



CIVIL SOCIETY GUIDE

UNCAC AND THE PRIVATE SECTOR

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

The UNCAC Coalition is a global network of over 350 civil society organisations (CSOs) in over 100 countries, committed to promoting the ratification, implementation and monitoring of the UN Convention against Corruption (UNCAC). It mobilises civil society action for UNCAC at international, regional and national levels.

www.transparency.org
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With the support of:



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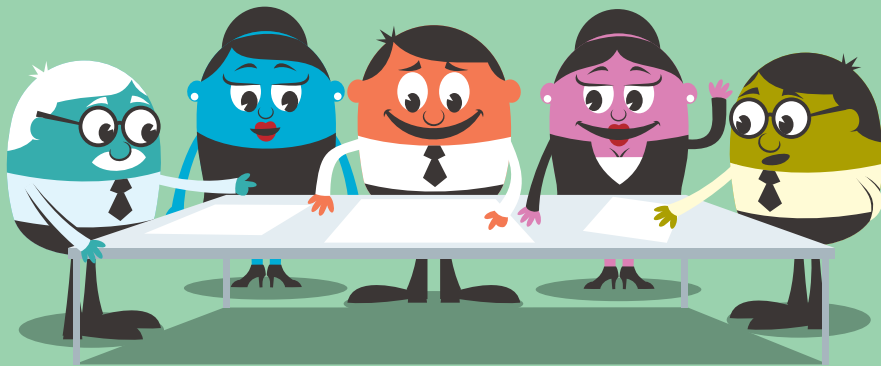




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1. INTRODUCTION



Transparency International (TI) has produced this practical guidance booklet to assist civil society organisations (CSOs) in engaging with companies to promote implementation and inclusive monitoring the United Nations Convention against Corruption (UNCAC) in their local context. The idea for the guide arose out of a joint training for CSOs on UNCAC and its review process co-organised by TI and UNODC.

This guide aims to assist CSOs engagement with companies, whether you are experienced or novices in such partnerships. It includes a summary of the UNCAC provisions which apply to companies, explains why companies should have an interest in implementing the Convention, and provides pointers on strategies CSOs can use to work with businesses on promoting UNCAC in their respective countries.

The United Nations Convention against Corruption (UNCAC), which entered into force in December 2005, provides a unique global response to a global problem. It requires vigorous follow-up by signatory governments with the support of other stakeholders.¹ The Convention is **the most global anti-corruption treaty** and embodies a comprehensive approach to corruption, recognising the importance of both preventive and punitive measures. On the criminal law side, UNCAC goes beyond bribery and covers a wide range of offences, such as the embezzlement of public and private funds, trading in influence, illicit enrichment and abuse of functions. It covers both private-to-public and private-to-private relationships.

The UNCAC and other anti-corruption conventions set the baseline. Countries which have ratified UNCAC have committed themselves to implementing it through passing any necessary domestic legislation.²

¹ The Convention was adopted by the UN General Assembly in October 2003 (Resolution 58/4) and entered into force in December 2005. As of February 2013 the Convention had 165 parties. See <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

² Other conventions include the OECD Anti-Bribery Convention as well as regional anti-corruption conventions such as the African Union Convention on Preventing and Combating Corruption; The Inter-American Convention against Corruption, developed by the Organisation of American States; The European Union Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States; The Council of Europe Criminal Law Convention on Corruption; The Council of Europe Civil Law Convention on Corruption; The Southern African Development Community Protocol on Corruption; the Economic Community of West African States Protocol against Corruption; and the Arab Convention against Corruption.

All stakeholders, including the private sector, should therefore understand that UNCAC fundamentally defines the environment in which they operate

Because the UNCAC is a key instrument for addressing corruption on a global scale; because it affects the private sector; and in view of the potential importance of the private sector in fighting corruption, it is therefore important that the private sector:

- understands the content and benefits of the UNCAC as the international framework for fighting corruption;
- advocates for implementation and effective monitoring of the UNCAC in the countries in which they operate; and
- establishes preventive measures and collaborative approaches in line with Convention provisions.

Working with the private sector can form an important part of your UNCAC advocacy strategy

Private sector actors are potentially influential allies for effecting change. The private sector accounts for about 60 per cent of gross domestic product (GDP) globally. More than 79,000 multinational enterprises (MNEs) and their 790,000 national affiliates are engaged in international production, accounting for 11 per cent of global GDP and sales worth US \$31 trillion.³ In our globalised and liberalising world economy, state-owned enterprises are being privatised at an increasing rate. Furthermore, the private sector is increasingly providing services that were traditionally provided by the state.

There are, however, potential challenges and risks to working with the private sector that have to be assessed by CSOs. Actors in the private sector are not only victims of corruption and part of the solution to it; they are also part of the problem.

³ United Nations Conference on Trade and Development (UNCTAD), World Investment Report 2008: **Transnational Corporations and the Infrastructure Challenge** (2008), http://unctad.org/en/Docs/wir2008_en.pdf.

CSOs can play an important role in engaging the private sector on the implementation and monitoring of the UNCAC

The importance of civil society in promoting UNCAC is recognised in the Convention, in Article 13:

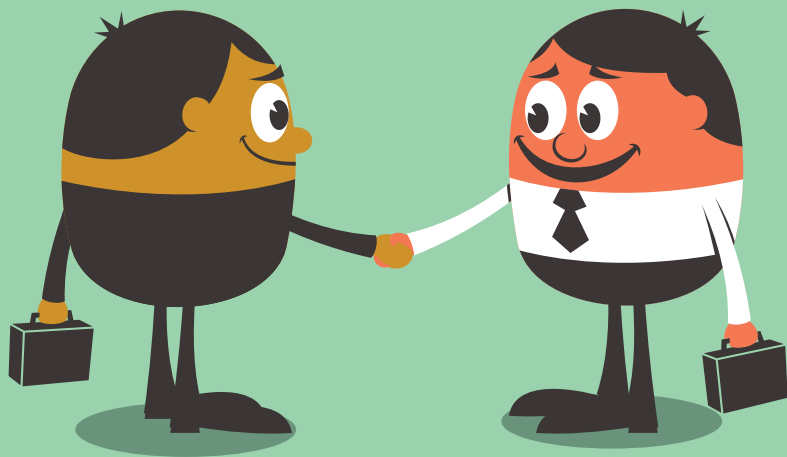
“Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the **active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption...”

Companies will differ in their receptivity to and interest in the UNCAC. Some companies may be resistant to government implementation of anti-corruption measures affecting the private sector, while others will be pro-active in seeking to promote effective preventive measures and partnerships.

They will also vary in the degree to which they are willing to introduce compliance programmes and other measures aligned with UNCAC standards. CSOs can therefore play both “watchdog” and collaborative roles in relation to the private sector. Some forms of engagement include:

- Educating companies on the contents and benefits of UNCAC.
- Collaborating with private sector companies in advocating to government the adoption of laws, policies and practices consistent with international conventions and introduction of the monitoring mechanisms for conventions.
- Calling for companies to introduce effective anti-corruption programmes.

2. THE UNCAC AND THE PRIVATE SECTOR



The key objectives of UNCAC

The key stated objectives of the UNCAC are to promote and strengthen measures to *prevent and combat corruption*; to promote, facilitate and support *international cooperation and technical assistance* in the prevention of and fight against corruption (including in asset recovery); and to promote integrity, accountability, and proper management of public affairs and property.⁴ These objectives are to be realised through provisions in the five major chapters of the Convention, which include both mandatory and non-mandatory provisions:

Major areas of UNCAC:	Articles of UNCAC:
Prevention	Chapter II (Articles 5 – 14)
Criminalisation and law enforcement measures	Chapter III (Articles 15 – 42)
International cooperation	Chapter IV (Articles 43 – 50)
Asset recovery	Chapter V (Articles 51 – 59)
Technical assistance and information exchange	Chapter VI (Articles 60 – 62)

UNCAC is designed to prevent and fight corruption committed by both public and private actors

The obligations UNCAC imposes on national governments (referred to as “**States Parties**” in the Convention), include a number of articles referring to prevention measures by the private sector and enforcement against private sector actors involved in corruption (see below). Where governments fulfil implementation requirements, the Convention will impact on the conduct of business in the countries in which companies operate, and thus are highly relevant to the business community.

Other articles in the UNCAC call for measures to ensure public sector integrity and enforcement against corruption involving public officials.

The following two sections describe the areas in the Convention that are of the highest relevance for the private sector (see also Annex B).

⁴ UNCAC Article 1; UNODC, *Technical Guide to the United Nations Convention against Corruption*, New York, 2009, http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf.

2.1 PREVENTIVE MEASURES

The UNCAC lists preventive measures not only for the public sector but also to prevent corruption in and by the private sector.⁵

Article 12.2 of the Convention lists a variety of measures that States Parties should take to prevent corruption in the private sector, such as:

- Promoting **cooperation** between law enforcement agencies and relevant private entities.
- Promoting the **development of standards and procedures designed to safeguard the integrity of relevant private entities**.
- Promoting **transparency among private entities** (e.g. identity of legal and natural persons involved in the establishment and management of corporate entities).
- Preventing the **misuse of procedures regulating private entities** (e.g. subsidies and **licences** granted by public authorities for commercial activities).
- Preventing **conflicts of interest** (e.g. imposing restrictions on the professional activities of former public officials and/or their employment in the private sector).
- Ensuring that private enterprises, taking into account their structure and size, have **sufficient internal auditing controls** to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to **auditing and certification procedures**.

Furthermore, Article 12.3 refers to measures regarding the **maintenance of books and records, financial statement disclosures and accounting and auditing standards** to prohibit acts such as establishment of off-the-books accounts, recording of non-existent expenditures, and use of false documents.

With regard to the **development of standards and procedures**, UNCAC does not list

⁵ E.g. codes of conduct for public officials, public reporting, measures relating to the judiciary, prosecution services, etc.

specific requirements.⁶ Transparency International recommends that companies develop comprehensive anti-corruption standards and procedures, based on a set of key principles outlined in TI's Business Principles for Countering Bribery.⁷

Transparency International supports companies of all sizes in building an effective anti-corruption programme with its **Business Integrity Toolkit**. This comprises an easy to understand **six-step process**: (1) Commit to an anti-corruption programme “from the top”; (2) Assess the current status and risk environment; (3) Plan the anti-corruption programme; (4) Act on the plan; (5) Monitor controls and progress; and (6) Report internally and externally on the programme.

This generic process can be applied when addressing various manifestations of corruption, such as bribery, embezzlement, laundering the proceeds of crime, or others. For more information, please visit http://www.transparency.org/topic/detail/private_sector.

⁶ The UNODC *Technical Guide to the United Nations Convention against Corruption* (2009) states the main preventive measures: codes of conduct, guidance on corruption or corporate governance codes, conflict-of-interest regulations and internal audit controls.

⁷ Derived from TI's *Business Principles for Countering Bribery* (2009), http://www.transparency.org/whatwedo/pub/business_principles_for_countering_bribery.
• A company should **develop a programme** that, clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent corruption from occurring in all activities under its effective control. • The programme should be **tailored to reflect a company's particular business circumstances and culture**, taking into account such potential risk factors as size, business sector, nature of the business, exposure to manifestations of corruption, and locations of operation. • The programme should be **consistent with all laws** relevant to countering corruption in all the jurisdictions in which the company transacts its business. • The programme is **not a one-off exercise but a continual improvement process** of implementation, monitoring, reporting and improvement. • The company should **develop the programme in consultation** with employees, trade unions or other employee representative bodies. • A company should **develop a programme** that, clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent corruption from occurring in all activities under its effective control. • The company should ensure that it is informed of all internal and external matters material to the effective development and implementation of the programme, and, in particular, emerging best practices including engagement with relevant interested parties.

2.2 CRIMINALISATION OF CORRUPTION

The UNCAC does not define corruption. Instead it lists various acts of corruption and calls upon countries to establish a series of specific criminal offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, countries are legally obliged to establish offences (*mandatory provisions*); in other cases, in order to take into account differences in domestic law, they are only required to consider doing so (*non-mandatory provisions*).

UNCAC criminalises bribery and other offences and calls for liability of legal persons

The UNCAC corruption offences most relevant for the private sector are listed below.

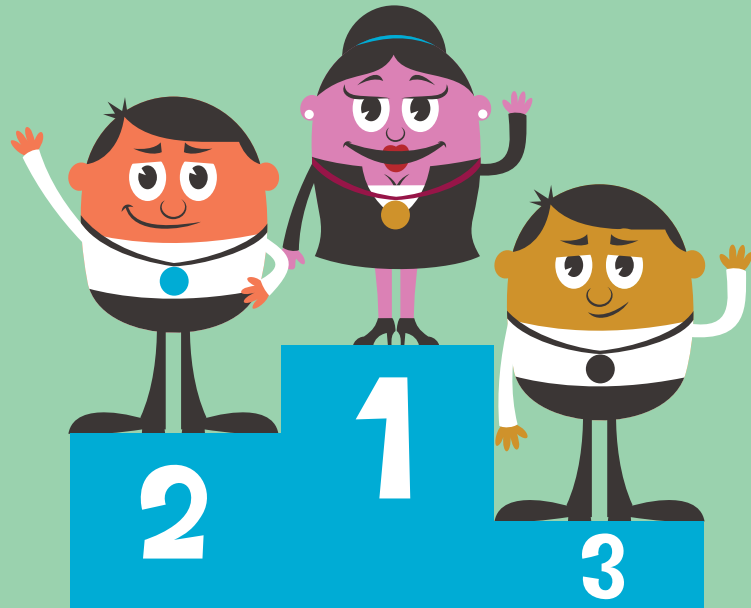
- **Bribery of national public officials:** Article 15(a) of the Convention states as a *mandatory provision* that countries shall establish a criminal offence for “the promise, offering or giving, to a public official ... of an undue advantage ... in order that the official act or refrain from acting in the exercise of his or her official duties.”
- **Bribery of foreign public officials and officials of public international organisations:** Article 16.1 of the Convention states as a *mandatory provision* that countries shall establish a criminal offence for “the promise, offering or giving to a foreign public official or an official of a public international organisations ... of an undue advantage... in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.”
- **Bribery in the private sector:** While Articles 15 and 16 describe private-to-public sector relationships, Article 21 concerns “the promise, offering or giving, directly or indirectly, of an undue advantage” within the private sector. However, the Convention makes the criminalisation of such actions a *non-mandatory provision* (expressed in the phrase, “Each State Party shall consider adopting”).

- **Trading in influence:** Article 18 of the Convention states as a *non-mandatory provision* that States Parties establish as a criminal offence “the promise, offering or giving to a public official or any other person ... of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person.”
- **Embezzlement of property in the private sector:** Article 22 of the Convention states as a *non-mandatory provision* that countries shall establish as a criminal offence embezzlement of “property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position” by persons who work for the private sector. For example, this can comprise the use of the company’s money for private purposes.
- **Laundering of proceeds of crime:** Money laundering – the process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities – is an area of concern not only for companies in the financial sector, but to all companies. Article 23 of the Convention calls on countries to establish – as a *mandatory provision* – the laundering of proceeds of crime as a criminal offence.

Furthermore, UNCAC Article 26 calls on countries to adopt measures to establish the **liability of legal persons**. This means that they are required to sanction not only individuals in the public or private sector who perform or facilitate a corrupt act, but also companies. It also calls for adequate sanctions and long statutes of limitation.

3. THE ROLE OF THE PRIVATE SECTOR

This section sets out why and how the private sector has an interest in contributing to the effective prevention and combating of corruption and, more specifically, to UNCAC implementation and monitoring. An understanding of these factors can help CSOs to motivate companies to participate in activities to promote and implement the UNCAC.



3.1 RATIONALES FOR COMPANIES TO SUPPORT UNCAC IMPLEMENTATION AND MONITORING

If the UNCAC is implemented in the local context it benefits companies that want to play by the rules

Some companies are persuaded by the business case against corruption and some believe that they have a responsibility to act as good corporate citizens.⁸ Some balance possible risks and costs of corrupt business practices against the benefits of these practices. Companies that adopt anti-corruption programmes will typically do so for a combination of reasons, including avoidance of costs and penalties, and potential rewards for good practices.⁹

Many companies will give weight to the following types of considerations:¹⁰

- Corruption adds to the cost of doing business.
- Once a company starts bribing it can no longer maintain the position that it does not pay bribes and sets itself up for continuing extortion.
- Legal and regulatory sanctions may result.
- There is potential damage to reputation.

⁸ A company committed to countering corruption will have a more resilient business model, will be an employer of choice for recruiting, and can gain a competitive advantage as a preferred choice of ethically-concerned customers, investors, suppliers and other stakeholders.

⁹ Taken from Humboldt-Viadrina School of Governance, *Best Practices on Anti-Corruption Incentives and Sanctions for Businesses* (www.humboldt-viadrina.org/anti-corruption).

¹⁰ Taken from *Clean Business Is Good Business – The Business Case against Corruption*, an anti-corruption brochure released jointly by TI, the World Economic Forum, the International Chamber of Commerce, and the United Nations Global Compact. This states that moving business from a country with a low level of corruption to a country with medium or high level of corruption is found to be the equivalent of a 20 per cent tax on foreign business. It also says that corruption adds 25 per cent to the cost of procurement contracts in developing countries.

3.1 RATIONALES FOR COMPANIES TO SUPPORT UNCAC IMPLEMENTATION AND MONITORING

Companies that adhere to anti-corruption standards understand that they may benefit from a competitive advantage with customers, suppliers and investors. They may receive preferential treatment in procurement, reduced legal liability and benefits to reputation. They may also have recruiting advantages. These considerations are of relevance not only for large companies but also for small and medium-sized companies. For example, a small manufacturer with a reputation for operating ethically increases its chances of selection as a supplier to large multinationals in their supply chain, as these large companies seek to reduce liability risks within their own operations.

Multinational companies may also be interested in promoting the Convention because it offers an opportunity to standardise and harmonise legal requirements and other procedures in the fight against corruption. This reduces the complexity of their transnational business activities.

CSOs seeking to work with the private sector may wish to highlight these considerations, and point out that the UNCAC is a key element in establishing and maintaining effective national integrity systems.

3.2 SUPPORT TO THE IMPLEMENTATION OF THE UNCAC

How can companies support the implementation of the UNCAC?

- 1 If a company operates in a country that **has not ratified the UNCAC**, it should work together with national CSOs to lobby the government to ratify the Convention. Even companies that do not directly operate in such countries but have major business partners there (e.g. suppliers) have an interest that their entire operating environment is bound to similar rules of conduct.
- 2 If a company operates in a country **that has already ratified the UNCAC** they may still be interested in working with local CSOs to ensure that the Convention is translated into law and practice.



3.3 SUPPORT TO THE MONITORING OF THE UNCAC

Companies could start with advocacy for their own participation in official reviews of national UNCAC implementation

In November 2009, the third UNCAC Conference of States Parties adopted a review mechanism for the UNCAC, including Terms of Reference for that mechanism.¹¹ The adoption of this review process was supported by major corporations around the world.

Case study 1: CEO letter calls for greater adherence to UNCAC

In 2009, Chief Executive Officers (CEOs) of 24 leading companies worldwide wrote a letter to UN Secretary-General Ban Ki-moon calling for governments to adopt an effective implementation review mechanism at the UNCAC Conference of States Parties in Doha in November 2009.¹² They reasoned that this would result in more effective and robust implementation of the Convention. The initiative was jointly organised by the International Chamber of Commerce, TI, Partnering against Corruption Initiative (PACI) and the Global Compact. Business leaders across the globe were then invited to sign the letter and many did so. This is a good example of a company initiative regarding UNCAC.

The resolution adopting the review mechanism **encouraged governments to include civil society and private sector inputs** in their self-assessments. But a country visit by an UNCAC review team is only an optional element of the review mechanism, and governments can decide on whether or not to include civil society and private sector inputs during eventual visits by the team. In July 2010, the Implementation Review Group (IRG) that oversees the review mechanism adopted guidelines for governmental experts and the secretariat, which to the UNCAC

¹¹ The Conference of States Parties is a follow-up meeting of all governments that have signed and ratified the Convention.

¹² http://www.unglobalcompact.org/Issues/transparency_antikorruption/CEO_Letter.html.

Coalition's¹³ disappointment do not reference the possible options for civil society and private sector inputs in the process.

The private sector and civil society have in common that they both have an interest in a well-functioning environment, as well as important expertise and information to offer about the challenges to anti-corruption law enforcement in the countries under review.

Whether included in official review processes or not, **civil society and the private sector have an important role to play as independent monitors of governments' implementation of the UNCAC** and of the transparency of the review process.

Companies should get involved in monitoring and in advocating for a transparent and inclusive UNCAC review process in their countries

Private sector support and input is valuable at many stages of the review process, including:

- The country self-assessment phase
- The country visit by the review teams
- The publication of official reports or executive summaries.

¹³ The TI Secretariat in Berlin provides the secretariat for the UNCAC Coalition, a global network of over 350 CSOs in over 100 countries, committed to promoting the ratification, implementation and monitoring of the UNCAC.

4. ENGAGING THE PRIVATE SECTOR IN UNCAC IMPLEMENTATION AND MONITORING



According to a recent survey, 72 per cent of respondents agreed that CSOs do not focus enough on businesses when fighting corruption – a view also shared by a majority of business respondents (66 per cent)¹⁴

CSOs that are interested in making contact with companies should consider the possible rationales for companies to support UNCAC implementation and contribute to monitoring. CSOs should consider these four intuitive steps:



¹⁴ Humboldt-Viadrina School of Governance, *Motivating Business to Counter Corruption – A Global Expert Survey on Incentives and Sanctions* (2012).

4.1 STEP 1: IDENTIFY YOUR TARGET GROUP

Objective

A CSO should identify and prioritise target companies or umbrella organisations to use its limited resources efficiently.

The overarching objective: To gain corporate support for UNCAC implementation and monitoring, including inputs into the review process

CSOs have limited resources for engaging with the private sector, and should therefore identify and prioritise target companies or umbrella organisations. The private sector is not homogeneous, but comprises companies with different sizes and structures, operating in different industries and doing business locally or internationally. It also includes business associations and chambers of commerce.

In order to identify and prioritise business partners for engagement, the following four major target groups should be considered:

Small and medium enterprises (SMEs)

Multinational enterprises (MNEs)

State-owned enterprises (SOEs)

Business Associations
Chambers of Commerce

These four target groups should be broken down into sub-groups based on additional attributes, such as industry categories (e.g. SOEs from the oil and gas industry).

A CSO should then ask the following two questions for each of the identified target groups:

Degree of influence:

? What is the potential influence of the target group for UNCAC implementation and monitoring?

Likelihood of interest:

? What are the chances for active support from the target group?

Factors to consider:

- Size of companies
- Access to decision makers
- Strategic industry
e.g. information technology, environment
- Driver in public perception, standing in community

Factors to consider:

- Multinational companies that
 - already participated in UNCAC reviews in other countries
 - face multiple jurisdictions
- Participation in voluntary anti-corruption initiatives
e.g. UN Global Compact

For example: “How much influence do multinational companies from the extractive industry have on the decision-makers in my country?” and “How likely is it that they support UNCAC implementation and monitoring?”

4.1 STEP 1: IDENTIFY YOUR TARGET GROUP

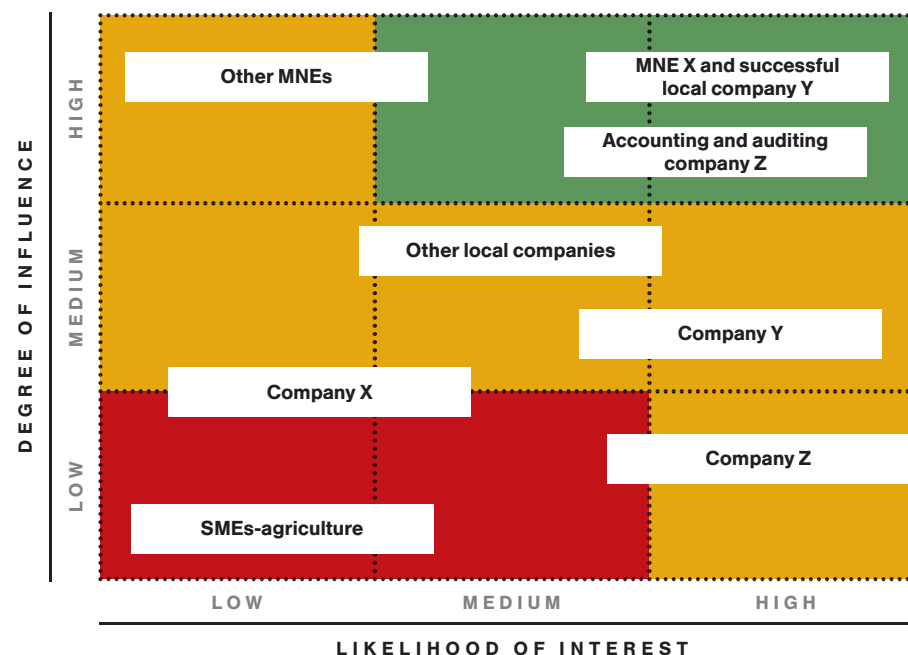
Some companies will have a greater interest in the UNCAC than others

Among the most interested will be companies that:

- prefer **ethical business practices** and believe they lose business to corrupt competitors. They may want to seek increased criminalisation and enforcement for corrupt practices, as well as enhanced prevention measures by the government;
- have an **existing anti-corruption programme** and would like to see anti-corruption standards become more widespread;
- are planning to **expand their business operations** into high-risk countries that have ratified UNCAC;
- are operating in multiple jurisdictions and are seeking to **align local business conditions to international standards** (using UNCAC as guidance);
- see engagement on UNCAC as beneficial for their **public image**;
- have joined **voluntary initiatives** (e.g. UN Global Compact) and are persuaded of the benefits of joint action;
- are looking for competent partners to fight corruption and may lack expertise in this field; and
- are afraid of publicly addressing issues of corruption on their own.

4.1 STEP 1: IDENTIFY YOUR TARGET GROUP

The outcomes of this process can be visualised in a prioritisation map, as follows:



Target groups with a **high degree of influence** and a **high likelihood of interest** (“green zone”) should be **prioritised for engagement**. CSOs facing limited resources and multiple target groups in the green zone can further **prioritise according to**:

- Existing contacts with target groups
- Knowledge of target groups and sectors
- Past experiences with target groups (also from other partner CSOs, national chapters) etc.

4.2 STEP 2: UNDERSTAND THEIR NEEDS

Objective

A CSO should seek to understand the needs of the selected target groups and their corruption-related challenges

Each target group may have **different needs in relation to anti-corruption efforts** that should be understood by the CSO:

The private sector target group may need... ↓	... regarding the objectives and measures of UNCAC ↓
<ul style="list-style-type: none"> - Information - Awareness raising - Training - Advice - Tools - Support for “levelling the playing field” - A forum for conversations with non- competitor companies 	<ul style="list-style-type: none"> - Certain manifestations of corruption (e.g. laundering the proceeds of crime) - Public sector integrity - Participation with civil society - Preventive measures - Whistleblowing - Technical assistance to government - Cooperation with law enforcement - International counterparts with whom to discuss issues

CSOs can obtain **information for understanding the needs and challenges** of the target group(s) from the following major sources:

- **Direct inquiries:** The best approach is to get information directly from the target groups, e.g. informal discussions at conferences, workshops, surveys.
- **UNCAC Coalition:** Another source of information is other CSOs with experience in working with a particular target group regarding UNCAC implementation and monitoring (www.uncaccoalition.org).
- **Research:** Finally, there is a wealth of information on the internet about the needs and challenges of particular private sector target groups (e.g. <http://gateway.transparency.org>).

CSOs can also collaborate with other institutions to understand the needs and challenges of the target groups, such as universities, local chambers of commerce, the UN Global Compact Local Network, etc.



4.3 STEP 3: SELECT ACTIVITIES

Objective

A CSO should select activities that match the needs of the target groups.

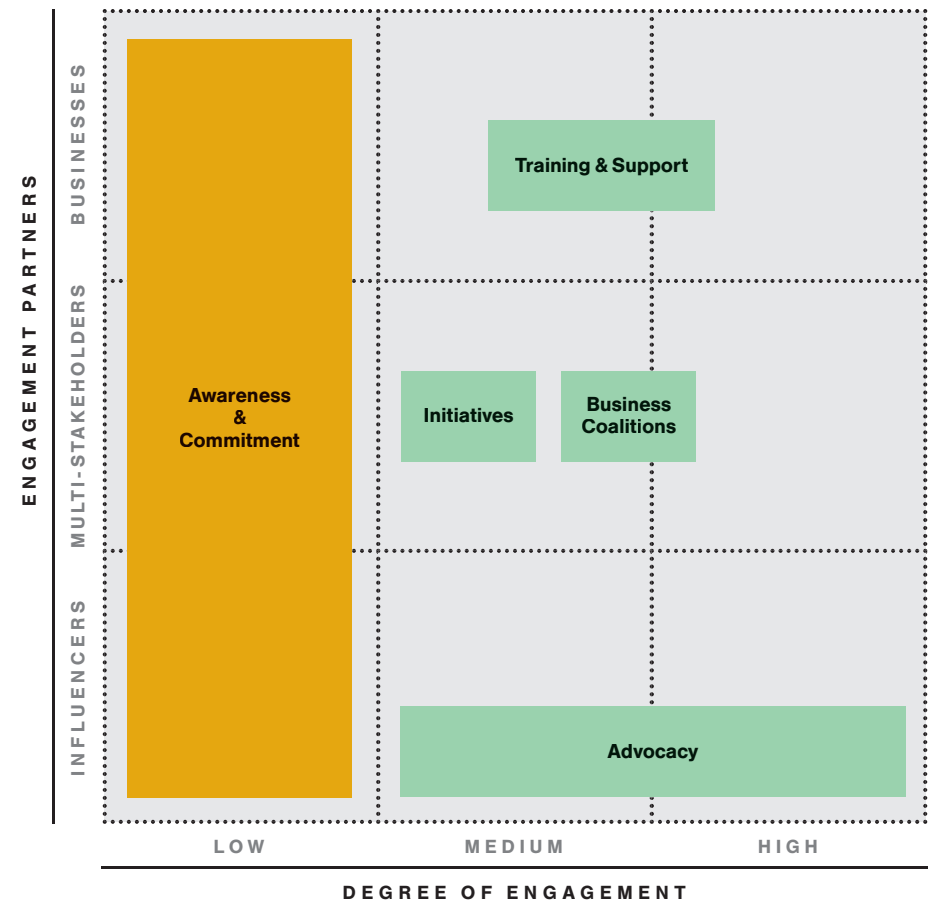
There are a **variety of activities** through which CSOs can engage with the private sector regarding the UNCAC. Selecting and prioritising the most appropriate activities should be based on a clear understanding of the needs and challenges of the target group (refer to step 2).

The **Activity Framework** below provides CSOs and other groups with a **generic overview** of engagement activities. The framework aligns the most common engagement activities according to:

- **Engagement partners:** CSOs can engage with a single business or a group of companies (BUSINESSES), or jointly with businesses and public sector representatives in multi-stakeholder groups (MULTI-STAKEHOLDERS) or with key influencers of the private sector, such as regulators, investors, academia, legislators, national and international public procurement agencies, export credit agencies or the media (INFLUENCERS).
- **Degree of engagement:** The effort and knowledge for the CSO to engage with businesses can be classified in LOW, MEDIUM, or HIGH, offering an indication for CSOs about the scope of engagement.

The following Activity Framework visualises the key activities for CSOs regarding the engagement of companies in the implementation and monitoring of the UNCAC.

Private Sector Activity Framework (partial, adapted for UNCAC work)



4.3 STEP 3: SELECT ACTIVITIES

The activities listed should not be seen as a sequential process; typically, activities are conducted in parallel.

Activity: Awareness and understanding

→ Addresses the following needs from Step 2:
Information, Awareness-raising

For CSOs that have not engaged with the private sector in the past, “awareness and understanding” activities with a low level of commitment from businesses are a good starting point (as well as an on-going engagement element), and can provide a mutual learning environment. Typical activities are described below.

- **Newsletter:** A newsletter can provide UNCAC-related information, such as status of UNCAC ratification, trainings, changes in relevant laws, upcoming events, etc. Creating a mailing list helps to build a contact list of local private sector actors in UNCAC-related issues. The UNCAC Coalition publishes a quarterly newsletter, in which CSOs can find relevant national news.
- **Publications:** Publications typically take one of two forms:
 - **Study:** Provides detailed analysis of past or current behaviour or trends etc. It is typically based on research, surveys, and/or interviews.
 - **Guidance document:** Provides practical recommendations on emerging UNCAC issues or principles.
- **Events:** A CSO can also organise UNCAC-related events for private sector representatives, ranging from a single information event (e.g. lunch meeting with an external guest speaker), to full-day workshops on specific issue areas (e.g. whistleblowing), to a series of roundtables.

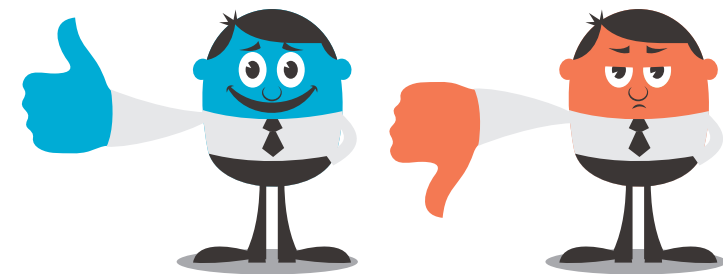
4.3 STEP 3: SELECT ACTIVITIES

These activities will also help to increase the visibility and credibility of a CSO as a valuable partner for the private sector, providing UNCAC-related information

Activity: Training and Support

→ Addresses the following needs from Step 2:
Training, Advice, Tools

CSOs can engage with businesses (especially SMEs) to conduct **training** sessions with their employees and/or suppliers on corruption in general and on UNCAC requirements. TI provides a **variety of training materials and tools** that can be tailored by CSOs for their own training purposes.



Activity: Initiatives

- Addresses the following needs from Step 2:
Advice, Levelling the playing field

An initiative (e.g. pact, declaration) can be either short- or long-term and seeks to **mobilise businesses** (e.g. from a specific industry sector) in order to **strengthen their commitments** around major issue areas addressed in UNCAC, such as public sector integrity, public procurement, cooperation with law enforcement, etc. CSOs can convene and support such initiatives, which typically involve anti-corruption stakeholders from the public sector, private sector and civil society.

Initiatives do **not generally result in binding commitments** But they should result in tangible outcomes and commitments from all participating stakeholders, publicly documented in an action plan.

Case study 2: Promoting collective action through UN Global Compact Local Networks

In December 2010, the Global Compact launched anti-corruption projects in five countries. Global Compact Local Networks in Brazil, Egypt, India, Nigeria and South Africa have been implementing collective-action platforms on anti-corruption, which facilitate on-going dialogue between the private and public sectors. This offers a wide range of stakeholders the opportunity to explore how collective action can create incentives for ethical business performance.

Activity: Business coalitions

- Addresses the following needs from Step 2:
Advice, Levelling the playing field, Monitoring

Business coalitions are another form of long-term collective action, bringing together businesses (and other organisations) to **promote standards of business conduct** within a country or industry sector (e.g. construction, water), including monitoring and certification of compliance by external auditors.¹⁵ CSOs can convene and support such business coalitions and can orient their work towards promoting UNCAC standards.



¹⁵ For more information, please refer to *Fighting Corruption through Collective Action – A guide for business*, The World Bank Institute, V1.0. http://www.unglobalcompact.org/docs/news_events/8.1/fighting_corruption_through_collective_action.pdf

Activity: Advocacy

- Addresses the following needs from Step 2:
Raising awareness, Levelling the playing field

Finally, CSOs can engage with businesses to influence the attitudes and behaviour of targeted actors in order to change the policy and practice of governments and institutions.¹⁶

CSOs can either work directly with company representatives to advocate for the implementation and/or monitoring of the UNCAC in the local context (as discussed above), or work with influencers on the private sector to get companies to comply with the provisions of the Convention (e.g. public procurement agencies, investors, business associations, media).

Advocacy activities often go hand-in-hand with collective action activities (e.g. initiatives, business coalitions).

¹⁶ Water Integrity Initiative's *Advocacy Guide* (2010)

Objective

A CSO should develop a clear engagement strategy, which documents the major objectives, activities, effort, timeline etc.

In order to increase private sector engagement on UNCAC implementation and monitoring, it is recommended that CSOs develop and document a clear engagement plan.

Such an engagement plan typically comprises the following key elements:

- **Strategic objectives** for engaging with the private sector on UNCAC.
- Definition of **target group** and **outcomes of situation evaluation** → outcomes of Steps 1 and 2.
- Selection and prioritisation of **activities** → outcomes of Step 3.
- **Work plan** (detailed activities, resource allocation, delivery strategy).
- **Timetable** (maximum three years).
- **Alignment with other activities within the CSO** (e.g. how does this engagement fit with the overall advocacy strategy?).
- **Other information** (e.g. assumptions, output, performance measures, risks).

Documenting an engagement plan helps to structure and execute the activities and is also beneficial when seeking external support (e.g. from development banks, local embassies, business associations, academic institutions).

5. KEY CHALLENGES AND APPROACHES

CSOs may face a variety of challenges when seeking company engagement in promoting the implementation and monitoring of the UNCAC.

CSOs should learn the language and customs of the private sector to demonstrate that they are a credible partner



5.1 WHY WOULD COMPANIES ENGAGE WITH CSOS ON UNCAC-RELATED TOPICS?

Companies may not initially see the benefit of engaging with CSOs on UNCAC. They may also not see the relevance of a global convention to their day-to-day operations. It is therefore important that CSOs explain the value of these to target companies. CSOs may consider the following key points when seeking to engage with companies, especially at the start of a relationship:

- **Demonstrate value to private sector (UNCAC matters!):** Companies may engage with a CSO if they believe that the relationship can be of value to them, whether through providing useful information, one-on-one training sessions or workshops. CSOs should understand the benefits of the UNCAC for the private sector, as outlined in this guidance. Real-world experiences from previous successful CSO-company engagement can help to persuade companies to engage.
- **Credibility and reliability of CSO:** Businesses may engage with a CSO if they believe that the CSO has requisite expertise on UNCAC and that it understands business challenges and constraints. A serious business will choose to work with a CSO that is a reliable and predictable partner that follows through on commitments and that will not give the business unpleasant surprises or cause embarrassment.
- **Constructive and professional engagement:** The private sector and civil society groups have different languages and cultures. For a good line of communication, CSOs should learn elements of corporate language and engage constructively. Furthermore, CSOs should understand the initial risks that companies see when engaging with a CSO. Companies may believe that engaging publicly with an anti-corruption CSO will send the signal that there is “something wrong” at the company. Such perceptions or concerns can sometimes be addressed by engaging companies in a larger sectoral initiative, rather than individually.

- **Independent, politically non-partisan and well-governed:** CSOs should be ready to demonstrate that they are not potential risks as partners. They should make clear that they are focused on the public interest rather than serving any specific political or private sector interest. They should also be ready to demonstrate that they have high standards of internal governance.
- **Aiming for constructive dialogue:** It is useful to emphasise the constructive nature of the planned engagement in UNCAC implementation and monitoring. The aim should be to create and maintain an open and collaborative channel of communication, which enables the business to share potentially sensitive business challenges without fear of information leaking or being used against it. However, this should not prevent CSOs from publicly criticising companies or institutions that fail to take meaningful steps towards reform where constructive engagement is not productive.
- **Common positions can be useful but are not essential:** CSOs may wish to communicate that companies are not expected or required to sign up to positions as a necessary part of the UNCAC engagement process, though there may be circumstances when they wish to do so (e.g. a national action plan for UNCAC monitoring).

5.2 HOW TO INCREASE PRIVATE SECTOR EXPERTISE WITHIN A CSO

CSOs typically face resource scarcity, which precludes them from acquiring expertise about the private sector by simply hiring experienced corporate professionals or consultants. They might therefore consider the following three options:

- **Seek pro-bono expert support:** CSOs can seek support from active or retired private sector executives (e.g. audit companies) that have been active in the anti-corruption community (e.g. representing business in voluntary initiatives such as the UN Global Compact).
- **Establish working groups:** CSOs can establish working groups with CSO members and outside experts that work on a specific topic, e.g. private sector transparency.
- **Engage with business schools:** CSOs can gain support from business schools, e.g. in conducting a target assessment (step 1), conducting needs analyses (step 2) or in developing training materials, conducting research, etc.



5.3 WHO TO CONTACT WITHIN A BUSINESS

After identifying target companies with which the CSO wishes to engage, the next step is to identify whom to contact in the business. This may be difficult with respect to large organisations and multinational enterprises. CSOs might consider the following:¹⁷

- **Chief Executive Officer (CEO):** CSOs may contact the CEO or owner of a business to discuss big picture issues, such as possible engagement of the company in advocacy activities regarding the UNCAC, commitment to an anti-corruption programme, or formation of sector-specific anti-corruption initiatives or business coalitions. A CEO should be contacted by the most senior representative of the CSO.
- **Chief Compliance Officer (CCO):** CSOs may contact the CCO to discuss specific needs and challenges (e.g. preventive anti-corruption measures, as listed in Article 12 of the UNCAC), or to offer training and support. In case the business does not have a CCO or an Ethics Officer, the Chief Financial Officer should be contacted, as he/she oversees the business's books and records and carries the responsibility for ensuring accurate financial statements.
- **Head of Sales/Procurement:** CSOs may contact the Head of Sales or Procurement to discuss specific procurement-related topics, such as extortion, facilitation payments or the use of TI Integrity Pacts.
- **Training departments:** CSOs may contact training departments of businesses to offer in-house training and support in anti-corruption challenges.
- **Trade unions or staff committees:** If there are trade unions or staff committees operating in a company they may be interested in seeing the company support anti-corruption measures, particularly those relating to whistleblower protection and anonymous reporting channels.

¹⁷ Please note that every company has organisational differences, assigning different titles and responsibilities to their senior management. Therefore, the names shown here may differ.

5.4 POSSIBLE COLLABORATION PARTNERS FOR ENGAGING WITH THE PRIVATE SECTOR

CSOs can enhance their existing resources, contacts or know-how for constructive engagement with the private sector by reaching out to collaboration partners. Some potential collaboration partners to consider are as follows.

- **Academic institutions:** Local academic institutions (e.g. law or business schools) are potential partners for joint research. Communications and business faculties may also be willing to join forces with CSOs on media campaigns and to support internal processes such as development of an engagement strategy with the private sector.
- **Chambers of commerce:** Local chambers of commerce further the interests of businesses and therefore can be useful partners for delivering messages to a broad audience of companies. CSOs can collaborate with the chambers on promoting solutions to specific corruption-related challenges faced by businesses (e.g. extortion, facilitation payments) or to advance broader advocacy topics.
- **National, regional or global trade unions, consumers associations and human rights groups:** These groups may be potential allies in strategies for constructive engagement and dialogue with companies operating nationally, regionally or internationally.
- **United Nations Global Compact:** The UN Global Compact (UNGC) is the world's largest strategic policy initiative for companies committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. CSOs can either directly contact local members of the UNGC (search on <http://www.unglobalcompact.org>) or seek collaboration with the UNGC Local Network.
- **UNODC:** This serves as the secretariat for the UNCAC and is therefore a valuable partner in discussing matters related to implementation and monitoring.

5.5 HOW TO SUSTAIN THE MOMENTUM IN MULTI-STAKEHOLDER ACTIVITIES

Multi-stakeholder initiatives are a powerful way to link the private sector with representatives from the public sector and with CSOs on major issues, such as the implementation and monitoring of the UNCAC. However, in TI's experience, such initiatives often start with great enthusiasm and then lose momentum; this is particularly true of mid- to long-term initiatives.

Below are some ideas of how to build and sustain momentum in multi-stakeholder activities:¹⁸

- **Establish terms of reference:** A multi-stakeholder group should be established with clear terms of reference, outlining major objectives, deliverables, milestones and responsibilities, as well as consequences for non-performance. Members of the multi-stakeholder group can even publically sign such a document. A member of the group should serve as the monitor of adherence to the terms of reference.
- **Set realistic goals:** The terms of reference should set realistic goals, aligned according to the overall timeframe. It is a good idea to avoid too many meetings and discussion rounds at the start of the initiative to avoid “meeting fatigue”.
- **Conduct face-to-face meetings throughout the timeframe:** Stakeholders can re-vitalise their enthusiasm in face-to-face meetings (instead of phone conferences) to celebrate achieved successes and milestones, plan future activities and network with peers. Such meetings should be conducted on a regular basis (e.g. every six months).

¹⁸ Taken from Rory Truex and Tina Soreide, *Why Multi-stakeholder Groups Succeed and Fail*, www.csae.ox.ac.uk/conferences/2011-EDiA/papers/077-Soreide.pdf

Additional measures to sustain momentum in multi-stakeholder activities can include:

- **Connecting multi-stakeholder group objectives to the bigger picture** such as a national action plan to emphasise importance.
- **Inviting external speakers** to multi-stakeholder meetings (e.g. from UNODC).
- Establishing formal decision-making rules that **do not require unanimity** to avoid difficulties (and frustrations) in reaching consensus.
- **Linking the multi-stakeholder group to high-level national** and (if relevant) international **officials**, thereby increasing participants' desire to be part of this group.
- Creating **positive incentives for timely execution of multi-stakeholder objectives**.



5.6 HOW TO DEAL WITH COMPANIES THAT LACK ANY INTEREST IN ENGAGEMENT

This is probably the most difficult question. There is **no “silver bullet”** answer.

It is important to understand the rationale behind the company's lack of engagement

Factors behind a company's reluctance to engage can include lack of awareness, unwillingness to work with the CSO as an organisation, lack of understanding of the relevance of UNCAC for their business, fear of losing business (by being a “first mover” while competitors maintain corrupt practices which seem to give them an advantage), fear of discovering and addressing low anti-corruption standards in their own operations (and the reputational consequences of uncovering such activities), etc.

Below are some examples of what CSOs can do when dealing with companies that lack any interest in engagement.

- **Highlight the benefits:** CSOs should explain the positive material benefits of UNCAC implementation for companies, such as a more level playing field.
- **Build peer pressure:** CSOs may seek to engage with business peers (e.g. through a sector-initiative or business coalition) and, if they agree, publicly name those companies supportive of UNCAC implementation and monitoring, thereby creating peer pressure.

Remember that not all companies are suitable partners

Not all private sector companies are suitable or desirable partners. You should conduct research and due diligence before engaging with specific companies. If they show signs of lack of commitment to ethical practices or if your inquiries suggest other risks, then they are not candidates to partner with you in your UNCAC work. Actors in the private sector are not only victims of corruption and part of the solution to it; they are also part of the problem.

6. CONCLUSION

The UNCAC is a crucial tool in the fight against corruption globally. Its implementation depends to a significant extent on the cooperation and support of the private sector. While in some countries parts of the private sector may decide to take the initiative, in other countries this will not be the case. Either way, CSOs can play an important role in facilitating private sector engagement with UNCAC.



ANNEX A

ADDITIONAL RESOURCES

Transparency International – Private Sector

http://www.transparency.org/topic/detail/private_sector

Information regarding, e.g.:

- Building an effective anti-corruption programme (Business Principles for Countering Bribery)

Business Anti-Corruption Portal

<http://www.business-anti-corruption.com>

Information regarding, e.g.:

- Country profiles
- Tools (integrity system, due diligence, training)
- Anti-corruption tools inventory
- Information networks

The Fight Against Corruption e-learning tool¹⁹

<http://thefightagainstcorruption.unglobalcompact.org/>

Information regarding, e.g.:

- Receiving gifts and hospitality
- Facilitation payments and corruption
- The use of intermediaries and lobbyists
- Corruption and social investments
- Insider information

¹⁹ This e-learning tool uses six interactive learning modules to further the audience's understanding of the UN Global Compact's 10th principle against corruption and the UNCAC as it applies to the private sector.

UNCAC Coalition

<http://www.uncaccoalition.org/>

Information regarding, e.g.:

- About the UNCAC Coalition
- How to get involved
- Newsletter and additional resources
- UNCAC review mechanism

United Nations Office on Drugs and Crime

<http://www.unodc.org/unodc/en/corruption/>

Information regarding, e.g.:

- Text of the UNCAC
- Background and highlights of the Convention
- UNCAC tools and publications (e.g. technical guide)
- Signature/ratification status
- Events

United Nations Global Compact

http://www.unglobalcompact.org/Issues/transparency_anticorruption/

Information regarding, e.g.:

- Business against corruption: A framework for action
- Anti-corruption reporting
- Fighting corruption in the supply chain
- Collective action – building a coalition against corruption
- Resisting extortion and solicitation in international transactions

ANNEX B

THE UN CONVENTION AGAINST CORRUPTION: WHAT BUSINESS NEEDS TO KNOW

With its global reach, the UN Convention against Corruption has the unique potential to create an environment where business can operate and compete fairly

Covering more than 160 countries from the developing as well as the developed world, this landmark convention addresses a wide range of corrupt practices, in both the public and the private sectors. The wide reach and broad scope of the convention have the potential to curb corruption and create a level playing field for all participants in the global economy.

Although the convention is addressed to national governments, it contains provisions that have direct implications for private and state-owned enterprises in signatory countries.

Each State Party to the convention is obliged to enact laws covering the following:

Tackling corruption on the demand side: Public officials and public enterprises²⁰

Corruption is often fed from the ‘demand side’ and the convention supports business by addressing some of the key issues around governmental and public sector corruption through preventive mechanisms, assets disclosure and penalties for corrupt officials and executives.

Preventive mechanisms

- a) adopt transparent and objective criteria for recruitment and remuneration (7.1 a & c)
- b) adopt procedures for rotation of individuals in high-risk positions (7.1 b)

²⁰ The definition of a public official includes executives of public enterprises (2 a ii). Therefore, most provisions on public officials will also concern those enterprises.

- c) apply codes of conduct for public officials (8.2)
- d) facilitate reporting by public officials of acts of corruption (8.4)

Assets disclosure

- a) require public officials to disclose investments and benefits from which a conflict of interest may arise (8.5)
- b) establish effective financial disclosure systems for appropriate public officials (52.5)
- c) require appropriate public officials to disclose foreign accounts (52.6)

Criminal offences

- a) establish embezzlement by a public official as a criminal offence (17)
- b) establish trading in influence by a public official as a criminal offence (18)
- c) establish abuse of functions by a public official as a criminal offence (19)
- d) establish illicit enrichment of a public official as a criminal offence (20)

Advancing private sector anti-corruption measures

The UN convention sets out the practices that business should undertake to counter corruption.

Preventive mechanisms

- a) promote codes of conduct to adequately conduct business, prevent conflicts of interest and covering contractual relations with the state (12.2 b)
- b) take measures in order to know the identity of legal and natural persons involved in the establishment and management of corporate entities (12.2 c)
- c) ensure that private enterprises have sufficient internal auditing controls to prevent and detect corruption (12.2 f)

Protection of whistleblowers

- a) permit non-disclosure of the identity of witnesses who give testimony concerning offences (32.2 a)
- b) protect any reporting person against any unjustified treatment (33)

Cooperation with judiciary authorities

- a) encourage offenders to supply information to competent authorities (37.1)
- b) mitigate punishment of (37.2), or grant immunity (37.3) to, offenders who provide substantial cooperation

International cooperation

Upon request from another State Party, each State Party to provide bank, financial, corporate or business records (46.3 f)

Investigative techniques

Allow the use of electronic surveillance and undercover operations in order to combat corruption (50)

Financial institutions

- a) require financial institutions to conduct enhanced scrutiny of accounts of individuals entrusted with prominent public functions (52.1)
- b) institute a regime for beneficial owner identification, record-keeping and the reporting of suspicious transactions (14.1)
- c) require financial institutions to implement systems maintaining information on the originator throughout the financial transfer chain (14.3)
- d) issue advisories to financial institutions regarding the types of persons, accounts or transactions to which to pay particular attention (52.2)
- e) require their financial institutions to refuse to enter into relationship with banks that have no physical presence or are not affiliated with a regulated financial group (52.4)

-
- f) implement measures requiring reports on cross-border substantial financial transfers (14.2)
 - g) ensure that bank secrecy is overcome in investigations of offences covered by the convention (40)

Sanctions

- a) establish liability of legal persons and effective, proportionate and dissuasive sanctions, including monetary sanctions (26.4)
- b) consider corruption a relevant factor in legal proceedings to annul or rescind a contract, or withdraw a concession (34)

Criminal offences

- a) establish bribery as a criminal offence (21)
- b) establish embezzlement of property in private sector as a criminal offence (22)
- c) establish laundering of the proceeds of crime as a criminal offence (23)
- d) establish as a criminal offence the concealment of benefits resulting from violation of the convention (24)
- e) establish the liability of legal persons for participation in the offences covered by the convention (26.1)

Other offences

- a) adopt procedures against misuse of subsidies and licenses granted by public authorities (12.2 d)
- b) restrict revolving doors between public and private sectors (12.2 e)
- c) prohibit fraud based on false or off-the-book accounting (12.3)
- d) disallow tax deductibility of bribes (12.4)

The full text of the UN Convention against Corruption can be accessed at:
www.unodc.org/unodc/en/treaties/CAC/index.html

What business should do to prepare

- Understand how the convention is being enacted into the laws of the jurisdictions where they operate
- Ensure that their anti-corruption programme meets legal requirements under the convention and that they address the risks relevant to their business
- Promote the effective implementation of anti-corruption laws by supporting the convention



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