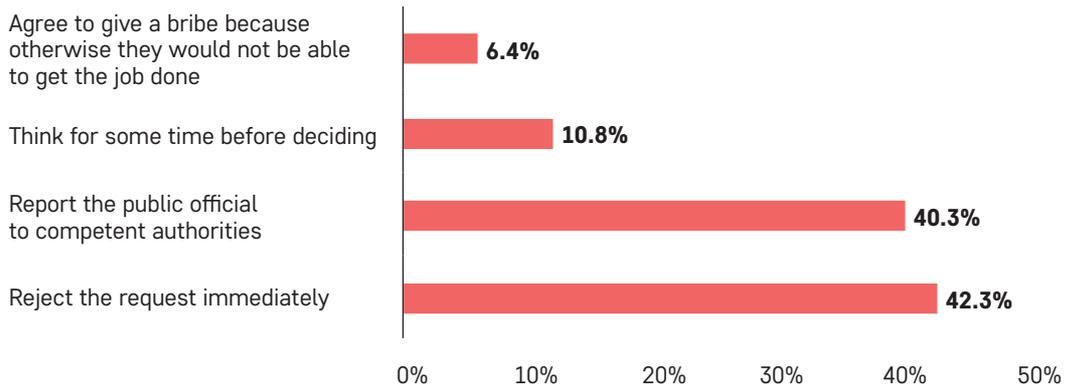


SOURCE: AUORS' CALCULATIONS

Businesses were also asked about how should a business official respond if a public official asks for a bribe or a gift in return for services and results show that 43% believe that the business officials should reject the request immediately, 40% believe that the business official should report the public official requesting a bribe to competent authorities, 11% think that

the business official should think for some time before deciding to give a bribe or gift, and 6% think that the official should agree to give a bribe because otherwise they would not be able to get the job done (see Fig.3). Results like these, show that respondents express a high level of intolerance toward corruption.

**FIGURE. 3 THE REACTION OF BUSINESSES WHEN A PUBLIC OFFICIAL REQUIRES BRIBE**

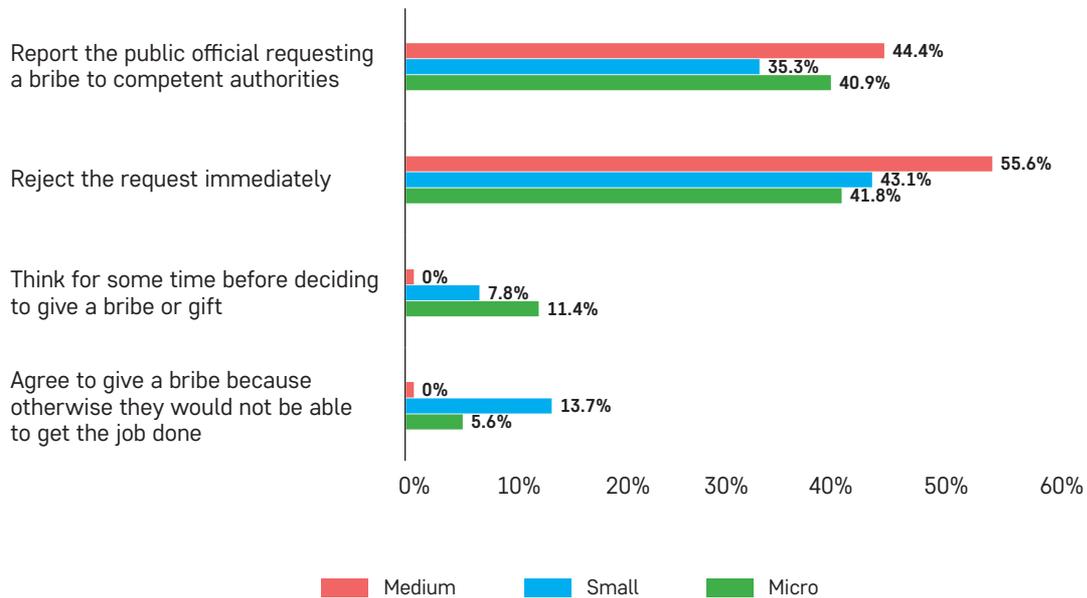


SOURCE: AUTHORS' CALCULATIONS

When comparing for differences in opinion in company size, the opinion of micro enterprises does not differ from the general picture. One reason for this might be the fact that more than 90% of enterprises in Kosovo are micro and hence, they constitute the bulk of the sample which was designed to be representative. Small enterprises show some differences as around 14% think that the official should give the

bribe because otherwise they would not be able to get the job done. Meanwhile, medium enterprises think that the business official should reject the request immediately or report the public official requesting a bribe to competent authorities. Showing that medium enterprises have a lower level of tolerance toward corruption (see Fig.4).

**FIGURE. 4 BUSINESS SIZE AND THE REACTION OF BUSINESSES WHEN A PUBLIC OFFICIAL REQUESTS BRIBE**



SOURCE: AUTHORS' CALCULATIONS

Meanwhile, when trying to understand the level of corruption within the sector, the team has asked businesses to rate the percentage of businesses that operate in their sector and that give bribes in order to get any type of job done. Such a method does not measure the level of corruption directly. Unable to measure directly, the survey method in indirect form has been shown to be the most appropriate in order to obtain information from companies about the level of corruption. Support for the methodology used has been found in the fact that studies that have subject-ed economies in transition have adapted surveys and indirect questions as the most appropriate. Results show that 25% of businesses pay bribes. This percentage is slightly lower than when asked about how widespread corruption is in their sector as 48% believe that it is widespread or very widespread (23% believe that it is widespread and 25% believe that it is very widespread). However, it still is a high percentage as it means that one in every fourth business pays bribes or gives gifts to get a job done. When comparing for differences in opinion in company size, the micro enterprises think that 25% of businesses pay bribes, small ones think that 31% of business pay

bribes and medium ones think that only 11% of business pay bribes.

The team also asked business to rate their level of acceptance on a certain number of practices if they are made by private business officials. Around 86% of businesses declared that it is either highly unacceptable or unacceptable to offer free lunch/dinner to a public official in order to solve a business-related problem. The remaining 14% believe that is acceptable or very acceptable. Such a percentage is worrisome as it indicates that for one in every seventh business it is acceptable to offer free lunch/dinner to a public official in order to solve a business-related problem.

Another practice listed was how acceptable they think it is for a business official to do a favor to a public official so that in-return the public official would help them solve a problem. The results reveal that 86% declared that it is either very unacceptable or unacceptable to do a favor to a public official so that in-return the public official would help them solve a problem. Meanwhile, 14% believe that it is acceptable of very acceptable to offer a favor.

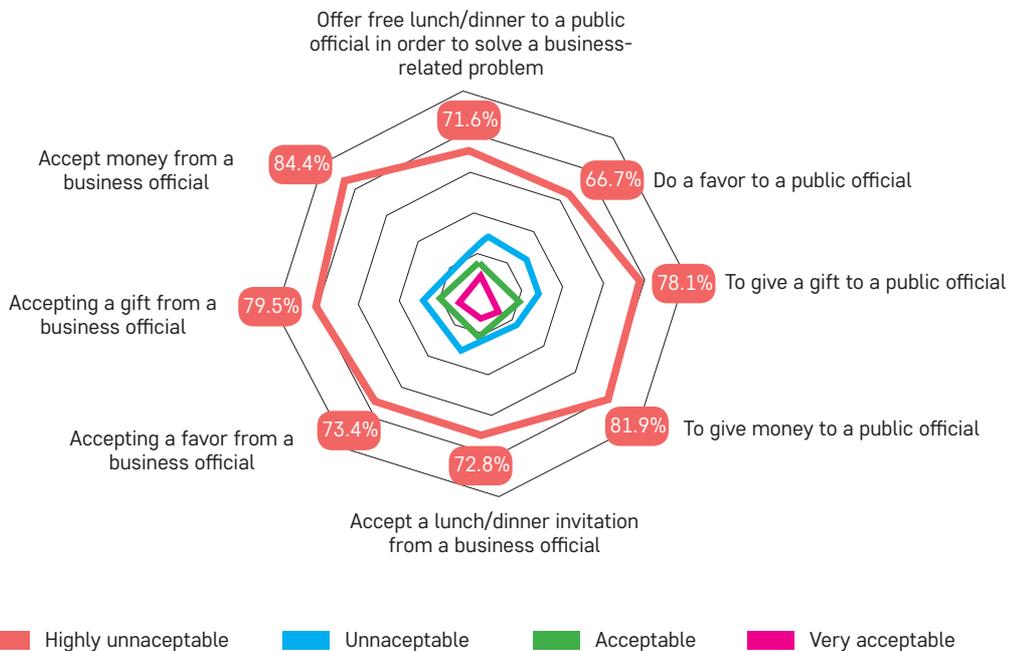
Another practice listed was how acceptable they think it is for a business official to give a gift to a public official so that in-return the public official would help them solve a problem. Around 90% believe that it is very unacceptable or unacceptable. The remaining 10% believe that it is acceptable or very acceptable to give a gift to a public official. Implying that for every 10<sup>th</sup> business it is acceptable to give a gift to a public official.

A further practice listed was how acceptable they think it is for a business official to give money to a public official so that in-return the public official would help them solve a problem. Almost 93% believe that it is very unacceptable or unacceptable. The remaining 7% believe that it is acceptable or very acceptable (4%- acceptable and 3%- very acceptable). Showing that a higher percentage of businesses think that it is not acceptable for a business official to give money to a public official compared to giving gifts or doing favors.

The same practices were asked but from the viewpoint of public officials. Around 83% of respondents

stated that it is unacceptable or very unacceptable for a public official to accept a lunch/dinner invitation from a business official in order to help the business solve a problem. The remaining 17% believe that it is acceptable. Regarding the practice of accepting a favor from a business official in return for solving a business-related problem, 88% think that it is unacceptable or very unacceptable, meanwhile 12% think that it is acceptable. Along the similar lines are the results for the practice of accepting a gift from a business official as 89% of respondents think that it is unacceptable or very unacceptable for a public official to accept a gift from a business official. Meanwhile 11% think that it is acceptable. Almost 92% think that it is unacceptable for a business official to accept money from a business official in return for solving a business-related problem, meanwhile 8% think that it is acceptable (see Figure 5 for details). Showing again that a higher percentage of businesses think that it is not acceptable for a public official to accept money from a business official compared to accepting gifts or favors.

**FIGURE. 5 LEVEL OF ACCEPTANCE FOR PRACTICES MADE BY BUSINESS AND PUBLIC OFFICIALS**



SOURCE: AUTHORS' CALCULATIONS

### 5.2.3 Awareness on consequences

Regarding businesses' awareness, results show that around 97% of businesses agree or agree to some extent with the statement that corruption undermines the rule of law, competition and the development of the country. On the statement corruption hampers economic growth, increases business costs, and discourages investment, 97% of respondents agree or agree to some extent. When asked if they agree with the statement that corruption ensures long-term development of the company, around 48% agree or agree to some extent. Almost 16% of respondents agreed with the statement. This shows that every sixth business thinks that corruption ensures the long-term growth of the company. Meanwhile, 32% agree to some extent. Such a result might have been influenced due to the business environment in Kosovo and perception that corruption is prevalent. Part of businesses might think that the only way for a company to prosper is through engaging in corruptive practices. Almost 97% of respondents agree or agree to some extent with the statement that involvement in corruptive practices undermines fair competition and in the long run the company involved. When asked if they agree with the statement that the only path for long-term development of the company is fair competition, 96% of respondents agree or agree to some extent.

The four most widespread practices, corruption wise, in Kosovo as perceived by businesses are bribery, informality (under declaring of turnover for tax purposes), non-payment of VAT, and favoring friends and family members in public institutions. Further, the most problematic issues for business development in Kosovo were considered to be corruption with 76.5 intensity points and nepotism with 71.7 intensity points.<sup>1</sup> In order to understand the barriers that businesses face in doing business, the team asked them to rank in terms of intensity where points for each barrier can vary from a minimum of 20 points to a maximum of 100 points, where a higher intensity shows a higher negative

impact on business growth. The other barriers such as complex administrative procedure, frequent change of laws and regulations, lack of tools or procedures to repay debt from others, tax level, access to finance or finance costs and access to public services scored intensity scores in mid-60.

### 5.2.4 The origin (sources) of corruption

Businesses were also asked if close business ties between business and politics lead to corruption and 91% of respondents agreed or agree to some extent with the statement (see Figure 6 for details). The majority of businesses are aware that close ties between the two might lead to corruptive practices. Further, around 80% agree or agree to some extent with the statement that bribe giving and using connections often is the easiest way to get certain public services. These results give hints regarding the perception of businesses about how widespread corruption is in Kosovo. Majority if businesses seem to agree that the easiest way to get access to a public service is through giving bribes and using connections. This is worrisome as businesses who have connections gain unfair competitive advantage over those who do not.

Regarding financing of political parties, 65% do not agree with the statement that there is sufficient transparency and control over financing of political parties. Meanwhile, 35% agree to some extent or agree. Lack of transparency and control over financing of political parties can lead to corruption as businesses might finance political parties in return for favors. And the majority of businesses think that the process is not transparent indicating that there might be corruption. This view point is also influenced by many reports which actually show that there is lack of transparency and control regarding financing of political parties.

When asked if they agree with the statement that the only way for a business to succeed is through political connections around 62% of respondents agree or agree to some extent with the statement.

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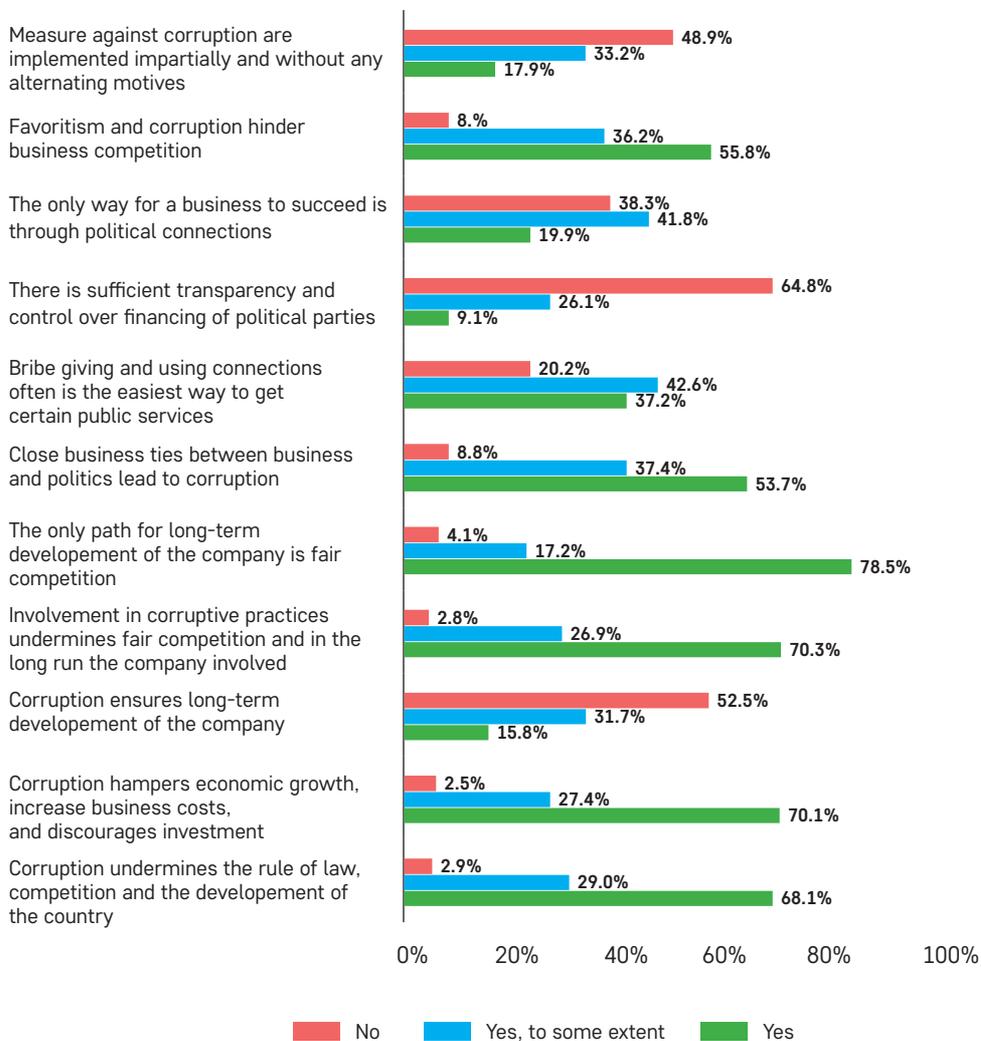
<sup>1</sup> For each obstacle, the rank given by each enterprise (from 1-4) is multiplied by a weight equal to the rank (also 1 to 4), i.e., the more serious obstacles get a higher weighting). The weighted average is then divided by 4 (the maximum ranking) and multiplied by 100 in order to convert the score into a percentage showing how close to the maximum ranking the average rank is. In other words, the score was calculated as:  $s = (\sum w_i x_i / n) * 100 / 4$ , with  $w_i = x_i$ ;  $s$  is the score for the intensity of each obstacle,  $w$  is the weight,  $x$  is the ranking given by each respondent and  $i=1,2,\dots,n$  stands for each respondent.

Showing that there is perception among businesses that political connections are needed in order for a business to be successful. This view point might be influenced the general perception about corruption in Kosovo in general. Such a viewpoint might indirectly impact competition as businesses that do not have political connections might not develop due to fear that they do not have what is needed meanwhile the ones that do have connection might end up developing precisely due to political connections. Around 92% of respondents agree or agree to some extent that favoritism and corruption hinder

business competition. Showing that businesses are aware about the negative impacts of corruption on competition.

Almost 51% of respondents agree or agree to some extent that measure against corruption are implemented impartially and without any alternating motives. Showing that businesses believe that there is a partial implementation of measures against corruption. This leads to unfair competition which is a problem that continues to persist in the Kosovo business environment.

**FIGURE. 6 LEVEL OF AGREEMENT WITH CERTAIN STATEMENTS**



SOURCE: AUTHORS' CALCULATIONS

In order to understand the frequency of bribe giving for certain procedures, the team has specifically asked about how frequent is the phenomenon of giving bribes or gifts for certain administrative procedures. For issuing construction permits, around 86% of respondents stated that it happens often or very often. Meanwhile, 14% stated that it happens rarely or that it never happens. The reason for a very high percentage might be due to the fact that getting construction permits is very bureaucratic procedure that takes time and businesses might find it easier to give bribes in order to make sure they get the permit. Around 86% stated that it happens often or very often to give bribes during bidding processes in public procurement procedures. Meanwhile, 14% stated that it happens rarely or that it never happens. Businesses still believe that public procurement procedures are corrupt.

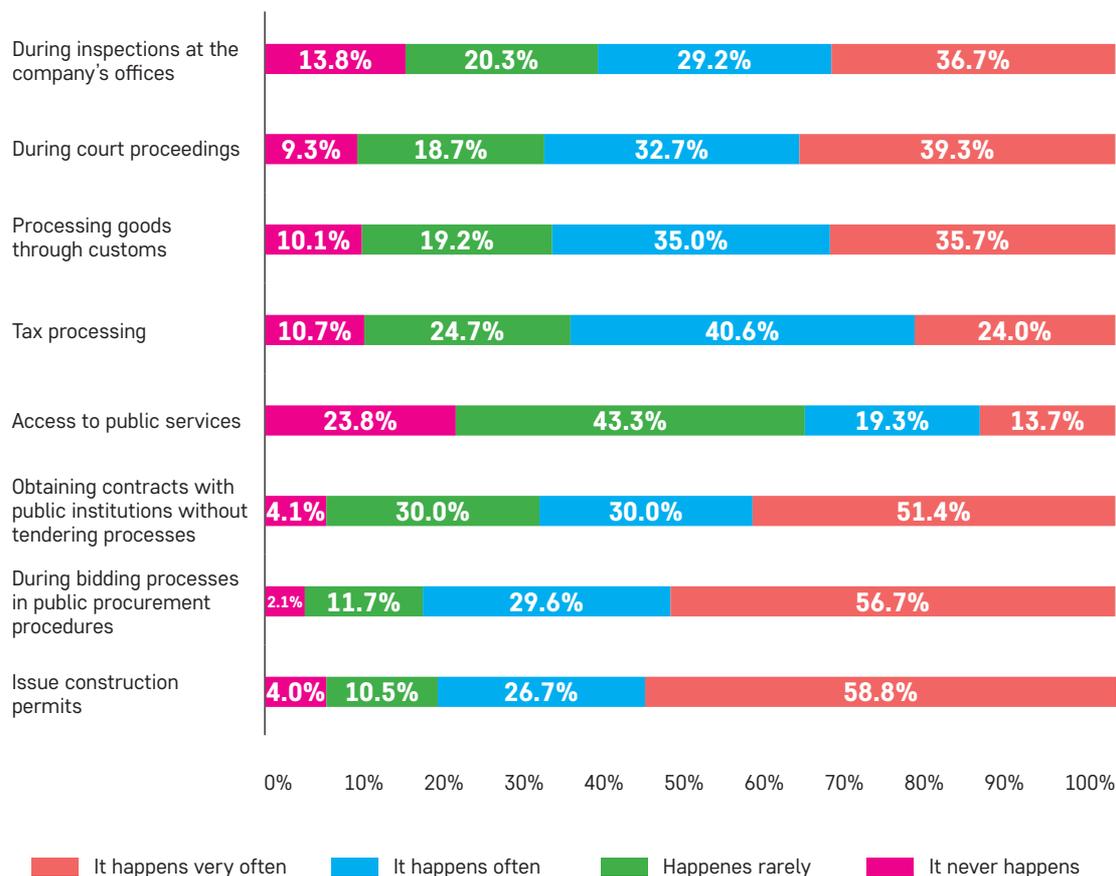
Regarding the practice of obtaining contracts with public institutions without tendering processes, 81% of respondents stated that it happens often or very often, 19% stated that it happens rarely or that it never happens (see Fig.7 for details). Businesses believe that other businesses pay very often bribes or give gifts in order to obtain contracts without a tendering process. Less frequency is observed when talking about access to public services as 67% of businesses stated that it never happens or that it happens rarely, meanwhile 33% stated that it happens often or that it happens very often. Such results show that perception for corruption is lower when it comes to access to public services such as electricity, water, heating, garbage, etc.

Tax processing was another procedure listed and around 65% of respondents stated that it happens often or very often, meanwhile 35% stated that it rarely happens or that it never happens. The perception of businesses is that businesses often have to give bribes or gifts while their taxes are being processed. A bribe can be given to decrease the amount of taxes due.

When asked about processing goods through customs, around 71% of respondents stated that bribe or gift giving happens often or very often, meanwhile 29% stated that it happens rarely or that it never happens. This shows that businesses think that bribe giving happens often while processing goods through customs. This can happen in order to decrease the amount of value that has to be paid at customs or not pay any taxes at all. Almost 72% of respondents stated bribe or gift giving happens often or very often during court proceedings. Meanwhile, 28% stated that it happens rarely or that it never happens. Around 66% of respondents stated bribe or gift giving happens often during inspections at the company's offices, 34% think that it happens rarely or that it never happens. Such a result shows that businesses often have to pay bribes or give gifts to inspectors. This leads to unfair competition.

The results imply that the perception of businesses is that corruption is mostly widespread in issuance of construction permits, public procurement and getting contracts from public institutions without a tendering procedure. Anyhow, perception is also high for the other practices as well.

**FIGURE. 7 FREQUENCY OF BRIBE GIVING FOR CERTAIN PROCEDURES**



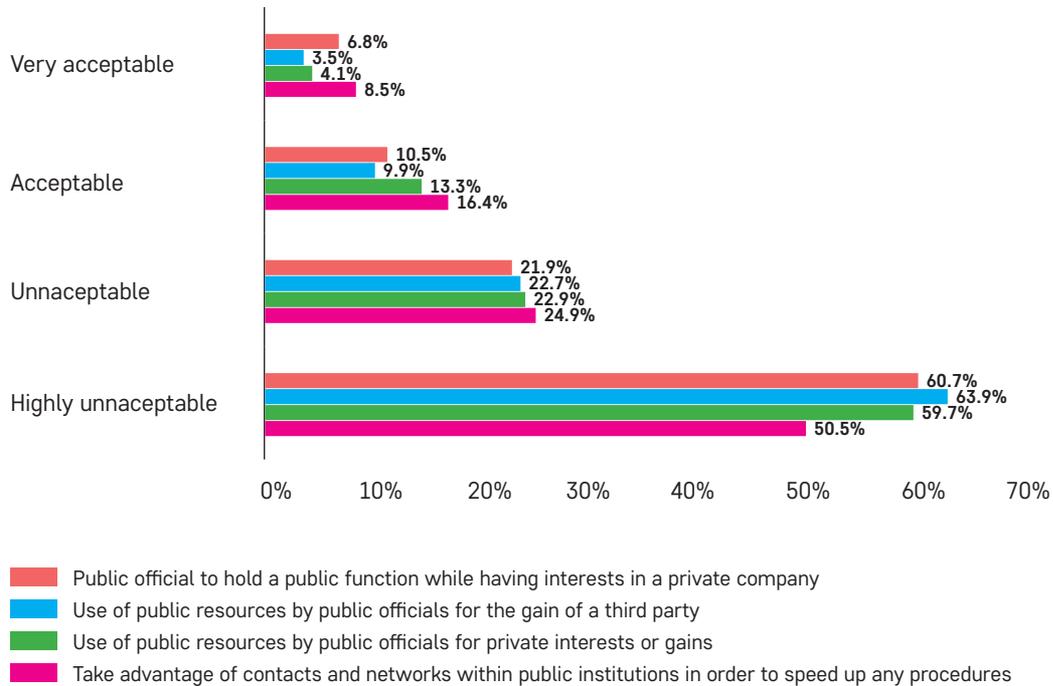
SOURCE: AUTHORS' CALCULATIONS

Regarding specific behaviors, around 75% of respondents stated that it is not acceptable at all or not acceptable for businesses to take advantage of contacts and networks within public institutions in order to speed up any procedures. Meanwhile, 25% think that it is acceptable or very acceptable. Such a result implies that every fourth business in thinks that it is acceptable to use connections in order to speed up any business-related procedures. This might be as a cultural aspect as well as it is customary in Kosovo to try use contact in public institutions to get a job done.

Along the same lines, 83% of respondents think that it is not acceptable at all or not acceptable for

public officials to use public resources for private interests or gains. Almost 17% think that it is acceptable or very acceptable. Similar results are for the practice of using public resources for the gain of a third party as 87% think that it is not acceptable and 13% think that it is. Although majority of businesses are aware that use of public resources by public officials for private gains or gains of a third party is bad, a small percentage still thinks that it is an acceptable practice. Further, 83% of respondents think that it is not acceptable at all or not acceptable for a public official to hold a public function while having interests in a private company. Meanwhile 17% think that it is acceptable or very acceptable (See Figure 8 for details).

**FIGURE. 8 ACCEPTANCE ON SPECIFIC BEHAVIOR**



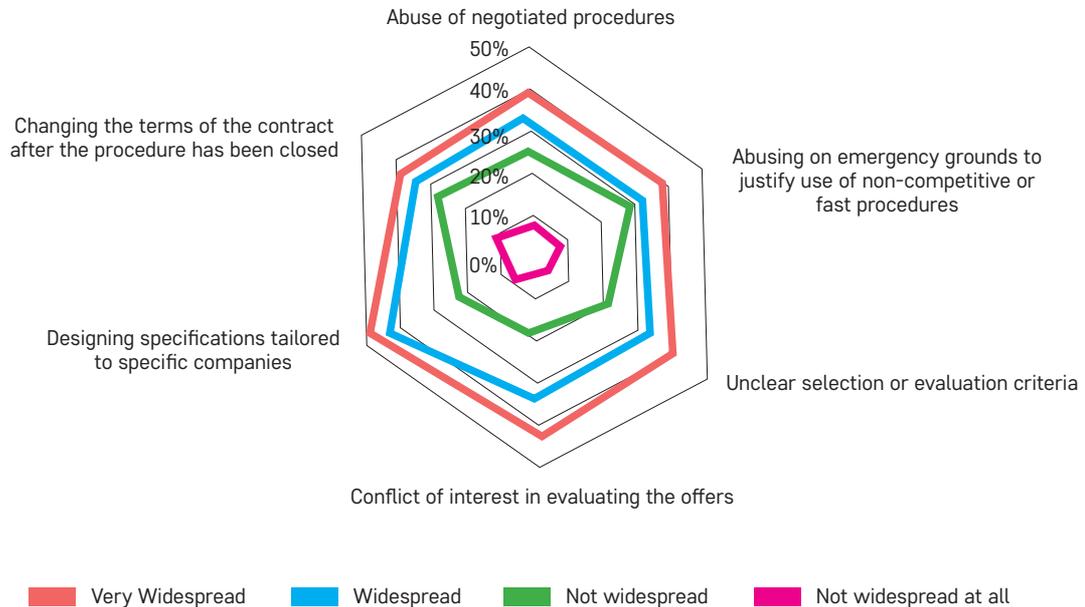
SOURCE: AUTHORS' CALCULATIONS

### 5.2.5 The experience of businesses with corruption

Since perception about corruption in public procurement is high, the team has asked businesses specifically about their experiences with corruption in public procurement. More specifically, the team has asked businesses to give their opinions regarding how widespread are certain practices in public procurement. For example, 67% of businesses think that abuse of negotiated procedures is a very widespread or widespread practice, meanwhile 33% think that it is not widespread or it is not widespread at all. Around 64% believe that the practice of abusing on emergency grounds to justify use of non-competitive or fast procedures is widespread or very widespread. Almost 36% believe that the practice is not widespread or it is not widespread

at all. Regarding the practice of using unclear selection or evaluation criteria, 74% of respondents believe that is a widespread or very widespread practice, 26% believe that it is not widespread or that it is not widespread at all. The practice of conflict of interest in evaluating the offers is believed to be widespread or very widespread by 77% of respondents, meanwhile 23% believe that it is not widespread or that it is not widespread at all. The practice of designing specifications tailored to specific companies is believed to be widespread by 78% of companies meanwhile 22% believe that is not widespread or that it is not widespread at all. The practice of changing the terms of the contract after the procedure has been closed (ex. Annex contracts) 64% of respondents believe that it is widespread, and 36% believe that it is not widespread or that it not widespread at all (see Fig.9).

**FIGURE. 9 LEVEL OF ACCEPTANCE FOR PRACTICES MADE BY BUSINESS AND PUBLIC OFFICIALS**



SOURCE: AUTHORS' CALCULATIONS

Around 20% of companies interviewed stated that they have participated in public tender procedures in the last three years. Of them, 44% have participated only once and the rest, 56%, have participated more than once. Of the companies that have participated in public tender procedures, around 34% believe that corruption has hindered their company from winning a tender or getting a public procurement contract. Around 26% do not think so and 32% were not sure or did not know. Indicating that every third businesses that has participated in public procurement processes thinks that corruption is hindering them from winning a tender. Such a perception might lead to businesses not applying for tenders as they think that a company with connections will get the contract.

From the companies that have never taken part in a public procurement procedure, around 12% stated that they did not do so because they had the opinion that the deal had already been made before the call for tenders was open, 7% stated that they did not apply because the criteria looked as if they

were tailored for someone else, another 7% did not apply because the deadline for submitting the tender were short and impossible to meet. Almost 5% stated that the procedure to apply was complicated and very bureaucratic. The majority, 53%, stated that it was for other reasons. Still around 31% of companies stated that they did not apply do to fear that the public procurement procedure is already fixed for some other company or because the deadline was very short. Such a percentage shows that a relatively good amount of companies do not have trust in public procurement procedures.

Respondents were also asked if their business has been in contact, during the last three years, with any public official, even through an intermediary, for certain administrative procedures and the results show that 8% have been in contact with an official for bidding processes in public procurement procedures, 10% were in contact with a public official in order to ensure contracts with public institutions without a tendering process, 6% were in contact with a customs officer, 26% were in contact with

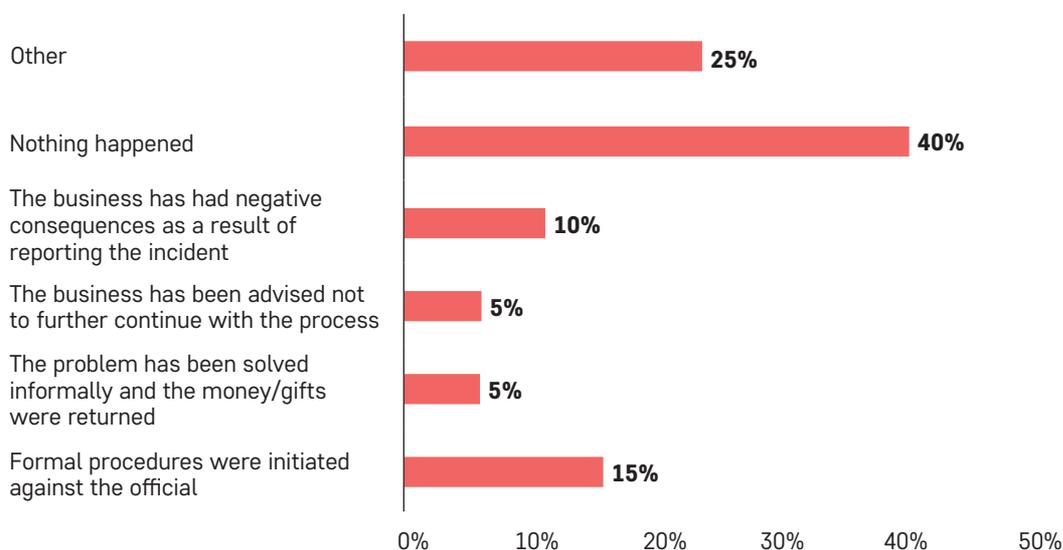
official for procedures related to labor regulations (including on-site inspections) and 6% were in contact with public officials for acquisition or renewal of licenses for conducting a business activity.

When asked if in the last three years, there has been any case when a public official asked a business to give a gift, a bribe or make a favor, almost 7% of businesses stated that yes, such a request was made, 86% stated that no such request was made and 7% were not sure. From those that had such a request, 10% have reported the official to competent authorities, 70% did not report the official and 20% did not know what happened. Such results show that a very high number of businesses do not report officials that request bribes or gifts. Further, when comparing for business size it can be observed that more medium sized businesses were requested a bribe as 11% of medium sized businesses declared that they have received such a request. Around 8% of small businesses and 6% of micro businesses declared that a public official requested a bribe from them. Along the same lines,

none of the medium sized businesses reported the official that requested the bribe to competent authorities, meanwhile around 10% of micro and 10% of small businesses have reported the official.

The businesses that reported the officials, around 4% did so at the police, 35% at the Anti-corruption Agency, 13% at the institution where the official work. The rest of respondents were not sure where the official was reported. Regarding consequences, 15% of companies stated that once they reported the official, formal procedures were initiated against him/her, 5% stated that the problem has been solved informally and the money/gifts were returned to them, 5% stated that they have been advised not to further continue with the process, 10% stated that they have had negative consequences as a result of reporting the incident, and 40% stated that nothing happened (see Figure 10). Results show that a very low percentage of officials that have been engaged in corruptive practices have faced consequences.

**FIGURE. 10 CONSEQUENCES OF REPORTING CORRUPTIVE PUBLIC OFFICIALS**



SOURCE: AUTHORS' CALCULATIONS

Majority of companies did not report the official at all, and for 16% of respondents the reason was that giving money or gifts to public officials is a common practice, and as such there is no need to report. For 26% of respondents the reason for not reporting was that they consider it to be pointless as no one will deal with the reported case. Showing that one in every fourth business thinks that it is not worth it to report an official as competent authority will deal with the case. This leads to businesses losing faith in the system and not report the corrupt officials who might continue to operate without any problems. For 11% the reason was that they were not clear as to where to report the public official. Around 9% did not report the official due to fear of punishment. Around 4% stated that they did not report the official as the payment/gift is made as a sign of gratitude. And only 1% stated that they did not report the official as the company benefited from payment/gifts/favors.

Businesses were also asked to provide the reasons for giving bribes or gifts. The main reason reported were to: i) accelerate the procedures (20%), ii) avoid payment of a fine (12%), iii) enabling the finalization of a procedure (otherwise it would not be possible) (6%), iv) reduce the cost of any procedure (5%), v) receive preferential treatment (e.g. increase your score, reduce taxes, etc.) (4%), vi) get information about a process (where to go, to whom to approach, etc.) (4%), vii) achieve advantage over competitors (3%). Around 46% did not know the reasons.

Regarding the method used to require the payment, around 18% of respondents stated that no official has requested it, they did it to facilitate/accelerate the procedure, 25% stated that the request was made indirectly (15% stated that the official requested the payment indirectly and 10% stated that a third person required the money), 10% stated that it was a direct request from the public official, and 47% did not know. The results show that 18% or every 6th business gives money to a public official without the official requesting the money. They do so in order to accelerate procedures. This creates unfair competition as the businesses that pay bribes might end up getting their procedures finished much faster than businesses that do not pay bribes. Further, such businesses promote corruption as they are the ones that offer to pay money.

Almost 21% of business who received a request from a public official for a bribe or gifts, in order to get a job done, stated that they did not accept to give anything. Meanwhile 56% did not refuse and 22 percent of respondents were not aware. Showing that every second business that receives a request to give money or gifts to a public official decides to do so. They might decide to give the money as they believe that if they do not give anything they will not get their job done. Further, they might also think that even if they decide not to give money and report he official nothing will happen to the official.

In order to understand how many companies, give bribes before they are even asked to by a public official, the team has posed the question indirectly by asking companies to state the percentages of companies operating in their sector that give bribes even if they are not required by public officials. The results show that on average 20% of companies give bribes without being asked by the public official. This result is worrisome as it shows that every fifth company decides to pay a bribe or give a gift to a public official without being requested.

Regarding refusal from public officials to receive a bribe or money, businesses stated that on average 18% of public officials will refuse to accept the bribe/gift if offered. Such a result shows that businesses believe that a very high number of public officials are corrupt. This perception leads to businesses not worrying about administrative procedures as they know that they can offer bribes to public officials. This leads to unfair competition which has been prevailing in Kosovo for a long time and is being listed as one of the top barriers to doing business.

### **5.2.6 The behavior of businesses towards corruption and willingness to implement ethics principles**

This section will focus on describing what are the attitudes of businesses towards corruption. Further, the section will present the willingness of business to sign anti-corruption codes and implement ethics principles within the company.

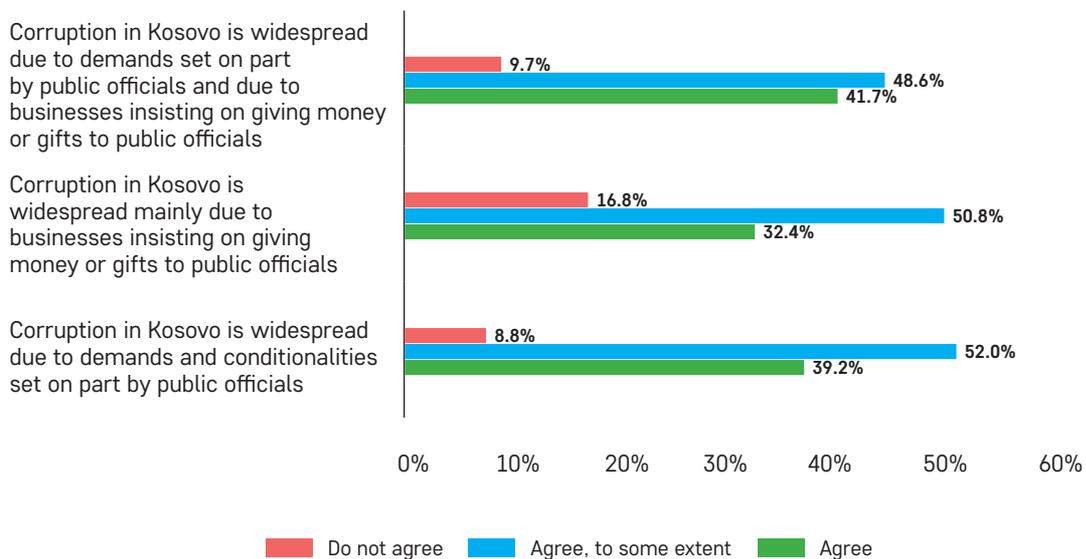
Around 12% of companies stated that over the past three years, they have you decided not to make a

big investment because of the fear of giving a gift or a bribe to get the necessary services/permits. Meanwhile 88% stated that they did not face such a fear. Showing that one in every tenth business might decide not to invest due to the fear of having to give money or gifts to public officials. Such businesses do not develop and as a result do not create new jobs.

Almost 91% of respondents agree or agree to some extent with the statement that corruption in Kosovo

is widespread due to demands and conditionalities set on part by public officials (see Fig.11 for details). Meanwhile, around 83% of respondents agree or agree to some extent that corruption in Kosovo is widespread mainly due to businesses insisting on giving money or gifts to public officials. Almost 90% agree or agree to some extent with the statement that that corruption in Kosovo is widespread due to demands set on part by public officials and due to businesses insisting on giving money or gifts to public officials.

**FIGURE. 11 LEVEL OF AGREEMENT ON FOLLOWING CORRUPTION RELATED STATEMENTS**



SOURCE: AUTHORS' CALCULATIONS

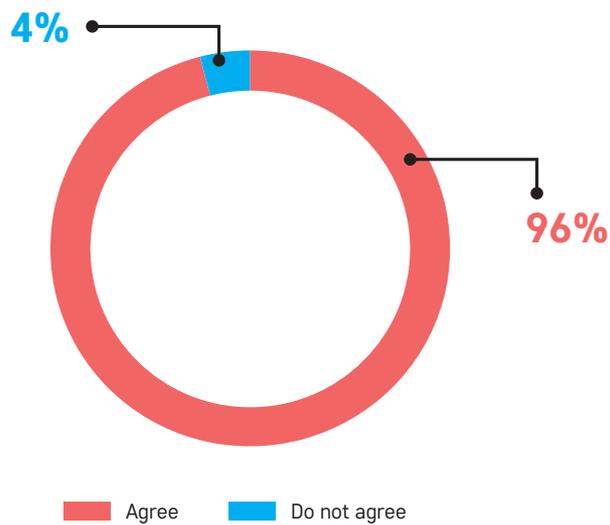
Regarding ethics principles, some companies have developed actual regulations to combat corruption. For example, 62% of companies stated that they do have a Code of Ethics to which employees need to adhere to. Meanwhile, 27% of companies stated that they have a regulation which prohibits bribe giving by company employees. Companies that did not have a regulation were asked if they would be willing to engage in drafting a regulation that prohibits bribery and 76% stated that they would be willing to do so and 8% stated that they would not be willing to commit. From the companies that are willing to commit, 78% stated that their top management would be willing to assign specific

responsibilities to people in order to make sure that the regulation is implemented and 67% stated that their company would be ready to install a system that continuously monitors the implementation of the anti-corruption program and 10% stated that they would not be willing to do so. Further, 58% stated their company would be ready to allocate the resources needed for the program and 17% would not be ready to commit resources. In addition, almost 24% of companies stated that they have other disciplinary procedures to deal with any bribery incident and 66% do not have any other procedures. Of those companies that do not have any procedures that deal with bribery incidents, 69%

stated that they would be prepared to draft rules for dealing with bribery incidents meanwhile 15% stated that they would not be prepared. Meanwhile regarding gift giving to public officials, around 16% stated that they have a policy in place meanwhile 77% do not. Similarly, almost 13% of companies stated that they a regulation about contributions to political parties and 21% have a regulation on donations and sponsorships.

When asked whether involvement in corrupt practices tarnishes the reputation of the company, 96% percent of companies agree. Further, around 97% of respondents stated that it is important for them as leaders/senior managers to promote/build a culture of moral and professional integrity in business.

**FIGURE. 12 INVOLVEMENT IN CORRUPT PRACTICES TARNISHES THE REPUTATION OF THE COMPANY**

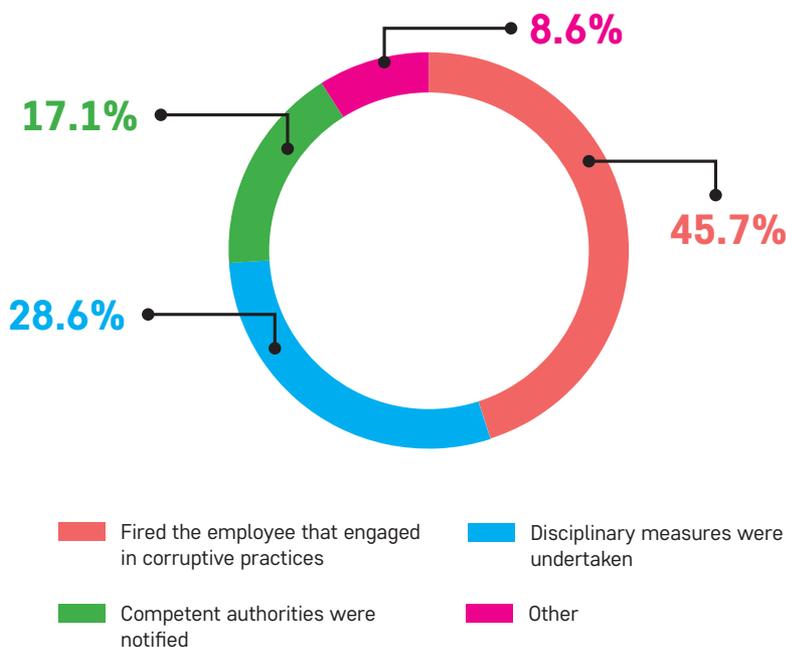


SOURCE: AUTHORS' CALCULATIONS

Only 6% of respondents stated that they have cases when they initiated disciplinary proceedings against employees in their company as a result of involvement in a corrupt affair meanwhile 94% stated that

they did not have such cases. Of the companies that have has such cases, 46% fired the employee, 29% have undertaken disciplinary measures, and 17% have notified the competent authorities.

**FIGURE. 13 CONSEQUENCES FOR EMPLOYEES WHO WERE ENGAGED IN CORRUPTIVE PRACTICES**



SOURCE: AUTHORS' CALCULATIONS

Regarding corruption within the private sector, 43% of companies believe that corruption is present in the business relations between companies in the private sector. Such a figure is very high as it shows that the perception is that almost every second business engages in corruptive behavior with another business. And the main reasons for corruption in private sector are: i) giving out information to competitors that could damage the company (57%), ii) accepting money in order to buy the products/services of a certain company (28%), iii) accepting money in order to sell products/services of a company (10%).

When it comes to awareness about the Ethics codes, around 17% of businesses were aware that some of the Business Associations in Kosovo have

established Code of Ethics which prohibits companies that are members of the Association from engaging in corrupt affairs. Meanwhile, around 47% were not aware and 36% did not know anything about the topic. This shows that there is lack of knowledge regarding such an initiative by Business Associations.

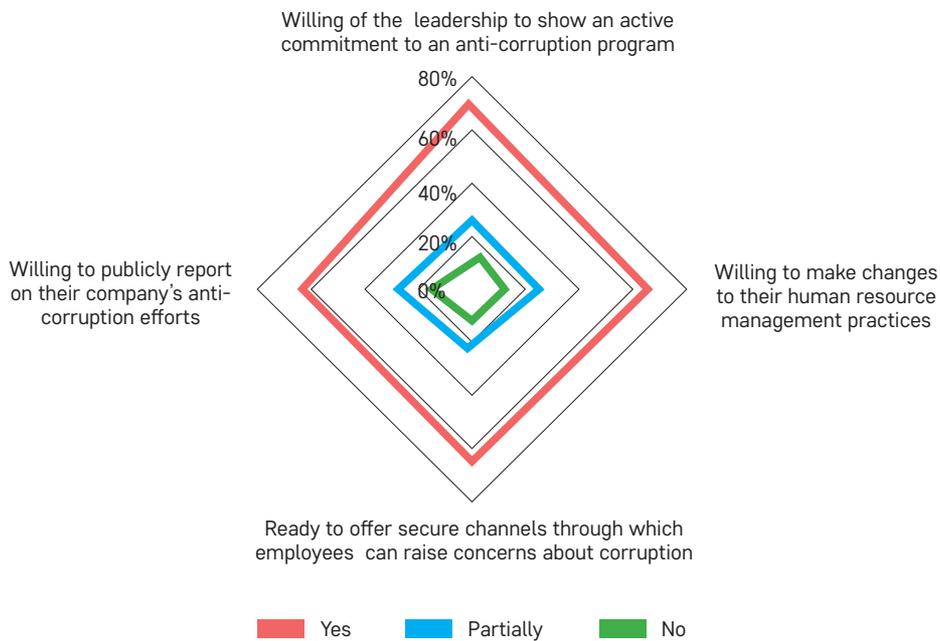
However, almost 68% of companies would be willing for their leadership to show an active commitment to an anti-corruption program and to act as an example of transparency and integrity and 26% would be willing to commit partially. There are still some businesses that hesitate to commit, however, the majority are willing to be engaged in anti-corruption program. When comparing for business size, micro enterprises do not show a difference

from the general picture, however, the difference can be observed at the small and medium sized businesses as around 75% of small business and 56% of medium sized businesses would be willing to commit.

Furthermore, 66% of companies state that they would be willing to make changes to their human resource management practices so that they reflect their company's commitment to the Anti-Cor-

ruption Program and 25% would be willing to do so partially. Additionally, 68% would be ready to offer secure channels through which employees and others can raise concerns about corruption without a risk of punishment and 24% would be ready but partially. Similarly, around 63% of companies stated that they would be willing to publicly report on their company's anti-corruption efforts and 24% stated that they would be willing to commit partially.

**FIGURE. 14 WILLINGNESS OF BUSINESSES TO FIGHT CORRUPTION**



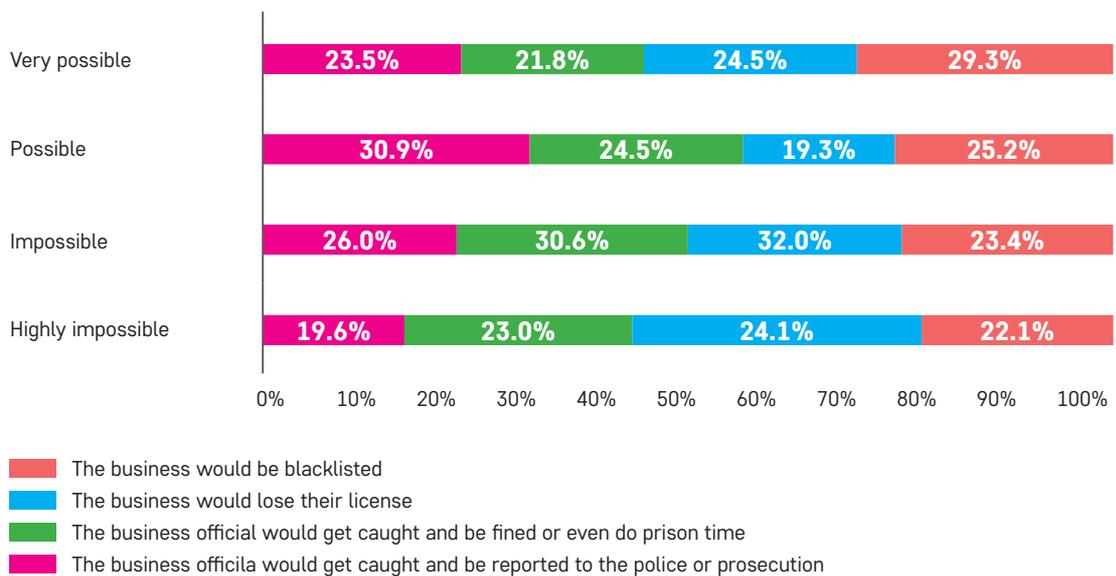
SOURCE: AUTHORS' CALCULATIONS

Vast majority of companies, 88%, are not part of any business association. Of companies that are part of associations, 80% would be willing to sign a Code of Ethics where they would pledge that their company will not be involved in corrupt affairs and will enforce ethical anti-bribery principles. Regarding effectiveness of the business community (businesses, chamber of commerce and business associations) to fight corruption by signing the Code of Ethics, around 71% of respondents stated that it would be effective (37%-very effective and 34%-effective). Meanwhile 22% think that it would be slightly effective.

Regarding consequences that businesses who engage in corruptive behavior in Kosovo might face, 54% believe that it is possible or very possible (see Fig.15 for details) that they would get caught and be reported to the police or prosecution. Meanwhile,

46% think that it is impossible or highly impossible. Such results show that almost every second businesses think that the chance of getting caught while engaging in corruptive behavior is low. As such, this could motivate them to engage in such behavior in order to gain advantage over competitors because they would know that the chances of getting caught are almost impossible. Similarly, 46% think that it is possible or very possible for a business who engages in corruptive behavior to get caught and be fined or even do prison time through a court decision. Meanwhile, 54% believe that such a thing is impossible to happen. Along the same lines, 44% believe that it is possible or very possible the business who engages in corruptive behavior would lose their license, 56% think that it is impossible. Also, around 54% believe that it is possible that the business would be blacklisted, meanwhile 45% believe that such a thing is impossible.

**FIGURE. 15 CONSEQUENCES OF BUSINESS OFFICIALS THAT ENGAGE IN CORRUPTIVE PRACTICES**

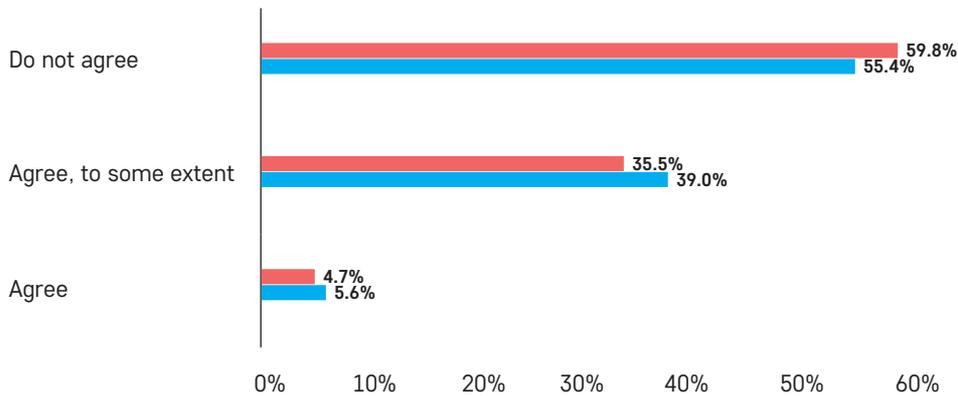


SOURCE: AUTHORS' CALCULATIONS

When asked if people or businesses who engage in corruptive behavior and get caught are punished appropriately, 55% disagree with the statement, 39% agree to some extent and only 6% agree fully.

Meanwhile, when asked if people and businesses caught bribing a senior official are punished appropriately, 60% do not agree with the statement, 35% agree to some extent and 5% agree.

**FIGURE. 16 LEVEL OF AGREEMENT WITH CORRUPTION RELATED STATEMENTS**



■ Individuals and businesses caught bribing a senior official are punished appropriately  
■ Businesses who engage in corruptive behavior and get caught are punished appropriately

SOURCE: AUTHORS' CALCULATIONS

Further, when asked if their company has ever been involved in any court case for corruptive affairs (whether as a defendant or accused) exactly 6% stated that they were involved, and for 86% of the businesses the reason for involvement was

that they have initiated the case in court since they believed that they have been wronged while 14% stated that their company was accused of involvement in corruptive practices.



## 6. CONCLUSIONS ON SUREVY OUTCOMES

The overall perceptions of 500 surveyed businesses shows that there is a consensus that corruption in Kosovo society is quite widespread, with the focus being on central institutions, public procurement and getting construction permits and licenses. Almost two thirds of businesses consider that no service that is related to public institution can be received without paying bribes.

Moreover, around 73% of businesses consider corruption to be a serious problem for carrying out business activities. Only 27% of them deny that it is not a problem. However, only about half of the surveyed businesses consider corruption to be widespread in the sector where they work. Further, businesses think that around 25% of the companies in their sector engage in corruptive practices.

Only 36 companies, about 7% of respondents, stated that they had received a request from public officials for a bribe or a gift in return for a service to be received or problem to be solved and only 10% have reported the official to competent authorities. Further, around 40% of respondents stated that nothing happened to the official that was reported. Along the same lines, around 26% of businesses stated that there is no point to report the official as no one will deal with the case. Moreover, more than half of businesses believe that officials that are caught engaging in corruptive practice are not punished adequately as they are not punished with prison. Showing in this way that businesses believe that penalties for corruption are not adequate. Only

6% of respondents have been involved in judicial proceedings related to corruption during the last three years, of which 79% initiated the case as they believed that they were wronged.

Another finding is that around 20% of businesses offer to give a bribe or a gift to a public official without the official requesting it. Such a result shows that one in every fifth businesses is the first one to offer the bribe to a public official. That might be due to the perception that no service can be received without paying bribes. Businesses think that only 18% of public officials that are offered a bribe would reject it. Showing that almost 82% of public officials would accept the bribe that is offered by private businesses.

Businesses think that corruption in Kosovo is widespread due to both official requesting a bribe and businesses offering to pay bribes or give gifts. Regarding how business representatives should react when asked by public officials for a bribe, about 42% consider that the business representative should reject the request immediately and 43% of them think that the business should report the official to competent authorities, meanwhile 6% think that such a request should be accepted.

Close links between businesses and politics are seen as the main source of corruption by almost 91% percent of businesses, making corruption in this way an essential precondition for doing business in Kosovo.

There is almost complete consensus among respondents regarding the negative consequences that corruption has on fair equal competition, economic development, investments and the image of the company. However, nearly half of the interviewed companies consider that long-term development of the company can be achieved through corruption.

Less than a fifth of companies have regulated disciplinary procedures and measures that prohibit and sanction corruption. But there is a high level of readiness to regulate this in the future. Over 80% of them would sign the Business Code for corruption, while 70% think this code would have positive effects in fighting corruption.



## 7. KEY PROVISIONS OF BUSINESS ANTICORRUPTION CODE

Following advanced practices in implementing ethical standards in doing business and also considering that about 80% of surveyed businesses (Riinvest 2019) expressed readiness to sign and implement the Anti-corruption Business Code (ACBC) here we present key provisions and principles that will serve to outline this code in consultation with key stakeholders, respectively business associations. Through ACBC, business associations and business leaders will express their willingness and commitment:

- That in company regulations, policies and procedures they will develop integrity standards that serve as codes of conduct for employees in which it is clearly stated the commitment of owners, executives and all employees toward integrity standards: doing business fairly, honestly and openly.
- Reflect the prohibition of bribery in company rules and introduce a bribery reporting system through which they will examine and manage anti-bribery efforts on a regular basis including review of budget expenditure related to work with the government.
- Establish internal audit control standards which will reflect antibribery standards and make the report from the audit control public.
- Clearly state that all corruption demands (direct and indirect) will not be accepted and will be properly reported to the competent authorities.
- Will implement rules in avoiding conflict of interest.
- Develop guidelines related to reward and punishment for employees related to bribery through providing incentives to those who have contributed to anti-corruption and impose adequate sanctions on those who violated internal rules.
- Accept transparency standards especially in public procurement including monitoring in procedures and implementation of contracts related to public procurement.
- Implement full transparency and ethical principles for contribution to political parties and sponsorships and keep records to all contributions for this purpose.
- Develop detailed anti-corruption education plans for employees.
- Will avoid doing business with others who do not accept values and who may harm reputation of company and who violate provisions of ACBC.
- Will stand for OECD Principles of corporate governance and corporate social responsibility that will contribute to the protection of the company's reputation and professional relationships with stakeholders, employees, with suppliers, subcontractors, competitors, costumers and government.



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