

The United Nations Convention against Corruption

ON THE LEVEL: BUSINESS AND GOVERNMENTS AGAINST CORRUPTION



UNODC

United Nations Office on Drugs and Crime

ABOUT

the United Nations Convention against Corruption

The United Nations Convention against Corruption (UNCAC) is the sole universal legal instrument designed to prevent and fight corruption in both the public and private sectors. Adopted in 2003 and nearing universal ratification, UNCAC is helping to build a global approach to combating corruption with common anti-corruption standards and activities applicable to the widest spectrum of society, including the business community.

The United Nations and its Member States have given the United Nations Office on Drugs and Crime (UNODC) the responsibility to help translate the commitments of UNCAC into actions. An important part of UNODC's mission is to help the private sector strengthen its involvement with anti-corruption activities globally and level the playing field for businesses around the world.



IMPACT

of the Convention on the Private Sector

UNCAC contains a number of provisions that, while addressed to States, have a direct impact on companies through promoting rules under which all participants, whether government or private businesses, operate under standards designed to combat unfair competition, reduce market distortions and promote integrity.

Private Sector Anti-Corruption Preventive Standards

Article 12 of UNCAC is devoted to measures aimed at preventing corruption in the private sector through a broad set of initiatives to be undertaken by States, including:

- Promoting cooperation between law enforcement agencies and the private sector
- Promoting the development of standards and procedures to safeguard integrity within the private sector, including codes of conduct
- Encouraging good commercial practices to level the playing field for business
- Promoting transparency within the private sector, including the disclosure of the identity of those who manage corporate entities
- Preventing the misuse of procedures regulating private entities
- Preventing conflicts of interest
- Strengthening accounting and auditing standards in the private sector
- Adopting civil, administrative or criminal sanctions to punish corporate wrong-doing
- Disallowing tax deductions for expenses that constitute bribes
- Adopting measures that prohibit the private sector from establishing off-the-books accounts; making off-the-books or inadequately identified transactions; recording non-existent expenditures; entering liabilities with incorrect identification of their objects; using false documents; and destroying bookkeeping documents in violation of legal requirements

Private Sector Cooperation

UNCAC emphasises the opportunities for cooperation between national authorities and the private sector to fight corruption and promote the interests of both the private and public sectors, including through private sector reporting on corruption when it is encountered. Many corruption cases are complex and covert, and will not come to the attention of the relevant authorities or their investigation will be frustrated without the cooperation of private sector entities, especially financial institutions. Article 39 of UNCAC encourages cooperation between companies and investigating and prosecuting authorities, in particular by reporting allegations involving corruption. The Convention also promotes the protection of whistle-blowers, witnesses, experts and victims (Articles 32 and 33).

Money-Laundering Prevention

Corruption generates illicit proceeds that flow through the financial system, and private sector entities, especially financial institutions, are subject to international standards requiring them not to facilitate money-laundering. Article 14 of UNCAC sets forth specific core measures to prevent money-

laundering and the obligations of the private sector to combat it, notably including the requirement that persons handling funds know the beneficial owner of the money. Under UNCAC, States are obliged to establish regulatory and supervisory regimes both for banks and for non-banking financial institutions, including anyone providing formal or informal services to transmit money. Article 52 of the Convention promotes prevention of the transfer of proceeds of corruption, including through requiring financial institutions to conduct enhanced scrutiny of accounts of public officials.

Robust Criminalization of Corruption

UNCAC does not provide a legal definition of corruption, but requires the criminalization of a series of specific offences including not only long-established crimes, but also new manifestations of corruption. States are free to adopt measures more severe than those listed in the Convention. Businesses can be victims or perpetrators of corruption in a variety of contexts referenced in UNCAC:

- Bribery of national and foreign public officials (Articles 15 & 16)
- Trading in influence (Article 18)

COUNTERING CORRUPTION HELPS THE CORPORATE BOTTOM LINE.



UNCAC BASED ANTI-CORRUPTION ACTIVITIES PROMOTE FAIR COMPETITION AND THE INTEGRITY OF MARKETS.

- Abuse of functions, in which an official performs or fails to perform an act to secure an improper personal advantage (Article 19)
- Bribery in the private sector (Article 21)
- Embezzlement of property in the private sector (Article 22)
- Laundering of proceeds of crime (Article 23)
- Obstruction of justice (Article 25)

UNCAC describes the issue of taking undue advantage as a corruption offence regardless of whether an individual is in the private sector or a government official, expanding the concept to reach a wide range of improper conduct involving economic, financial and commercial activities, as well as conduct involving official action. Given that serious and sophisticated crime is frequently committed by companies and corporations through or under the cover of legal entities, UNCAC requires States to establish measures to allow for corporate liability for participation in corruption offences (Article 26). UNCAC also allows entities that have suffered damages as a result of an act of corruption to have the right to seek compensation for that damage (Article 35).

International Cooperation

UNCAC promotes cooperation among governments to successfully combat corruption. For cross-border investigations and prosecutions, UNCAC

encourages States to provide one another the widest measure of mutual legal assistance. Article 46 obligates States to provide, upon request, bank, financial, corporate and business records which cannot be refused on the basis of bank secrecy.

Protecting Public Procurement

In the absence of effective controls, public procurement is highly vulnerable to corruption, as officials may solicit or be offered unlawful advantages to award contracts. Article 9 of UNCAC obligates States to adopt systems of public procurement based on transparency, competition and objective criteria in decision-making. In particular, States are obliged to:

- Make information relating to procurement procedures well known to the public, including information on invitations to tender
- Establish and publish in advance conditions for participation, tendering rules and award criteria
- Create systems of review and appeal against public procurement decisions
- Exercise particular diligence in selecting and training public procurement personnel

Article 34 of UNCAC promotes the annulment and rescinding of contracts and the withdrawal of concessions when appropriate in cases involving corruption, so that the consequences of corruption are properly addressed.

BENEFITS

of Fighting Corruption

Companies are becoming more conscious that combating corruption is good for business. Benefits include:

Clean governments are better partners for business. Private sector engagement in anti-corruption activities helps make governments in difficult environments less vulnerable to corruption, lowering the cost of doing business and providing greater certainty for long-term investment.

UNCAC based anti-corruption activities promote fair competition and the integrity of markets. Implementing UNCAC helps to level the playing field, rewarding good behaviour by making it more likely that pay-offs, bribes and other forms of corruption will be punished.

Countering corruption helps the corporate bottom line. Reduced corruption lowers the cost of doing business. Private sector participation in anti-corruption activities can be a factor in reducing the presence of corruption in the overall business environment, lowering costs and promoting efficiency and the bottom line over time.

Leadership on anti-corruption has an impact on corporate reputation. Just as being named in a corruption case can have a negative impact on corporate reputation, engaging in anti-corruption activities can promote trust in the company by employees, shareholders, business partners, and customers alike. Demonstrating the commitment to integrity and accountability is an increasingly valuable component of a company's overall corporate reputations.

RESOURCES

for the Private Sector's Fight against Corruption

Additional information about the Convention, UNODC's initiatives and opportunities for private sector involvement in the fight against corruption can be found at www.track.unodc.org/private_sector. The website contains several resources designed specifically for the private sector, including an interactive E-learning tool, guidebooks and reports on good anti-corruption practices.

We welcome your questions and comments through email or telephone:

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