

# 2A.1 Overview of corporate anti-corruption programmes

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## The changing context

*The context for countering bribery and corruption has changed dramatically for internationally active companies in the last few years. Bribery was once seen by many companies merely as an inevitable means of securing business abroad. This notion has been overturned by recent changes in the international regulatory context and the highly publicized demise of corporate executives and companies that have been embroiled in scandals involving bribery and corruption.*

Only a few years ago, companies may have deliberately adopted different ethical standards abroad than they had at home. Now they are thinking twice. By engaging in bribery in international operations, whether wittingly or unwittingly, companies now run the risk of breaching new anti-bribery laws that make it a criminal offence to engage in foreign bribery. As important as legal constraints are, companies must also take account of the costly and irreparable damage to their reputations that could result from becoming involved in a corruption scandal at home or abroad. Bribery is one of several issues companies must consider in developing comprehensive anti-corruption pro-

grammes. These can include, among others, conflict of interest, collusion, extortion, fraud and money-laundering.

One of the major gains of the anti-corruption movement in the past decade has been the advent of international conventions that criminalize the bribery of foreign public officials. The 1999 Organization for Economic Co-operation and Development Anti-Bribery Convention was recognized as an important landmark in the fight against corruption because it imposed a new standard on the world's largest exporting nations. Similar regional anti-bribery conventions in Europe, Africa and Latin America and, more recently, the United Nations Convention against Corruption, are creating a more consistent regulatory framework. The UNCAC, which came into effect in December 2005, is seen as a milestone in the fight against graft and corruption because it provides for mutual legal assistance and repatriation of funds sent abroad by corrupt officials, two critical mechanisms that are absent from other conventions.

A new emphasis on corporate governance has also been spurred by the scandals that rocked the corporate world in the United States and elsewhere. Reforms that followed these spectacular company debacles have

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made it less likely that boards will turn a blind eye to corrupt practices, and more likely that they will put in place strengthened risk management processes and compliance systems.

Not only do companies have to take into account financial and reputational risk but they must respond to the expectations of society and stakeholders for standards of integrity and transparency. As a result, bribery and corruption are increasingly gaining their rightful place on the corporate social responsibility agenda. In the name of good corporate citizenship, companies are signing up to voluntary codes and standards focusing on labour, human rights and the environment and, more recently, bribery and corruption. A prime illustration of this trend was the addition, a little over a year ago, of a 10<sup>th</sup> Principle to the United Nations Global Compact, focusing on bribery and corruption. Signatory companies now face the challenge of ensuring that they have in place the policies and systems that make them compliant with the 10<sup>th</sup> Principle.

Additional forms of pressure on companies are building through increased shareholder activism and the socially responsible investment movement, where companies are increasingly taken to task on the issue of bribery and corruption. The Global Reporting Initiative, a framework for corporate reporting on non-financial issues, is further developing its standardised indicators (performance measures) for companies reporting on corruption. But the challenge remains the same whether a company is prompted to focus on bribery and corruption for the basic but important purpose of complying with the law or because it is looking to build its reputation as an outstanding corporate citizen.

A review of corporate anti-bribery codes conducted in 2001 by the OECD revealed that the texts of such codes gave “little evidence of agreement or convergence in the scope of, or definitions used in, firms’ anti-bribery commitments.” The authors surmised that the diversity of interpretations relating to the definition of bribery and corruption in the 250 or so codes that were reviewed dur-

ing the study suggested that the international business community was “still struggling to come to grips with the complex ethical questions that arise in defining appropriate business conduct in this area.”

Considerable progress has nevertheless been made in the past few years. A number of initiatives have been convened to address the issue of corruption from a corporate perspective. The International Chamber of Commerce has recently issued a tougher version of its Rules of Conduct to Combat Extortion and Bribery, which now includes an expanded definition of bribery and corruption, a stronger rejection of facilitation payments and a requirement that companies establish confidential channels for staff members to seek advice and report violations without fear of retaliation.

An initiative convened by the World Economic Forum in 2004 has led to the development of corporate anti-bribery principles to which some 100 companies across several industry sectors are now signed up.

The Partnering against Corruption Initiative (PACI) is providing an opportunity for companies to commit publicly to anti-bribery principles, sending a positive signal to capital markets, international financing institutions and the public.

In order to assist companies in dealing with the development of anti-bribery policies and programmes, Transparency International has worked in collaboration with a group of leading international companies and other non-corporate stakeholders, including academics, trade unions and other non-profit organizations, to develop the Business Principles for Countering Bribery. The purpose of this comprehensive anti-bribery code is to provide companies, large and small, with a framework for either developing or improving internal practices and procedures to reduce the likelihood of bribery at home and abroad.

The Business Principles attempt to strike a balance between a compliance approach based on detailed rules and one that rests on clearly articulated values without which companies are likely to fail in implementing an anti-bribery programme.

## “Companies must exercise great care in choosing business partners.”

### Developing an effective programme to counter bribery

As illustrated in the case studies included in this chapter, the implementation of effective anti-bribery programmes requires a consistent level of effort. This can at first sight seem an onerous burden for small and medium-size companies that have limited financial and human resources, but respecting the law is essential for all companies, regardless of size.

As described in TI's Six-Step Process, the first step for a company wishing to develop an effective anti-bribery programme is to articulate a clear policy that promotes zero tolerance of corrupt practices. This policy must be accompanied by a detailed implementation programme to ensure that every employee in the company is knowledgeable in all aspects of the policy and trained in coping with ambiguous situations. Too often, good policies are developed and announced by top management, but they remain theoretical because not enough effort is devoted to making sure that they are adhered to throughout the company, especially in locations where business conditions are challenging.

A critical condition to successful implementation is top-level commitment to the anti-bribery policy. The Board and high-level management must demonstrate their full commitment by addressing employees and making public their unequivocal stance on bribery and corruption. It is difficult to resist the temptation to mention the now legendary Enron code of conduct developed by the defunct US energy firm. The Enron code was exemplary in its formulation but proved to be worthless when it was suspended by the company's venal executives.

A programme tailored to address the risks that are specific to a company is required to protect it against instances of bribery and corruption. However, the company must be mindful that beyond the behaviour of its own employees, it must ensure that business partners, including subsidiaries, joint venture partners, agents, contractors and other third parties with whom it has a business relationship, are carefully selected by reference to the company's zero tolerance rules.

As is stated in the Business Principles, companies must exercise great care in choosing business partners,

particularly in countries or in business sectors where corruption is known to be widespread. Due diligence must be undertaken in hiring agents, and their compensation must be commensurate with the services they provide.

The company's zero tolerance policy should be clearly communicated to all employees, particularly to those in sales, marketing, purchasing, and project management, as well as to sales representatives and other agents. Employees should be given practical guidance on how to deal with recognized areas of risk, such as payments to and by sales representatives and other agents; gifts, entertainment and travel allowances; political contributions and facilitation payments.

If company efforts to uphold a zero tolerance policy on bribery and corruption are to be successful, all aspects of human resources management, such as recruitment, promotion and performance reviews, should reflect the commitment to this policy. This may mean reviewing human resource practices to introduce schemes that concretely reward integrity, as described in the contribution by Michael H. Pedersen of Novozymes. Failing the introduction of an integrity incentive scheme, it should be made clear that no employee will be penalized for having lost business that was deemed to be tainted or to have the potential to be so. Appropriate sanction mechanisms must be built into an anti-corruption programme, and if employees are to be rewarded for their honesty, those who deviate from company policy must be submitted to appropriate disciplinary action.

Employees should be provided with secure and accessible channels for raising concerns and reporting violations, and whistle-blowers must be protected from reprisals. Anti-bribery communication channels increase the likelihood that the actions of wrongdoers will be exposed. Such channels give honest employees and business partners a means through which they can report bribery and corruption and contribute to creating a culture of prevention.

These communication channels can also play an important role in providing advice to employees who have questions about the company's programme and its implementation and can encourage employee feedback on the

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programme. This role can be extended to providing advice to business partners and other stakeholders interested in the company's programme.

Very often, bribes have been paid out of “slush funds” or secret reserves that were established in order to pay costs of any kind that cannot be justified. Accurate accounting and record keeping is therefore of the utmost importance in the fight against bribery and corruption. Robust internal systems of accounting controls must be put in place to safeguard assets and ensure the reliability of financial records. Regular audits must be performed to provide assurance that the internal controls are effective in preventing corrupt practices.

Finally, but equally important, a company's anti-bribery programme should be reviewed periodically by senior management for its suitability and effectiveness. The process of improvement should be seen as a continuous one. It is only through regular reviews of the effectiveness of its systems that a company can develop and maintain appropriate protection against corruption.

### Building credibility

As with any voluntary standard, the credibility of companies that subscribe to anti-bribery principles will depend on their effectiveness in improving company behaviour. Apart from the complexities involved in adapting to the laws and regulations of each country where a company operates, changed behaviour will not be achieved by focusing solely on legal compliance programmes; commitment to ethical principles must be established throughout the company. This approach can be demonstrated by appropriate and fair disclosure in annual reports, social responsibility reports or website postings, and supplemented by independent verification of the systems in place, where credibility is critical.

Companies cannot fully come to grips with the pervasive issue of bribery and corruption on their own. However, the combination of an expanding legal framework and its vigorous enforcement with enhanced company compliance

through voluntary codes can contribute to creating a climate where bribery and corruption are increasingly viewed as a risky and costly way of doing business.

Companies that have joined the United Nations Global Compact are now faced with the challenge of implementing the 10<sup>th</sup> Principle. What does this mean practically for United Nations Global Compact signatories? Companies that already have in place programmes to counter bribery and corruption must assess their effectiveness periodically and take the lead in providing meaningful reporting on their efforts. Companies that are at an earlier stage must devote time and resources to assessing their risk exposure and developing adequate policies and programmes that can be fully integrated into their business. This is a time-consuming and sometimes costly process. But the alternative can be costlier still.