

Alliances for Integrity
Government and Business Roles in
Enhancing African Standards of Living

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Panel Discussion-
*What are the implications for business of the
evolving anti-corruption framework?*

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1.- The Panel

- We have the chance of having a panel discussion on the first day
- I have the chance of having a panel of the highest quality
- We look at the business implications of three important integrity documents
- Three **specialists** will illustrate the business implications of the African Union, the UN and the OECD Conventions, two will do it now, the third one later
- I can briefly introduce on the importance of anti-corruption for business in general

2.- The Business Case

- As a former executive of an international corporation and presently a lawyer in private practice, I will try to express the corporations' point of view on the evolving legal framework on integrity
- My point will be that integrity is not only the answer to legal - societal constraints but that there is also and primarily a **business case** in fighting corruption

3.- New managerial approach

- Under the influence of « corporate governance » thinking, Boards of Directors and executives feel more and more the need to conduct more extensive internal and external **audits** of the **risks**, confronting the company
- Under pressure of claims for more and better **accountability**, all major corporate decisions, like i.a. foreign direct investments (FDI) and the concluding of major commercial contracts / designation of an intermediary/ , are subjected to a thorough risk analysis
- For financial institutions this is expressed by the future Basel II Accord rules which lay an enormous weight on internal risk analysis

4.- Risk Management.-

- One cannot overestimate the importance risk assessment processes have recently acquired in investment and long term commercial decisions
- Boards are more and more inclined to conduct in depth risk analysis studies which determine their acceptance or refusal of a project
- They are helped in this by professional risk managers and by the internal/ external control function
- Recent experiences show how integrity matters can create **huge** stock exchange, marketing and reputational **damage**, bigger than the investment or the contract value itself

5.- Investment decisions

- Boards and executives base their investment decisions on rates of return, level of government take and stability of taxation, but also
- They give an extraordinary weight to « **intangible** » or difficult to measure criteria
- These intangible elements include the possibility to transact business fairly, transparently and with integrity in a given country : the country risk

6.- It's a no go!

- Boards are averse to integrity risks and often the absence or a low degree of integrity will mean a **no go**
- Massive corruption, solicitation and economic crime will have the same effect as a « double taxation »
- The cost of corruption is high in figures but also in demoralization of the organisation
- Boards and executives know very well that engaging in corruption or in corrupt countries is risky because of the risk of kickbacks and of parallel power networks within the organization

7.- The need for a legal framework

- As a result, enterprises ask for a solid legal framework nationally and internationally
- Business has demanded that one would suppress unnecessary State intervention in economic life (**deregulation** of the nineties), but has also urged and is urging the creation of a general and fundamental legal framework (**regulatory reform** of the years 2000)
- The OECD Convention of 1997, the African Union Convention on Preventing and Combating Corruption of 2003 and the Merida UN Convention of 2004 are answering this need at regional and global level

8.- The level playing field

- This legal framework should be the basis and is the precondition for the « **level playing field** » the enterprises are demanding
- One will never say enough that extortion and bribery distorts competition, that it lowers the quality of goods and services and that it imposes a huge cost on all participants; it creates poverty

9.- Participant in society

- Over and above this need for a basic legal framework, corporations recognize the need for voluntary compliance
- Corporate social responsibility has made us aware that enterprises must play their full role as **a participant in society** over and above the mere legal norms ex Global Compact
- Internal codes do not suffice, there must be a continuous process of information, training and implementation
- There must be sanctions and protection for whistle blowers
- The ICC Rules since 1977, which are being rewritten now
- ICC book on corporate compliance

10.- Taking care of ALL companies

- Voluntary schemes are easier to put in place in the context of large multinational enterprises, than in **smaller entities**
- Still, smaller entities face a terrible competition and have less resources to resist all forms of solicitation
- In developing countries and spe the problem is all the more important, specifically in Africa
- This remains a major challenge for us at the ICC

11.- Is everything rosy?

- We want to warn against Convention congestion or treaty inflation
- African business should plead for a UN **monitoring system**
- No country or company should have a free ride
- In any case, there should be a good coordination between the various Convention systems and their monitoring systems should be integrated
- We do not use extortion as an excuse, but we want to be helped and supported in front of systemic solicitation
- We also insist on combating all forms of bribery also private-to private corruption

12.- An evolving matter

- We are in the process of rewriting our ICC Rules on extortion and bribery in the light of the most recent evolutions
- We want to be at the cutting edge on the most sensitive matters, such as facilitation payments, business intermediaries, political contributions etc.

13.- No conclusion

- My submission to you is that fighting corruption is a **good business decision** because the cost of bribing is too high and the cost of an integrity scandal is simply not affordable
- There is a business case and we have all the reasons to make public private alliances for integrity
- The Congolese case, the need for a public private effort