Anti-corruption Compliance and Ethics Programmes

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A multitude of definitions

- Corporate Governance
- Corporate Social Responsibility
- Philanthropy
- Compliance
- Ethics
- Integrity
- Sustainability
- Anti-Corruption
- Corporate Citizenship
Classification of concepts

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

Source: Adapted from Pommerening, Gesellschaftliche Verantwortung von Unternehmen, 2005
International conventions and national laws

### International conventions

- Bring the fight against corruption to the political forefront
- Set legally binding standards by which signatory states can be held accountable
- Foster international cooperation

### National laws with international effects

- Implement international conventions
- Adopt local circumstances and foster domestic action
- Apply concept of extraterritoriality

### Examples

- 1977: US Foreign Corrupt Practices Act (FCPA)
- 1999: OECD Anti-Bribery Convention
- 2005: UN Convention against Corruption (UNCAC)
- 2011: UK Bribery Act
1999: OECD Anti-Bribery Convention

- **Groundbreaking convention!**
  - Criminalization of the act of bribing a foreign public official → focus on “supply side” of corruption
  - Ban of tax deductibility of bribes
  - Collaboration between law enforcement agencies of signatory countries
  - Whistleblowing mechanisms
  - Peer-driven monitoring mechanism

- **43 countries** (as of Jun. 2018)

- No focus on private *(business-to-business)* bribery
2005: UN Convention against Corruption

- Only legally binding universal anti-corruption instrument
- Many different forms of corruption
- Public and private sector
- Recognition of preventive and punitive measures

<table>
<thead>
<tr>
<th>Major areas of UNCAC</th>
<th>Chapters of UNCAC</th>
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</thead>
<tbody>
<tr>
<td>Prevention</td>
<td>Chapter II (Articles 5 – 14)</td>
</tr>
<tr>
<td>Criminalization and law enforcement measures</td>
<td>Chapter III (Articles 15 – 42)</td>
</tr>
<tr>
<td>International cooperation</td>
<td>Chapter IV (Articles 43 – 50)</td>
</tr>
<tr>
<td>Asset recovery</td>
<td>Chapter V (Articles 51 – 59)</td>
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<tr>
<td>Technical assistance and information exchange</td>
<td>Chapter VI (Articles 60 – 62)</td>
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</tbody>
</table>

- 186 parties (as of August 2018)
No global legally binding definition of corruption

- UNCAC addresses different **manifestations of corruption** as well as activities which support them, including:
  - Bribing of domestic public officials
  - Bribing of foreign public officials and employees of inter-governmental institutions
  - Commercial bribery
  - Embezzlement
  - Illicit influence
  - Abuse of office
  - Illicit enrichment
  - Money laundry
  - Misappropriation
  - Obstruction of justice

“Corruption is the **abuse of entrusted power for private gain.**”

*Transparency International*
Case discussion – The evaluation trip

Your company is a leading manufacturer for construction equipment, operating out of Vilnius. Your company is currently negotiating a major sale of the technology to a foreign government from the Middle East.

In order to demonstrate the technical capabilities of your equipment and to show that this is state-of-the-art, you are inviting a delegation of the foreign government to a large construction equipment conference in Frankfurt/Germany. Your company pays for flight, accommodation and other travel expenses.

Since the conference takes place right before the weekend, your company provides an “all-inclusive” weekend stay in Berlin/Germany, including sightseeing and a visit to a football match.

Is this corruption or just business development?
Case discussion – Charity or corruption?

You are bidding on a large public road construction project in a community in country Y.

During the bidding phase the local mayor of this community approaches you and states that, as part of the overall construction project, the company that is awarded the contract also needs to build a public kindergarten for the benefit of the community (for free!).

This is a common practice in this country, where organizations or government agencies often require assistance from companies in order to deal with budgetary constraints.

It is expected that the setup of this new kindergarten provides an indirect benefit to the mayor in the upcoming election campaign.

Does this request constitute corruption?

Source: Adapted from Mark Pieth (2011): “Anti-corruption compliance”
Types of corruption

Corruption according to spheres of corporate activity

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

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

<table>
<thead>
<tr>
<th><strong>OECD: Good Practice Guidance on Internal Controls, Ethics, and Compliance</strong></th>
<th><strong>International Chamber of Commerce: Rules on Combating Corruption</strong></th>
<th><strong>Transparency International: Business Principles for Countering Bribery</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Strong, explicit and visible support and commitment from senior management</td>
<td>- Strong, explicit and visible support and commitment by the Board of Directors (“tone at the top”)</td>
<td>The Business Principles:</td>
</tr>
<tr>
<td>- A clearly articulated and visible corporate policy</td>
<td>- Clearly articulated and visible policy</td>
<td>1. <em>The enterprise shall prohibit bribery in any form whether direct or indirect.</em></td>
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<tr>
<td>- Oversight</td>
<td>- Risk assessments and independent reviews</td>
<td>2. <em>The enterprise shall commit to implementing a programme to counter bribery.</em></td>
</tr>
<tr>
<td>- High-risk areas, such as gifts, hospitality, facilitation payments, etc.</td>
<td>- Responsibility of individuals</td>
<td>- Organisation and responsibilities</td>
</tr>
<tr>
<td>- Third parties</td>
<td>- Oversight</td>
<td>- Business relationships</td>
</tr>
<tr>
<td>- Financial and accounting procedures</td>
<td>- Financial and accounting procedures</td>
<td>- Human resources</td>
</tr>
<tr>
<td>- Communication and training</td>
<td>- Systems of control and reporting procedures</td>
<td>- Training</td>
</tr>
<tr>
<td>- Positive support for observance</td>
<td>- Internal and external communication</td>
<td>- Raising concerns and seeking guidance</td>
</tr>
<tr>
<td>- Disciplinary procedures</td>
<td>- Training</td>
<td>- Communication and reporting</td>
</tr>
<tr>
<td>- Guidance and advice</td>
<td>- Channels to raise concerns, seek advice or report in good faith</td>
<td>- Internal controls and record keeping</td>
</tr>
<tr>
<td>- Internal and (where possible) confidential reporting</td>
<td>- External certification, verification or assurance</td>
<td>- Monitoring and review</td>
</tr>
<tr>
<td>- Periodic reviews</td>
<td>- Collective Action</td>
<td>- Cooperation with authorities</td>
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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
- Support and commitment from senior management for the prevention of corruption
- Developing an anti-corruption programme
- Oversight of the anti-corruption programme
- Clear, visible and accessible policy prohibiting corruption
- Detailed policies for particular risk areas
- Application of the anti-corruption programme to business partners
- Internal controls and record keeping
- Communication and training
- Promoting and incentivizing ethics and compliance
- Seeking guidance - detecting and reporting violations
- Addressing violations
- 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: Risk management

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

There is no “one-size-fits-all” anti-corruption programme!
Who should attend regular anti-corruption trainings in your organisation?

<table>
<thead>
<tr>
<th>Employees from</th>
<th>In any case!</th>
<th>Possibly</th>
<th>Not necessarily...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales</td>
<td></td>
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<td>Procurement</td>
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<td>Logistics</td>
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<td>Finance</td>
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<td>Human Resources</td>
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<tr>
<td>Research &amp; Development</td>
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<td>Marketing</td>
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<tr>
<td>Production</td>
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</tbody>
</table>
A standardized **risk register** should be set up to document the results of the risk management.

Such a register facilitates the **consolidation of information** in large enterprises.

### Risk register

<table>
<thead>
<tr>
<th>Risk factor</th>
<th>Risk</th>
<th>Scheme</th>
<th>Probability of occurrence</th>
<th>Potential impact</th>
<th>Inherent risk</th>
<th>Risk mitigation strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>External – Country risk</td>
<td>Bribery of a government official to secure, retain or influence an improper business decision</td>
<td>Improper payments to customs officials to facilitate processes related to importation of goods or to clear the import of goods that are illegal</td>
<td>Medium (3)</td>
<td>High (4)</td>
<td>Medium (12)</td>
<td>&lt;Various activities to minimize risk&gt;</td>
</tr>
</tbody>
</table>
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”

Business practices that are illicit but perceived as normal or even required

- Facilitation payments

Business practices that are legal but bear the risk of being misused to disguise corruption

- Gifts, hospitality, travel and entertainment
- Political contributions
- Charitable contributions and sponsorships

Business practices that are based on biased decisions

- Conflicts of interest

Step 1: Commitment

- Conduct communication and training
- Establish an internal control system
- Provide help and reporting hotlines
- Address violations
- Offer incentives

Step 2: Risk management

Step 3: Design

Step 4: Implementation

Step 5: Evaluation and improvement

Step 6: Reporting and participation
Step 4: Implement your programme

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

Factors for a successful capacity-building program

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

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

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

Source: Adapted from Alliance for Integrity (AfIn)
Case discussion: The „special“ customs fee

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
Case discussion: The unknown partner

You are the sales manager of a medium-sized consulting company. Together with other local and international companies you are competing for a tender of a large public client in a country that, according to the Transparency International Corruption Perceptions Index, has a high-risk of corruption.

In the call for tender, your company is asked to contract with a designated local company as a pre-condition to bid. There is not much publicly available information on that local company, but it appears that they do not have the necessary qualifications to perform the task. Further, it is not transparent who the beneficial owner of this local company is. You need this contact – otherwise, you need to lay off colleagues.

What should you do?
Step 5: Evaluate and improve your programme

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.