Developing Effective Anti-Corruption Ethics and Compliance Programmes

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A multitude of definitions

Source: Adapted from Pommerening, Gesellschaftliche Verantwortung von Unternehmen, 2005
Classification of concepts

- **Legal Compliance**
  - Mandatory
    - Criminal, civil and administrative laws

- **Corporate Social Responsibility**
  - Expectations of society
  - Part of business activities (beyond laws)
    - Code of Conduct
    - Labels
    - Standards

- **Corporate Citizenship**
  - Outside of business activities
    - Donations
    - Volunteering
    - Foundations

Source: Adapted from Pommerening, Gesellschaftliche Verantwortung von Unternehmen, 2005
Expectations for companies regarding anti-corruption

Adhere to a zero-tolerance of corruption

Establish an anti-corruption program

"<Name of company> has a zero-tolerance of corruption. This extends to all our business dealings and transactions in all countries in which we or our subsidiaries and associates operate. This policy is given force in an anti-corruption program which is regularly revised to capture changes in law, reputation demands and changes in the business. All directors and employees are required to comply with this policy."

Source: Adapted from Transparency International UK „The 2010 UK Bribery Act Adequate Procedures“, 2010
3-step approach for companies to counter corruption

1) Internal measures
2) External measures
3) Collective measures

Business environment with reduced risk of corruption

Source: Adapted from United Nations Global Compact "Business against Corruption - A Framework for Action", 2006
### 3-step approach for companies to counter corruption (Details)

#### OECD: Good Practice Guidance on Internal Controls, Ethics, and Compliance
- Strong, explicit and visible support and commitment from senior management
- A clearly articulated and visible corporate policy
- Oversight
- High-risk areas, such as gifts, hospitality, facilitation payments, etc.
- Third parties
- Financial and accounting procedures
- Communication and training
- Positive support for observance
- Disciplinary procedures
- Guidance and advice
- Internal and (where possible) confidential reporting
- Periodic reviews

#### International Chamber of Commerce: Rules on Combating Corruption
- Strong, explicit and visible support and commitment by the Board of Directors ("tone at the top")
- Clearly articulated and visible policy
- Risk assessments and independent reviews
- Responsibility of individuals
- Oversight
- Financial and accounting procedures
- Systems of control and reporting procedures
- Internal and external communication
- Training
- Channels to raise concerns, seek advice or report in good faith
- External certification, verification or assurance
- Collective Action

#### Transparency International: Business Principles for Countering Bribery
- **The Business Principles:**
  1. *The enterprise shall prohibit bribery in any form whether direct or indirect.*
  2. *The enterprise shall commit to implementing a programme to counter bribery.*

  - Organisation and responsibilities
  - Business relationships
  - Human resources
  - Training
  - Raising concerns and seeking guidance
  - Communication and reporting
  - Internal controls and record keeping
  - Monitoring and review
  - Cooperation with authorities
  - Independent assurance

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**WHAT to do** → Commonly accepted  
**HOW to do it** → Differs from company to company

Source: Adapted from the German Global Compact Network, 2014
Risk assessment

Developing and implementing an anti-corruption ethics and compliance programme
A. Support and commitment from senior management for the prevention of corruption
B. Developing an anti-corruption programme
C. Oversight of the anti-corruption programme
D. Clear, visible and accessible policy prohibiting corruption
E. Detailed policies for particular risk areas
F. Application of the anti-corruption programme to business partners
G. Internal controls and record keeping
H. Communication and training
I. Promoting and incentivizing ethics and compliance
J. Seeking guidance - detecting and reporting violations
K. Addressing violations
L. Periodic reviews and evaluations of the anti-corruption programme

From organizational change to collective action
How to get started with an anti-corruption ethics & compliance program?

- **Step 1:** Commitment
- **Step 2:** Risk management
- **Step 3:** Design
- **Step 4:** Implementation
- **Step 5:** Evaluation and improvement
- **Step 6:** Reporting and participation

- The UN Global Compact Management Model
- 6 practical steps (to support companies in defining milestones and allocating resources).
- An anti-corruption program is not a one-time activity, but rather a process of continuous adjustment and improvement.
Step 1: Commitment from senior management

- Provide a public declaration
- Define responsibilities
- Provide sufficient resources
- Be prepared...
- Lead by example!

“*If you don’t get the CEO to signal support for the anti-corruption programme, you might as well not do it.*”

Quote by Dr. N. Joubert, Group General Manager, SASOL – taken from PricewaterhouseCoopers, “Confronting corruption - The business case for an effective anti-corruption programme”, 2008.
Step 2: Who should attend regular anti-corruption trainings?

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<th>Employees from</th>
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<th>Possibly</th>
<th>Not necessarily...</th>
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Step 2: Risk management

- Identify your risks
- Prioritize your risks
- Mitigate your risks

There is no “one-size-fits-all” anti-corruption programme!
Step 3: Design your programme

- Provide written policies ("what is the expected behaviour")
- Use a participatory approach
- Provide practical resources for "grey areas"
“Grey areas”

Step 4: Implement your programme

- Conduct communication and training
- Establish an internal control system
- Provide help and reporting hotlines
- Address violations
- Offer incentives
Step 4: Implement your programme

Public resources for “Communication and training” (Examples)
Step 4: Implement your programme

... *I was not aware* ...
... *that this was corruption.*
... *that there is actually a victim.*
... *of the consequences for myself, my management and my company.*

... *I cannot* ...
... *afford losing business to corrupt competitors.*
... *invest resources in a costly anti-corruption program.*
... *make a difference; I am too small.*

... *I don’t know how to* ...
... *establish an internal anti-corruption program.*
... *engage my employees and partners.*
... *address a corrupt request.*

Factors for a successful capacity-building program

Understanding

Willingness

Ability

Source: Adapted from Alliance for Integrity (AfIn)
You are the local manager of a company in a foreign country. You are waiting for the shipment of critical technical equipment. When the equipment finally arrives, your employee is told by a customs officer that the paperwork is “incomplete”. This will prevent the release of the equipment until the problem has been solved.

The customs official indicates that a resolution could take several weeks. He adds, however, that the problem can be solved quickly through an expeditor’s fee or cash payment of $200, which would ensure customs clearance of the equipment in one business day.

What should you do?

How would you assess the knowledge, willingness and ability of employees to handle this situation?

Source: Adopted from UN Global Compact / International Chamber of Commerce / World Economic Forum (PACI) / Transparency International: Resisting Extortion and Solicitation in International Transactions, scenario #12
Your anti-corruption programme is a continuous process of learning, adapting and improving!

- Conduct regular reviews of implementation → Are your policies and procedures applied in day-to-day activities?

- Conduct regular reviews of up-to-dateness → Does your programme still address the risks and characteristics of your company and its environment?
Step 6: Report about your programme

“Do good and talk about it…”

- Increases awareness among employees
- Improves reputation in the marketplace and society

“… and collaborate with and learn from other organizations!”
Is it compliance or ethics?

Organizations can follow 2 different paths:

**Compliance strategy**

- Abide by the law: „if it is legal, it is okay“
- Do the minimum to avoid punishments (checklist approach)
- Rules-based
- Use of fear as major practice to advance compliance
- Controlling approach

**Ethics strategy**

- Commit to values and aspiration: „do things the right way“ (going beyond the law, if necessary)
- Encourage and enable responsible behavior
- Principles-based
- Use of virtue as major practice to compliance
- Trust approach

Source: Adapted from Matthias Kleinhempel, Business Ethics and Corporate Ethics Programs, Effective Executive, August 2009
It is both: Compliance and ethics!

- **Compliance strategy:** even as a precaution, everyone should realize that unethical behavior will never be tolerated → control system in place

- **Ethics strategy:** securing buy-in from employees and management by leveraging human beings’ natural attitude for moral actions.

- The 1991 U.S. Sentencing Guidelines for Organizations were revised in 2004, introducing new requirements for companies to implement efforts to establish an ethical culture.

Ethics and compliance are both essential elements of a successful anti-corruption program:
buy-in from employees and management as well as a formal control system based on those values.

Source: Adapted from Matthias Kleinhempel, Business Ethics and Corporate Ethics Programs, Effective Executive, August 2009
Summary

Companies should follow a 3-step approach (internal, external, collective) to counter corruption.

There is a general consensus on the elements of an anti-corruption ethics & compliance program (independent of size, location, ownership).

Ethics and compliance are both essential elements of an effective corporate program.

Implementing and continuously improving an anti-corruption program should be risk-based.

The global anti-corruption community provides a variety of supporting material – most of them free of charge.
Types of corruption

Corruption according to spheres of corporate activity

**Corruption in society**
- Undue influence

**Corruption in the market environment**
- Collusion
- Bribery
- Extortion

**Corruption in the supply chain**
- Bribery
- Extortion

**Corruption within a company**
- Fraud
- Embezzlement
- Conflicts of interest
- Insider trading

Source: Adapted from Transparency International (2009): “Global Corruption Report 2009 - Private Sector”