THE GLOBAL COMPACT

Business against corruption

Case stories and examples

Implementation of the
10th United Nations Global Compact
Principle against corruption

Acknowledgements

We would like to express our sincere appreciation to all the authors who have contributed valuable insights and input for this guide, especially those co-authors who provided feedback to their colleague's articles.

Special thanks to:
John Bray | *Control Risks*
Susan Côté-Freeman | *Transparency International*
Fritz Heiman | *Transparency International*
Peter Wilkinson | *Transparency International*
Stuart Gilman | *United Nations Office on Drugs and Crime (UNODC)*
Dimitri Vlassis | *United Nations Office on Drugs and Crime (UNODC)*
Sofia Perazzo | *United Nations Global Compact Office*
Jan Richter | *United Nations Global Compact Office*

This publication was edited by Birgit Errath of the United Nations Global Compact Office.

Contents

Foreword

Georg Kell | *Executive Head, United Nations Global Compact*
Stuart Gilman | *Head of the Anti-Corruption Unit and the Global Programme against Corruption, Rule of Law Section, Division for Operations, United Nations Office on Drugs and Crime*

On 24 June 2004, the United Nations Global Compact added its 10th principle against corruption. This addition was an important step for the initiative. Corruption impedes the development of markets, drives away investment, increases the costs of doing business, and undermines the rule of law. It has a corrosive effect on democracy and the general well-being of a nation. Furthermore, corruption also undermines the implementation of the other Global Compact principles in the area of human rights, labour standards and environmental standards. With the emergence of the United Nations Convention against Corruption, which was signed on December 2003 and entered into force on 14 December 2005, the Global Compact was able to add this important principle, thus providing the platform for an extraordinary coalition of business, labour, civil society organizations and governments to fight corruption.

The United Nations Office on Drugs and Crime (UNODC) has become an important partner in this endeavour. The Secretary-General has made UNODC the custodian of the UN Convention against Corruption and it has also become one of the core agencies of the Global Compact looking after the issue of anti-corruption.

The UN Convention against Corruption marked a new milestone in the fight against this global problem . It is the first worldwide legal instrument of its kind and it addresses both the demand and supply side of corruption. This can benefit the private sector by creating a level playing field where the quality and price of the product are more important than whom you know and how much are you willing to pay under the table. The standards set out in the Convention are both demanding and rigorous. However, they are not unreasonable. Strong prevention frameworks, regulations and law enforcement are key elements in the fight against corruption. Voluntary approaches, which are also recognized by the Convention, are important complementary efforts to support and enhance anti-corruption requirements in the Convention .

Since the introduction of the 10th principle, the Global Compact, along with its partners, has engaged in a variety of efforts to develop tools for the implementation of anti-corruption measures. Additionally, the initiative has encouraged participants' activities in local Global Compact networks involving all stakeholders. Many in the business, multilateral and NGO communities have taken up the challenge. This is what the tenth UN Global Compact principle is about.

This publication, which was developed by the Global Compact Office in partnership with UNODC, showcases case stories and examples of implementation efforts by businesses. It also illustrates the dilemmas they faced in this process. As the Global Compact is mainly focused on changing business behaviour in order to create an inclusive global marketplace, this first volume of case stories on the 10th principle focuses predominantly on company actions. At the same time, we recognize that the private sector cannot solve the problem of corruption alone. But companies can support the fight by making a leadership commitment to "zero-tolerance" and the implementation of anti-corruption programs throughout their own operations. However, isolated actions by a company are not always sufficient. Ideally, this book will also further the understanding of how companies can act collectively to curb corruption and create a level playing field. We believe that the Global Compact can provide a useful platform to this end.

We are grateful to the large number of company managers, academics, activists and experts who have contributed to this publication and shared their experiences. Through its pragmatic approach, this collection will be a useful instrument for companies. It is our hope that Global Compact participants around the world will be inspired to share and contribute their own insight on how to effectively tackle corruption.

Chapter 1

The framework and position of the 10th Principle

1A

The legal framework of the 10th Principle

1A.I The United Nations Convention against Corruption

Dimitri Vlassis* | *United Nations Office on Drugs and Crime*

"The world of the 21st century needs new rules to become a better place for all peoples."

The new United Nations Convention against Corruption has enormous significance. It proves that destructive practices as old as history can no longer be tolerated. It manifests the realization that the world of the 21st century needs new rules to become a better place for all peoples. It demonstrates that core values, such as respect for the rule of law, probity, accountability, integrity and transparency must be safeguarded and promoted as the bedrock of development for all.

People around the world, in developing and developed countries alike, have become increasingly frustrated at witnessing and suffering from the injustice and the deprivation that corruption brings. On a daily basis, people face head-on the effects of corruption on areas such as the administration of justice and the provision of adequate medical care. They watch with anger as corrupt leaders amass immense fortunes and enjoy a luxurious lifestyle while their own people toil to scrape a living and are denied the most basic of services. That anger becomes resignation and cynicism when people discover that the money stolen by corrupt leaders cannot be recovered because it has been transferred abroad. To these people, diatribes about good governance, sustainable development, the benefits of a free market and the liberalization of trade ring hollow.

Therein lies one of the most serious threats posed by corruption: the loss of confidence in institutions and the de-legitimization of Government. Such a situation has destructive consequences that can span generations. The best and brightest will eschew local political and economic life or even flee abroad.

Negotiating the Convention was not an easy undertaking. The negotiators had to tackle many complex issues and concerns from different quarters. It was a formidable challenge to maintain the quality of the new Convention while making sure that all of these concerns were properly reflected in the final text. Although compromise was not easy, all participating countries made concessions. The result—made possible by their flexibility, sensitivity, understanding and, above all, strong political will—should be a source of pride to all of them.

At a special conference in Merida, Mexico, to open the Convention for signature, expectations were exceeded when 95 countries signed on and one country deposited the first ratification of the new instrument. Since then, the

* Chief of the Crime Conventions Section, United Nations Office on Drugs and Crime

"The Convention offers standards, measures and rules to prevent and control corruption....It is the first truly global instrument of its kind."

The Convention—a closer look

The new Convention offers good reason to look at the future with optimism. It is itself an act of faith. Only a decade ago, speaking of the possibility of such an instrument and saying it would be negotiated in such a short time would have brought ironic smiles to the faces of most people. Yet, today, this remarkable achievement is a reality.

It became a reality because of the vision, determination and commitment that all Governments displayed throughout the negotiation process. And it is a remarkable achievement because it is innovative, balanced, strong and pragmatic. These qualities, together with its universality and functionality, make the new Convention a unique platform for effective action and an essential framework for genuine international cooperation.

The Convention offers all countries a comprehensive set of standards, measures and rules that can strengthen their legal and regulatory regimes to prevent and control corruption. It includes a comprehensive chapter on preventive measures, which are intended to cover both the public and the private sectors, in recognition of the multidisciplinary approach that is necessary to fight corruption. In particular, the Convention includes measures on public procurement and management of public finances, and asks States to put in place measures to prevent corruption involving the private sector and enhance accounting and auditing standards in this sector. The Convention also contains a chapter on criminalization, coupled with an extensive chapter on international cooperation. And it makes a major breakthrough with its provisions on asset recovery, which are the first of their kind and offer hope for the cooperation needed to help developing countries recover assets that often represent large percentages of their domestic product.

number of signatories has risen to 133 and 30 Member States have ratified the Convention, which entered into force on 14 December 2005.

While we should all rejoice with the adoption of the new Convention, we must guard against complacency. This new instrument must be only the beginning of our redoubled efforts to prevent and control corruption. We must all make sure that the momentum that made its negotiation possible is not allowed to dissipate. The collective political will that permitted these innovative and groundbreaking solutions must continue unabated.

We need to outline a vision for what lies ahead. But before doing that, we require clarification of a point of crucial importance. We are concerned that some people mistakenly think that the new Convention does not take into account the monitoring of its implementation. Nothing can be further from the truth. The Convention contains provisions for a vigorous, robust and effective mechanism to ensure and follow up on its implementation. That mechanism is the Conference of the States Parties, which will be convened and become operational before December 2006, within one year of the entry into force of the Convention, in accordance with its relevant provisions. The terms of reference of the Conference of the States Parties were carefully negotiated and, while inspired by similar provisions in the United Nations Convention against Transnational Organized Crime, go considerably beyond that Convention both in detail and potential impact. We are trying to dispel the misperception about the new Convention and, instead of engaging in theoretical discourses on how it should read, we must concentrate on the formidable task at hand.

Our initial task is to organize our efforts around some key elements that we must always keep in mind.

The first step is to secure the highest possible number of ratifications of the Convention within the short-

"We must not underestimate the role that civil society and the private sector can and must play."

est possible time. Implementation would be a word devoid of meaning if the Convention does not become the global standard that it was intended and negotiated to be. The best way to achieve implementation is to ensure the widest possible participation in the Conference of the States Parties and make sure it functions effectively. This means exercising all the influence we possess to bring the matter to the top of the domestic political agenda in every country around the globe.

Implementation rests firmly in the hands of States—and for good reason. First, effective action against corruption is the responsibility of Governments. Only through their commitment and determination can we see tangible results. Second, the Convention is the first truly global instrument of its kind. This distinguishes it from the very commendable initiatives and instruments that preceded it at the regional level. This global nature is also the source of special attributes that we must not ignore. Mechanisms for implementation that were developed for, and are functioning in the context of, regional legal instruments cannot be readily emulated at the global level. We can learn from the experience gained by those mechanisms, and we fully intend to continue strengthening close working relationships with the international organizations that are supporting those mechanisms. However, we must also take into serious consideration the legitimate concerns of our constituency and, most importantly, the gaps in capacity that exist in many developing and least developed countries. On that basis, and remaining faithful to the letter and spirit of the Convention, we must nurture its implementation mechanism and support the widest possible participation in the development and functioning of that mechanism, particularly through providing well-targeted technical assistance to developing countries.

While guided by these considerations, we must not underestimate the role that civil society and the private sector can and must play. Governments must be prompted, encouraged, supported and held accountable. And both civil society and the private sector can help in all of these efforts.

For many years, businesses have generally portrayed themselves as the unwilling victims of greedy public officials rather than as accomplices in illegal transactions designed to obtain unfair advantage. However, the private sector has come to realize that corruption distorts fair competition and the rules of a free market economy, has a negative impact on the quality of products and services, weakens the prospects for economic investment and undermines business ethics. Bribe payments shift money away from potentially productive investments. Non-economic transaction costs keep the level of enterprise development low in relative terms.[1] Corruption is detrimental to business for all types of company—large and small, multinational and local. It is, however, the smaller businesses that are more likely to be negatively affected.

Recent scandals have shown that, in the long run, business cannot prosper without appropriate and responsible corporate governance. Large off-the-books payments to public officials or intermediaries can throw a company's finances into turmoil and call into question the performance of its duties versus its stakeholders. The negative impact on the company's reputation from following adverse publicity exposure is incalculable.[2] Even if the corrupt deals remain undiscovered, short-term gains are made at the cost of long-term profitability. Over time, companies that spend their resources on financing corrupt deals rather than investing in the development, manufacturing and marketing of quality products and services will increasingly lose their competitiveness, thus becoming even more dependent on bribery as a means of maintaining their market share.[3]

Private-to-private sector bribery has become particularly dangerous in recent years, since Governments have started to privatize many functions and services that were previously carried out by public sector agencies. Also, just as in the public sector, if individual employees take decisions that are not in the best interest of their company, the internal decision-making process is distorted, with detrimental effects on the company and its shareholders.

"Business cannot prosper without appropriate and responsible corporate governance.…Companies that spend their resources on financing corrupt deals will increasingly lose their competitiveness."

The International Chamber of Commerce has for more than two decades been promoting the anti-corruption agenda in the corporate world, starting first with the so-called *Shawcross Committee*,[4] which in 1977 called for rules of conduct to serve as a basis for corporate self-regulation. Since then, numerous initiatives by international organizations and advocacy groups have led to an array of international instruments addressing, in particular, the role of the private sector in corrupt practices. Such instruments include the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Organization for Economic Cooperation and Development in 1997 and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, as well as the production of guidelines and manuals providing businesses with the necessary tools to ensure that employees comply with both regulatory frameworks and principles of sound business practices.[5] Also featuring prominently are the Council of the European Union Framework Decision 2003/568/JHA on combating corruption in the private sector and the United Nations Convention against Corruption, which is the first global legally binding instrument explicitly requesting State parties to consider criminalizing bribery in the private sector.

Examples of anti-corruption programmes

At the same time, several other initiatives have emanated from the corporate world itself. In 2000, the Conference Board, a global business membership organization, asked companies worldwide about their anti-corruption programmes. The survey found compliance-style programmes in 42 countries, with 40 per cent of the respondents being based outside North America and Western Europe.[6]

- The Extractive Industries Transparency Initiative of 2002, involving Governments, companies and civil society, aims to increase transparency concerning payments made by companies in the extractive industries and revenues received by Governments.

- The Equator Principles of 2005 provide a common baseline for financial institutions in determining, assessing and managing environmental and social risks involved in project financing.

- The Wolfsberg Anti-Money-Laundering Principles for Private Banking of 2000 were adopted by a number of the largest commercial banks, which committed themselves to the principle of due diligence and a code of conduct based on compliance with international anti-money-laundering standards.

- The International Council on Mining and Metals adopted in 2002 a Sustainable Development Charter that expresses the commitment of its members to principles of sustainable development in four key areas: environmental stewardship; product stewardship; community responsibility; and general corporate responsibilities.

The proliferation of such major initiatives by the private sector is a welcome development that demonstrates increased awareness of the importance of concerted action against corruption and a willingness of the private sector to play its part. It also demonstrates a shift in attitude on the part of the private sector away from considering action against corruption as the sole responsibility of Governments towards the view that such action is a task to be shared with civil society and the private

"Operations in a globalized economy bring great potential, but also great responsibility."

The United Nations Global Compact's 10th Principle

In connection with the involvement of the private sector in the fight against corruption, the role and potential of other international initiatives, such as the United Nations Global Compact, must be highlighted. In an address to the World Economic Forum on 31 January 1999, the Secretary-General invited business leaders to join an international network, the United Nations Global Compact, that would bring companies together with United Nations agencies, labour and civil society to support certain principles in the areas of human rights, labour and the environment. The operational phase of the network was launched in New York on 26 July 2000. During the first United Nations Global Compact Leaders Summit, held in New York on 24 June 2004, the Secretary-General announced the addition of a 10th Principle in the agenda of the network, according to which businesses should work against corruption in all its forms, including extortion and bribery, as part of the broader movement of corporate social responsibility (see also http://www.unglobalcompact.org/Portal/).

sector itself. The merit of such initiatives is significant, despite the scepticism voiced by some as to whether they reflect real commitment or are designed to obtain public relations dividends, pre-empting or deflecting more rigorous Government regulation.

Private sector debate

Such initiatives also introduce two interrelated issues that are key to the debate about the private sector.

- The first issue is how to achieve an appropriate balance between Government regulation and an environment that fosters the proper functioning of a free market;

- The second issue is how much one can rely on such initiatives when formulating an effective set of measures to prevent and control corruption.

The outcome of that debate will naturally depend on a number of factors and the particular attributes of a national economy. Suffice it to say, however, that striking the appropriate balance should be based on a critical evaluation of the initiatives, the consistency of their application and the effectiveness of their results. It should also be based on recognition of the fact that voluntary initiatives cannot be considered a panacea, nor replace broader regulatory regimes. It is a matter of leading by example with consistency, credibility and efficiency.

That principle should apply to the private as much as any other sector. The private sector must realize and accept that its position and operations in a globalized economy bring great potential, but also great responsibility. Integrating and projecting transparency and using influence to help fight corruption are sound business practices. Just as businesses invest seriously in their own infrastructure, even so they must look very carefully at investing in the infrastructure of the environment in which they wish to operate. It is a sound investment, an investment in the future carrying very little risk, to support the efforts of countries to strengthen their systems in order to fight corruption, domestically and internationally. The returns may not be immediately quantifiable in a way that could be reflected in a balance sheet. But the results and returns are bound to show in the medium to longer term. This is why the United Nations Office on Drugs and Crime is an avid supporter of the United Nations Global Compact and stands ready to contribute to its efforts in any way it can. The United Nations Office on Drugs and Crime is also

committed to doing everything in its power to promote the ratification and implementation of the new Convention and welcomes the support of the private sector and the United Nations Global Compact.

Endnotes

1 Gaeta Batra, Daniel Kaufmann and Andrew H. W. Stone, V*oices of the Firms 2000: Key Findings of the World Business Environment Survey 2000* (World Bank Group, 2003).

2 Organization for Economic Cooperation and Development, ***Fighting Bribery and Corruption: No Longer Business as Usual*** (OECD, 2000).

3 Russ Webster, ***Corruption and the Private Sector***, prepared by Management Systems International for the United States Agency for International Development, November 2002.

4 See Fritz Heimann, "The ICC Rules of Conduct and the OECD Convention", International Chamber of Commerce, ***Fighting Corruption: a Corporate Practices Manual*** (Paris, International Chamber of Commerce, 2003), pp. 13-21.

5 International Chamber of Commerce, ***Fighting Corruption***...; OECD, ***Guidelines for Multinational Enterprises, 2003***, and the ***OECD Principles of Corporate Governance***, 2004; Transparency International and Social Accountability International, ***Business Principles for Countering Bribery***, 2002.

6 Ronald E. Berenbeim, ***Company Programs for Resisting Corrupt Practices: a Global Study*** (Conference Board, 2000) (http://www.conference-board.org). For an example of such a programme, see Peter Kidd, "Facing up: how a multinational tackles corruption", in United Nations Office on Drugs and Crime, ***Global Action against Corruption: the Merida Papers***, 2004.

1A.II Making the United Nations Convention against Corruption work

Fritz Heimann* | *Transparency International*

"The establishment of an effective follow-up monitoring process is essential to making UNCAC work."

The United Nations Convention against Corruption (UNCAC) represents a crucial step in building a worldwide framework to combat corruption. In today's global economy, corruption has become a global phenomenon, making it essential to have an international convention that binds all countries. UNCAC's worldwide participation raises hopes for major progress, particularly on issues requiring North-South cooperation.

UNCAC has a very broad scope, including preventive measures to be adopted by Governments, criminalization of corruption in both public and private sectors, extortion by public officials, and bribery by companies and individuals. UNCAC also includes detailed provisions dealing with money laundering, mutual legal assistance, and asset recovery.

While UNCAC holds great promise, achieving its goal will be difficult. It will require sustained efforts by the United Nations, by national Governments, by donor agencies, by civil society and by other stakeholders. The establishment of an effective follow-up monitoring process is essential to making UNCAC work.

Transparency International (TI) organized a study group on follow-up monitoring of UNCAC. The study group reviewed the monitoring procedures of other anti-corruption conventions and analysed the concerns about follow-up monitoring that had been raised during the Vienna negotiations that led to the adoption of UNCAC. This chapter is based on the work of the study group. It was written before the study group had completed its work; therefore the views presented are my own, and not necessarily those of the study group or of TI. The final report of the study group is expected to be submitted to the United Nations Office of Drugs and Crime (UNODC) in June 2006.

Key findings

- UNCAC must have a strong follow-up monitoring programme to provide an effective framework for combating corruption around the world.
- To build momentum for UNCAC implementation and promote public confidence, a monitoring mechanism should be authorized in 2006, and monitoring activities should begin in 2007.
- UNCAC monitoring must be regarded as a long-term programme and should be permitted to evolve over time.

* Fritz Heimann is one of the founders of Transparency International and leads TI's study group on UNCAC monitoring. He is Vice Chairman of the ICC Commission on Anti-Corruption and was formerly Associate General Counsel of General Electric Co.

"The actual enforcement of prohibitions against corruption is usually the most difficult step."

- A capable Secretariat with adequate and dependable funding is needed to manage the monitoring programme.

- To ensure that UNCAC monitoring will have adequate political support, concerns about monitoring must be addressed.

  - *Where necessary, monitoring should be coupled with technical assistance to enable developing countries to implement UNCAC.*

  - *To avoid duplication, UNCAC's monitoring programme should be coordinated with existing anti-corruption monitoring programmes.*

- UNCAC monitoring should be conducted transparently and with the involvement of non-governmental stakeholders because strong public support for reducing corruption is the best lever for achieving UNCAC's objectives.

The case for follow-up monitoring

Follow-up monitoring is necessary because UNCAC is not self-executing. Numerous actions by national Governments are needed to implement the Convention.

Challenges to implementation

There are powerful groups that benefit from corruption and that will resist change. The resistance is likely to increase as Governments move from signature of UNCAC to ratification, and then to enactment of implementing laws. The actual enforcement of prohibitions against corruption is usually the most difficult step.

Delays in implementation by some countries may encourage advocates of delay in other countries. Monitoring will help maintain consistent progress. Because effective implementation of UNCAC will require many years, there will be changes in Governments and competing priorities will arise. In the face of such changes, monitoring will be essential in maintaining Government commitment to UNCAC.

In countries where corruption is deeply embedded, implementing UNCAC will be particularly difficult, and continuing monitoring efforts will be needed to overcome resistance to reforms called for by UNCAC. Developing countries are likely to need capacity-building assistance.

Why monitoring works

Follow-up monitoring has an impact because it brings four influences into play:

- Reporting schedules or review team visits stimulate Government action.

- Monitoring reviews provide a forum for peer group pressure by other Governments.

- Monitoring reviews enable private sector and civil society groups to provide non-governmental assessment of progress on implementation.

- Reports on monitoring reviews build public pressure for action by lagging Governments.

Applicable UNCAC provisions

UNCAC contains detailed provisions for promoting effective implementation. Chapter VI covers "Technical assistance and information exchange". Chapter VII covers "Mechanisms for implementation" and outlines the responsibilities of the Conference of States Parties in promoting and reviewing implementation. These provisions establish a sound framework for action by the Conference of States Parties on follow-up monitoring and technical assistance. The first such Conference is expected to be held in the fourth quarter of 2006.

Other monitoring programmes

The study group received reports from experts on monitoring programmes for the following anti-corruption instruments:

- OECD Convention against Bribery of Foreign Public Officials
- The GRECO programme (Group of States against Corruption) for monitoring the Council of Europe Conventions on Corruption
- Inter-American Convention against Corruption (OAS Convention)
- Anti-Corruption Action Plan for Asia-Pacific
- African Peer Review Mechanism of the New Partnership for Africa's Development
- Stability Pact Anti-Corruption Initiative (SPAI)
- Financial Action Task Force (FATF)
- UN Convention against Transnational Organized Crime (UNTOC)

Following are key lessons learned from the other monitoring programmes:

Monitoring should start promptly

Starting a monitoring programme promptly after a convention enters into force has great advantages. At that time, there will be strong support for the convention, and the monitoring process can build on that momentum. If monitoring is delayed, it will be much more difficult to organize an effective monitoring programme and to maintain momentum for implementation.

Capable Secretariat is needed

Experience with existing monitoring mechanisms makes it clear that a capable Secretariat is needed to manage the monitoring process. Adequate staffing for the Secretariat is critical to the success of the monitoring programme.

Adequate funding is essential

Adequate funding is needed to conduct monitoring reviews. Because monitoring must be organized as a long-term programme, funding must be secure and dependable. Funding from the regular budget of the sponsoring international organization is preferable to reliance on voluntary contributions from wealthier countries.

Wide range of monitoring methods should be used

Experience has been obtained with a wide variety of monitoring methods, including responses to questionnaires, country visits, peer reviews, expert reviews, plenary reviews and regional reviews. The method used should be based on suitability for particular issues.

- *Questionnaires* directed to Governments are a necessary starting point and are common to all anti-corruption monitoring systems. They are used as the first step to determine the rate of progress on implementation of convention provisions. While questionnaires are necessary, they are not sufficient when it comes to complex issues where inputs from different sources are needed.

- *Country visits* provide the most effective method for obtaining inputs from multiple sources and for in-depth questioning by the reviewers. Country visits are more expensive than questionnaires but provide better information. Country visits can be conducted by the staff of the Secretariat, peer reviewers, expert reviewers, or a combination of the foregoing.

- *Peer reviews* can be conducted by small teams composed of persons from other States Parties.

- *Expert reviews* can be conducted by experts chosen from a roster. The use of a roster of experts helps expand the resources of Secretariat without expanding its staff.

- *Plenary reviews* furnish an opportunity to present reports and recommendations based on monitoring reviews to a group composed of all Member Governments. This is desirable politically and may enhance peer pressure but can become unwieldy when the plenary group is very large and there is a strict requirement for consensus.

A mixed menu of monitoring methods can be used to maintain momentum for enacting reforms. Country visits can only be made at substantial time intervals. Questionnaires and reviews at plenary meetings can be used on a much more frequent basis to maintain momentum.

Monitoring reviews should provide for follow-up

Clear conclusions and recommendations should be included in country reports. Country action plans to correct deficiencies should be required as part of the review process. Follow-up reviews should be conducted to ensure that deficiencies requiring correction are revealed.

Monitoring programmes should be conducted in a transparent manner

Reports by monitoring bodies should be made public promptly after the conclusion of reviews. Publication of monitoring reports is an important step in holding participating Governments accountable to their own public.

Role of NGOs, private sector, trade unions and others

Participation by non-governmental organizations, the private sector, labour unions and other stakeholders plays an important role in effective monitoring. Assessing corruption and the effectiveness of anti-corruption measures is always difficult. Inputs from NGOs and the private sector are essential for providing monitors with a balanced picture. NGOs have played an important role in getting monitoring programmes launched, in making sure that they do not lose steam, and in publicizing their results. The role of NGOs is controversial, but that only confirms that it is essential.

Overcoming concerns about UNCAC monitoring

During the Vienna negotiations in 2002-2003, the following concerns about UNCAC monitoring were raised:

- Can UNCAC monitoring be effective and operate at reasonable cost?
- Will UNCAC monitoring duplicate monitoring conducted under other anti-corruption conventions?
- Will UNCAC monitoring be unfair to developing countries?
- Will UNCAC monitoring be an infringement of sovereignty and an intrusion in national affairs?

It is essential that the foregoing concerns be resolved. Otherwise, there is danger that the Conference of Party States will be unable to take action on monitoring or adopt an ineffective monitoring programme. Lack of action on monitoring could undermine momentum for UNCAC implementation. Adoption of an ineffective monitoring programme would risk discrediting UNCAC and play into the hands of critics of United Nations effectiveness.

Cost and effectiveness

UNCAC monitoring faces the following challenges:

- UNCAC has the largest and most diverse number of parties of any anti-corruption convention. More than 140 countries have signed UNCAC and are expected over time to ratify. This compares with 36 OECD parties (Organisation for Economic Co-operation and Development), 33 OAS parties (Organization of American States), and 39 GRECO parties. UNCAC parties also have a greater diversity in political, legal, and economic systems than the other conventions.

- UNCAC has the broadest scope of any convention. The interest that different Governments have in particular provisions of UNCAC varies substantially.

"Participation by non-governmental organizations, the private sector, labour unions and other stakeholders plays an important role in effective monitoring."

The foregoing challenges make monitoring even more important under UNCAC than under other conventions. However, they also make it more difficult to develop an effective and politically acceptable monitoring process.

Concerns have been raised that UNCAC monitoring would be costly and result in further growth of United Nations bureaucracy. Some Governments question whether UNCAC monitoring would be effective.

Response: Developing a capable monitoring organization is the key to overcoming the foregoing concerns. Proposals for monitoring organizations and monitoring programmes, outlined below, describe how an efficient and cost-effective monitoring programme can be organized.

Duplicative reviews

Concerns have been raised that UNCAC monitoring would duplicate reviews already being conducted under other anti-corruption conventions. There is basis for these concerns because UNCAC covers many of the same subjects as other anti-corruption conventions, and many UNCAC signatories are also parties to other conventions. Concerns already exist about duplicative reviews under the OECD, Council of Europe, SPAI and OAS monitoring processes. The prospect of UNCAC monitoring serves to aggravate these concerns. Within Africa, there is concern that UNCAC monitoring could hinder efforts to develop a monitoring programme for the African Union Convention.

Response: Concerns about duplicative monitoring can be overcome by coordinating UNCAC monitoring with other anti-corruption monitoring programmes, as described below.

Fairness of reviews

Developing countries are concerned that monitors from developed countries may unfairly criticize them for deficiencies they do not have the capability to correct, and that weaker countries may be treated more harshly than powerful countries.

Response: Concerns about unfair criticism can be resolved by making technical assistance available to developing countries to enable them to implement UNCAC, as described below. The experience under existing monitoring programmes demonstrates that both weak and powerful countries can be treated fairly and equally.

Infringement of sovereignty and intrusiveness

Some countries objected to monitoring as an infringement of sovereignty and intrusion in their national affairs. Such objections probably reflect a broader aversion to multilateral surveillance. Within Europe, countries have gone further in accepting the need for multilateral bodies, with other regions showing varying degrees of reluctance. The slow start of OAS monitoring illustrates the reluctance of many Latin American countries to cede any sovereignty.

Response: The signature of UNCAC by over 140 countries demonstrates widespread acceptance of the underlying principle that combating corruption requires international action. Since the end goal is not in dispute, Governments should accept monitoring as an essential means to that end.

Proposals for UNCAC monitoring

UNCAC monitoring should be allowed to evolve over time. The following proposals begin by identifying guiding principles. This is followed by proposals on monitoring organization and monitoring programmes. The last two sections cover the need for technical assistance and for coordinating UNCAC with other monitoring programmes.

Guiding principles

The objective of monitoring should be to work with the parties to achieve prompt and effective implementation of the provisions of UNCAC. Monitoring should not be punitive and should avoid comparative assessments. It should be guided by the following principles:

- Monitoring should be regarded as a long-term programme. While it should start promptly, it should be allowed to evolve over a period of several years.

- *Widespread participation by States Parties* is important, but reluctant Governments should be given time to overcome their concerns.

- A *capable organization* with adequate and dependable funding is needed to manage the monitoring programme.

- Monitoring programmes should be *conducted with flexibility*, taking into account the diversity of the parties and the broad scope of UNCAC.

- *Collaboration with other monitoring programmes* is necessary to build on existing experience and utilize limited resources efficiently.

- *Technical assistance* should be made available to developing countries to overcome deficiencies identified in monitoring reviews.

- *Public credibility* of the monitoring programme is important for the attainment of UNCAC's objectives.

- *Civil society* organizations should be given an opportunity to participate in review processes

- Questionnaires, Government responses and monitoring reports should be *made public.*

Monitoring organization

UNCAC Secretariat

A capable Secretariat will be needed to manage UNCAC's follow-up monitoring programme. UNODC has been designated by the United Nations Secretary-General as the Secretariat for the Conference of States Parties. The record of UNODC in managing the development of both UNCAC and the United Nations Convention against Transnational Organised Crime (UNTOC) with a very small number of dedicated professionals provides a high level of confidence that UNODC can manage the UNCAC monitoring programme effectively. Collaboration with the Secretariats that support the other monitoring programmes would augment UNODC's capacity.

Conference of States Parties

The Conference of States Parties (CSP) will supervise the role of the Secretariat. Because the CSP is likely to consist of delegates from more than a hundred countries, who will meet only annually in the first three years and later every two years, CSP should establish a subgroup of a reasonable size to work with the Secretariat between CSP meetings.

Funding

A rough cost estimate for UNCAC monitoring in the range of EUR 5 million per year would seem reasonable. The costs of OECD and GRECO monitoring programmes are in the range of EUR 1-2 million per year and are widely considered the most effective monitoring programmes. The estimate for UNCAC monitoring recognizes UNCAC's larger number of parties and broader scope. The costs of monitoring are very modest when compared with the benefits, measured in terms of progress in reducing corruption.

Funding for monitoring should be provided from the regular UNODC budget. Such funding would be preferable to reliance on special contributions from wealthier countries. Dependable multi-year funding commitments will be needed to permit adequate planning and staffing.

Monitoring programmes

Monitoring should start promptly, preferably in 2007, in order to encourage prompt implementation by Governments. UNCAC monitoring should be envisioned as a programme involving multiple phases.

Phase I: Survey of implementation

The implementation survey would take stock of the status of implementation across countries in order to obtain a clearer idea of what further work is needed. Decisions could then be made on steps to ensure effective implementation such as

"Public disclosure of monitoring reports, identifying deficiencies in implementing UNCAC provisions, provides the best assurance that such deficiencies will be corrected."

preparation of guidance documents and model laws, convening of regional workshops, and provision of technical assistance.

- *Self-evaluation:* Governments should respond to a questionnaire, prepared by the Secretariat, covering status of implementation, obstacles to implementation, actions required to overcome obstacles, need for technical assistance, and priorities for future progress.

- *Review of responses:* Government responses should be reviewed by the Secretariat, which could also use expert reviews, peer reviews and regional workshops.

- *Report to Conference of States Parties:* The Secretariat should prepare a report summarizing the country responses for the Conference of States Parties.

Subsequent phases

Monitoring in subsequent years should involve more intensive review of selected UNCAC provisions. The Secretariat should make recommendations to the Conference of States Parties of provisions to be monitored, taking into account the results of the survey of implementation as well as feasibility based upon available resources and ability to achieve timely results. In the early years, priority should probably be given to cross-border issues, particularly those requiring North-South participation, where UNCAC has the greatest comparative advantage over other conventions. These might include asset recovery, mutual legal assistance, and cross-border bribery and extortion. In future years, the full range of UNCAC provisions can be covered.

Monitoring methods

A variety of monitoring methods should be used, including questionnaires, expert reviews, peer reviews and country visits. Selection should be based on suitability of the particular method for the issue being reviewed.

Peer group reviews are particularly useful for programmes where consistent implementation by a group of countries is desirable, and where inaction by one country would influence the behaviour of other countries. An example would be enforcement of foreign bribery prohibitions. Peer groups should generally be organized on a regional basis. However, there may be occasions where it would be useful to form peer groups with diverse geographical participation. One model might be the selection method used for the World Cup Finals, where each group contains participants from different regions.

Need for transparency:
Role of NGOs, private sector and labour unions

Participation by NGOs, the private sector and labour unions is essential to ensure that the monitoring programmes obtain a balanced picture. Public disclosure of monitoring reports, identifying deficiencies in implementing UNCAC provisions, provides the best assurance that such deficiencies will be corrected.

Promoting consistent interpretation of UNCAC provisions

The monitoring process can play an important role in promoting consistent implementation and interpretation of UNCAC provisions. This could be done by publishing official commentaries on potentially ambiguous provisions. The monitoring process could also provide a forum for addressing concerns about Government actions that appear seriously inconsistent with the letter or the spirit of UNCAC.

Providing technical assistance

The successful implementation of UNCAC in developing countries will require capacity-building assistance. Unless there is reasonable assurance that technical assistance will be made available, some developing countries may be reluctant to participate in a monitoring process because it will identify deficiencies that they may be unable to correct. An important objective of the survey of implementa-

tion discussed above would be to obtain information on the need for technical assistance.

Discussions should be held promptly with leading donor agencies, including UNDP, the World Bank, the MDBs, and with major bilateral donors, to lay the basis for funding of technical assistance. Such funding could be provided through individual country-based programmes, regional programmes or global programmes.

The principal purpose of coupling monitoring and technical assistance is to enable developing countries to implement UNCAC and correct deficiencies identified by the monitoring process. Monitoring reviews can provide independent validation of the need for technical assistance. This would be helpful for both the donor agency and the recipient country.

Coordinating UNCAC and other monitoring programmes

Concern that UNCAC monitoring would duplicate monitoring carried out by other anti-corruption conventions can be addressed through cooperation and collaboration among the different monitoring organizations. Anti-corruption conventions adopted before UNCAC were developed without consideration for the existence of other conventions. The adoption of UNCAC provides an opportunity to think through and rationalize the relationship among the different anti-corruption conventions.

Regional conventions and the OECD convention should be regarded as important building blocks of the system for combating corruption, with UNCAC providing a unifying worldwide framework. There is a clear incentive for cooperation among the organizations administering anti-corruption conventions because they all have serious resource constraints. Collaboration would enable each programme to accomplish more with its available resources.

Cooperation between UNCAC and other monitoring programmes can be considered in two stages.

Stage 1: Procedure for cooperation among monitoring programmes

Annual meetings of representatives of monitoring organizations should be held to discuss plans for reviews, including countries and issues to be reviewed, and to explore ways to share experience and avoid duplication. There should also be exchanges of information from prior reviews, including access to reports and other relevant data. A roster of experts should be established.

Stage 2: Procedure for coordination and collaboration

Coordination and collaboration in monitoring programmes would be very beneficial, with UNCAC providing the broadest possible scope to the process. Given limited resources for monitoring, only a few provisions can be monitored in any year. Thus monitoring organizations have to establish priorities, and it would be useful to take into account the priorities of the other programmes.

The following points are possible examples to illustrate how prioritization might work:

- *UNCAC:* Best forum for monitoring issues where worldwide cooperation, particularly North-South cooperation, is needed. Examples include mutual legal assistance, asset recovery, and cross-border bribery and extortion.

- *Regional conventions:* Cooperation and mutual support among countries with similar legal and economic systems. For example, monitoring of preventive measures might be started at the regional level because examples from within the region are likely to be considered more relevant.

- *OECD convention:* Specialized convention focusing on bribery of foreign public officials, with well-developed follow-up monitoring programme. UNODC should work with

OECD on techniques for UNCAC monitoring of foreign bribery prohibitions in non-OECD countries.

- *FATF:* UNODC should work with FATF on UNCAC monitoring of anti-money laundering provisions in countries that are not FATF members.

There should be flexibility in working out arrangements for collaboration and coordination, with varying arrangements for different countries and for different issues. Whenever possible, UNCAC monitoring should collaborate with existing regional anti-corruption organizations.

Conclusion:
Monitoring is crucial for success of UNCAC

If UNCAC is properly implemented, the result will be major reductions in corruption around the world, producing great benefits in terms of better democratic governance, accelerated international development, more efficient Government procurement, stronger competition, and alleviation of poverty around the world. Follow-up monitoring ensures that such implementation will take place and that the goals of UNCAC can be achieved. Without monitoring, all the efforts that have gone into the adoption and ratification of UNCAC will have been wasted, and UNCAC will become another example of the futility of high aspirations without effective follow-up.

1B

Corruption corroding the global economy and sustainable development: The United Nations Global Compact at risk

1B Corruption corroding the global economy and sustainable development: The United Nations Global Compact at risk

Errol Mendes* | *University of Ottawa*

"All members of the human family should have the right to be free from the evil of corruption."

Secretary-General Kofi Annan pointed out in 1999 that there is a need to "humanize" the global market though effective promotion of human rights, labour standards and the environment. These three areas, he said, were chosen as the prime concerns of the United Nations Global Compact, because they are the ones that, in the absence of positive action, could pose a threat to the open global market, and especially to the multilateral trade regime.[1] *These words now seem prophetic, in light of what happened at Seattle and Genoa, and the uncertain fate of the Doha Development Round of multilateral trade talks.*

The UN Global Compact and corruption

In the background waiting to undermine any progress through the United Nations Global Compact on human rights, labour standards and the protection of the environment lurks the evil of corruption. Awareness of this danger prompted the addition of a fourth area of concern—the 10th Principle on corruption—which followed the successful conclusion of the United Nations Convention against Corruption (UNCAC).

This article will highlight case studies illustrating the negative impact of corruption and demonstrating that progress in the four areas of concern may be retarded or even completely blocked by the corrupt actions of Governments, businesses and other sectors of civil society. The article will then canvass how the various stakeholders in the United Nations Global Compact can work together to combat such a threat to the goals of the United Nations Global Compact, the sustainable development goals of many countries, and even the goals of the United Nations Convention against Corruption.[2]

Corruption and human rights

Turning to the goals of the United Nations Global Compact on human rights and the impact of corruption in this area, the analysis is extremely disturbing.

One critical right is missing from the Universal Declaration of Human Rights[3] and the two International Covenants that together make up the International Bill of Rights,[4] namely the right of all members of the human family to be free from the evil of corruption. For hundreds of millions of people around the world, this evil is the chief cause of misery and degradation.

> At a recent conference on security and development organized by the International Peace Academy, one expert from Nigeria shocked the audience by declaring that many more people have died and will die from corruption than from HIV/AIDS.[5]

*Professor of International Law, University of Ottawa, Adviser, United Nations Global Compact, External Adviser on Corporate Integrity, Nexen Inc. Some material in this paper is drawn from Errol Mendes and Ozay Mehmet, ***Global Governance, Economy and Law, Waiting for Justice***, Routledge, New York and London, 2003.

Stories of corruption from around the world tell of the horrific deprivation of many of the rights laid out in the International Covenant on Economic, Social and Cultural Rights. These include the right to a fair and living wage under Article 7, the right to adequate food, clothing and housing under Article 11, the right to education, including access to secondary education under Article 13.[6]

Tragic tales of corrupt Government show that States often do the opposite of fulfilling their obligation under Article 2 of the Covenant to progressively realize the economic, social and cultural rights of their citizens.[7] This corruption, of course, also undermines the inspirational sources of these legal obligations in Articles 22 to 26 of the Universal Declaration of Human Rights.[8]

Corruption also frequently leads to horrible violations of the fundamental rights put forth in the International Covenant on Civil and Political Rights. These include the right to life in Article 6, the right to liberty and security of the person and a fair criminal process and trial in Articles 9 and 14, and the rights to freedom of thought, conscience, religion and expression in Articles 18 and 19.[9] A few examples taken from actual events will suffice:

> In an East Asian country, a businessman was having a commercial dispute with the general manager of another trading company who had a friendship with a group of local judges. The judges manufactured a case against the businessman, fabricated a set of files and had him arrested. After six months of illegal detention, they ordered his release, but only after his family and associates had paid the equivalent of a US$29,000 bribe. The judges split most of bribe among themselves, but left a little for their friend, the general manager. [10]

> In Russia, Galina Starovoitonova was a fearless campaigner against the exploding crime, bribery and corruption in her country. Starovoitonova was a 52 year-old independent Member of Parliament and one of the most respected and loved of the small number of democratic reformers who rose to fame during the final years of the Soviet Union. In 1997, she exposed corruption in the Russian Parliament, showing how members of the legislature were making deals with organized crime, even appointing them as parliamentary assistants to exempt them from traffic laws and to obtain other perks. She also threatened to expose corruption at the highest levels of the St. Petersburg municipal politics. In November of 1998, two people shot her at close range in the stairwell of her St. Petersburg apartment building. They were such confident contract killers that they left their guns behind and did not bother to masquerade as thieves by stealing anything from their victim. One of her supporters, Vladimir Ryxhkov, a deputy chairman of the lower house of the Russian Parliament at the time, said that such murderers were almost never found and that the State in its present shape, could not protect the most important thing a person has, namely his life and security.[11]

The cost of corruption

IMF studies have revealed that countries rife with corruption have less of their GDP going into areas critical to development, such as education, and have lower growth rates. [12]

Some experts argue that corruption acts as a tax on foreign direct investment. Shang-Jin Wei, an economist at Harvard University, has suggested that an increase in the corruption level from that of Singapore to that of Mexico is equivalent to raising the tax rate by over 20 percentage points.[13]

"The effect of corrupt activities by foreign and domestic business in the developing world is particularly devastating."

The International Institute for Strategic Studies, using World Bank data, has suggested that if only 5 per cent of the value of all direct foreign investment and imports goes into countries with extensive corruption, the yearly figure involved in corruption business practices would be around US$80 billion. The Institute also asserts that the Philippines lost some 20 per cent of its internal revenues through corruption in the 1970s, while Nigeria and Zaire (now the Democratic Republic of Congo) lost 10 per cent and 20 per cent respectively in the same period.[14]

Writer Sue Hawley, citing OECD sources, claims that in 2000 bribes by Western businesses were conservatively estimated to run to US$80 billion a year. This, Hawley asserts, is the amount that the United Nations believes is needed to alleviate global poverty.[15] She also cites a 1999 US Commerce Department report that in the preceding five years, bribery was believed to be a factor in 294 commercial contracts worth US$145 billion.[16]

More recent estimates by World Bank official Daniel Kaufman estimated that corrupt business practices worldwide could reach the US$1 trillion mark in terms of the impact on the global economy.[17]

The effect of corrupt activities by foreign and domestic business in the developing world is particularly devastating. Hawley succinctly puts it in the following words:

> *They undermine development and exacerbate inequality and poverty. They disadvantage smaller domestic firms. They transfer money that could be put towards poverty eradication into the hands of the rich. They distort decision-making in favour of projects that benefit the few rather than the many. They also increase debt; benefit the company, not the country; bypass local democratic processes; damage the environment; circumvent legislation; and promote weapons sales.* [18]

As this author has pointed out elsewhere, free markets may be the fuel that can stoke economic development around the world, but often overlooked is the "oxygen" that is needed to keep the fire burning. That oxygen is an environment where anti-corruption systems, the rule of law, accountability of the public sector and social stability enable sustainable business to survive.[19]

Corruption and labour standards

Corruption in labour standards takes the form of rent-seeking, which generates personal monetary gain for the ruling elite in many countries in the South. These ruling elite are decision makers in Government and business circles. This is especially the case in the Asian Pacific, the Americas and Africa. Often rent-seeking will take the form of rationing licences to the highest bidder to supplement meagre salaries or to accumulate vast fortunes, which are then safeguarded abroad.

> For example, during the regime of President Suharto in Indonesia, both domestic and foreign investment was controlled by gate-keepers in the public service who sold investment and manufacturing licenses to willing foreign investors.[20] These investors then bribed Indonesian officials in order to get fiscal concessions, such as tax exemptions and duty-free imports of machinery, free land and, above all, cheap labour without safeguards under labour laws and social security legislation.

In this type of institutionalized corruption, the ruling elite and both domestic and foreign investors benefit, while workers face gross violations of even domestically legislated labour standards. Clearly because the elite have a personal stake in labour policies and practices that exploit and subordinate workers, there is a vicious circle that could spiral downwards as competitive markets demand ever cheaper forms of labour.

"The corruption that encourages unfair and illegal labour practices potentially threatens the global economy."

The downward spiral of corrupt rent-seeking extends to trafficking of cheap labour, whereby corrupt politicians are paid off to turn a blind eye while vulnerable illegal migrants are forced to work in inhuman conditions, sometimes unpaid, to pay off the snakeheads who arrange for their illegal migration.

During the Asian financial crisis, these workers were the first to lose their precarious livelihoods. Even after the end of the crisis, in at least one South-East Asian country, large numbers of illegal workers were rounded up by the police and deported. This resulted in rioting, violence and allegations of severe mistreatment.[21]

These practices could become especially prevalent in Export Processing Zones (EPZs) which are rapidly increasing in number. Many EPZs are characterized by unfair or illegal labour practices supported by a corrupt bureaucracy that ignores the violation of social security laws and any rights to collective bargaining or freedom of association. In EPZs, a typical form of unfair labour practice involves procuring workers through labour agents under lucrative contracts that exempt employers from responsibility for the workers. These unfair practices have a particularly negative effect on women, who make up more than 70 per cent of the workforce in EPZs around the world. While corrupt officials look the other way or even actively condone such practices, female workers in EPZs are forced to undergo virginity tests and are fired if they get married or become pregnant.[22] It must be emphasized however, that not all EPZs involve exploitation of workers backed by a corrupt ruling elite. In Malaysia, working conditions at the larger EPZs tend to be superior when compared to local enterprises.[23]

In many developing countries, due to corruption in the public and private sector, the existence of child labour laws may mitigate the conditions of child labour but does not reduce or eliminate it.

For example, in India, the Factories Act and the Minimum Wages Act strictly regulate the use of child labour in factories and industrial enterprises. However, employers evade their statutory obligations by contracting work out to so-called master craftsmen who employ children within their homes without fear of prosecution.[24]

These forms of subcontracting enable employers to falsify the size of their workplace and evade minimum labour standards, while labour inspectors who are aware of these practices look the other way because they depend on bribes to supplement their meager incomes. In addition, Governments are reluctant to enforce child labour laws because of political pressure and rents from employers and the attraction of foreign exchange earned by the export industries employing child labour.[25]

Over and above these practices, there are serious infractions of human dignity flowing from unfair labour policies. These implications give rise to arguments such as "social dumping" in international trade even by the leading economic and industrial powers in the world, such as the United States, setting the stage for confrontation between North and South in multilateral trade negotiations. Thus the corruption that encourages unfair and illegal labour practices potentially threatens the global economy.

Corruption and environmental protection

"There are huge rents to be earned from activities such as logging in tropical rain forests, where permits can be obtained corruptly or where inspectors can be bribed. The environmental costs of corruption may take the form of ground water and air pollution, soil erosion, or climate change, and can be global and inter-generational in their reach."

Source: *Helping Countries Combat Corruption; The Role of the World Bank,* 1997. Washington, D.C.: World Bank.

"There are countless instances of corruption in the privatization of public services."

"The nation's public property invaded and used for private interests; beach areas and ecological reserves illegally exploited by former and current public servants as well as businessmen and foreigners; environmental impact certificates and forest, fishing, and hunting permits granted on a discretionary basis; preferential treatment given to companies responsible for polluting; distribution of water for political purposes; punitive actions not carried out—these are some examples from an inventory of anomalies discovered so far by the Department of the Environment and Natural Resources (Semarnat) under the new administration of President Vicente Fox."

Source: October 2001 issue of World Press Review 1997. Washington, D.C.: World Bank.

Corruption has the potential to inflict serious damage on the majority of the earth's inhabitants through its impact on the environment, from the ecosystems of rainforests to the urban environments around the world.[26]

There is increasing evidence that corruption is the unseen cause of much of the deforestation and loss of biodiversity in many regions of the world, through both legal concessions given to cronies of the ruling elite and illegal logging. The unholy alliance between the elite and corrupt domestic or foreign corporations also undermines inspection policies and leads to rigged or special taxation regimes and environmental impact assessment processes, making a mockery of sustainable forest and biodiversity management practices.

The same framework of corruption can be found in many of the extractive industry sectors with similar impacts on local ecosystems and biodiversity.[27]

The deadly cancer of corruption is also eating away at environmental systems in the urban environment, which is dramatically expanding in almost every country. Within this century, the majority of the world's population will live in mega cities around the world. Transparency International (TI) claims that there are countless instances of corruption in the privatization of public services, such as transportation, utilities and other urban infrastructure, especially in countries in transition. Sound environmental management systems are invariably abandoned as urban Governments lack the political will and resources to properly police the privatized services. As a consequence, it is often the poorest urban residents who suffer the direst consequences of air and water pollution, health impacts and other forms of environmental degradation.[28]

Conclusion

The deadly disease of corruption and the lack of transparency affect all the areas covered by the other nine principles of the United Nations Global Compact.

The United Nations Convention against Corruption is the first major multilateral anti-corruption agreement that targets both the supply side and the demand side of corruption. The Convention urges cooperation between Governments, the private sector and civil society organizations to radically excise corruption. The United Nations Global Compact provides one of the most promising platforms for such cross-sectoral cooperation. Along with major business organizations such as the International Chamber of Commerce (ICC), TI already has a great deal of expertise in developing such cross-sectoral initiatives. Some of the most promising models for such cooperation are the integrity pacts that TI has pioneered within national, sectoral or functional frameworks. The goal of these pacts is to reduce and eliminate misconduct and corrupt practices through either legally binding and/or externally monitored agreements between Government agencies and the private sector who wish to bid on public sector procurement contracts or obtain Government benefits. These pacts, which could draw on the results of the dialogues and learning forums of the United Nations Global Compact to develop effective strategies, are designed not only for developing countries plagued with corruption,

but also for the enhancement of accountability and transparency in the most advanced developed countries.

In addition to annual progress reports, corporations that have endorsed the United Nations Global Compact should include reports on progress in the battle against corruption "within the appropriate sphere of influence." In this way, the Compact could be an important part of the implementation of both the letter and the spirit of the United Nations Convention against Corruption within a voluntary and peer-reviewed framework.

The fundamental value added of the United Nations Global Compact to the United Nations Convention against Corruption is to convince all well-intentioned organizations and individuals that it is their duty not only to participate in the battle against corruption but to show progress in doing so. There is a depth of wisdom in the saying that all it takes for evil to triumph is for a few good individuals to do nothing.

Endnotes

1 For the full text of the 1999 Speech in which the Secretary-General gave the rationale for the United Nations Global Compact at the World Economic Forum in Davos, see UN Press Release SG/SM/6881

2 The Convention was adopted by the UN General Assembly by resolution 58/4 of 31 October 2003. There are presently 126 parties, and the Convention is one short of the 30 ratifications to go into force. See the text of the Convention at the following url: **http://www.unodc.org/unodc/en/crime_convention_corruption.html (accessed 29 August 2005)**

3 The Universal Declaration of Human Rights was adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. The full text can be located at the UN website at the following url: **http://www.un.org/Overview/rights.html** (accessed 29 August 2005)

4 The two covenants are the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. The former Covenant was adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976. The latter covenant was also adopted by the General Assembly on 16 December 1966 but entered into force on 3 January 1976.

5 Statement by Mr. Kayode Fayemi, Director, Centre for Development and Democracy, Nigeria at the International Peace Academy Conference on Security And Development: Assessing International Policy and Practice since the 1990s, 5 December 2003, New York.

6 For detailed discussion of the International Covenant on Economic, Social and Cultural Rights, see Steiner and Alston, *International Human Rights in Context*, 2nd ed., Oxford University Press, 2000, pp. 136-322, pp. 592-778; Meron, and *Human Rights law making in the United Nations. A critique of instruments and process.* Clarendon Press, Oxford, U.K., 1986.

7 Article 2 (1) states: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including the adoption of legislative measures."

8 For a detailed discussion of the Universal Declaration of Human Rights, its content and its evolution, see Alfredsson and Asbjorn, *The Universal Declaration of Human Rights: a common standard of achievement,* Martinus Niijhf Publishers, The Hague, London and Boston, 1999.

9 For detailed discussion of the International Covenant on Civil and Political Rights, see Henkin (ed), *The International Bill of Rights: The Covenant on Civil and Political Rights*, Columbian University Press, 1981; Steiner and Alston, supra, endnote 3 at pp. 592-778.

10 *Far Eastern Economic Review*, 20 August 1998, p.13.

11 For accounts of the assassination, see *The Globe and Mail*, 23 November 1998, A1, A12.

12 `"Why Worry about Corruption," Paulo Mauro, *IMF Economic Issues* No. 6, 1997. This paper can be accessed on the Internet at **http://imf.org/external/pubs/ft/issues6/** (accessed 8 August 2005)

13 See Shang-Jin Wei, "How Taxing Is Corruption in International Investment?" National Bureau of Economic Research, Working Paper No. W6030, May 1997.

14 `For further details on the study see the website of the Institute for Security Studies located at: http://www.iss.co.za/Pubs/Monographs/No40/Contents.html and http://www.iss.co.za/Pubs/Monographs/No65/Contents.html (accessed 8 August 2005)

15 See Sue Hawley, "Exporting Corruption: Privatization, Multinationals and Bribery" (2001), Cornerhouse. The full article is located at: http://www.thecornerhouse.org.uk/pdf/briefing/19bribe.pdf (accessed 8 August 2005)

16 Ibid.

17 See International Herald Tribune, 17 May 2005 (Business Section) located on the Internet at **http://www.iht.com/articles/2005/05/16/business/bribes.php** (accessed 8 August 2005)

18 Supra, note 15.

19 "Put Corruption on the Trade Agenda," Errol Mendes, *The Globe and Mail*, Report on Business, 11 June 1998.

20 The full case study of Indonesian rent-seeking is in Mehmet, "Rent-seeking and Gate-Keeping in Indonesia: A Cultural and Economic Analysis," Labour, Capital and Society 27 (1), April 1994.

21 See the briefing note from the UN High Commission on Refugees on the deportation of illegal migrants from Malaysia located at the following url: **http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=422454fb16&page=news** (accessed 29 August 2005). For further details on allegations of mistreatment of such workers since 2002, see the BBC News website at the following url **http://news.bbc.co.uk/2/hi/asia-pacific/2163440.stm** (accessed 29 August 2005)

22 October 2001 issue of World Press Review World Bank, Involving workers in East Asia's Growth, (1995) (Washington, D.C.: World Bank).

23 See Sivalingam, G., (1994), "The Economics and Social impact of EPZs; The Case of Malaysia", Working Paper No. 66, Geneva, ILO.

24 See Mehmet, Mendes & Sinding, *Towards a Fair Global Labour Market, Avoiding the New Slave Trade*, (1999) (New York and London: Rutledge) at p.52.

25 Ibid.

26 See World Bank. *Helping Countries Combat Corruption. The Role of the World Bank.* (1997) (Washington, D.C.: World Bank).

27 See Robbins, P., "The Rotten Institution: Corruption in Natural Resource Management," *Political Geography,* vol. 19, no. 4 (March 2000), pp. 432-443. World Resource Institute, (2003) Mining and Critical Ecosystems: Mapping the Risks; Human Rights Watch, The Price of Oil, (1999) (New York: Human Rights Watch).

28 See LIPPE, Michael, *Corruption and Environment at the Local Level*, TI Working Paper, Berlin: Transparency International, 1999.

1C

Corruption, economic development and governance: Private sector perspectives from developing countries

1C Corruption, economic development, and governance: Private sector perspectives from developing countries

John Sullivan* | *Center for International Private Enterprise*

"Although it is important to develop legal codes to combat bribery, it must be recognized that it is just as important to address the enabling environment issue."

Widespread and persistent corruption remains one of the leading problems for business, Governments and citizens worldwide. Increasingly, efforts to combat corruption are no longer just a prerogative of NGOs and civil society organizations: Businesses are also mounting sustained efforts to address both the supply and the demand sides of corruption. The increasing costs of corruption for business in countries worldwide are driving the private sector involvement in anti-corruption initiatives. For example, CIPE's partner INDEM has estimated that businesses in Russia pay over US$300 billion in bribes each year. A recent survey of the Iraqi business community, conducted by CIPE and Zogby International, revealed that corruption adds more than 40 per cent to the costs of doing business for 38 per cent of companies.

The addition of an anti-corruption principle to the United Nations Global Compact illustrates the increasing importance of the private sector in the global fight against corruption. "Companies are waking up to the need to fight corruption," said Transparency International Chairman Peter Eigen, when the addition of the new principle was announced in June 2004. The event signified that sustainability, business leadership and good governance are becoming the defining elements of the private sector's internal safeguards against corruption. The United Nations Convention against Corruption, which stresses the need to reform public institutions and lays out a framework for private-public cooperation, is another tool in fighting corruption.

These two United Nations initiatives demonstrate that if challenges of corruption are to be met with resolve, there has to be a sustained multi-dimensional effort. Although it is important to develop legal codes to combat bribery, it must be recognized that it is just as important to address the enabling environment issues. In that sense, efforts to establish the rule of law, strengthen the protection of private property rights and improve the quality of regulations become crucial in anti-corruption reform. New institutional economics provides us with a set of tools that can help Governments, the business community and society address the root sources of corruption. This paper highlights several approaches.

In many cases, measures to fight corruption can be created as part of the institutional development of

*Executive Director of the Center for International Private Enterprise (CIPE), an affiliate of the U.S. Chamber of Commerce

"Corruption is an institutional problem, and the institutions that allow for sustainability of corruption should be reformed."

countries—establishing the incentive structures that reward honesty and transparency and punish bribery and abuse of public office. Despite the continued pervasiveness of corruption, decades of reforms and the success of countries in combating corruption cannot be ignored. As corruption remains on the top of the list of issues of concern for business both internationally and locally, the emphasis should be put on continuing second-generation reforms in countries where anti-corruption efforts have succeeded and applying the lessons learned in countries where anti-corruption efforts have failed to strengthen institutions that make corruption unsustainable.

Business principles also play an integral role in anti-corruption initiatives. While this article focuses on business-Government relations in addressing corruption, the importance of internal company controls against bribery can't be underestimated. One example of such a control mechanism is the Business Principles for Countering Bribery (BPCB) developed by Transparency International (TI). Equally important are procurement reforms and other transparency measures to combat corruption. Probidad, a programme implemented by CIPE's partner, the Colombian Confederation of Chambers of Commerce (Confecámaras), is illustrative in this sense: it brings together private companies and local municipalities to create a more transparent process of awarding public works contracts.

In some countries where— due to the closed nature of their political and economic environments—corruption remains institutionalized and off-limits to public scrutiny, initiatives of the private sector and civil society, as well as international pressure and increased competitiveness in the search for foreign capital, play a key role in reducing opportunities for corruption and paving the way to economic growth. In such environments, where the political will for anti-corruption initiatives is lacking, introducing measures that put forth the institutional solutions to corruption on both sides of the equation should be a priority for the business community.

NGOs and civil society organizations alone can't reduce corruption. Business participation is the key to success. The stakes for the private sector are high: if businesses choose to remain on the sidelines and continue to participate in corruption, they will not be able to gain access to foreign and domestic investments. Moreover, a lack of competitiveness associated with corruption can leave businesses unable to survive in a highly demanding global economy. Experience shows that business participation in anti-bribery initiatives—effective and consistent advocacy efforts on the part of associations and chambers of commerce—can lower corruption levels and allow more efficient markets and Governments to arise. Increasingly, both local and international business communities refuse to accept the uncertainty that comes with extortion, bribery and lack of fairness.

Combating corruption should be thought of as more than simply weeding out crooked Government officials. Such an approach has been implemented in many countries and has proven to be unsuccessful in reducing the extent of corruption. Corruption is a symptom of underlying problems, not the problem itself. Therefore, the trends that sustain it should be addressed. These problems include opaque regulations, weak enforcement mechanisms, barriers to business, inefficient Government agencies, absence of a public dialogue on corruption, excessive discretionary powers in the hands of public officials, and a lack of checks and balances. Simply, corruption is an institutional problem, and the institutions that allow for sustainability of corruption should be reformed.

As acts of weeding out single corrupt officials are coming to be viewed as publicity stunts and an institutional approach to combating corruption is gaining momentum, the next decade of anti-corruption reforms in developing countries will place an amplified emphasis on more effective law enforcement and a strong judiciary. Anti-corruption reforms should move beyond advocacy and policymaking, as proper and fair implementation of laws and regulations requires increased attention. It is a reality in too many countries that policy intentions differ from policy outcomes, and the seemingly effective measures to reduce corruption fail. This policy gap should be addressed if corruption is to be reduced.

"NGOs and civil society organizations alone can't reduce corruption. Business participation is the key to success."

Approaches that work

CIPE partners have implemented dozens of successful anti-corruption initiatives in many countries around the world. Although they work in different political, economic and social environments, their successes share the same basic principles and approaches largely based on private sector advocacy to reform inefficient institutions that breed corruption. The process involves the private sector taking a leadership role and building awareness of the need for reform, identifying the root causes of corruption, developing solutions, and working with policymakers, business partners and other civil society groups to put an end to bribery, extortion and facilitation payments.

In the early stages of anti-corruption initiatives, it is important to break the taboo about discussing corruption. While discussion of corruption is increasing in many developing countries and media coverage of it is more pervasive, there are countries where the topic is still off-limits due to its political sensitivity and social acceptance. It is also important to dispel the myths that sustain corruption, such as the myth that corruption is inseparable from traditions and culture in certain countries.

Here lies one of the problems with combating corruption—corruption itself becomes widely accepted and perceived as a normal part of daily life. In such cases, sentiments such as "it has always been done this way," "nothing can be done about it," or "it is too sensitive an issue to address because everyone is doing it" are common. Many small entrepreneurs are used to it and have developed mechanisms to keep corruption manageable on a daily basis. It is important, therefore, to demonstrate to the public, the business community and the Government that corruption is not permanent and inevitable—that it can and should be dealt with.

Many countries face a lack of political will to combat corruption. Often, grandiose statements by high-level public officials about the importance of anti-corruption measures do not translate into commitment on the local level to tackle the institutional problems that sustain corruption. This is not surprising, since local officials are often major beneficiaries of corruption, and in a broken system they have few incentives to eliminate this source of personal gain. This lack of political will discourages the private sector and regular citizens, as it seems impossible to implement anti-corruption initiatives in environments where political leaders block such initiatives and weak democratic institutions do not allow citizens to hold their leaders accountable for their actions. Yet an absence of political will does not mean that political will cannot be created.

There are several ways in which political will to combat corruption can be fostered, and the private sector and NGOs play a key role in this process. Globalization has emerged as one of the solutions. As international trade becomes more widespread and the process of globalization affects businesses of all sizes, corruption makes business uncompetitive and corrupt countries end up on investor "blacklists." This means that Governments face the prospect of an uncompetitive economy, which translates into political instability through lower Government revenues and an inability to provide social services to the population. From this perspective, it is becoming harder for politicians to ignore corruption.

On the other side, the problem of political will can be approached from the grassroots level, where private sector representative organizations such as chambers of commerce and business associations can not only approach the Government about reform, but also engage the Government in a dialogue with the business community. Increasingly, corruption is one of the top issues in the electoral process, as Government officials cannot ignore constituents' interest in eradicating bribery and extortion. Private sector can find public officials who are committed to eradicating corruption and use them as focal points to change attitudes within Government agencies.

Revealing that corruption is a serious threat to economic development is not nearly enough. The next step is to identify the root sources of corruption and demonstrate how corruption occurs through a basic audit of countries' institutional and administrative resources. The pattern leading up to corruption is similar in many countries—it is often a combination of obscure and opaque

"It is important to demonstrate that corruption is not permanent and inevitable."

laws and regulations, complex tax codes, overregulation of economic activities, overstaffing of Government agencies and lack of technological innovation within them, absence of an independent audit, weak corporate environment, shortage of accountability mechanisms, and lack of transparency in policy making and in relationships between Government and business.

After the root sources of corruption are identified, the next step is mobilizing key anti-corruption constituencies and building anti-corruption coalitions. This is one of the keys to the development of successful anti-corruption strategies, because lack of communication and cooperation among members of the private sector can weaken their ability to successfully develop and implement anti-corruption initiatives, as well as advocate for reform. An important part of this stage is promoting a healthy dialogue between the private sector and Government to ensure that policies designed to curb corruption address the real needs of the business community. The private sector and independent think tanks play a crucial role in this process by providing information to Government officials in a timely manner. Mobilizing constituencies and building coalitions leads to a successful development of action plans with specific anti-corruption policies. Yet, in many countries, most problems occur when it's time to implement and enforce those policies. Anti-corruption policies will often stagnate on paper while corruption persists on a daily basis. Effective oversight of implementation and evaluation of programs is crucial.

Some examples

Many measures of corruption and governance are not specific—they uncover correlations between the rule of law and corruption levels but fail to indicate what exactly needs to be done to reduce corruption. Similarly, studies showing that civil servants are corrupt are a useful starting point but they often fail to indicate the reasons for this corruption.

Not all countries are the same—raising the question of whether a "one size fits all" approach is viable. Although corruption varies in scope and definition in different countries, in its essence it requires the same cure—reforming institutions to make them more efficient. The challenge is identifying which institutions are key to the problem and prioritizing the reform process among them. For example, while some countries may require a complete regulatory overhaul, others may have the right rules in place but lack sufficient enforcement of those regulations.

Specific measures to curb corruption should address both the private and the public sectors—the demand and the supply sides—equally. The private sector does not always recognize that it is in fact a source of corruption—after all, in many cases bribes and kickbacks have to be offered before they are accepted. Although it is true that the private sector is often a victim of corrupt Government officials who use their power to extort bribes, especially from smaller entrepreneurs, the private sector often facilitates corruption—such as when businessmen try to gain preferential Government treatment or win over their competitors. Measures that address the supply side of corruption aim at limiting the ability of the private sector to willingly engage in corruption. Efforts on the demand side of corruption, on the other hand, aim at limiting the ability of public sector employees to extort bribes and use their power of public office for personal benefit. In the end, measures on both sides aim at correcting the institutional problems, i.e. taking away the incentives and opportunities to be corrupt. It is important to look beyond simply weeding out corrupt individuals and focus on reforming systems that reward corrupt behaviour.

Institute sound corporate governance systems

Although corruption is bad for business, individual companies that engage in corruption receive a short-term advantage. It is important to set up a system that makes it hard for companies to engage in corruption, even if it seems desirable.

Corporate governance is perhaps the single most effective tool to limit the ability of private sector companies to participate in corruption. Good corporate governance establishes a system where companies are unable to provide bribes covertly and are easily held accountable for wrongdoing. Corporate governance ensures that man-

"The pattern leading up to corruption is similar in many countries."

agers act in the interest of a company, board members exercise good judgement, investors receive timely and relevant information and decision-making is not done behind closed doors. By making companies transparent and by holding decision makers accountable for their actions, corporate governance makes it hard for companies to provide bribes or other company resources to Government officials in exchange for services.

Implement codes of conduct for intermediaries

As multinational companies (MNCs) are increasingly dependent on intermediaries to open up markets and enable them to function, those same intermediaries increasingly abuse this dependency. Such abuse is especially easy in local settings where companies require assistance with such important daily issues as taxes, customs, shipping, contract administration and payment collection. But the integrity of MNCs is threatened when their agents are themselves dishonest and corrupt; therefore corporations are faced with the need to monitor agents' performance and ensure their integrity. Since such monitoring can get expensive, the solution may be a system of incentives to discourage corruption from entering the system via local markets. The short-term benefit of corruption is in this way offset by the possibility that corrupt agents will be excluded altogether.

Such is the idea behind Transparent Agents and Contracting Entities (TRACE), an international non-profit association that conducts corruption reviews of its members and posts ratings thereof, and runs compliance training and anti-corruption workshops; its members are commercial intermediaries such as sales agents, distributors and suppliers. TRACE recognized the willingness of companies to be corruption-free at every level of their supply chain and set up a system that enables it to combat corruption by creating an honest international business environment, where the privilege of doing business is reserved for companies that do not engage in corruption. TRACE maintains a database of "clean" companies and provides its members with a background check on honest agents throughout the world.

Streamline legal and regulatory codes

As the primary source of corruption is inefficient regulations, efforts to simplify legal and regulatory environments should form the core of anti-corruption initiatives. The purpose of such efforts is to take away opportunities for corruption, such as when public officials use selective judgement in applying laws or businesses try to bribe public officials to avoid unnecessary and costly regulatory hurdles.

Case example: Ecuador

The efforts of the National Association of Entrepreneurs (ANDE), a voluntary private business association in Ecuador, illustrate this approach to reducing corruption. To address widespread corruption and the need for legal reform in Ecuador, ANDE identified and proposed the elimination of duplicative and conflicting commercial laws. Importantly, ANDE's focus was not to blame past corruption on any one particular group, as is often done, but rather to initiate reforms that would change the direction of business and institute clean practices.

To identify the roots of corruption, ANDE reviewed the country's commercial laws, particularly those concerning production, foreign trade, the establishment of official prices in the private sector and technology transfers. ANDE's studies showed that since the founding of Republic of Ecuador more than 150 years ago, some 92,250 legal norms have been created, of which 52,774 were in force in 1997. The sheer number of overlapping, unclear and contradictory laws had created an environment of legal chaos and had left the application and enforcement of laws to the discretion of bureaucrats. ANDE obtained the support of chambers of commerce, industry, agricultural entities, labour unions, ministries and NGOs and presented its legal reform proposals to the Government, which implemented 25 per cent of all proposed legislative changes in the first year alone.

The experience of ANDE and other think tanks and associations suggests that they play a key role in legal simplification. Governments are often compelled to make decisions and execute "top-down" reforms once problems get out of hand. Yet input from the private sector is key to the

"The private sector is key to the formulation of legal and regulatory reform."

formulation of legal and regulatory reform. The private sector knows first-hand the inconsistencies that hamper business growth and present opportunities for corruption for both business and Government officials. Such a grassroots approach to reform is more effective in reducing opportunities for corruption than a top-down method.

Lower barriers to starting and operating a formal business

Business registration procedures present a field of opportunities for corruption.

Case example: Peru

One of CIPE's first partners to research the negative effect of burdensome business registration procedures was Peru's Institute for Liberty and Democracy (ILD). In the early 1980s, Hernando de Soto, the head of ILD, decided to set up a small business and attempted to get it licensed. With the help of five university students who spent several hours a day winding their way through Peruvian bureaucracy, he discovered that to obtain a legal license to operate took 289 days and cost 31 times the average monthly minimum wage. Since then, a similar approach has been undertaken in many countries, and the result has always been the same: burdensome business registration facilitates corruption in two ways—directly, by forcing entrepreneurs to bribe Government officials to simplify the registration process, and indirectly, by forcing entrepreneurs into the informal sector, survival in which most often involves bribes.

As the issue of business registration procedures and their effect on corruption levels is explored, the problem evolves into one of transaction costs—constraints on business beyond business registration, such as labour laws and enforcement of contracts. Simply put, when the costs of complying with official regulations exceed the benefits, companies will seek a more "efficient" resolution of the problem, thus institutionalizing corruption.

Streamline business inspection procedures

One of the complications of the informal sector that also applies to the formal economy is that businesses are subject to frequent Government inspections. In many countries, the authority of the inspectors is so strong that they have the ability to shut down companies for a short period of time if they so much as suspect non-compliance with any one of many regulations, no matter how inconsequential. This forces business to give bribes, as being shut down even for a few days, especially for small entrepreneurs, can force companies out of business. Limiting the number of inspections and inspection agencies is also an important step in reducing corruption.

Case example: Russia

In Russia, for example, where inspections have become increasingly widespread in their scope and authority in recent years, anti-corruption efforts have yielded a regulation prohibiting Government inspectors from shutting down businesses for non-compliance with regulations; exceptions are made rarely.

Reform procurement policies

Corrupt procurement processes are a cost to business and society as firms with insider contacts remain in business and the most efficient firms almost always are pushed to the sidelines. To combat corruption, especially at the top echelons, it is important to establish sound procurement codes that require open bidding and tenders. At the core of such codes are efforts to eliminate the discretionary power of Government officials in conducting bidding procedures, open up the bidding process and make it public, and fully disclose procedures and requirements.

Case example: Brazil

In the mid-1990s, the Liberal Institute of Rio de Janeiro (ILRJ) led a project titled "Reducing Transaction Costs in Brazil." Through studies by its economists, ILRJ documented that the cumbersome bureaucracy and lack of transparency created high costs for business and lowered

"Anti-corruption initiatives should address the root sources of corruption – inefficient institutions."

benefits for consumers. To address the problem, ILRJ proposed several reforms, seven of which were adopted by policymakers. The policies included: better dissemination of bidding rules, reduction of the discretionary power of bureaucrats, better definitions of decision-making authority, more competition among contract bidders, broader criteria for evaluating proposals and waiving bidding requirements only in urgent cases. As a result of the ILRJ project, significant legislative changes in Brazil were passed to reduce transaction costs. Perhaps the most important was the passage of a law to reduce the ability of bidders to collude and fix prices in the public contracting process. On the local level, similar efforts can be very effective in reducing corruption and paving the way for fair and transparent market transactions.

Case example: Colombia

The Colombian Confederation of Chambers of Commerce (Confecámaras) in the late 1990s recognized that on paper Colombia had a sophisticated set of norms and instruments for detecting, controlling and punishing corrupt practices. However, these mechanisms were often not applied, partly because of fear of political backlash from entrenched, corrupt politicians. Confecámaras therefore attempted to put forth measures that would ensure application of anti-corruption initiatives on the supply-side of the equation—the private sector.

Confecámaras worked with local businesses to establish clear rules and codes of conduct in procurement processes and to demonstrate the benefits of compliance. With input from local business leaders, Confecámaras developed local ethical codes of conduct, to which over 1,000 businessmen voluntarily signed in the first year alone. To ensure transparency in public procurement, Confecámaras also proposed the development of integrity pacts. In the first year, a total of 12 integrity pacts were signed between local businesses and Governments, and the total value of the contracts that were signed under integrity pact requirements with the Manizales city mayor amounted to US$1,039,200.

Conclusion

Corruption is often viewed a social issue because definitions of corruption vary and what is perceived to be corruption in some countries could be a socially acceptable behaviour in others. Corruption is also frequently legitimized as a means of avoiding inefficient regulations and was even perceived as a contributor to economic growth in some countries, such as in Asia in the 1990s. But in reality, corruption creates inefficient and uncompetitive economic systems, imposes additional costs on business and threatens democratic institutions.

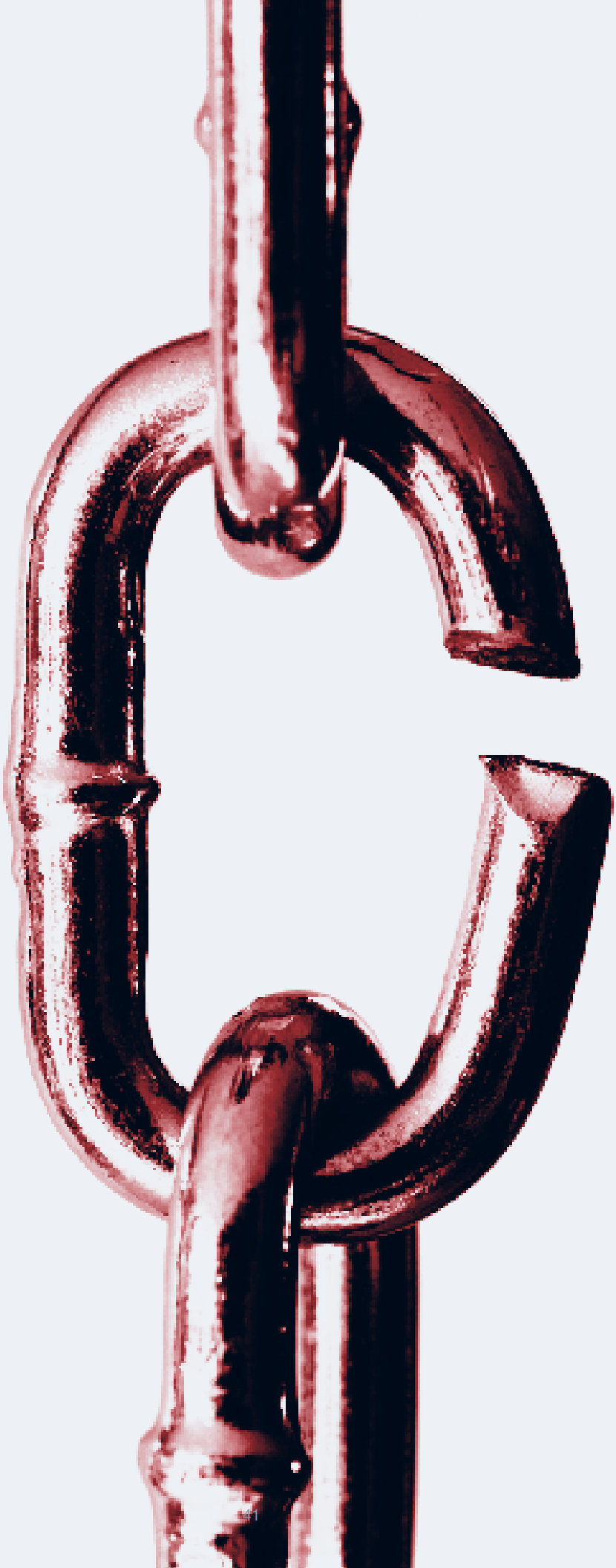
Corruption is not only a moral issue, it is also an economic one. Combating corruption, therefore, requires looking at the costs that it imposes on business, governments and society and instituting good governance mechanisms within both the public and the private sectors. Such mechanisms take away the opportunities for corruption and hold corrupt public officials and companies accountable for their actions.

As corruption is a problem of the private and public sectors, both sectors should implement anti-corruption measures. Simply blaming corruption on the other party, as is often done, does not solve the problem. Also, anti-corruption measures should not be focused on weeding out single corrupt individuals. Such measures merely deal with the symptoms of a larger problem. Instead, anti-corruption initiatives should address the root sources of corruption – inefficient institutions. Building a system of strong, balanced institutions reduces corruption by creating a set of reliable incentive structures, where compliance is not costly and corrupt behaviour is monitored and punished.

Initiatives to combat corruption should come from the private sector, as well as from Governments and civil society groups. Recognizing its role, the business community continues to mount successful efforts not only to reform external institutional structures, but also to build internal mechanisms to make corruption unsustainable within the private sector. The challenge in the coming years is to ensure that it is not only a handful of private sector organizations that actively participate in combating corruption. To reduce corruption, a widespread commitment by the private sector, regardless of size, industry and location is essential.

Chapter 2

Good practices and case stories



Anti-corruption: A business case?

François Vincke* | *International Chamber of Commerce Anti-Corruption Commission*

"Corruption undermines the very base of the free enterprise market."

Fighting corruption was, until recently, the monopoly of the police and judiciary bodies. Bribing or being bribed was considered just another crime, and the general populace were not supposed to have any involvement in the fight against it. To be recognized as a good citizen one needed simply to stay away from corrupt practices. Moreover, corruption as a topic was reserved for university professors in criminal law who lectured on it as they would on any crime—for instance, arson or embezzlement.

An active involvement for the enterprises?

When, in 1994, in my capacity as company lawyer, I was asked to chair a committee on extortion and bribery in international business transactions at the International Chamber of Commerce in Paris (ICC), I wondered why. Everybody knew that corruption of civil servants was forbidden and there was, I thought, no need to dwell on the matter. Since then, however, I have become aware that corruption is more than just another crime and that we need to talk about it in order to prevent it.

Now, within the last decade, corruption has become everybody's problem, as public international organizations, Governments, NGOs and individual citizens scramble to find a place in the (by now) crowded movement against corruption. There are so many different anti-bribery initiatives that one wonders what the latest one can contribute to the already large existing pack.

Is there a business case for an active anti-corruption attitude?

Despite this dramatic and global evolution of minds against corruption, there is still a question whether businesses, in their own capacity, have a unique contribution to make to this highly discussed struggle. Should business not leave the subject completely to specialized NGOs? What new elements could the business community contribute, without repeating what has already been said by others? And what reasons would compel the enterprises not only to submit to the provisions of the law, which they have to do in any case, but also to actively participate in anti-corruption efforts? In other words, is there a case for enterprises to enter the fray and engage actively in the combat against corruption?

ICC clearly took the option to become involved almost three decades ago. It was the first international organization to express in no uncertain terms its plain rejection of any form of extortion and bribery and to formulate a programme of action to combat corruption. This happened in 1977, immediately after the American Congress voted unanimously to pass the Foreign Corrupt Practices Act (FCPA). In fact,

*Member of the Brussels Bar; Willkie Farr & Gallagher LLP; Chairman International Chamber of Commerce (ICC) Anti-Corruption Commission

"A bribery deal puts shareholder money at risk without any certainty of obtaining something in exchange."

ICC, as the world business organization, went a few steps further than the American legislator with the FCPA, when it rejected any form of corruption, be it active or passive, national or international, private or public.

At this early stage, the original ICC committee on anti-corruption set a forthright and ambitious standard. The present commission continues to work with the same aim. It has a unique and specific input to make in the fight against corruption and will do so, together with other friendly organizations, whenever possible, or alone, if there is no other possibility. But let's not jump to conclusions and let's try, without at this stage paying attention to larger societal or moral interests, to analyse impartially what can motivate an enterprise to aim for anti-corruption behaviour, or, alternatively, not to.

We will have to look at the basic mechanics of bribery and see if they fit the needs and demands of the enterprises. Do bribery and business work harmoniously together? Is there a business case for corruption, or is there a business case for anti-corruption? To determine this, we will need to isolate, identify and analyse the delicate interface between business and corruption.

A bribe is often money badly spent

Does bribing achieve its goal?

The first reason for an entrepreneur to be concerned about bribing—which is rarely if ever mentioned—is that indulging in bribing is actually taking a "casino risk," as the briber never receives any kind of firm or reliable assurance that the advantage he intends to obtain—with money paid in advance to the bribee—will effectively be delivered.

This raises the question of the capacity and the connections of the bribee to manage the commitment he has taken on: Does he have the necessary network to acquire the desired advantage for the briber? It also raises the question of the bribee's motivation to obtain the promised result.

Moreover, the projected deal is criminal in nature; therefore, there will be no legal evidence of the result of the bribery contract. Without evidence, it will be almost impossible to obtain redress before any jurisdiction or arbitration panel. From a *risk assessment/risk management* point of view, a bribery deal can hardly be defended. The shareholder puts his money at risk without any certainty of obtaining something in exchange.

Compare this to the situation of competitors who form cartels. Promises are exchanged: they will raise prices, divide or exchange territories amongst themselves and rig bids, with no guarantee that their promises will materialize. Participants risk prosecution and heavy fines, but the results of anti-competitive attempts remain random, as they depend solely on the goodwill of participants who are not legally bound by their promises, and the deal, being illegal, is null and void.

The bribery market is opaque

It is difficult to ascertain the effectiveness of bribing; it is even harder to grasp what amount one is supposed to pay for obtaining an advantage. A businessman who resorts to corruption will never be sure that he is paying the "fair price" or the "market price." In other words, he can never be certain that the price he is ready to pay is equal to the value of the service he intends to buy.

The "bribery market" indeed is opaque. There is nothing like a reliable index, a transparent reference, objective quotations, price indications or a posted tariff allowing for a quantification of the bribery cost. Probably, some figures will be whispered between so-called specialists, but nobody ever knows if the figure suggested is a "normative price" or, on the contrary, an amount that is largely over-inflated.

A bribe can be any of several things: a lump sum paid as a success fee, a percentage of the business to be acquired or to be maintained, a monthly amount payable over the lifetime of the contract as a consultancy fee, an equity share in the company to be registered, a percentage share in the gross/net result of the operation or any other form of advantage, like for instance a scholarship or a support programme for a (family) foundation.

It is therefore difficult, not to say impossible, to determine if a deal, under the various forms mentioned, is cut at a bargain price or at a highly exaggerated level. From a *costing/purchasing/pricing policy* point of view, the giving, determining and measuring of a bribe is a headache. So, a briber is not sure about what he will get and remains in doubt about the adequacy of his payment. He never knows if he has been fooled into paying too much or if he made a mistake in not paying enough—a nasty situation from the point of view of the *allocation of corporate resources*.

Registering a bribe: An accountant's nightmare

Whether a payment is made directly by a corporation or through an intermediary, an entry must be made to reflect the transaction in the accounts of the local subsidiary or affiliate and also in the consolidated accounts of the mother company. How will a bribe be accounted for? No ready or adequate answer is available; actually the accountant, who has to make an entry in the books, will be faced with a dilemma. Indeed, under the legislation passed during the last decade and under generally accepted accounting practices, it has become impossible to identify a payment as a bribe, as this would be an admission of an offence. It has also become unacceptable to falsely identify the payment (as for instance "promotion expenses"). Falsified accounts lead to false financial reporting, which, if discovered, could destroy the company's reputation.

Wrong accounting, truncated entries, use of false documents, misinformation for the board of directors, the shareholders and the investors' public—all of that contributes to a heavy price to be paid by a company for a single, risky and shady bribing transaction.

"Hidden treasures in the islands"

Bribery money will often originate from "black money" circuits, money undeclared to the shareholders and not reported to the tax administration. It will in general come from hidden and faraway sources. Bribes are indeed often paid out of slush funds, from amounts hidden in off-the-books accounts, stowed away in anonymous and non-accessible entities, located in offshore centres or other "non-cooperative jurisdictions."

The executives in accounting, finance and investors' relations at the corporate headquarters will not necessarily have sufficient control over these non-consolidated, overseas affiliates, not to speak about the internal and external auditors of the company, who may even be ignorant of their existence. From a *control policy* point of view, this is a situation difficult to manage.

"Thou shalt not serve two masters"

When paid out, the hidden money becomes vagrant money. The intermediaries chosen to approach the official and set up the deal are often partial beneficiaries. They will invariably "kick back" part of the compensation they receive to certain executives or employees in the company, so as to implicate them in the bribery scheme.

While solidarity may develop between the various beneficiaries of bribes and kickbacks both inside and outside the corporate structure, conflicts of interest may build up between company employees on one side and the external beneficiaries of bribes and kickbacks on the other.

Good corporate governance postulates an unfailing accountability to the board of directors and to the shareholders, not to bribing third parties. On top of that, employees who are directed to pay out bribes may be tempted to blackmail their employer.

From a *human resources policy* point of view and from a *corporate governance* perspective, an uncomfortable situation arises for the employee, whose loyalty is divided between the employer, who pays a fixed salary, and the person who pays a large kickback which sometimes greatly exceeds the salary.

Corruption undermines the very base of the free enterprise market

By accepting or tolerating bribery (active or passive) in the enterprise, the very base of *free enterprise thinking* is undermined. Indeed, a liberal economy requires the exchange of supply and demand, conducted by economic

"Ultimately, all forms of corruption lead to misuse of corporate assets."

agents free of bribery and corruption in a transparent market. Contracts are drawn up based on free and independent decisions of both parties. Bribery corrupts what would otherwise be a clear agreement based on mutual consent and instead creates a complex arrangement clouded by deception. Free competition is gone, as dishonest economic agents do not fight with the legitimate and accepted weapons of pricing, quality, service, expertise, continuous research and development, but rather with the obscurity of bribes, trading on hidden influences.

A transaction that should have taken place only between a buyer and seller is now distorted by the disturbing appearance of the bribee (a local or foreign official), and the payer (an employee of the company or an intermediary chosen by it), as well as possible beneficiaries of kickbacks. What should have been a level playing field, with only a few legitimate players, has become a disorderly game with several intervening parties.

What about bribery in cases of extreme hardship?

Still, one may argue, there could be times that the corporation will require more extreme measures to save it from being destroyed by savage competition. If, for instance, an enterprise needs to obtain an order to escape bankruptcy and/or closure and to avoid having to lay off its employees, is bribery justified? In other words, is a company allowed to bribe in order to survive?

The French Supreme Court hovered for a long while between acceptance and rejection of this solution, deciding initially that the recourse to bribing could be excused in extreme cases. Subsequently the Supreme Court reversed its position, condemning any form of bribery as an abuse of corporate assets.

Admittedly, the temptation can be very big to resort to bribery to avoid a "bigger evil," such as closure and bankruptcy. However, in its medium and long-term interest an enterprise would be wise to avoid bribery altogether. Ultimately, all forms of corruption lead to misuse of corporate assets, even if the immediate purpose of the transaction is to save the enterprise.

A tentative conclusion

We have tried to present convincing elements that, even without taking into consideration moral and societal interests, show that the very mechanics of bribing cannot be reconciled with the efficient and effective operation of an enterprise in a liberal economy. Bribery undermines free enterprise. So, in conclusion, we claim that there is indeed a business case for anti-corruption, and we strongly advocate that free enterprise join the battle to eliminate corrupt practices within the private sector.

2A

Implementation of a corporate anti-corruption programme

2A.I Overview of corporate anti-corruption programmes

Susan Côté-Freeman* | *Transparency International*

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

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 programmes. 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

*Secretariat, Business Principles for Countering Bribery, Transparency International USA

"Companies must respond to the expectations of society and stakeholders."

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 10th 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 10th 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 during 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 collabouration 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

"The credibility of companies will depend on their effectiveness in improving company behaviour."

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 10th 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.

2A.II Case Story: Translating global values into local practice – Business integrity management in Novozymes

Michael H. Pedersen* | *Novozymes A/S*

A key challenge when devising business integrity measures is striking the delicate balance between two contrasting objectives: upholding international consistency on one side and adapting to and appreciating local cultural traditions on the other. This case represents an account of Novozymes' process of striking this balance by utilizing the United Nations Global Compact principle on anti-corruption as a reference framework for the company's business integrity measures.

Introduction

As is the case for many other companies, Novozymes is a part of numerous global value chains with customers, employees, suppliers and other business partners in many different countries, each having their own particular cultural and judicial perceptions of corruption. In the process of devising business integrity measures, this fact makes it particularly challenging to uphold international consistency without engaging in a crusade, while at the same time adapting to and appreciating local cultural traditions without being unprincipled.

Novozymes has found the United Nations Global Compact principle on anti-corruption a most useful reference framework for handling this challenge; first and foremost due to the universal authority and legitimacy that the principle holds by being derived from the United Nations Convention against Corruption, signed by the majority of the world's Governments; secondly due to the framework character of the principle, which provides room for local interpretation and clarification.

This case outlines how Novozymes has utilized the United Nations Global Compact principle on anti-corruption when devising business integrity principles and a business integrity management system. The case also gives a practice-oriented account of Novozymes' business drivers for going beyond law compliance. And last but not least, the case outlines Novozyme's process of establishing organizational consensus, ownership and awareness about the company's business integrity measures.

A brief introduction to Novozymes

Novozymes is the biotech-based world leader in enzymes and micro-organisms with an estimated global market share of 45 per cent (2005 figures). The company operates in the business-to-business market. It has a turnover of DKK 6,300 million and has an operating profit margin of 19.2 per cent (2005 figures). Novozymes' 600+ products play an important role in thousands of products, ranging from foods and textiles to cleaning and wastewater treatment. The company's products are manufactured in Europe, Asia, North America and Latin America. They are sold in 130 countries, the largest geographical markets being Europe, North America and Asia.

Novozymes became a signatory to the United Nations Global Compact in 2002. This commitment has been integrated into the company's vision and corporate quality management system, e.g. policies and management standards. In its vision, Novozymes states: "We imagine a future where the company's biological solutions create the necessary balance between better business, cleaner environment and better lives."

A Corporate Sustainability Development Strategy Group, which is comprised of functional and geographical vice-presidents from across Novozymes' organization, devises the company's corporate responsibility strategy and oversees the efforts to further integrate corporate responsibility into the way of doing business. On a daily basis, this work is coordinated by a corporate Sustainability Development Center.

*Senior Corporate Responsibility Advisor, Sustainability Development Center, Novozymes A/S

"Bribery and corruption are widely and increasingly criminalized and sanctioned in most national jurisdictions across the world."

Novozymes publishes an integrated online annual report which includes the United Nations Global Compact Communication on Progress. The company also accounts for social and environmental performance in its quarterly financial statements. Furthermore, Novozymes has a corporate responsibility bonus scheme, according to which executive management, vice-presidents and directors can obtain a bonus based on the company's ability to meet corporate responsibility performance and development targets as defined by the board.

At a corporate level, Novozymes is a member of World Business Council for Sustainable Development, CSR Europe and AccountAbility. In terms of business integrity, the company is a member of the United Nations Global Compact global working group on the 10th Principle. Novozymes also coordinates an anti-corruption network of Denmark-based companies. At the same time, the company strives to meet requests for sharing its experiences from devising business integrity measures.

Novozymes' business integrity measures

Novozymes' business integrity measures take the form of a management standard on business integrity that has been integrated into the company's corporate quality management system.

The management standard, which all employees must comply with as part of their employment terms, outlines six business integrity principles *(see figure on right)*.

Novozymes' business integrity principles apply to all employees in their dealings with external counterparts and take the form of framework principles with room for local clarification. The principles come with further guidance in the form of a document that outlines definitions and examples of potential improper actions.

To ensure the effectiveness of Novozymes' business integrity principles, the company's employees are not allowed to actively request any business partner or potential business partner to engage in actions that would contradict the principles. For the same reason, Novozymes' employees are required to make the company's business partners aware of its business integrity principles and to encourage them to adopt similar principles.

Novozymes' management standard on business integrity also outlines a business integrity management system. It is based on three pillars, providing employees with means of:

- Seeking guidance on business integrity;
- Anonymously raising concern about potential breaches of Novozymes' business integrity principles; and
- Reporting facilitations payments and excessive gifts given/received.

We don't do corruption
What does it actually mean?

Novozymes' business integrity principles outline the company's values of responsibility, accountability, openness and honesty:

Bribes: We do not give or accept bribes.

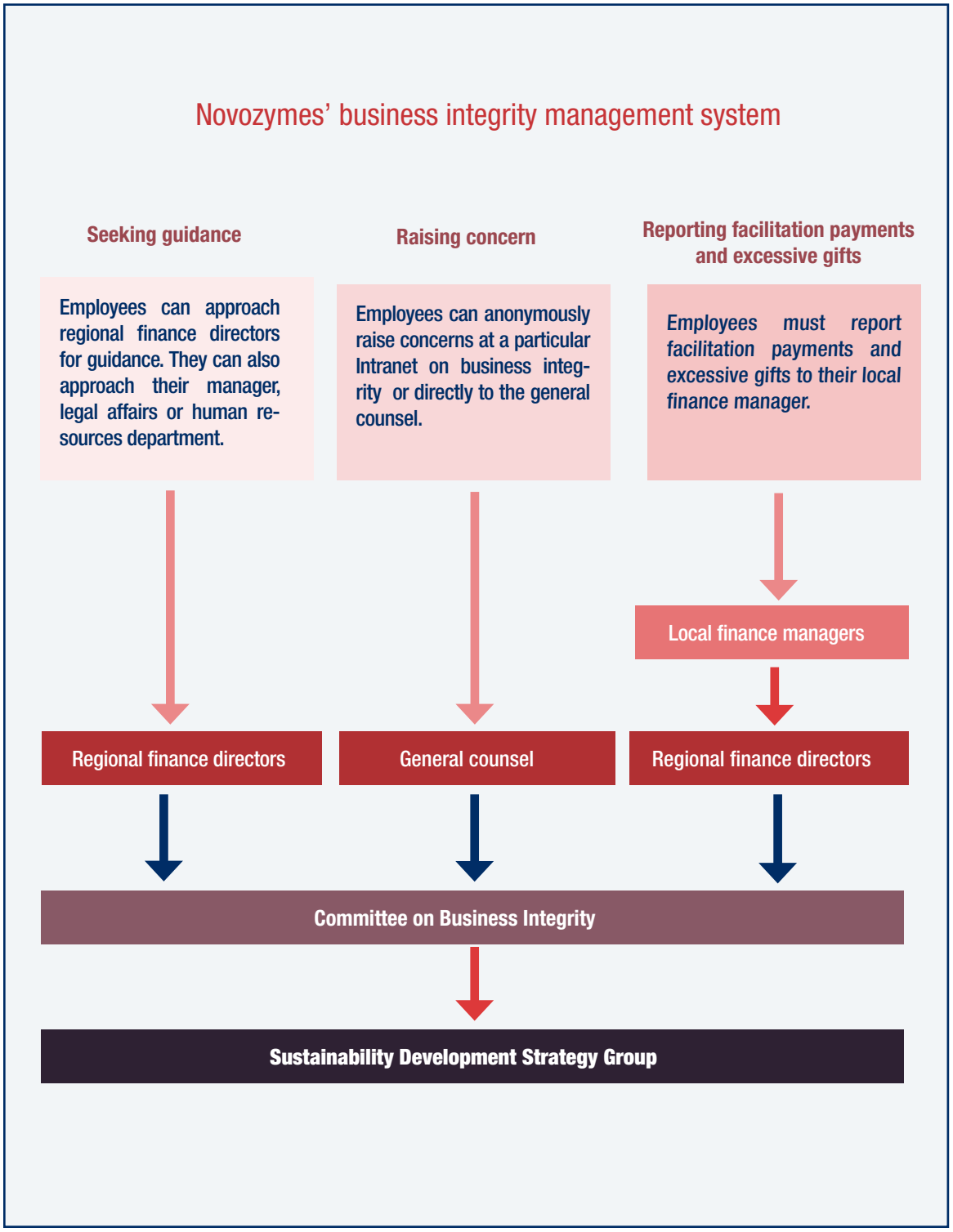
Facilitation payments: We pay only reluctantly to expedite public services.

Money laundering: We do not assist in laundering money from criminal activities.

Protection money: We do not pay criminals for protection.

Gifts: We do not give or receive big gifts.

Political and charitable contributions: We do not give money to political parties but sometimes we contribute to charities.


Novozymes' business integrity management system
Seeking guidance
Employees can approach regional finance directors for guidance. They can also approach their manager, legal affairs or human resources department.
Raising concern
Employees can anonymously raise concerns at a particular Intranet on business integrity or directly to the general counsel.
Reporting facilitation payments and excessive gifts
Employees must report facilitation payments and excessive gifts to their local finance manager.
Local finance managers
Regional finance directors
General counsel
Regional finance directors
Committee on Business Integrity
Sustainability Development Strategy Group

The three pillars of Novozymes' business integrity management system have been integrated into existing management systems to avoid creating new reporting entities. While the pillars of seeking guidance and reporting facilitation payments and excessive gifts are managed by Novozymes' local finance managers and regional finance directors, the pillar of raising concern is managed by the company's general counsel.

Accordingly, the only new organizational entity that has been established within Novozymes' business integrity management system is the Committee on Business Integrity (CBI). CBI is comprised of Novozymes' vice-president of finance, the vice-president of marketing and business development and the general counsel. Besides overseeing implementation, CBI handles concerns raised and assesses quarterly consolidated reports from regional finance directors on guidance given, facilitation payments paid and excessive gifts given/received. CBI also regularly assesses the effectiveness of Novozymes' business integrity measures and suggests improvements to the Sustainability Development Strategy Group. Furthermore, comprehensive quality management procedures are in place to ensure systematic and coherent handling of issues and consolidated reporting within Novozymes' business integrity management system.

Why business integrity and why now?

In the middle of 2004, Novozymes initiated the process of devising business integrity measures. Due to the company's long-standing tradition of complying with the law and carrying out its business with integrity, Novozymes was not facing any particular problems that needed to be corrected. However, for a number of other reasons, both in terms of obtaining competitive advantages and ensuring effective risk management, the company considered the time ripe for clarifying its values of responsibility, accountability, openness and honesty *(see figure on next page)*.

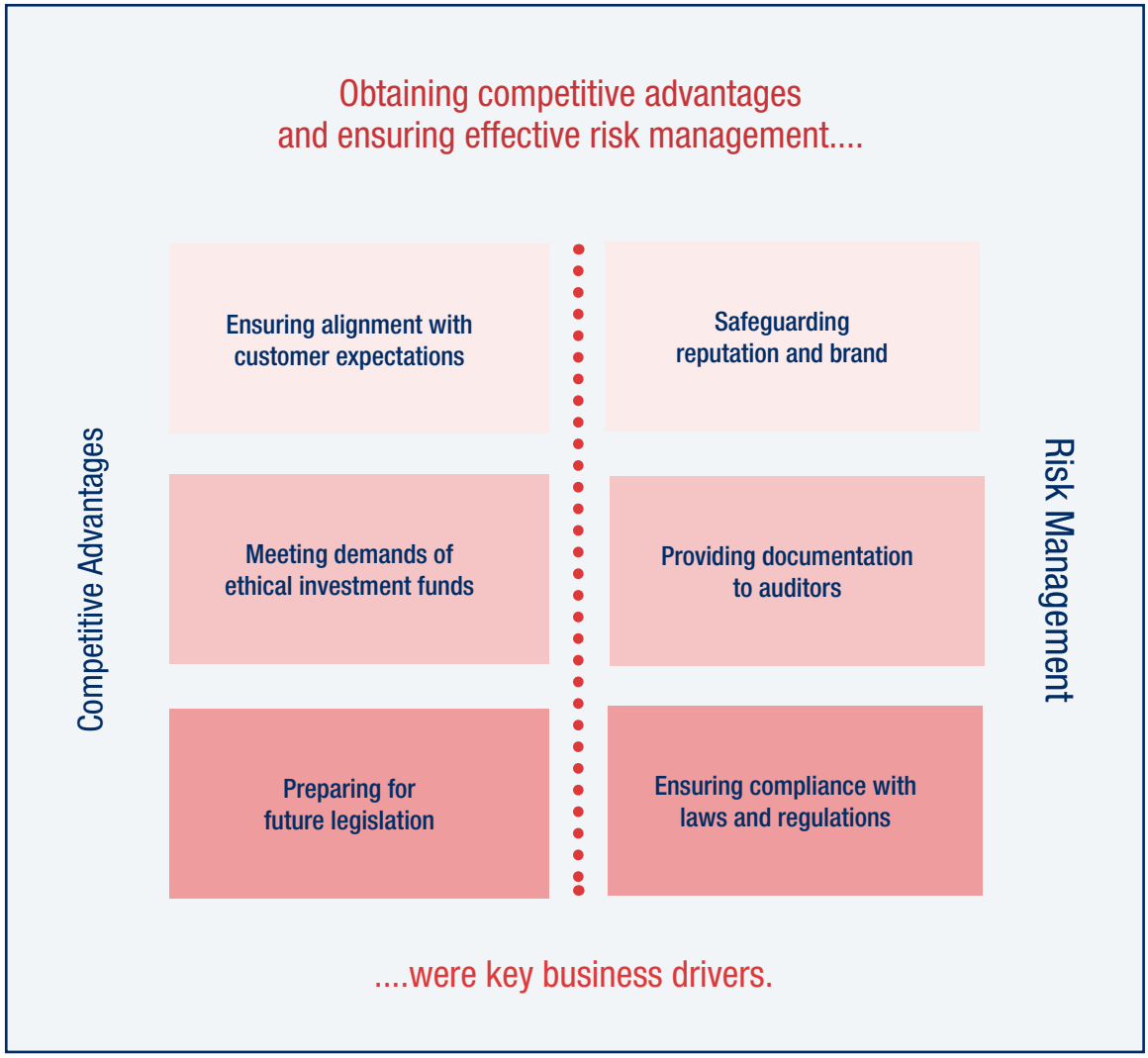
In terms of obtaining competitive advantages, many of Novozymes' customers in the business-to-business market already had comprehensive business integrity measures in place or were beginning to develop such. Increasingly, these customers were seen as requiring their suppliers to do the same, and some already even asked for documentation through the means of supplier audits. On these grounds, there seemed to be a window of opportunity for Novozymes, in the sense that devising business integrity measures would document that the company effectively contributes to limiting customers' supply chain risks.

Ethical investment funds also increasingly included detailed assessments on business integrity measures in their corporate responsibility rankings of companies. Consequently, being able to document such measures more and more seemed a pre-requisite for maintaining top rankings by such entities in the medium and long term.

Furthermore, the Sarbanes-Oxley Act, requiring companies listed in the USA to devise and publish comprehensive business integrity measures, was increasingly seen as raising the bar among even non-listed companies operating in the USA. In fact, sooner or later Novozymes expected business partners in the USA to require compliance with the Sarbanes-Oxley Act, despite the fact that the company is listed in Denmark only. Along the same lines, Novozymes anticipated that the European Union might well adopt similar requirements within a foreseeable future. If that were to happen, devising business integrity measures would leave Novozymes in proactive compliance with such requirements.

In terms of ensuring effective risk management, Novozymes acknowledged that bribery and corruption are widely and increasingly criminalized and sanctioned in most national jurisdictions across the world. Not least, recent criminal investigations and/or charges for corruption in third world countries against multinational companies reflect this fact.

For instance, in Denmark, where Novozymes is listed, the Danish Penal Act criminalizes giving bribes to employees of public entities (in any country), just as it criminalizes giving bribes to or receiving bribes from employees of private entities (in all countries with laws against it). The

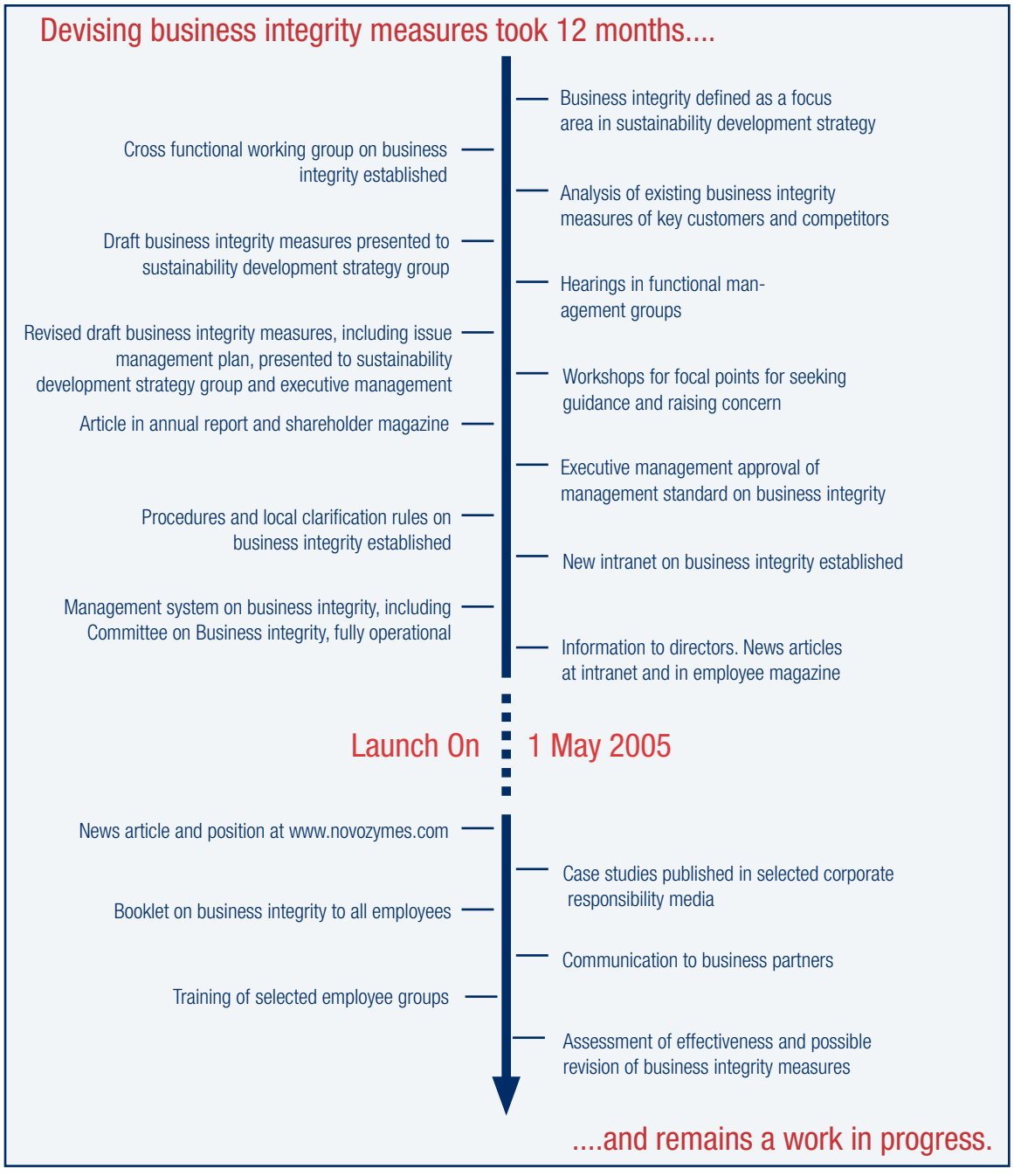


employees that commit such acts, as well as management members who knew or ought to have known about these acts, may be penalised. Furthermore, employees and company management, as well as the companies as legal entities, face liability for corruption committed by employees of the company or company management (fines and liability to pay compensation). Consequently, devising business integrity measures would enable Novozymes to ensure compliance with existing laws and regulations on anti-corruption.

At the same time, such measures would provide auditable documentation on compliance with anti-corruption laws and regulations. They would also strengthen the credibility surrounding Novozymes' brand and reputation as a responsible company, e.g. by proactively meeting possible criticism for being a signatory to the United Nations Global Compact but failing to effectively demonstrate compliance with the principle on anti-corruption.

Establishing organizational consensus, ownership and awareness

Novozymes' process of devising business integrity measures was initiated in the middle of 2004. It primarily included the following milestones:



The process, which took 12 months and remains a work in progress, was initiated by Novozymes' corporate Sustainability Development Strategy Group. Following the decision to include business integrity as a focus area in Novozymes' corporate responsibility strategy, a cross-functional working group on business integrity was given the mandate to draft the company's business integrity measures with reference to the Sustainability Development Strategy Group. The working group comprised employees from legal affairs, finance, marketing and business development, and sustainability development. Novozymes' vice-president of marketing and business development, who is also a member of the Sustainability Development Strategy Group, chaired the working group.

At first, the working group on business integrity carried out a comprehensive benchmark study on business integrity measures of key customers and competitors. This benchmark study was based on Transparency International's Business Principles for Countering Bribery *(see figure on next page)*.

In addition to establishing a clear picture of current business integrity principles and management systems within Novozymes' market, the benchmark study provided a useful reference for internal discussions on the scope of the company's forthcoming business integrity measures; both in terms of comprehensiveness and profundity.

On the basis of these discussions, the working group on business integrity devoted much time and effort to giving Novozymes' Sustainability Development Strategy Group, the corporate executive management team and all relevant functional management groups the possibility of discussing draft business integrity measures and of providing feedback. Albeit time-consuming, this process was instrumental in establishing organizational consensus and ownership vis-à-vis Novozymes' business integrity measures. It also came with the valuable side effect that the management groups became confident with the undertaking and felt encouraged to engage in a process where nobody was deterred from making reference to real dilemmas.

Since the process primarily aimed at clarifying Novozymes' values of responsibility, accountability, openness and honesty, the company's business integrity measures ended up going well beyond ensuring compliance with laws and regulations . In fact, in many countries the measures go beyond such compliance in one or more of the following ways:

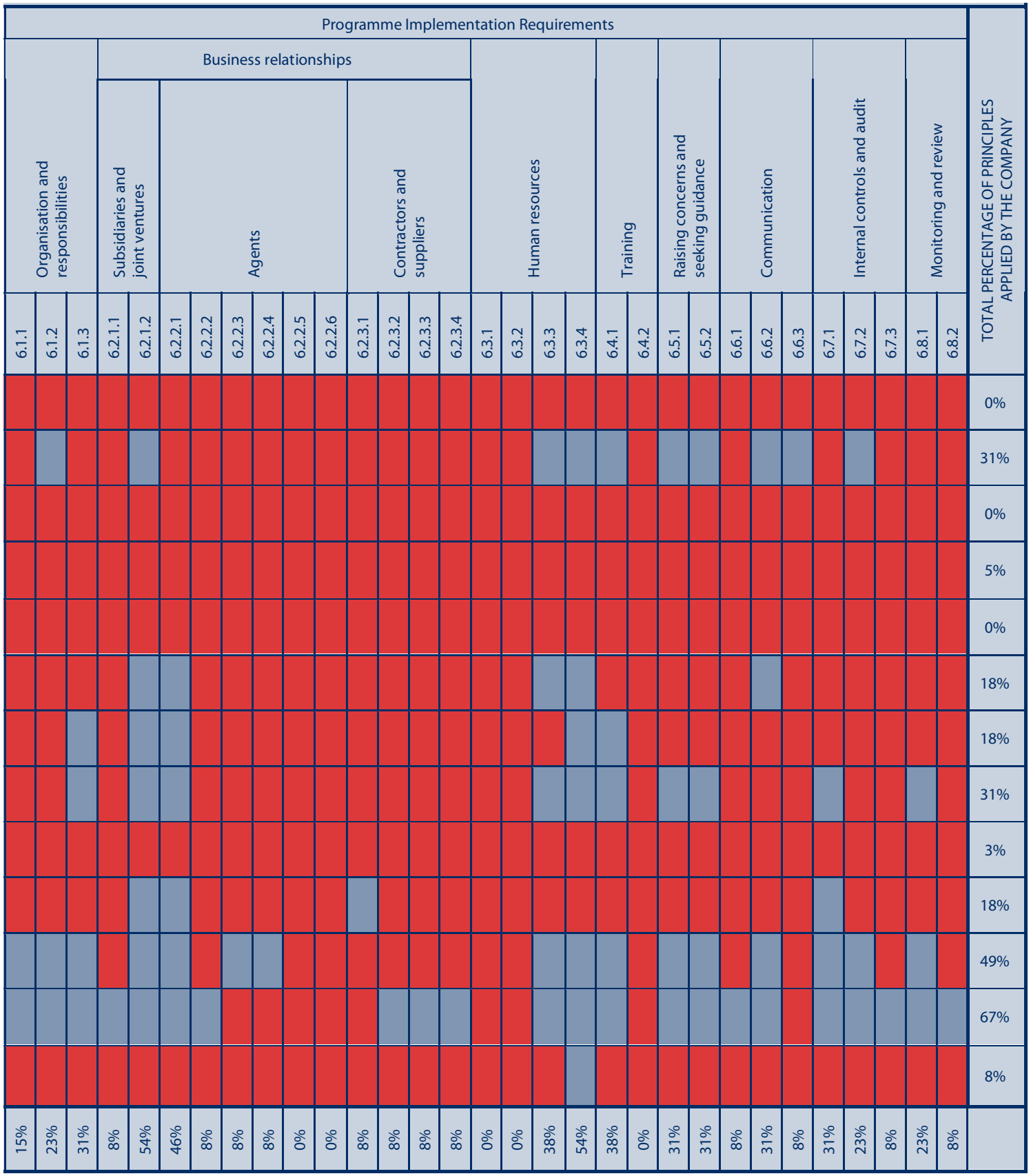
- No distinction is made between public and private bribes, although international conventions and laws of some countries have legally binding provisions against public bribes only.
- Gifts given and received must not supersede locally defined triviality limits.
- Financial transactions are only allowed to and from accounts registered in the name and the home country of the company with whom Novozymes does business.
- Financial contributions to political parties are not allowed.
- Facilitation payments and excessive gifts must be reported at a corporate level.

At an early stage of the process, the employees who had been given a particular role in Novozymes' business integrity management system were given a say to facilitate their commitment and ownership. Among other things, they were involved in devising procedures for seeking guidance, raising concerns and reporting facilitation payments and excessive gifts. Furthermore, these employees were given the task of devising local clarification rules, either regionally or country specific, to clarify local implications of Novozymes' business integrity principles. Besides facilitating local ownership, such local clarification rules made it possible to take particular local cultural traditions into consideration, e.g. traditions such as giving and receiving gifts, which tend to vary greatly across countries.

Benchmark on Transparency International's Business Principles for Countering Bribery

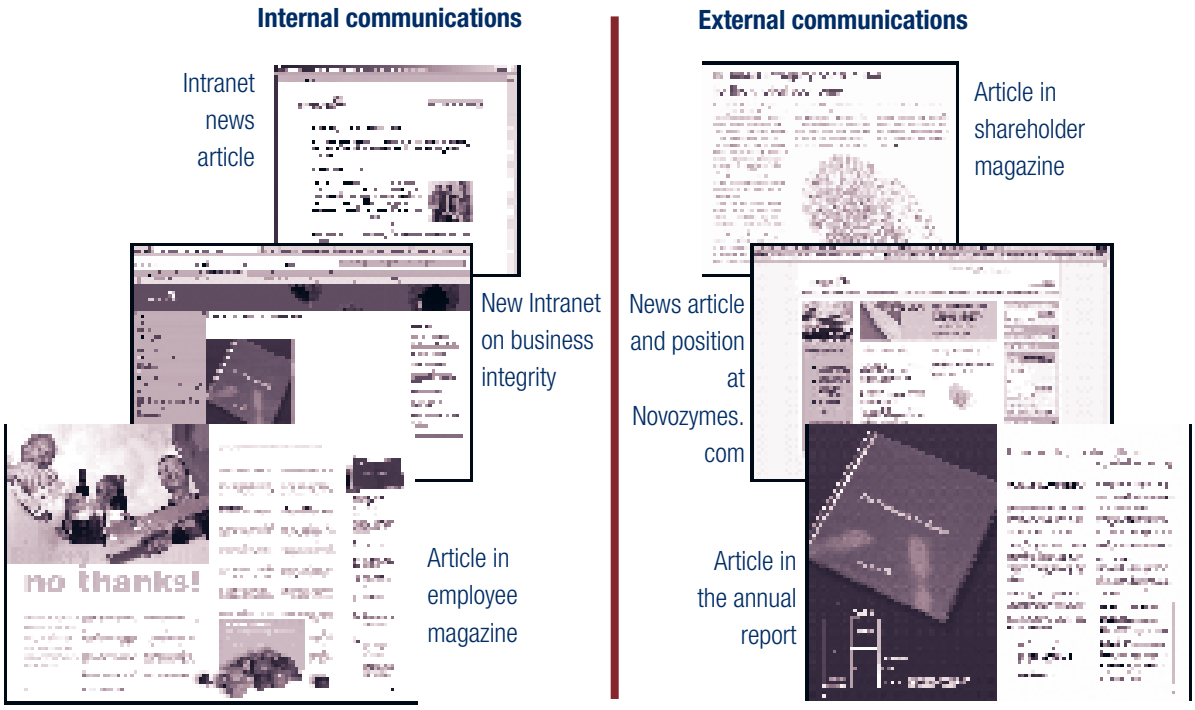
Company name	Documentation available on company web site	Scope of the Programme							
		Bribes		Political contributions		Charitable contributions and sponsorships		Facilitation payments	Gifts, hospitality and expenses
		5.1.1	5.1.2	5.2.1	5.2.2	5.3.1	5.3.2	5.4.1	5.5.1
TOTAL PERCENTAGE OF COMPANIES APPLYING THE PRINCIPLE		62%	0%	31%	0%	0%	0%	8%	77%

Principle covered. Principle not covered. Threshold: 75%.


Programme Implementation Requirements
Organisation and responsibilities
Business relationships
Subsidiaries and joint ventures
Agents
Contractors and suppliers
Human resources
Training
Raising concerns and seeking guidance
Communication
Internal controls and audit
Monitoring and review
TOTAL PERCENTAGE OF PRINCIPLES APPLIED BY THE COMPANY
6.1.1 6.1.2 6.1.3 6.2.1.1 6.2.1.2 6.2.2.1 6.2.2.2 6.2.2.3 6.2.2.4 6.2.2.5 6.2.2.6 6.2.3.1 6.2.3.2 6.2.3.3 6.2.3.4 6.3.1 6.3.2 6.3.3 6.3.4 6.4.1 6.4.2 6.5.1 6.5.2 6.6.1 6.6.2 6.6.3 6.7.1 6.7.2 6.7.3 6.8.1 6.8.2
0%
31%
0%
5%
0%
18%
18%
31%
3%
18%
49%
67%
8%
15% 23% 31% 8% 54% 46% 8% 8% 8% 0% 0% 8% 8% 8% 8% 0% 0% 38% 54% 38% 0% 31% 31% 8% 31% 8% 31% 23% 8% 23% 8%

On top of establishing organizational consensus and ownership, Novozymes also attached great importance to creating awareness, both internally and externally, about the company's business integrity measures in order for them to become effective:

Initial awareness activities



Before launching Novozymes' business integrity measures, the company published news articles in its annual report and its shareholder magazine. At the launch, Novozymes also published a news article and a position on business integrity at www.novozymes.com.

Internally, Novozymes published news articles at the company's Intranet and in its employee magazine. Furthermore, a particular Intranet on business integrity was established. It is maintained by Novozymes' corporate legal affairs department and contains comprehensive easy-to-read information for all employees, including:

- Links to management standard and procedures on business integrity;
- Guidance and clarification on each business integrity principle, e.g. definitions and examples of potential improper actions;
- Local clarification rules;
- Electronic form for anonymously raising concern about potential breaches of the business integrity principles;
- Templates for reporting facilitation payments and excessive gifts; and
- Contact information of focal points for seeking guidance, anonymously raising concern, and reporting facilitation payments and excessive gifts.

"Devising business integrity measures on the basis of the United Nations Global Compact principle on anti-corruption enables companies to operate with international consistency and acceptance."

Novozymes' initial awareness activities were primarily undertaken to ensure that the company's employees know what is expected of them in terms of business integrity, e.g. what it actually means not engaging in corruption. Following these activities, numerous additional awareness activities were carried out:

- Information to business partners about Novozymes' business integrity measures. It included encouraging them to adopt similar measures.
- Distribution of an easy-to-read booklet on business integrity titled *Bribery – no thanks!*
- Integration of business integrity into internal training courses.
- Business integrity training for selected employees groups in selected regions.

As a start purchasing and sales and marketing personnel at Novozymes' entities in countries that Transparency International and other internationally acknowledged parties classify as the most corrupt ones received training. Purchasing and sales and marketing personnel were pre-selected for such training, because these employee groups are responsible for most of the value transfer between Novozymes and external counterparts.

Conclusions

The case of Novozymes demonstrates that the United Nations Global Compact principle on anti-corruption constitutes a most useful reference framework for devising business integrity measures. Utilizing the principle makes it possible to strike the delicate balance between two contrasting objectives: upholding international consistency without engaging in a crusade on one hand and adapting to and appreciating local cultural traditions without being unprincipled on the other.

First and foremost, devising business integrity measures on the basis of the United Nations Global Compact principle on anti-corruption enables companies to operate with international consistency and general acceptance due to the universal authority and legitimacy that the principle holds by being derived from the United Nations Convention against Corruption. At the same time, the framework character of the United Nations Global Compact principle on anti-corruption enables companies to adapt and appreciate local cultural traditions by the means of local clarification rules, e.g. rules for giving and receiving gifts.

In more practical terms, the case of Novozymes also demonstrates the importance of having internal processes in place to identify relevant business drivers and to establish organizational consensus, ownership and awareness on business integrity. Furthermore, the case illustrates that there is no one-size-fits-all, and that devising effective business integrity measures remains a work in progress.

Further information about Novozymes' business integrity measures

Various external communications about Novozymes' business integrity measures are available at the company's Internet site:

- *Annual Report article about business integrity in Novozymes*
  See **www.novozymes.com > About us > Publications > The Novozymes Report 2002-2004 > The Novozymes Report 2004 (pp. 22-23).**
- *Shareholder magazine article about business integrity in Novozymes*
  See **www.novozymes.com > Investor zone > The Zymes > February 2005 (p. 3).**
- *News article about business integrity in Novozymes*
  See **www.novozymes.com > About us > Sustainability > Sustainability news > Business integrity.**
- *Position on business integrity*
  See **www.novozymes.com > About us > Sustainability > Positions > Business integrity.**

2A.III Case story: The corporate ethics framework – A road to fighting corruption

Richard Lanaud* | *Total*

Right from the formation of the new Total Group, senior management paid specific attention to fighting corruption by devising a dedicated anti-corruption process with five main thrusts: identify the risks we are dealing with; make our position on corruption clear; monitor employees' concerns and provide support where needed; verify compliance with rules and principles; and evaluate and improve performance. Emphasis was placed on integrating the standard anti-corruption processes, comprising legal, audit and control procedures, with a clearly defined approach to ethics in general based on a Code of Ethics overseen by an Ethics Committee. This provided a solid framework for reinforcing and extending action to prevent and/or identify and rectify instances of corruption.

Five years down the track, it appears that basing anti-corruption measures on a broader approach to ethics has proved to be the right direction. This approach has allowed us to make significant progress in implementing and improving our processes. We are still moving forward, confident that the way ahead is via close integration of ethics, legal and audit processes.

Our company

Total is an international energy group. Our origins are French, but we are active in more than 130 countries on all five continents (in terms of share capital, Total is the largest company listed on the Paris Bourse and indeed anywhere in the Euro zone). The Group has more than 110,000 employees working in four main business segments: Exploration and Production (production of 2.6 mb/d and our E&P reserves are 11 billion); Gas and Power (a strong position in LNG and a growing involvement in renewables—solar and wind power); Refining and Marketing (output of 2.5 mb/d from 28 refineries and sales of 3.8 mb/d via 17,000 service stations); and Chemicals (mainly petrochemicals and specialty products).

Total can be considered a young company, as the Group in its present form was born of two successive mergers five years ago, first between Total and the Belgian company PetroFina, and then with the French company Elf Aquitaine.

Total's business context

The oil industry is a capital-intensive sector. Today's oil companies are called on to invest very large sums of money in infrastructures (the industry's capital investment in exploration and production for 2003 came to US$170 billion). A single project today can last for years and run to billions of dollars, with much of the work being contracted out.

New business opportunities are restricted by the fact that many of the potential production zones have now been identified. An increasing number of these opportunities are in countries that have variable records as regards financial transparency.

Access to business opportunities is limited even more by the fact that several major producing countries are still virtually closed to international companies. This increases the competition for new business. International

*Chairman of Total Group's Ethics Committee

companies are also competing with a growing number of new players, most of which are not bound by the business rules laid down by the OECD and/or financial markets. One last aspect should also be kept in mind: International companies account for only a modest 15 per cent of world production (national companies have by far the lion's share), while they have greater media exposure, along with the image risk that this entails.

A dedicated anti-corruption policy

Given this business context (large sums of money at stake, tough market competition, weak governance in some host countries), and in view of the increasing civil-society scrutiny of high-profile businesses such as international oil companies, Total management decided right from the formation of the new Group in 2000 that an anti-corruption process was a very high priority.

Implementing an effective anti-corruption policy within an international company engaged in multiple business segments and working in numerous countries with different legislative frameworks, cultures and customs poses a number of challenges regarding interpretation, coordination and local implementation. Total needed more than internal legal and audit structures and a general ethics policy/behaviour code. We needed a clearly structured and focused anti-corruption policy to complement them, a process based on Group-wide core principles but with an associated organization to adapt them to each local context.

Starting in 2000, following the double merger of Total, PetroFina and Elf Aquitaine to form the new Total Group, we set about devising and implementing a dedicated process with the following five objectives:

- Identify the risks we are dealing with.
- Make our position on corruption clear (to employees, partners and customers, civil society, financial markets).
- Monitor employees' concerns and provide support where needed.
- Verify compliance with applicable rules and principles and act on non-compliance.
- Evaluate and improve the process.

It was therefore decided to incorporate this dynamic process as the structure of the Group's approach to ethics (covering financial procedures, human rights, employment conditions, etc.), capitalising on Total's recent Code of Conduct and on the coordination potential of its new Ethics Committee. In addition to providing a framework for reinforcing and extending the anti-corruption process, this solution had another value: it would be easier to convince employees to maintain a strong anti-corruption stance if they felt their company was morally credible in all other areas too.

Official support for internationally acknowledged principles or standards is a cornerstone of the process. Reference to the ILO and OECD standards and also to the principles of the Universal Declaration of Human Rights and the United Nations Global Compact (which Total joined in February 2002) provides added internal credibility to the policy where all employees are informed that the company's reputation depends on our ability to fulfil our commitments.

Identifying corruption risks

Risk identification was the obvious starting point. Three main categories of risks were outlined.

The first type of corruption risks relates to securing new business. The risk here increases as the market becomes more and more competitive. Special vigilance is required where intermediaries or agents are involved in initiating and/or concluding deals. A solid framework for action here is already provided by the OECD and the United Nations Anti-bribery Conventions. French legislation is particularly advanced, as it has incorporated both the OECD and United Nations requirements in 1999 and 2005 respectively. In 2003, France also underwent a successful examination by the OECD commission (CIME) on the way domestic laws complied with OECD recommen-

"A successful anti-corruption process hinges on vigilance."

dations. As a major national industrial company, Total actively participated in this review.

The second type of corruption risk occurs when awarding contracts. Business outsourced by oil companies ranges from prime contracts on major international projects to quite modest service or equipment supply contracts with local companies in host countries. Particular care must be taken to avoid irregularities in the tendering process—which is a "classic" occasion for bribery—and to ensure that Total is not tainted by irregular or illegal behaviour on the part of our suppliers.

The third type of corruption risk involves product marketing, with the corollary risk of distortion (kickbacks, illicit pricing agreements) of the rules of free competition. This is an area where the regulatory framework has been strengthened via OECD standards, EU regulations and French legislation. Risk management here will involve close cooperation between marketing departments (including their training teams) and company legal officers.

As an extractive industry, we also need to be aware of corruption induced by the lack of transparency in the use of extractive revenues by some countries. While we refuse to interfere in the political process of host countries and we cannot disclose sums paid under confidential contracts, we naturally support any action encouraging greater transparency in the use of such revenues. We are therefore an active supporter of the Extractive Industries Transparency Initiative (EITI), which aims to bring all major players (producing states, all extractive companies, NGOs, etc.) together around a table along with independent mediators (such as the World Bank or the IMF), to work towards greater transparency on all sides. This approach is now bearing fruit in countries such as Azerbaijan, Nigeria, Congo and Gabon, to mention only a few of the countries where we work.

A successful anti-corruption process hinges on vigilance, and Total is constantly on the watch for potential new risks. All new projects and agreements are examined by Risk Committees at both corporate and business segment level. In addition to assessing the technical, commercial and financial risks, these committees are required to report less "traditional" factors, including potential corruption risk. The Corporate Ethics team also works closely with local subsidiaries to help them identify specific local risks.

Making our position clear

Right from the start, Total decided to take a forceful stand on corruption and to make that stand very clear to employees, partners and the general public by publishing a Code of Conduct and setting up an Ethics Committee to coordinate communication and compliance.

Leadership commitment

The Group's Chairman and CEO took care to leave no ambiguity or margin for interpretation here and to clearly place individual and collective responsibility on each employee. The Code, drafted at his initiative, thus provided a clear message from the top, stating: "Total rejects bribery and corruption in all forms, whether public or private, active or passive. (...) In particular, Total will not resort to bribery or corruption in order to obtain or retain business or other improper advantage in the conduct of international business, as outlined in the OECD Convention on Combating Bribery of Foreign Public Officials."

Code of Conduct

As regards the other main corruption risk (the tendering process), the Code is equally explicit: "Total is careful to respect each party's interest, with transparent and fairly negotiated contract terms." It goes on to specify: "Employee relations with customers and suppliers should be fair and honest, in strict compliance with contractual undertakings and applicable laws and regulations. The giving or receiving of gifts or entertainment should remain within acceptable limits, having regard to what is customary and the provisions of anti-corruption legislation....Under no circumstances may employees solicit gifts or invitations."

The Code of Conduct, introduced in 2000, less than six months after the merger, is the Group's primary reference document here, asserting the fundamental values that un-

derpin all Total's activities and specifying the corresponding operating principles and commitments. Over the five years since the Code was first published, 382,000 copies have been issued internally, not counting copies downloaded from Intranet and Internet sites. The document is now available in 12 languages, with the Chinese, Arabic, Russian, Iranian and Khmer versions being printed in dual-language format alongside English for improved implementation.

The Group's business segments, and even individual subsidiaries, can have their own codes of behaviour. Based on Group principles, they can contain more specific or detailed provisions if required by the local or operational context. These codes are always drafted in consultation with the Ethics Committee. Examples here are the Financial Ethics Code and the Contracts and Purchasing or Free Competition Codes implemented by Exploration and Production, Refining and Marketing and Chemicals. These codes contain more detailed descriptions of tendering procedures, conflicts of interest and the levels of gifts and entertainment tolerated.

Ethics Committee

Ensuring that the Code comes alive is the responsibility of the other pillar of Total's approach to ethics: the Ethics Committee. This Committee, set up in 2001, consists of five members, including a representative from each of Total's business segments. The Ethics Committee is charged with making all employees fully aware of the values and principles enshrined in the Code of Conduct; sensitizing Group employees via specific ethics seminars and workshops; providing advice and support to any Group employee facing an ethical dilemma; updating the Code and related procedures; and making appropriate recommendations to Group management regarding ethical matters. The Committee reports directly to Total's Chairman and CEO, which adds to its effectiveness by making it independent of Total's other organizations.

In order to give a concrete dimension to the principles behind the Code of Conduct and provide interactive support, Total has initiated a programme of Ethics awareness seminars, designed to help managers understand just what the Code of Conduct means in terms of their everyday activities.

During these seminars, bribery and corruption concerns are highlighted, often during dedicated workshops, where role-playing puts participants in situations that force them to take a stand, come up with solutions and justify their position. We do not attempt to provide participants with ready-made answers but encourage them to ask questions, to recognize the problems they could face, and to remain vigilant.

Over the past two years, some 30 ethics seminars, lasting a day and a half, have been organized in about 20 countries (more than a third non-OECD countries) and involving more than 1,800 operational managers. These seminars now feature in the regular corporate training catalogue.

Suppliers and subsidiaries

In addition, the Group's position on corruption is reiterated at numerous other Group seminars organized along geographical or business-segment lines. We also make our position very clear to partners and suppliers. Indeed, the Code of Conduct explicitly states: "We expect our suppliers to adhere to principles equivalent to those in our Code of Conduct." Suppliers are provided with copies of the Code. The Ethics Committee is currently working on a mechanism to ensure this.

Monitoring employees' concerns and providing support

Employees who face any dilemma regarding corruption or who are unsure of how to handle a particular situation are encouraged by the Code of Conduct to seek help from their immediate superior. Ethics seminars provide supervisors with advice on how to support subordinates in resolving their dilemma.

In addition, Group employees are allowed, if necessary, to bypass the usual management chain and refer

"We regard it as very important to share experience with external stakeholders."

issues directly to the Ethics Committee, to seek advice or present a problem, with a guarantee of complete confidentiality and without fear of reprisal. This process was chosen in preference to an anonymous "hotline," which would limit the interactive support the Committee member can provide. Naturally, employees usually turn to the member of the Ethics Committee representing their own business segment.

This referral procedure is formally encouraged by our Chairman and CEO and clearly described in our Code of Conduct. It is also outlined on our Intranet and during ethics seminars.

Ensuring compliance

Compliance with the Code of Conduct is encouraged by the fact that there is synergy between the overall approach to ethics and internal operating rules and procedures, particularly those stemming from the legal departments. These rules include the addition of anti-corruption clauses in any contracts with petroleum partners or suppliers or with agents or intermediaries. Our internal control framework was recently revised in accordance with COSO (Committee of Sponsoring Organizations) recommendations. All these mechanisms can help to prevent corruptive practices.

Employees can naturally report any perceived breaches of the Code of Conduct using the procedure set in place for monitoring their concerns and providing support, as outlined above. However, despite a moral willingness to use this procedure, we often notice cultural resistance stemming from the desire not to be seen as informing on colleagues.

This reporting procedure, set up in 2000, was recently opened to individuals outside the company in line with the Sarbanes-Oxley rules on alert procedures. We had to pay specific attention to reconciling the US Sarbanes-Oxley rules with French legislation on denunciation.

In 2002, Total launched a programme of external "ethical audits" of its subsidiaries across the world. This original approach, which allows the Group to assess implementation of the Code by its subsidiaries, also facilitates identification of best practices and potential non-compliance. The independent British accreditation company GoodCorporation has been commissioned to assess more than 30 subsidiaries (from all segments) by examining 84 key processes, of which about 20 are directly related to corruption. Any irregularities are reported to both the Ethics Committee and the unit concerned, and action is taken to rectify them. Relevant best practices are collected and shared with other Group units using a dedicated Web database.

The process includes a follow-up and monitoring of the corrective measures taken. A special guide is prepared on a case-by-case basis to make it easier for the subsidiary or worksite to draft an improvement plan. GoodCorporation reviews and signs off on each remedial action plan. Some subsidiaries can even be reassessed to review their progress.

Evaluating and improving the process

As our anti-corruption process was implemented in its present form rather recently, we are very aware that we are still in a learning phase and must give high priority to evaluation and improvement.

We regard it as very important to share experience with external stakeholders. Platforms of exchange provided by professional associations such as the IPIECA, and international initiatives such as the United Nations Global Compact Working Group on the 10th Principle are key elements. It is also important to compare our approach to the ones offered by organizations such as Transparency International, the International Chamber of Commerce or the World Economic Forum.

Internally, we monitor awareness, survey employee needs and analyse referral response. Despite a concerted internal communication campaign, a confidential survey (45,000 employees, managers and subordinates, in 100 countries) showed that 25–30 per cent of respondents felt they had not been sufficiently well informed about ethics policies.

"Conflicts of interest are frequently a starting point for corruption."

Subsequently, we updated the Code of Conduct with narrower focus and we significantly increased the number of copies of all codes being distributed. In 2005, we put on-line a thoroughly overhauled Ethics internal website. This Intranet is accessible by all employees and covers a broad range of issues. It provides in-depth details on ethics-related areas of importance (e.g. anti-corruption, free competition, accepting gifts, conflicts of interest, etc.) with appropriate web-links. The site also explains the stance taken by the Group and the corresponding implementation measures available (including best practices). And lastly, it contains a summary of the relevant legal frameworks and requirements. The external Corporate website also provides information on internal actions implemented at business-segment level. The launch of this new site is being accompanied by campaigns to familiarize employees with Intranet structure and search techniques.

As regards response to the Ethics Committee referral process, the number of cases referred to the Committee (ethical questions in general, including corruption) is increasing steadily (36 in 2002, 54 in 2004,) but still considered low given the size and nature of our company, especially since some referrals concern employee-employer conflicts interpreted as involving ethics or even corruption (i.e. personal abuse of power). Furthermore, the Committee is unable to know how many referrals were made to supervisors instead of to the Committee itself, and it does not plan to collect such information.

In addition, we have to consider that reporting ethical concerns remains essentially a matter of personal judgement. We can encourage this but certainly not make it compulsory. In many regions of the world, the legal and/or cultural context may weaken employees' readiness to report.

We are now using the website and seminars to boost awareness and to encourage greater use of the referral process. We are also using the new Sarbanes-Oxley inspired Web-based financial malpractice alert procedure introduced in 2005 to encourage referral of other ethical and/or corruption issues. And since early 2005, employees have been able to communicate directly with the Ethics Committee via a dedicated e-mailbox.

Ethics seminar feedback has been useful in improving our process too. For example, one survey suggested that we should be more precise in explaining exactly what "conflict of interest" involves. This highlighted some interesting differences in interpretation of the notion, even by cultures within the EU (e.g., France and Britain). This is apparently one area where the Group principle "Total expects its employees to... act with loyalty and integrity towards the Group by avoiding conflicts of interest" needed to be tailored to local contexts, especially because conflicts of interest are frequently a starting point for corruption.

Other action being taken as a result of seminar and survey feedbacks includes:

- More systematic Intranet-sharing of Best Practices (more than 50 so far) identified by the external Ethics Assessments;
- More specific anti-corruption workshops rather than general ethics seminars;
- Workshops run by legal experts to train middle managers in identifying the risks associated with their decisions (extensive decision-making power + strong pressure to get results = high corruption risk);
- Greater synergy with subsidiaries to identify local ethical risks through on-the-spot assessments;
- Further involvement in supply-chain integrity management.

"For an international company, implementing an effective anti-corruption policy also means translating a collective stance into individual behaviour."

The latest improvement to this global process is a self-assessment procedure designed in collaboration with GoodCorporation to help individual units determine for themselves how well they comply with the Code of Conduct. Three pilot sites are currently testing the methodology and its associated package before full implementation. This approach will not only broaden our ethics auditing system but will encourage local teams to think for themselves about where they stand and how their practices could be improved.

Conclusion

For an international company active in multiple business segments and dealing with numerous cultures and legal frameworks, implementing an effective anti-corruption policy involves finding a satisfactory balance between a strictly defined central code and its application in different local contexts. It also means translating a collective stance into individual behaviour.

During the past five years, Total has found that a forceful and structured approach to ethics in general, based on an "awareness-monitoring-support-verification" structure, was invaluable in helping us to frame, consolidate and extend our anti-corruption measures while also providing employees with a clear reference code on which to model behaviour. By giving our anti-corruption process a solid ethics nexus, we were able to bring declarations of principle down to the individual human level, to translate words into action and give Total's policy the flexibility it needed to have a good chance of success.

We know we have not reached the end of the path. We still have a lot to learn and achieve. Having identified some of the possible improvements of our anti-corruption process, we are now working on them, with the emphasis on reinforcing synergy with the Group's legal and financial audit functions. We are convinced this is the way forward.

2A.IV Facilitation payments

Alexandra Wrage and Kerry Mandernach* | *TRACE*[1]

"The mixed message of permissible small bribes versus impermissible large bribes creates a risky arena for business activities."

Most multinational companies have made progress toward eliminating traditional bribes from their business practices. They have done this by implementing comprehensive compliance programmes, by training local and foreign employees and business intermediaries, and by rigorous internal enforcement. Some of these companies are now taking steps to eliminate "facilitation payments" from their business practices as well. These small bribes, permitted under an exception in the US Foreign Corrupt Practices Act and under the laws of some countries, are made to Government officials to encourage them to perform or expedite routine, non-discretionary Governmental tasks.

In this chapter, TRACE shows why making "facilitation payments" leads to problems and provides suggestions on how companies can implement and enforce their own internal policy against bribes of any kind, both large and small. Much of the following guidance was developed from a recent TRACE survey in which we interviewed 42 companies engaged in international business to learn how they have stopped paying small bribes to Government officials. Many of the companies interviewed have found that it is possible—occasionally even easy—to refuse to participate in bribery schemes. There are certain techniques that work and certain practices to avoid.

The problem

In many companies, a distinction has long been drawn between major bribes and mere "facilitation payments." The distinction has been confusing. Bribes and "facilitation payments" are both payments or gifts to, or favours for, Government officials in exchange for preferential treatment. If companies pay these small bribes willingly, they are nevertheless bribes. If companies pay these bribes because they believe they have no choice, they are extortionate.

Double standard

Of the countries that permit these small bribes overseas, none permits them at home. A Canadian or American who makes a "grease payment" to a foreign customs official would face criminal penalties for making the same payment to an official at home. Permitting the citizens of one country to violate the laws of another on the grounds that it is "how they do business there," corrodes international legal standards that otherwise benefit multinational corporations.

A slippery slope

The mixed message of permissible small bribes versus impermissible large bribes creates a risky arena for business activities. Many companies interviewed complained that small bribes involving routine Governmental tasks are both difficult to define and impossible to control. They found that some employees, responding to pressure to

*Alexandra Wrage is the President of TRACE (Transparent Agents and Contracting Entities) and author of the TRACE Standard: Doing Business with Intermediaries Internationally; Kerry Mandernach is responsible for TRACE Law Firms / Resource Center.

"Paying small bribes is poor legal practice, but more to the point, it is bad business practice."

ensure timely contract performance, paid bribes for distinctly non-routine services. Furthermore, it is difficult to convey to employees why the payment of large bribes to foreign Government officials is likely to cost the employee his job and possibly his freedom, but that the payment of small bribes is acceptable.

Loss of local community's confidence

It is difficult to maintain a good reputation within a local business community when your company is believed to buy its way past the administrative obstacles that local citizens and companies must endure. When a bureaucratic delay is legitimate—rather than created by the bribe-taker—purchasing preferential treatment for your company bumps others further down the waiting list.

Inherent illegality

Every bribe of a Government official—regardless of size—breaks the law of at least one country. There is no country anywhere with a written law permitting the bribery of its officials. A lack of resources, political will or interest has meant violations are rarely prosecuted, but that is changing. Some countries, eager to be seen combating corruption, are prosecuting the payment of small bribes with increasing frequency. As a result, there is widespread concern amongst the companies that TRACE interviewed that small bribes could lead to costly legal complications.

Accounting dilemma

The laws of countries that permit the payment of these bribes abroad also require companies to maintain detailed and accurate records of each transaction. Many businesspeople interviewed expressed reluctance to record on company books a "payment to Government official for routine task"—creating a record of a violation of local law. Yet, failure to keep accurate records of the expense constitutes a violation of law even in countries where the underlying payment does not.

Consequently, companies making these payments must choose between falsifying their records in violation of their own laws or recording the payment accurately and documenting a violation of local law.

Foreign subsidiaries

With the implementation in many countries of new laws criminalizing the payment of small bribes to foreign Governments, there is also an increasing risk that a multinational company with foreign subsidiaries will violate the laws of the country where the subsidiary is based. Companies with offices in more than one country expressed concern that if they do not abolish the use of small bribes altogether, they must undertake different compliance programmes based not only upon the location of each office, but the citizenship of the people working there.

International security

In addition to the legal issues, there is a growing concern regarding national security. One US company reported that the terrorist attacks of September 2001 put a new face on the practice of paying small bribes. That company had routinely paid foreign officials for processing work permits and visas, but is now very uncomfortable promoting corruption in this area. If visas can be bought, borders won't be safe. The practice of bribing immigration officials can lead to serious entanglements with the enhanced security laws of the company's home country.

Bad for business

Paying small bribes is poor legal practice, but more to the point, it is bad business practice. Widespread small bribes set a permissive tone, which invites more and greater demands. Every company that TRACE interviewed expressed dissatisfaction with these small bribes. They told us that they amount to a hidden tax on business, they tend to proliferate, they buy an uncertain, unenforceable advantage and—the most common complaint—they are simply irritating. Well-run businesses seek clear, dependable terms and enforceable contracts. Small bribes introduce uncertainty, risk and delay.

"It is crucial to have the full support of the highest level of management."

Reputation as a "soft touch"

The standard argument in defence of bribery is that it is impossible to conduct business successfully overseas without paying bribes to ease the bureaucratic and regulatory burden. If true, business should be more efficient for companies paying bribes, yet this argument is not supported by research or anecdote.

Two World Bank researchers studied the premise that small bribes reduce red tape and found that "contrary to the efficient grease theory… firms that pay more bribes are also likely to spend more, not less, management time with bureaucrats negotiating regulations and face higher, not lower, cost of capital." [2]

Decide and commit

Several companies reported that the most difficult part of eliminating the practice of paying small bribes was actually focusing attention on the issue and making a commitment to stop. Once a company decides that it wants to eliminate the practice, it must commit itself to spending the time and money needed to carry out its goal through:

- A clear written policy;
- An internal audit;
- Training employees and intermediaries;
- A robust internal reporting programme;
- Enforcement.

It is crucial that the decision to eliminate the practice have the full support of and formal endorsement by the highest level of management in the company.

Adopt a clear policy

The essential core of any successful anti-bribery strategy is a clear and consistent message to employees, intermediaries and bribe-takers that bribes of any kind will not be paid. Such a message is most effectively conveyed through a clear written policy that includes assurances that no employee or intermediary will be penalized for delayed performance that can be directly tied to his or her refusal to pay bribes.

Medical and safety emergency exception

Employees of multinational companies are occasionally asked to travel and live abroad in countries where the standard of living is lower than their own country and the risks to health and safety are higher. Many companies currently rely on the good judgement of their employees in these situations, but some have created a formal medical and safety emergency exception. The situation should be a true emergency and the payment should be accounted for appropriately and reported through management channels both to conform to books and records requirements and to ensure that management is apprised of and can track the risks to personnel in that country.

Assess

A comprehensive inventory of past payments will enable companies to address each risk area appropriately. This assessment should include a review of the company's areas of operation that pose a high risk of exposure, any past legal or ethical problems, existing policies, procedures and compliance efforts, and all relevant laws and regulations.

A key aspect of the internal assessment is the employee interview. It is crucial that those conducting the assessment speak to the right people. The companies that TRACE interviewed stressed this point more emphatically than any other. Employees in the field understand the local challenges better than the head office; their participation in a change of policy will be critical to its success. They can identify situations for which a small bribe has been useful and help devise alternative approaches. They also know when a small bribe is not necessary.

The last point is important. Most of the people interviewed recounted stories of employees, new to a foreign assignment and primed with rumours about corruption in the local business community, thrusting money at a Government official at the first mention of delay.

Types of payments

Payments identified during the assessment are likely to fall into one of four categories and a different response may be required for each.

Expediting payments are usually demanded by entrepreneurial Government officials who threaten delay and red tape if they are not paid small amounts at regular intervals. This category includes payments to secure licenses, to overcome unwarranted delays at customs, to resolve disputes over inflated taxation, and to end harassment by local police or military. Suggested responses to demands for expediting payments include the following:

- Meet with the individual in question and explain the change in policy.
- Avoid the embarrassment of including superiors in discussions unless it is clear that it is necessary or that they are a part of the problem. If the junior official has been required to funnel a portion of the bribes he collects to a superior, the superior will have to be included in the conversation.
- Acknowledge that small payments have been a part of the business relationship until now, but that these will no longer be made. Again, explain the change in company policy.
- Prepare to reject suggestions on how things might be structured to reach the same end by different means such as re-characterizing the payment or channelling payments through third parties.
- Prioritize shipments or administrative tasks where possible so that the least urgent requests are presented immediately after a change in company policy.
- Maintain records of additional expense resulting from a refusal to make payments and provide copies to senior officials of the relevant Government ministry. If the Government is either a partner or the customer, pass along a portion of the cost of refusing the bribe, together with a detailed explanation. Companies that have done this report a significant reduction in demands for bribes.

Additional services are generally made for a legitimate service that is being purchased through inappropriate channels. Services may include overtime work, work during local holidays, or duties outside the scope of the official's job description. It is important that real value be provided and that these payments do not simply become a way to legitimize bribery. Suggested responses to requests for additional services include:

- Assess the value of the service that has been provided and formalize the relationship. One company stopped paying overtime directly to border guards and began working through the border guard office, requesting a formal agreement and invoices. The result was the same service at the same price, but with new control and transparency.
- Recognize that in some countries, certain Government officials receive no pay at all from their Government. Instead, they are expected to create their own income—and supplement their superiors' income—through corruption. By formalizing and documenting the arrangement, the official is paid for his service, but the haggling and secrecy are brought to an end.
- Seek the approval of the official's superior, where feasible, to hire him under a separate agreement. In some countries, Government

"Training is the most critical step in abolishing small bribes."

officials are permitted to hold second jobs. The goal is not to impoverish already badly paid officials.

Traditional commercial bribes are payments to obtain a business advantage and are not permitted under any legal exception for small bribes. The suggested response to a traditional commercial bribe:

- If a bribe is paid in order to obtain a business advantage, the employee involved should be sanctioned and the company protected from the consequences to the extent possible by prompt remedial action. The company's broader policy on bribery of foreign Government officials should be invoked to address these situations.

Extortion payments amount to clear, criminal extortion—for example, an employee held at a security check and released only upon payment. Things to consider when an extortionate demand is made:

- If a demand is clearly extortionate and criminal, the employee's safety must be the paramount consideration.

- Once an emergency has passed, companies should advise their embassy and ask that it pursue the matter at the responsible level of Government.

- These situations are of real concern, but the embarrassment they can generate for the host country can result in unexpected leverage for companies. Most companies agree that the best response is to manage the situation in the short term and publicize it in the long term.

Train

After management commitment, training is the most critical step in abolishing small bribes.

Employees

An effective anti-bribery policy must include comprehensive training for employees. Employees should also be required to sign a statement verifying that they have participated in the training and that they will comply with the company's anti-bribery policy.

Business intermediaries

A company can be held responsible for the actions of its business intermediaries—sales agents, consultants, suppliers, contractors and local partners. Consequently, intermediaries should receive the same rigorous anti-bribery training and a copy of the company's anti-bribery policy.

Contracts should include a requirement for all intermediaries to comply with the company's policy.

General training guidelines

The points that follow apply regardless of the type of bribery being addressed:

- The anti-bribery policy should be disseminated to every employee and business intermediary.

- Employees and intermediaries should be assured that they will not be penalized for diminished productivity directly attributable to their refusal to pay bribes.

- Employees who are posted overseas or whose jobs require frequent travel should receive training on the company policy and on how to deal with demands for bribes. This training should include an opportunity to meet with employees who have worked in the territory to which they will be sent.

"The long-term results will include reduced bureaucracy, enhanced predictability and a more stable business environment."

- Employees affected most directly—those in the international sector, marketing, operations and finance—should have an opportunity to ask specific questions about the situations they expect to face.

- Company auditors should be alerted to the possibility that rogue employees and intermediaries may attempt to circumvent the new policy by mischaracterizing small bribes as permitted expenses.

- Auditors, in-house lawyers or compliance officers should ensure that payments made under the medical and safety emergency exception are reviewed for potential abuse.

Report

Although this issue has become quite controversial in light of concerns about privacy and "big brother" tactics, a well-organized, secure means by which to report problems within a company when all other channels of communication fail is essential to a sound anti-bribery programme. The reporting programme should be accessible to all employees; it should provide for either anonymous or confidential reports, as appropriate, to protect the reporting employee; it should include screening by a neutral party to safeguard against frivolous or malicious reports; and it should permit collection and tracking of data over time for reporting to senior management. A well-run reporting programme will assist management in assessing the success of its anti-bribery policy and will identify the points at which the programme is breaking down.

Enforce and follow up

It is important for management to stay focused during the implementation and transition period. Anticipated difficulties have proven to be short-lived. Dire warnings that profitability will plummet and business will grind to a halt are not supported by the experiences of any of the companies interviewed. Most of the 42 companies that TRACE interviewed reported delays and unusual additional bureaucratic steps in the first 30 to 60 days after abolishing small bribes. After this period, business "more or less returned to normal."

Conclusion

Addressing all forms of business corruption at the same time with a single, coherent message is preferable to labouring under an equivocal policy and waiting until some future ideal time to tackle small bribes. Many companies have adopted strong policies against the payment of small bribes, and the consensus has been that the transition has been simpler, faster and less painful than was expected. The short-term result for many of the companies interviewed has been relief from constant demands for small bribes; the long-term results will include reduced bureaucracy, enhanced predictability and a more stable business environment.

Case story: Royal Dutch Shell plc

Introduction

Royal Dutch Shell plc ("the Shell Group" or "the Group") has been a participant in the United Nations Global Compact initiative since its inception in July of 2000. This case story focuses on how the Shell Group has made progress toward abolishing facilitation payments from its business practices. It also examines the tools that the Group currently uses to implement and enforce its internal anti-bribery policies. As demonstrated below, the Shell Group takes a very strict stance on bribery; it does not sanction any form of illegal payment, large or small. Facilitation payments are in all cases illegal under the laws of the country in which they are made.

Based on TRACE research on this topic to date, the oil and gas industry is particularly susceptible to demands for facilitation payments. This is true, in part, because of the long-term nature of the relationship that oil and gas companies have with their host countries: companies must maintain good relations with the local community, while engaging with all levels of Government officials for a great variety of services.

Recognizing the specific challenges that the Group faced, Shell embarked on a carefully designed programme to eliminate facilitation payments worldwide. The process has been challenging, and certain areas require additional attention. This is particularly true with respect to discouraging and monitoring facilitation payments made by contractors and other commercial intermediaries. Nevertheless, the obstacles have not been insurmountable. As this case story illustrates, progress can be made if the problem is approached systematically and is addressed with a clear and emphatic message.

Adopt a clear written policy

Shell General Business Principles

The Shell Group publishes a document that is intended to govern the way in which all Group companies conduct their affairs. This guiding document, known as the Shell General Business Principles (SGBP), was established almost thirty years ago and was most recently revised in 2005. It states the Group's principles for economics, business integrity, political activities, health, safety, security and the environment, local communities, competition, communication and engagement, and compliance. The SGBP section on business integrity addresses the Group's stance on bribery, including facilitation payments:

> *Shell companies insist on honesty, integrity and fairness in all aspects of our business and expect the same in our relationships with all those with whom we do business. The direct or indirect offer, payment, soliciting or acceptance of bribes in any form is unacceptable. Facilitation payments are also bribes and should not be made. Employees must avoid conflicts of interest between their private activities and their part in the conduct of company business. Employees must also declare to their employing company potential conflicts of interest. All business transactions on behalf of a Shell company must be reflected accurately and fairly in the accounts of the company in accordance with established procedures and are subject to audit and disclosure.* [3]

Increasingly restrictive versions of this clause have been a part of the SGBP since their establishment in 1976. Shortly after the SGBP was revised in 1997, Mark Moody-Stuart, former Chairman of the Committee of Managing Directors of the Royal Dutch/Shell Group of Companies and former Chairman of The Shell Transport and Trading Company plc, underscored the Shell Group's commitment to open and honest business practices at a 1998 European Parliament Conference in Brussels. His words reflect the unambiguous stance that the Shell Group takes in its fight against bribery and its efforts to eliminate any and all forms of illegal payments:

> *We do not bribe. We do not sanction any type of bribery or illegal payment of any kind anywhere, either directly or indirectly. We do not give or accept bribes and any Shell company employee who is found to have done so will be dismissed and, if possible, prosecuted....All employees of Shell companies are aware that there is zero tolerance of anyone who ignores the policies on these matters. The principle they have to follow is simple: "Just say no."* [4]

Moody-Stuart also highlighted the level of importance given to the SGBP in all of the Shell Group's deal-

ings, including joint ventures, stating: "Ultimately a Shell company would have to withdraw from a venture if there was a serious conflict [with the SGBP] which we could not resolve with our partners."

The clear written policy adopted by the Shell Group on facilitation payments mirrors its earlier stance on bribes more generally: "Facilitation payments are bribes and should not be made."

Assess the scope of the problem

In order to address the problem of routine, extortionate demands from Government officials, companies should first undertake an internal review of the scope and pattern of these demands. Each region, and every industry within each region, will face different demands at different levels and different consequences for failing to acquiesce.

In 1998, the Shell Group published its first edition of the Shell Report, entitled "Profits and Principles—Does there have to be a choice?" The report grew out of the Group's in-depth "look in the mirror" that involved feedback from thousands of members of the general public and hundreds of Shell employees supporting its operations around the globe. The results were mixed. While half of the respondents expressed a favourable opinion of Shell, 40 per cent expressed neutrality and 10 per cent expressed an unfavourable view. Survey feedback reflected that respondents felt the Group was deficient in the areas of human rights and care for the environment. As the authors of the report admitted, "We neither recognized nor liked some of what we saw. We have set about putting it right, and this report is a small manifestation of widespread action taking place across the Group." [5]

The Shell Group continues to publish an annual Shell Report; each edition provides a summary overview of the Group's financial, social and environmental performance over the past year. Social performance data includes information on areas such as revenue transparency, business integrity (incidence of bribery, internal reporting mechanisms and procedures), and contracting and procurement.

No problem can be effectively addressed until a company has assessed the degree to which the practice is entrenched. A critical evaluation is an essential first step. TRACE research has found that some companies approach the assessment process on a country-by-country basis, while others evaluate the problem by category of tasks: customs clearance, transportation and license applications, for example. Both methods have been successful; the choice depends on both the size of the company and the nature of its services and marketing model.

Training employees and intermediaries

Data tables published in conjunction with the 2004 Shell Report include information on training and other tools used by Shell Group companies in an effort to increase awareness of the company's "no bribery" policy and enforce company-wide compliance measures. The data reports that Shell Group company staff in 106 countries participated in training on the use of intermediaries (up from 98 in 2003) and that Group companies in more than 100 countries have procedures in place to prevent facilitation payments by staff, contractors and suppliers.[6]

In addition to the Shell General Business Principles and the annual Shell Report, the Shell Group has also published two training manuals for managers: The manuals were developed to aid employees and business partners in their understanding of company policy and ensure that appropriate behaviours are applied in a variety of hypothetical business situations.

Business integrity principles are outlined in the primer, including specific information on the Group's policy on facilitation payments.

> *The anti-bribery commitment is long-standing: the clause has featured in the SGBP since the first edition in 1976. It should be noted that the policy makes no distinction between bribes and facilitation payments. Our policy is not to make facilitation payments and we seek to en-*

"Once someone is known as being willing to make such payments, they may well be asked for further payments down the line."

sure that our agents, contractors and suppliers do not make them either.

In many countries, small facilitation payments to low-level officials are common practice especially for such services as issuing of visas and customs clearance. These are typically areas where Shell employs local agents to expedite routine administrative processes. As part of the SGBP assurance process, Country Chairs are expected to investigate and report on all areas where facilitation payments are made by their agents, contractors or suppliers. They are, in addition, expected to mitigate and, if possible, stop such practices. This may require the cooperation of the authorities as well as other industry players to eliminate the underlying reasons for facilitation payments—e.g. low wages—as well as the practice itself. [7]

Language in the Shell Group primer supports TRACE's argument that it is never a good idea to pay a bribe, regardless of size, as it could lead to the expectation of additional payments in the future: [8]

Once someone is known as being willing to make such payments, they may well be asked for further payments "down the line" while the person who refuses to make a facilitation payment may be left alone. Equally, once an official has successfully obtained a facilitation payment, he may habitually slow down a process to enhance his gains.

While the management primer acknowledges that facilitation payments are not addressed in the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions (OECD Convention), it does point out that such payments are "generally illegal in the foreign country concerned and that countries should address this 'corrosive phenomenon' by supporting programmes of good governance." [9]

The Shell Group has also developed a training supplement to the primer, "Dealing with Dilemmas," which is used in staff training sessions and workshops.[10] It contains a series of "grey area" scenarios that are based on actual dilemmas faced by Shell staff. Questions are included with each scenario to help staff understand what they should consider and what actions they should take if faced with similar dilemmas in the field. How to handle knowledge of ongoing facilitation payment schemes and how and when to report bribery accusations are two of the dilemmas in this training supplement.

The Shell Group's strict "no bribes" policy applies not only to employees, but also to Shell Group contractors. Within the context of the Shell Group's activities in Nigeria, a statement on the shell.com website explicitly states: [11]

The penalty for corrupt practices is dismissal and, if possible, prosecution. We also require our contractors, under our General Conditions of Contract, not to pay bribes or commissions. If they do, they lose their contracts and forfeit future business with Shell.

TRACE frequently hears from the Shell Group and other companies that influencing a third party's actions with respect to bribes and facilitating payments is one of the greatest challenges they face. Third party intermediaries often live and work locally and report only intermittently back to a multinational company's head office. They may balance the immediate need for timely licenses, customs approvals and transportation against the less clear and more distant admonitions of the head office and decide in favour of expedience. Although large companies may have the negotiating stature to insist on audit rights for third parties, there are rarely resources to undertake the audit and there are valid questions as to how much expense a company should bear in order to monitor the good internal governance of its third party contractors. Like many other companies interviewed by TRACE, the Shell Group is struggling with this challenge and acknowledges that there is room for improvement.

"Individual cases of petty corruption may appear relatively unimportant, but the cumulative effect can destroy decent society and particularly damage those at the bottom of the social scale."

Establish a robust internal reporting mechanism

In the 2004 Shell Report, the Managing Director of The Shell Petroleum Development Company of Nigeria Ltd. describes how his company makes use of internal reporting mechanisms: [12]

> *Corruption is a problem at many levels in Nigeria....Increased use of our whistle-blowing facility led to investigations that resulted in the firing of seven staff and the dismissal of 19 contractors. In 2004, we began publishing each proven case of corruption on our internal website.*

The Shell Nigeria internal reporting facility is one of 114 national systems established for employees and contractors to report concerns on a confidential basis.[13] Shell Nigeria concluded that successfully following up on complaints and ensuring subsequent remedial actions for those found to have been involved in SGBP violations resulted in increased employee confidence in the internal hotline. It has become one of the most widely used hotlines in the Shell Group.

Audit and enforcement

Few practices will undermine a robust compliance programme as quickly as failing to investigate and take remedial action when bribery schemes are uncovered. TRACE heard from employees in industries as diverse as aerospace, pharmaceuticals and telecommunications that suspicions that management had a "paper programme" in place with no real means or intention to uncover and sanction wrongdoing was more corrosive of good governance than having no policy at all.

The Shell Group management primer explains in detail the various reporting and auditing structures that support the Group's business integrity policies. The Board of the Royal Dutch Shell plc is advised by a Group Audit Committee (GAC) that is composed of at least three independent members. The GAC does not conduct audits; this is the responsibility of internal and external auditors. Rather, the GAC monitors and makes recommendations on the Group's internal risk management and control system. It also monitors compliance with the SGBP, the Code of Ethics and any legal and regulatory requirements.[14] In addition to the GAC, internal audit committees occasionally review the internal audit plan and monitor the implementation of actions identified in response to business control findings. The internal audit committees also consider SGBP-related information and findings provided in letters submitted by Country Chairs and the CEO of each business and group service organization.[15]

The primer also provides specific examples of business integrity violations, guidance on how and when to report "business control incidents," and definitions of the kinds of corruption Shell Group staff may encounter during business operations. Specifically, the primer focuses on bribery, the use of intermediaries, fraud, vulnerabilities in contracting and procurement, and organized crime.

The 1998 Shell Report includes a two-page section devoted to business integrity and the Group's policy on bribery. In this discussion, the Shell Group admits that many of its managers are offered bribes or encouraged to pay them. The Report discloses that "in 1997, Shell companies reported 23 instances in which Shell staff were detected soliciting or accepting bribes in any form."[16] The Report emphasizes that while it actively prosecutes those that do choose to pay bribes (all of the 23 instances reported led to terminations), those who choose to adhere to the Business Principles will not be penalized in any way for the consequences of their decision.

The 2004 Shell Report continues this tradition of transparency in bribery reporting. For the year 2004, "16 bribery incidents and 123 fraud cases were reported, resulting in the dismissal or resignation of 203 staff and contractors." [17]

Conclusion

Shell Group companies operate in more than 140 countries around the globe. Such expansive operations make it difficult to control the actions of all Group company employees. Moody-Stuart acknowledged this reality in his 1998 speech. Similarly, the 2004 Shell Report notes that the Company must continue to work to improve the way in which it detects and gathers data on incidents of bribery.

Nevertheless, theirs is a continued effort based on a clear policy that facilitation payments are not to be tolerated in any fashion. The development and application of training tools and reporting channels further support the Group's policy and serve to increase awareness amongst those expected to apply the Group's broader principles of business integrity.

A current Shell Group website statement on business integrity sums up the reality that no payment, however small, can be good for business; rather, it can have much broader implications that carry significant risk: [18]

> *Individual cases of petty corruption may appear relatively unimportant, but the cumulative effect can destroy decent society and particularly damage those at the bottom of the social scale who cannot afford to pay.... Bribery and corruption lead to a society where economic and political decisions become twisted. They slow social progress, hamper economic development and drive up prices for products and services. A corrupt society is an unequal and unfair society.*

Endnotes

1 TRACE is a non-profit anti-bribery business association supporting more than 1,000 member companies and intermediaries worldwide with anti-bribery compliance tools and services.

2 "Does 'Grease Money' Speed Up the Wheels of Commerce?" Daniel Kaufmann, World Bank Institute and Shang-Jin Wei, Development Research Group, Public Economics, World Bank.

3 Royal Dutch Shell plc. *Shell General Business Principles*. Shell International Limited: 2005. Available at: **http://www.shell.com/sgbp.**

4 Moody-Stuart, Mark. "Corruption and recent developments in legislation." Shell News & Library: 15 April 1998. Available at: **http://www.shell.com/home/Framework?siteId=media-en&FC2=&FC3=/media-en/html/iwgen/news_and_library/speeches/1998/corruptionandrecent_10171348.html**

5 Royal Dutch Shell plc. *Shell Report 1998: Profits and Principles – Does there have to be a choice?* "Introduction." Shell International Limited: 1998. p. 4.

6 Royal Dutch Shell plc. *Shell Report 2004: Meeting the energy challenge – our progress in contributing to sustainable development*. "Data Tables – Social." Shell International Limited: 2005. Available at: http://www.shell.com/static/shellreport2004-en/downloads/data_tables/data_tables_social.pdf

7 Royal Dutch Shell plc. "Dealing with Bribery and Corruption – A Management Primer." 2nd edition. Shell International Limited: 2003. p.9.

8 "Dealing with Bribery and Corruption – A Management Primer." p.16.

9 Ibid.

10 Royal Dutch Shell plc. "Dealing with Dilemmas – a training supplement." Shell International Limited: 2003.

11 Shell Nigeria. "Shell's Stance against Corruption." Available at: **http://www.shell.com/home/Framework?siteId=nigeria&FC2=/nigeria/html/iwgen/leftnavs/zzz_lhn8_6_3.html&FC3=/nigeria/html/iwgen/society_environment/issues_dilemmas/security/corruption/dir_agacorru_2703_1040.html**

12 *Shell Report 2004*. "Location Reports – Nigeria." p. 17.

13 According to the *Shell Report 2004*: "Our companies in 114 countries now offer staff hotlines, whistle-blowing schemes and other confidential ways to report possible incidents, up from 109 in 2003." p. 25.

14 Royal Dutch Shell plc. "Audit Committee Terms of Reference." p.3. Available at: **http://www.shell.com/static/investor-en/downloads/company_information/committees/rds_audit_committee.pdf**

15 "Dealing with Bribery and Corruption – A Management Primer." pp. 10-11.

16 Ibid, p. 23.

17 *Shell Report 2004*. "Social: Living by our business principles." p. 25. The number of bribery incidents includes proven cases of bribes paid or accepted by Shell employees, contractors or intermediaries.

18 Shell.com. "What is business integrity?" Available at: **http://www.shell.com/home/Framework?siteId=royal-en&FC2=/royal-en/html/iwgen/environment_and_society/key_issues_and_topics/issusanddilemmas/businessintegrity/zzz_lhn.html&FC3=/royal-en/html/iwgen/environment_and_society/key_issues_and_topics/issuesanddilemmas/businessintegrity/businessintgtyissue_10091625.html**

2A.V Gifts, meals and entertainment

Alexandra Wrage* | *TRACE*

"Approving expensive gifts and lavish hospitality can be symptomatic of weak internal controls."

Rules prohibiting bribes to Government officials are straightforward. Most companies have little trouble recognizing the risk inherent in wiring money to a foreign official's numbered bank account in order to secure a large Government contract. Written policies, employee training, internal hotlines and remedial action all contribute to greater transparency and less risk to reputation and shareholder value. Guidelines on gifts and entertainment for Government officials, however, are far less clear.

Are fruit baskets and other perishables appropriate and defensible gestures of goodwill? Is it appropriate to give a gift of higher value if the item carries the company's logo? Cash isn't ever an acceptable gift for a foreign official, of course. Or is it? If local custom is a reliable guide, China's New Year tradition of *hong bao*—giving little red envelopes containing small amounts of cash—remains widespread. Extravagant gifts to a foreign official should be easy to spot, but "extravagant" may be interpreted differently by a highly compensated executive of a major multinational travelling on an expense account and a foreign official living locally on a modest salary.

Meals provide another area of risk with even less guidance. Few would find any impropriety in a working lunch provided at company facilities, but what about a lavish dinner with spouses at a top London restaurant? If you lose control of the wine list, the bill can quickly exceed the monthly salary of some Government officials. Enforcement authorities usually stop short of declaring that all hospitality is suspect, but their admonition that it be "reasonable" under the circumstances is of little help.

Companies addressing the issue must consider not only the laws of their home country, but also the local laws of the foreign official's country, where the law may be unclear and the risk of reputational damage is often greatest. Many countries have enacted laws forbidding their Government officials to accept anything of value from any supplier or potential supplier; some of these laws expressly include gifts, meals, entertainment and travel. It is corrosive of good governance to permit employees to ignore these laws, but it's simply not feasible to expect a Government official to pay for his own coffee. Risk analysis may dictate that no company will be prosecuted for a modest meal, but recent prosecutions have highlighted patterns of hospitality as evidence of weak internal controls.

Earlier this year, TRACE undertook a review of more than 80 corporate policies addressing the question of whether or under what circumstances business people should provide gifts, meals, and entertainment to foreign Government officials. Almost all companies surveyed during this research agreed with the nine principles that have been adopted as TRACE guidelines on this issue.

*President of TRACE (Transparent Agents and Contracting Entities) and author of the TRACE Standard: Doing Business with Intermediaries Internationally

TRACE gifts and hospitality guidelines

All benefits provided to a foreign official should:

- Be reasonable and customary under the circumstances;
- Not be motivated by a desire to influence the foreign official inappropriately;
- Be tasteful and commensurate with generally accepted standards for professional courtesy in the country where the company has its headquarters;
- Be provided openly and transparently;
- Be given in good faith and without expectation of reciprocity;
- Be provided in connection with a recognized gift-giving holiday or event in the case of gifts;
- Be provided in connection with a bona fide and legitimate business purpose in the case of hospitality and travel;
- Not be provided to any foreign official or group of foreign officials with such regularity or frequency as to create an appearance of impropriety or undermine the purpose of this policy;
- Comply with the local laws and regulations that apply to the foreign official.

Company policies on gifts, meals and entertainment

Companies may choose to take a generally rules-based approach, providing strict dollar thresholds for gifts and meals. This approach is particularly popular with companies based in the United States. Or, companies may take a values-based approach, counselling employees that no gift, meal, or entertainment may be provided with corrupt intent, but that reasonable and customary gifts and meals may be provided at the employee's discretion. Regardless of the approach taken, internal conflicts can arise as companies balance the interests of their business development groups, tasked with customer relations and the development of goodwill, against the concerns of their legal and compliance organizations.

When capturing either approach in their compliance programmes, TRACE research indicates that companies tend to approach the question of gifts, meals, and entertainment in one of three ways. Companies fall fairly evenly into two of these categories, regardless of industry or region; the exception is the third category, which includes US companies almost exclusively.

1. **Employee discretion:** Gifts, meals and entertainment may be provided at the employees' discretion, subject typically to budget restraints and an overriding code of ethics.

2. **Fixed monetary threshold:** All gifts, meals and entertainment under a financial threshold, which varies from US$20 to US$250, are permitted. All expenditures over the threshold are either prohibited or permitted only with additional internal approvals. These thresholds may vary:

   a. By country or region;
   b. By seniority of employee; or
   c. By seniority of recipient.

3. **Management approval:** All gifts and hospitality over a low minimum threshold require approval of a compliance officer or the legal department.

"Simply dismissing the issue of local law as low-risk is no longer advisable."

Of the companies that TRACE interviewed, those that use monetary thresholds typically use a similar model for receipt by employees of gifts, meals and entertainment from suppliers. This was widely described as an intuitive and consistent approach that was easily understood by employees. Of the companies relying on employee discretion, there was generally a high level of confidence that the company's broad code of conduct would minimize abuses.

Addressing foreign law

In addition to the laws of the country in which a company has its headquarters, it is possible that local laws of foreign countries in which the company operates may regulate or prohibit nationals from receiving this sort of benefit. TRACE research shows that the codes of conduct of most companies operating internationally state that the companies will comply with all local laws. Most companies, however, are not familiar with the local laws governing gifts and hospitality. Those that are spend enormous sums keeping their information on numerous countries up to date. The written laws of some Gulf States, for example, prohibit all gifts and hospitality to Government officials. This is problematic in part because the practice of dining out is widespread and expected and in part because it isn't always clear who fits the definition of a Government official in countries where members of the royal family may hold honorary or paid positions within quasi-Governmental enterprises. To address the question of local law, TRACE has worked with more than 50 law firms worldwide to develop an on-line matrix of local regulations, addressing the black letter law as well as providing comments on local custom.

Simply dismissing the issue of local law as low-risk is no longer advisable. Recent cases and investigations in Europe and the United States demonstrate that the media and enforcement agencies are paying attention to corporate practices in this area and that both liability and reputational damage can result.

Case stories: Dilemma situations

Due to the uncertainty of the law in this area and an increasingly aggressive enforcement climate, we have provided a series of case studies without attribution to specific companies. Despite the difficulty of the decisions facing these companies, it was encouraging to see the level of interest in this issue and the commitment to provide resources to work toward solutions that balanced the need to support internal marketing efforts with the company's need to proceed in a transparent and ethical manner.

Surprise spouse

Company A complained of an event that was planned far in advance for two employees and four Government officials. Local law provided only vague guidance that Government officials should not accept anything that might influence them unduly. The Company in question had a policy with strict monetary limits and the restaurant had been chosen with care in order to ensure that those limits were observed. On the evening of the dinner, the four Government officials arrived with their four spouses and the sister of one of the spouses, for a total of five guests. They ordered expansively, including several bottles of expensive wine.

Many company policies prohibit gifts, meals, and entertainment for the spouses of Government officials on the premise that there is no business purpose for them to attend. Others require that the value of anything provided to the spouse of a Government official be added to the value of what is provided to the official himself, for purposes of monetary thresholds.

In this case, the employees had taken the appropriate steps to ensure compliance with the company's policy, but nevertheless ended up with a violation. The short-term response was to inform management that the policy violation was inadvertent and to account for the expense accurately in their books and records. The long-term response was the creation of an informal policy to favour business

lunches over dinners, except in exceptional circumstances. Lunches are often less expensive than dinners, and spouses are far less likely to arrive unexpectedly.

Signing ceremonies

Company B described a signing ceremony for an important and long-term contract. It was to be the third major contract signed with the same senior Government official. For each ceremony, the Company executive was expected to present his pen to the Government official after the signing and to accept the Government official's pen in return. This was a long-standing tradition and it launched the project with goodwill and positive publicity. The Company expressed concern, however, that the Government official had made clear the brand of pen he expected, going so far as to encourage the executive to buy it at the tax-free shop at the airport; it was determined that the cost of each pen was over US$300. The pen provided by the Government official in return was of little or no value, but that probably wasn't relevant to a bribery risk assessment, as it was the Government official who held decision-making authority over the contract. What may have been relevant was that US$300 was only slightly less than a mid-level Government official's monthly salary in the country in question and that this was the third pen presented in two years.

In this case, the Company determined that: (1) there was no tactful way to provide a less prestigious pen than the brand that had been requested; (2) no local laws prohibited a gift of this kind; (3) the nature of the event was sufficiently transparent to mitigate the high relative value of the item given; and (4) the contract had been awarded already and no immediate procurement decisions were before the Government official in question. Based on this analysis, the expenditure was approved.

Involuntary entertainment

Company C described repeated requests by Government officials that fell outside permitted corporate entertainment policy thresholds. In one case, the Government officials were travelling to corporate headquarters for three days of meetings at the Company's expense. The trip was approved in accordance with the Company's policy, which required review and approval by the legal department. Shortly before their arrival, the Government officials indicated that they wanted to stay over for the weekend and visit local attractions. They asked to be escorted and made it clear that they expected the Company to pay for the weekend excursion.

The Company concluded that the weekend activities were outside the scope of the trip's legitimate business purpose and therefore could not be approved. Their compromise was to offer to book—but not pay for—a rental car for the Government officials for the weekend. When the Government officials realized that they would have to pay for the excursion themselves, they departed after the meetings as originally planned. The Company's response illustrates careful and diplomatic application of the Company's policy, although some within the Company believe that this response soured business relations with these important customers. Addressing gifts or hospitality requested by Government officials is among the greatest challenges to a robust anti-bribery compliance programme. Training employees to decline inappropriate requests is more difficult than training them not to offer inappropriate gifts or hospitality.

Meetings prolonged for legitimate reasons

Unlike the previous example, Company D planned a business trip for foreign Government officials that was prolonged for legitimate reasons, raising the question of entertaining the Government officials over the weekend. This is largely uncharted water under anti-bribery laws, and companies must apply a standard of reasonableness. The Company in this case made arrangements for the weekend, but largely at the customer's expense. There was a major attraction nearby. The Company chose to provide transportation to and from the site, but it required the Government officials to bear their own costs once inside.

Just between friends

Company E's policy on gifts for Government officials includes monetary thresholds of US$50 which cannot be exceeded without the prior approval of the legal department. An employee who had lived in-country for many years was invited to his primary customer's house for dinner to celebrate a local holiday. The employee decided to bring a more lavish gift than Company policy permitted, worth approximately US$120. He submitted the expense falsely, recording it as two gifts given on two separate occasions; he then paid the remaining US$20 himself. The Company had several reasons for concern, including deliberate circumvention of Company policy and a books and record violation. When the Company met with the employee to discuss the situation, he indicated that the Government official was a personal friend and that he would have been happy to pay the additional amount himself.

This situation arises quite frequently when employees live overseas for long periods and develop friendships within the business community. Nevertheless, there was a breakdown in the policy that the Company needed to address. They revised their internal guidelines by: (1) limiting the frequency with which gifts can be given to Government officials to one major gift-giving holiday per year; (2) prohibiting employees from paying their own money for gifts for Government officials that are not permitted under Company policy (unless prior approval has been obtained); and (3) requiring more rigorous audits of expenditures on gifts, meals and entertainment.

Some may find this level of compliance needlessly restrictive, and for some industries and regions it may be. However, most companies that TRACE interviewed preferred a comprehensive global approach to this issue over a regional approach or fact-specific analysis.

Per diem

Payment of a *per diem* for travel expenses has long been thought a reasonable approach to managing legitimate expenses. Company F used an international table to determine an appropriate rate of per diem for a Government official's multi-city tour of the Company's facilities and then paid it in advance to ensure the official had sufficient funds upon arrival. The Government official then permitted the Company to pay for almost all meals and even some hotel rooms as these expenses arose. As a result, the Government official received double payment of his expenses. This was a violation of the Company's policy and probably of US law, which applied in this case.

The Company has since revised its policy. Now, in all cases where per diem payments will be made, the policy dictates that the per diem amount must be disclosed to the superiors of the Government official (as a part of the initial invitation) and that the amount should be paid in part upon arrival in the country and at appropriate intervals thereafter. In addition, rather than trying to monitor who would pay for each meal, the per diem was set at such a level as to anticipate that it would cover only lodging and those meals that the Government official ate alone. There are frequent stories of customers sharing hotel rooms in order to save a portion of their per diem, but there is little that companies can reasonably be expected to do to police this sort of behaviour.

Widely attended events

Company G sponsors frequent seminars, conferences and trade shows to promote its products internationally. Elaborate refreshments and gifts bearing the Company's logo are typically provided at these events. The Company has been concerned in the past that they cannot monitor attendance, restrict participation by spouses, or assess the value of hospitality and gifts flowing to any one Government official.

Many companies struggle with different approaches to hospitality provided to Government officials at widely-attended events. Accurately tracking attendance is not possible for companies hosting events of this kind. One event may flow into another, and Government officials may attend multiple events but stay only briefly at each one.

To address this problem, TRACE researched how its member companies deal with this situation and pro-

"A consistent approach will make oversight easier."

vided a proposed model policy with criteria that, if met, would exempt an event from the Company's usual policy on gifts, meals, and entertainment. Company G adopted this policy with the criteria set forth below:

- No corrupt intent;
- More than 25 participants;
- Nationals of more than two countries, such that a country-by-country legal analysis would be impracticable;
- Reasonable and customary for the country in which the event is held;
- Per person cost of event not to exceed (monetary threshold to be determined by Company, in this case US$125).

Conclusion

Regardless of which approach a company takes when establishing and enforcing its gifts, meals and entertainment policy, the issue should be addressed clearly and consistently. A consistent approach will make oversight easier and will reduce both employee confusion and the compliance or legal resources otherwise required to address this issue on an ad hoc basis.

While approving expensive gifts and lavish hospitality is less likely to undermine a company's culture of compliance than the payment of a traditional bribe, it can be symptomatic of weak internal controls. In addition, details of lavish gift-giving are often featured in media accounts of anti-bribery enforcement actions. One recent US enforcement action involved large cash transactions, but the enforcement agency nevertheless decided to include in its summary details of pedicures provided to the spouses of Government officials. The relative value of these items is often very small, but the reputational damage they can cause is extraordinary.

2A.VI Case story: Nexen's Yemen scholarship programme – Developing an educational legacy while promoting transparency and equal opportunity in a host country

Andrea Bosnjak* | *Nexen*

Nexen Inc. is a Canadian-based energy company that predicates its sustainability not only on profits and competitiveness but on its ability to grow value responsibly. Transparency, integrity and business ethics, safety and the environment, and people and partnerships are the values carried in parallel with delivering returns to shareholders. Nexen's operations in Yemen provide a strong example of the unique way this company does business in Canada and internationally. When it came to developing and implementing a post-secondary scholarship programme for Yemeni youth, these values were at the forefront in ensuring the delivery of a merit-based, equal opportunity initiative that would build a legacy of education and transparency. The following business case story illustrates the development and implementation of a scholarship programme in Yemen. It outlines the challenges and opportunities, and methodologies employed in advancing Nexen's corporate values cross-culturally, specifically as it relates to the United Nations Global Compact 10th Principle for business to promote transparency and combat corruption.

Corporate culture built on ethics and integrity

Originally formed in 1972 as Canadian Occidental Petroleum Ltd., Nexen explores for, develops, produces and markets crude oil and natural gas. Producing about 250,000 barrels of oil equivalent per day before royalties, its assets and long-term growth opportunities are positioned in the North Sea, deep-water Gulf of Mexico, the Athabasca oil sands of Alberta, offshore West Africa and Yemen. In 2004, it earned $2 billion in cash flow and $800 million in earnings.

Nexen's shareholders receive additional value through its leadership in ethics, integrity and sustainable business practices. The company has approximately 3,200 employees worldwide and requires that they conduct business according to principles of responsibility, honesty and reliability. In fact, each employee must undertake mandatory integrity training. This commitment has helped the company attract and retain high-calibre employees while building credibility in the communities in which it operates.

Nexen's commitment to operating with integrity became deeply rooted in the 1990s. One of its most significant accomplishments was helping develop the International Code of Ethics for Canadian Business in 1997. The Code was designed to provide a framework of values and principles with respect to community participation, environmental protection, human rights, business conduct (including principles related to anti-corruption), employee rights and safety. Through its involvement in this initiative, Nexen helped define benchmarks for the conduct of Ca-

*Manager, Yemen Scholarship Program

nadian companies operating globally and in turn set its course for further entrenching these values within its own corporate culture. Notably, several of Canada's leading companies from various sectors have either adopted the Code or used it as a template for developing their own.

Nexen's flagship operations in Yemen

In 1987, Nexen and its joint venture partners entered into a partnership with the Government of Yemen to develop the Masila Project (Block 14). Since first production in 1993, the Masila Block has been Nexen's most significant international project and accounted for nearly 30 per cent of the company's cash flow in 2004. Masila is also the largest oil project in Yemen, currently producing approximately 40 per cent of the country's total oil output.

The relationship Nexen has with the Yemeni people, from the highest levels of Government to residents in local communities, is critical to the company's success and sustainability in Yemen. Nexen is firmly committed to playing a role in Yemen's development. Through partnering with the Government of Yemen and the Yemeni people, the company is investing in the country's human resource potential, its physical infrastructure and progress.

Yemen provides an example of Nexen implementing transparent, ethical and sustainable business practices. For example, Nexen's localization programme to increase the percentage of Yemenis in the workforce seeks to enhance the professional development of Yemenis in the oil and gas industry, and specifically in Nexen's operations, through recruiting Yemenis and engaging them in a formal training and development programme. Today, Nexen's operations in Yemen are 73 per cent "Yemenized", with the proportion increasing on a yearly basis. Nexen also provides high-quality drinking water to local communities with previously unreliable water sources and operates medical clinics located at the Central Processing Facility and Terminal that are open to communities, treating up to 1,000 local residents and families monthly. Additionally, Nexen, the United Nations Development Programme (UNDP), and the Government of Yemen agreed to jointly promote water management and sanitation in the Masila-Hadramout region in April 2004.

Initiation of a new community programme

In 1997, Nexen and its Masila Block partners—Occidental Petroleum and Consolidated Contractors Company—celebrated ten years of operations in Yemen by developing a scholarship programme directed in disciplines critical to the country's economic growth and development. It was originally envisioned that 20 Yemeni students would be given the opportunity to study at post-secondary institutions in Calgary, Canada. To date, Nexen and its partners have awarded scholarships to 70 deserving Yemeni students.

Nexen championed the effort to build a post-secondary scholarship programme to help improve the educational attainment for young Yemenis. According to the UNDP's Human Development Report for 2003, Yemen is one of the world's least developed countries. It was ranked 151 out of 177 countries on the UNDP's human development indices regarding health and longevity, education and quality of life. In terms of educational attainment, there is 72 per cent participation at the primary level and only 35 per cent at the secondary level.[1] Added to that are inequalities in education between males and females. According to 1999 statistics, only 35 per cent of females attain a primary education and 26 per cent complete the secondary level.[2] Given these figures, Nexen felt it could play a role both in increasing the educational attainment of Yemen's youth and in advancing female participation in education.

The first ten scholarships were awarded in 1998, with the students arriving in Calgary in 1999 to begin their studies. Each scholarship underwrites the completion of a four-year post-secondary degree programme and includes the provision of tuition, books, accommodation, meals, health care insurance, monthly living allowance and annual travel to Yemen. The value of each scholarship

"The company recognized the challenge it would face to ensure that it awarded the scholarships solely on the basis of merit."

is approximately $140,000 over a four-year period and each student is given the tools, resources and grounding for personal success in the programme.

From a macro perspective, the purpose of the scholarship programme as envisioned, and as implemented, was to create an education project that would leave a legacy in Yemen. A secondary, but no less fundamental objective, was to develop and implement a transparent, merit-based programme where only the students with a proven academic ability would receive a scholarship. Nexen did not want the scholarship programme to be a cheque-writing exercise; it wanted to be involved in the selection of each student as a further check-and-balance to ensure that the highest standards of integrity and transparency were part of the formula.

Promoting merit and transparency through selection methodology

The scholarships—due to their monetary value, comprehensive elements of the entire programme, and the opportunity for advanced education in another cultural milieu—are viewed as prestigious awards and are competed for with great intensity. The company recognized the challenge it would face to ensure that it awarded scholarships solely on the basis of merit and to counter the possibility of *wasta* (a common Arabic word in the Middle East generally indicating "influence"). In addition, the company was under the scrutiny of sceptical stakeholders watching whether or not this programme could be established according to the principles of merit and transparency.

The first step in developing this process involved establishing a working group of local stakeholders to guide the development of the project. Nexen wanted to collaborate with the Government of Yemen to ensure and enhance the programme's integrity and longevity. The Scholarship Steering Committee (SSC) was thus formed under the chairmanship of His Excellency Abdulaziz Abdulghani, Chairman of Yemen's *Al-Shoura Council*, and today still operates under his stewardship. Since 1997, the SSC has included the Ministers of Foreign Affairs, Oil and Minerals, Education, and Higher Education and Scientific Research. Representatives from Nexen, which acts on behalf of its Masila Project Partners, and America-Mideast Educational and Training Services Inc. (AMIDEAST, an NGO facilitating educational exchange programmes, English-language training and educational advising), also sit on the SSC.

The SSC played a critical role in establishing the original criteria for selection. An important first step was setting minimum qualifying criteria that each applicant would have to meet, which included being a Yemeni citizen between 17 to 22 years of age, attaining at least an 80 per cent overall average on their secondary school certificate, and having English-language ability. Students meeting these criteria are eligible to apply and have their applications considered equally amongst their peers applying to the programme. A call for applications is published in major English and Arabic language newspapers to ensure that the programme is widely advertised and that a particular region of Yemen is not favoured.

All applicants are ranked on objective criteria by a scoring team composed of representatives from the Ministry of Higher Education and Scientific Research. A standardized score is assigned to each student's overall secondary school average, their average in math and sciences (since degree programmes under the scholarship require an aptitude in theses subjects), and their level of English-language achievement. Students are given access to the scoring standards so that they have the opportunity to maximize their ranking where possible. For example, a student who writes the international TOEFL exam (an English-language proficiency test) and achieves at least the minimum requirement set for university admission will be given full points under the English-language category. Once all the applications have been scored, an audit is conducted by Nexen and AMIDEAST representatives.

The top candidates move on to the second phase, where they are interviewed to determine if they have the maturity and motivation to succeed in the Scholarship

"It can take years to a build a reputation of ethics and integrity, and only one bad decision can quickly erode hard-won credibility."

Programme. The interviews are conducted by a team of representatives from Nexen, AMIDEAST and the Ministry of Higher Education and Scientific Research. Following the interviews, the top-ranked candidates are endorsed by the SSC to proceed to the final phase. At this stage, candidates' applications are sent to post-secondary institutions in Calgary for further evaluation. The University of Calgary and the Southern Alberta Institute of Technology determine if each student has the academic qualifications to gain admission to their selected programme based on their secondary school transcripts. The institutions are an integral check-point in the selection process; only students meeting their academic standards will be admitted, thus reinforcing the merit-based ideology of the programme. The results from each phase are combined, and a recommendation of award is made to the SSC. The SSC endorses the final recipients.

In the first year that the scholarships were offered, 731 applications were received and the 62 top-ranked candidates were interviewed. From there, 33 candidates were short-listed for evaluation at the post-secondary institutions, and finally, 10 students were given scholarships. The entire process took approximately nine months. Throughout the selection period, Nexen faced significant pressure to promote candidates who were not qualified or even eligible to receive a scholarship. The members of the SSC played a critical role in diffusing the pressure and ensuring that Nexen and its partners were able to award the scholarships according to merit and transparency.

The selection methodology has remained consistent, with only minor adjustments to improve the fairness of the process. As an example, a change was made to the criteria under the category of English-language ability. In Yemen, students attending private school receive English training beginning at the primary level, with instruction taking place exclusively in English. Public school students begin learning English at the primary level too, but Arabic is the principal language of instruction. As a result, scholarship candidates from the private school system had an advantage over public school students and students applying from rural areas. The SSC thus introduced tiered entrance into the scholarship programme in 2003 in order to level the playing field. If a student demonstrated a strong academic ability but lacked English-language skills, they were given the opportunity to complete an intensive English-language training programme in Sana'a or Aden. This broadened the accessibility of the programme and deepened the perception that the programme was operating according to principles of merit and transparency.

Measuring success

In 2006, the scholarship programme will award the final 10 scholarships under its present commitment, bringing the total number of awards to 80. The first group of ten students graduated in 2003. By the end of 2005, the programme will have 26 graduates. The success of the scholarship programme can be directly credited to the selection process. Students admitted to the programme generally perform well academically and even excel in their field of study. Out of the 70 students selected, only two students did not complete their degree programme, but in both cases, it was due to non-academic reasons.

The qualifying criteria and academic screening process ensure that the most qualified candidates receive awards. In addition, the SSC plays a critical role in managing external pressures of influence on the programme to advance unqualified candidates. The SSC members work cooperatively and with a common goal to enhance and ensure the credibility and stature of the programme. This partnership is a vital pillar in the administration of the programme, its ongoing success and its reputation as a merit-based initiative.

It is also significant that the scholarship programme enhances opportunities for women. Members of the SSC fully accept and approve the advancement of women under the programme. Today, some 30 per cent of scholarship recipients are women in contrast to 10 per cent in 1999. It is becoming increasingly accepted for women to pursue post-secondary studies and to travel abroad for this purpose.

One premise of the programme was that graduates would return to Yemen following completion of their degree to use their skills and knowledge for the development of their country. Based on a survey of the 17 graduates from the classes of 2003 and 2004, eight students returned to Yemen and found employment related to their field of study. Six students stayed in Alberta to pursue employment opportunities under a joint programme run by the federal Government and the province of Alberta that issues two-year work permits to foreign students who graduate from publicly funded Alberta post-secondary institutions. Three students are undertaking further studies in Canada.

Many students in the original group of recipients subsequently admitted that they approached the scholarship programme with scepticism when they applied. They believed that *wasta* would be the sole unpublished criterion for acceptance into the programme. The credibility of the programme has increased with each passing year due to adherence to the principles of merit, transparency and equal opportunity. With time, outside pressure for advancement of candidates has decreased significantly.

An important footnote to make is that Yemen has adopted similar selection methodologies and principles for its own post-secondary scholarship competitions. For example, some of the Government ministries now use the model Nexen developed in administering its own scholarship programmes.

Conclusion

It can take years to a build a reputation of ethics and integrity, and only one bad decision can quickly erode hard-won credibility. Nexen's employees are trained and expected to uphold high standards of safety, environment and social performance. The relationships the company has with its communities and stakeholders are dependent on this. Poor decisions could have a long-standing negative impact on the company's reputation.

Promoting Nexen's values within an international operating environment can be challenging at times. The Yemen Scholarship Programme is an example of how a company successfully navigated difficult terrain to implement a transparent, merit-based and equal opportunity programme that is now one of the country's signature community initiatives. The programme's success is based on three elements working together. From its inception, it was made clear that if the company was unable to deliver a programme according to these principles, it would not undertake it at all. Acting as enforcements to Nexen's ideals and delivery strategy was the establishment of a partnership amongst stakeholders through the SSC. Defining solid qualifying criteria and selection methodology was also instrumental to awarding scholarships to the most qualified students.

The programme's graduates are a testament that the processes and systems in place work and are building a legacy of personal achievement, creating access to higher education and cross-cultural experiences, and contributing to enhanced Governmental and institutional expertise that will ultimately be of benefit to the Yemeni people. Nexen's Yemen Scholarship Programme could be a model for transparent, merit-based assistance for critical human capital development in developing countries by multinational companies.

Note: All figures quoted are in Canadian Dollars

Endnotes

1 United Nations Human Development Report 2005
2 UNESCO Institute for Statistics, Arab States Regional Report 1999

2B

Control and compliance methods

2B.I Internal reporting and whistle-blowing

José A. Tabuena and Chris Mondini* | *Deloitte Financial Advisory Services LLP*

"Whistle-blower reporting mechanisms remain one of the most effective means of fighting corruption and detecting fraud in organizations."

The popularity of helplines is expanding internationally along with the global nature of company business practices. According to a Conference Board survey on the ethics programme of 165 companies worldwide, numerous countries have significant percentages of organizations with policies and procedures that encourage employee reporting of violations. [1]

Helplines across the world

Such global popularity has led to new legal and regulatory concerns regarding the use of helplines. For instance, the European legal system differs from the US one, and privacy laws vary tremendously. This can be especially challenging for businesses when exchanging information between multiple jurisdictions.

Recent legal decisions in France and Germany, ruling that "anonymous employee whistle-blowing hotlines, without certain precautions, are invalid or unlawful in those countries," are now causing concern for many multinational public companies that must comply with the US Sarbanes-Oxley law and related rules.[2] For several European Union Member States (EU), Sarbanes-Oxley requirements may be in direct conflict with these decisions. US companies who have subsidiaries and employees in the EU with reporting mechanisms in place must now consider additional options to minimize risks in those countries.

Another consequence of the globalization of helplines is the potential impact of cultural differences that may govern its use. A World Bank Conference Board study found culture-based resistance to whistle-blowing to be less common in East Asia than in Europe.[3] This study suggests that a lower incidence of whistle-blowing in Western Europe may "reflect a preference for other channels, such as work councils, labour unions, or even direct discussions with appropriate company executives." The study further notes that whistle-blowing may be a risky proposition in France because Article 214 of the French Criminal Code makes denunciation of another person without just cause a criminal offence.

Anecdotal explanations have been generally offered in countries where there may be a culture-based resistance. For instance, respect for the chain of command is said to be embedded in Japanese business culture, thus making it unlikely that someone will feel comfortable reporting an issue outside that chain of command. According to Clarisse Girot, senior legal advisor for the Commission nationale de l'informatique et de libertés (CNIL), for cultural and historical reasons anonymous

* José Tabuena is a Manager amd Christopher Mondini is a Senior Manger in Deloitte's Forensic & Dispute Services practice. The case story described was previously published in the December 2005 issue of Compliance & Ethics (http://www.corporatecompliance.org/)."

whistle-blowers are discouraged in France. "It's very much related to World War II. Anonymous reports do not raise good memories in our minds," says Girot referring to the experience under German occupation.[4]

The historical stigma of the whistle-blower as informer has its various cultural explanations, yet the discomfort is apparently universal. At this time there is no universal solution for disparate regulations and cultural norms, thus companies should monitor and perform a country-by-country analysis pending future multinational resolution.

Whistle-blower reporting mechanisms remain, however, one of the most effective means of fighting corruption and detecting fraud in organizations, be they public, private or governmental, or non-governmental. Because the most developed systems and the longest experience with whistle-blower programmes are found within the US private sector, the case story below is drawn from that pool of examples.

Whistle-blower case story

The attached case story is a short and specific account of the use of a whistle-blower helpline in working against corruption within an organization.

Background

This case description involves a large, publicly traded health benefits company in the United States that provides a range of medical and speciality products, including network-based health care services. The company offers various health plans, pharmacy, life and disability benefits in over 10 states.

The problem

The company had a large Information Technology (IT) department that tended to be viewed as a separate part of the organization. As a result, they were often overlooked when it came time to communicate and promote company-wide initiatives. The IT department was also suffering from poor morale and frequent turnover of programming staff.

A compliance and ethics programme, including a telephone helpline had been in place for approximately two years. A broad range of issues were reported through the helpline, including allegations of regulatory violations and employee misconduct. Feedback from employees regarding the helpline was generally positive with a percentage of callers (approximately 15 per cent) using the mechanism to seek guidance.

The helpline was active and averaged a volume of 1.5 per cent calls per 1,000 employees each year since inception. However, it was observed by the Compliance department that the IT department was the only segment of the organization that did not have a single employee make a report or seek guidance through the helpline. The Compliance department then realized that while all company regions provided basic training on the compliance and ethics programme, regional Compliance officers did not include IT staff as "regional" employees. Similarly, the corporate units did not include IT in their compliance training.

Drivers of change, key players, and trigger stakeholder group

The Compliance officer determined that a compliance liaison needed to be formally designated for the IT function. This liaison would be responsible for ensuring implementation of core compliance and ethics programme activities for the department. A new Chief Information Officer had recently been hired who was supportive of the ethics and compliance programme. As a result, IT employees finally began receiving basic training and communications regarding the company helpline. The stakeholders most responsible for bringing pressure to bear in addressing the problem were the IT department employees.

What happened

As training to IT employees became implemented across the organization, the usual initial surge of calls started coming to the helpline. The Compliance and Ethics department observed that calls coming from IT employees concerned the following major issues:

"A helpline is of no value if the workforce is not aware of it."

- Questions regarding conflict of interests and hiring of family members;
- Allegations that certain managers (Director-level and above) were manipulating certain metrics to maximize their annual bonus.

The issues

Conflicts of interest

Upon evaluating questions regarding conflicts of interest and the hiring of family members, the compliance and ethics staff learned there was a wide-spread perception of favouritism and inappropriate reporting relations in the IT department. A review was conducted with the support of Human Resources (HR) that included questioning all IT managers about their direct reports and employees of their unit. It was determined that there was one instance of a family member (brother-in-law) of a manager who had been hired, but that person did not report to the manager and was in a different section of the IT organization. Still, managers occasionally would refer a friend or family member to another manager, and employees believed the referring managers exerted influence in the hiring process.

Because of the misperceptions, which were believed to be impacting morale, all the IT managers received training on appropriate employment practices (hiring, performance reviews, discipline and retention). Communications were also delivered to all IT employees explaining policies and practices regarding the hiring of family members.

Follow-up with callers to the helpline was conducted. Most of the callers were not anonymous, but confidentiality of their identity was maintained. The callers stated that the work environment in the IT department had noticeably improved. They also expressed gratitude that their questions had been answered and that the issue had been addressed. The callers felt their concerns were taken seriously when they saw the communications on hiring practices and when they were able to discuss issues with managers during staff meetings. Staff retention started improving in the department.

Manipulation of data impacting incentive compensation

Efforts were made to get more detail on these allegations from an anonymous caller. The HR leader responsible for incentive compensation noted that the same allegation was made by an anonymous letter the prior year, but it was difficult to investigate the matter due to limited information. For instance, there were over 10 managers with varying compensation factors who could potentially fall under the allegations. Further, the data sources on which some of the metrics were based were not centrally maintained, and controls were loose. A comprehensive investigation would have been difficult and time-intensive.

Through the telephone mechanism, ethics and compliance staff were able to obtain more information from the callers, thus isolating the metrics and impacted individuals. It was determined that the bonuses of a select few IT managers were indeed influenced by the data source in question, which was controlled by a non-manager with minimal oversight and controls.

Following interviews with the key individual and review of the data file (including forensic analysis), it was determined that one IT manager had misrepresented information provided to the staff person maintaining the data. Notably, this staff person also reported to this manager. As a result, the IT manager's bonus compensation was inflated.

The IT manager was subsequently terminated. The compliance and ethics department also worked with HR to review all bonus compensation arrangements to assess appropriateness and potential for data manipulation. Performance incentives were adjusted, and stricter controls on pertinent data files were implemented. The board and senior leadership began considering linking ethics and compliance-oriented conduct and measures to bonus compensation and other company incentives.

"The helpline, in addition to addressing the problem of corruption, proved to be a successful management tool."

Conclusion: Success in the correction of failures

This case story provides support for several basic tenets of an effective ethics and compliance helpline in uncovering, investigating and mitigating corruption.

First, a helpline is of no value if the workforce is not aware of it. Although a helpline was in place, it became apparent that a segment of the company had not been informed. It was helpline data that revealed this gap. Through a review and comparison of the data segmented by region, department and incident classification, it became obvious that the IT department had not used the helpline.

Once the IT department became part of the helpline communication plan, they began to call the helpline. Fortunately, promotion of the helpline to IT staff was not done in isolation. The Ethics and Compliance office obtained support from the CIO for designating an accountable liaison within the IT function. The support of department leadership likely influenced the success of the training and communications delivered by the Ethics and Compliance staff.

Awareness of a helpline is not sufficient to ensure success. The company made sure that issues and allegations were addressed and investigated, as needed. During assessment work we've done for Fortune 500 companies, employees who choose not to report wrongdoing indicate a belief that nothing will be done anyway, so why should they take the risk? Employees also cite fear of retaliation as a reason for not reporting.

Here, the Ethics and Compliance office established the credibility of the helpline as a resource to raise issues and report misconduct. The concern regarding nepotism and conflicts of interest was taken seriously, and although the situation did not exist as thought, the review went a long way to clearing the air.

Similarly, the investigation and dismissal of the manager who manipulated data to increase bonus compensation sent a message to the department that such conduct would not be tolerated. Without the report by an anonymous caller, it is highly unlikely this scheme would have been uncovered. And the telephone mechanism enabled a degree of interactivity that supported a detailed investigation, which had not been possible by submission of an anonymous letter.

Finally, it should be apparent that the helpline, in addition to addressing the problem of corruption, proved to be a successful management tool. Before the helpline was utilized, the IT function was a hotbed of discontent and high turnover. Once underlying concerns were safely raised and addressed, employee satisfaction and retention improved. Clearly, the helpline supported a culture of compliance and ethical behaviour, which in turn fostered satisfaction in the workplace.

Note

This case story was written in coordination with and approval of the company described. The nature of the topic of fraud and corruption in companies is such that a number of clients whom we approached opted not to participate. Happily, the situation described is illustrative of similar experiences with whistle-blower helplines in a number of countries and among multinational corporations.

Endnotes

1 The Conference Board, "Ethics Programmes, The Role of the Board: A Global Study," 2003. Available at: **http://www.conference-board.org.**

2 Schreiber, Mark E., Jeffrey M. Held, et al., Anonymous Sarbanes Oxley Hotlines in the E.U.: Practical Compliance Guidance for Global Companies. *BNA International World Data Protection Report*, August 2005 (**www.bnai.com**).

3 Jean-Francois Arvis, Ronald E. Berenbeim, *Fighting Corruption in East Asia: Solutions from the Private Sector*, The World Bank, 2003, p. 57.

4 Pierce, Alan, French say oui to Hotlines but U.S. companies must learn the rules. *Compliance & Ethics,* March 2006 **(http://www.corporatecompliance.org/).**

2B.II Reporting on countering corruption

Peter Wilkinson* | *Transparency International*

"There is a need for better quality and more comparable information on the environmental, social and governance impacts of companies."

Reporting on countering corruption

United Nations Global Compact participants are expected to communicate with their stakeholders every year about progress in implementing the 10 United Nations Global Compact principles. This assumes that the company has implemented its policy and put in place actions and activities to make progress. Investment in reporting has to be balanced against many other demands, but for countering corruption, reporting and transparency of disclosure provide a safeguard against risk and a means of establishing credibility in an area of growing concern to stakeholders.

Motivation for sustainability reporting

Companies and other organizations are being confronted with an increasing demand for reporting on non-financial matters from a wide range of stakeholders and users, ranging from regulators to civil society. The demands from stakeholders for reporting come from an underlying desire to be assured about the ways companies behave on matters that can affect their interests, whether these are broader issues such as the environment, risks that could affect the share value of a company or specific information such as the sustainability or health and safety aspects of products and services.

The users of reporting include:

- Reporting company itself;
- Business sector and peers;
- Compliance codes;
- Regulators and legislators;
- Investors and fund managers;
- Supply chain: customers and clients;
- Lenders;
- Multilateral development banks, international development agencies, export credit agencies;
- Media;
- Employees;
- Civil society and other stakeholders.

Growth in sustainability reporting

There has been a substantial growth in sustainability reporting over recent years, but the growth has taken place mostly in Europe, US, Japan, Australia and South Africa.

However, not all stakeholders want to know about sustainability issues. A 2005 report by United Nations Environmental Programme[1] found that young analysts appeared unconvinced of the materiality of most environmental, social and governance issues to business; unable to consider them because of inadequate information, training or tools; and unwilling to depart from business as usual.

*Secretariat, Business Principles for Countering Bribery, Transparency International USA (www.transparency.org).

"Only one in five reports included policies for bribery or corruption."

The desire for quality information is not easily satisfied. Corporate scandals have shaken the confidence of stakeholders, who are also being overwhelmed by an explosion of information and reporting. Companies are making available ever greater amounts of information, but the reports may omit or overlook key sustainability issues, either from lack of awareness, hesitation to discuss sensitive topics or fear of legal liability.

Stakeholders want information that:

- Is relevant to their needs;
- Is reliable;
- Is understandable;
- Can be acted on with confidence;
- They can respond to.

Corruption not yet prominent in the reporting agenda

Corruption, which underlies many of the major sustainability issues, has not been prominent on the Corporate Social Responsibility (CSR) agenda. The KPMG 2005 survey[2] reported that the majority of the reports (61 per cent) included a section on corporate governance, but only one in five reports (18 per cent) included policies for bribery or corruption, and few elaborated on how such commitments are put into practice. However, increasing mention in media articles and corporate reports of corruption issues signals that countering corruption is now on the CSR agenda. The arrival of the United Nations Convention against Corruption and the introduction of the United Nations Global Compact (UNGC) 10th Principle give further leverage to this trend.

Towards standardised reporting

A United Nations survey in 2005 concluded that there is "a need for better quality and more comparable information on the environmental, social and governance impacts of companies if investors are to assess the significance of these issues to their investments."[3]

Solutions are being sought through reporting frameworks such as the *Global Reporting Initiative* (GRI), surveys, analyses and indices by independent voices such as academia, NGOs or think tanks. The reporting organizations themselves are seeking greater credibility through the use of verification or assurance for their reports.

For NGOs such as Transparency International (TI), there is both an opportunity and a responsibility. The opportunity is to provide analysis and comment on the information that is available. The responsibility is to analyse and make use of the information provided at great cost by companies. NGOs and other stakeholders can also take responsibility for providing guidance to companies on the information that they believe should be supplied and developing generic reporting indicators. The GRI is the leader in this work. However, the indicators for corruption are still to be developed fully—a task that falls to TI and other stakeholders.

Is reporting necessary?

Organizations must consider critically whether the effort involved in reporting is justified by the overall aim or goal. The responsibility lies heavily upon requesting organizations not to generate unnecessary requests, as companies and organizations are now inundated with requests from Government, researchers and NGOs. The requesters should also make sure that the goal of their request is clear and that they will act upon information obtained.

The United Nations Global Compact's goal is for participants to make progress against the ten principles and to demonstrate this progress to stakeholders who will in turn either approve the progress or push for more. The annual Communication of Progress is used to show that policies and targets are in place, outcomes are measured and that progress is being made.

For the GRI, the goal is to encourage sustainable development by "assisting reporting organizations and their stakeholders in articulating and understanding contributions of the reporting organizations to sustainable development."[4]

The FTSE4Good Index Series identifies companies that meet globally recognized corporate responsibility standards in environmental sustainability, relationships with stakeholders, and universal human rights. It sets criteria indicators within a best practice framework of policy, management systems and reporting or disclosure.

The United Kingdom's *Business in the Community* (BitC), a business membership organization, has as its overall aim "to create a public benefit by working with companies to improve the positive impact of business in society." BitC's Corporate Responsibility Index is the leading United Kingdom benchmark of responsible business practice. Each year, some 150 companies from the FTSE 100 and FTSE250, the Dow Jones Sustainability Index Sector leaders and larger Business in the Community Members are invited to participate.

Why do companies report?

The reporting company may have several aims:

Compliance with a voluntary code: The organization has made a commitment to a voluntary code such as the United Nations Global Compact.

Membership association requirement: This is a variation of compliance with a voluntary code, but the commitment here is to the business sector or grouping rather than to society. An example is the International Federation of Inspection Agencies,[5] which requires members to demonstrate that certain key elements are included in their company's regulatory compliance programme. Members have to report annually on their compliance against the association's Compliance Code covering technical and business professional conduct and ethics in relation to integrity, conflicts of interest, confidentiality, anti-bribery and fair marketing.

Compliance with regulation: Mandatory non-financial reporting is growing and includes laws and regulations set by Government, stock exchange and other regulators.

Demonstrating quality of management: Fund managers may use reporting of performance on anti-corruption as one of the factors for assessing a company's quality of management.

Assessing quality of risk management: Fund managers and investors need information about the key risks for a business—which may require reporting under Government or stock exchange regulations.

Building reputation and credibility: This is of key importance to organizations, especially in the light of major business scandals and the stakeholders loss of trust in the business sector.

Pre-qualification requirement: Companies with anti-corruption programmes may require their suppliers to have established comparable systems. Multilateral development banks and export credit agencies can be expected to place increasing pre-qualification requirements related to anti-corruption practices before making loans. In September 2004, the World Bank announced the adoption of an integrity clause for all companies bidding on large Bank-financed projects. The clause requires companies to certify that they "have taken steps to ensure that no person acting for [them] or on [their] behalf will engage in bribery."

Continuous improvement: For some organizations, there will be a high risk of bribery because of the sectors or markets in which they operate and they will wish to monitor and improve their anti-corruption processes and performance. An important part of the improvement process will be reporting on key indicators, including internal benchmarking, whether year-on-year or, in larger organizations, between divisions and business units.

Peer or sector action: Business sectors or groups of companies, such as CSR leaders, may create pressure on other companies by setting standards for performance and reporting.

Meeting stakeholder expectations and needs: The sustainability reporting movement not only responds to stakeholder pressure for more information but feeds an expectation for quality and accessibility of information.

Why companies report:

- Complying with a code;
- Meeting membership association requirements;
- Complying with a regulation;
- Demonstrating quality of management;
- Demonstrating quality of risk management;
- Building reputation and credibility;
- Meeting a pre-qualification requirement;
- Making continuous improvement;
- Matching peer or sector action;
- Meeting stakeholder expectations and needs.

Codes and frameworks on countering corruption

The international codes relating to countering corruption have been focused to date on bribery and money laundering. They are not compliance codes, and only the United Nations Global Compact requires reporting on progress. The Global Sullivan Principles and the Partnering against Corruption Initiative (see below) encourage signatory companies to submit case studies. In addition to the United Nations Global Compact, the principal international codes that focus on countering corruption are:

The Business Principles for Countering Bribery: Published in 2002, these are an initiative of Transparency International and Social Accountability International. They were developed by a multistakeholder Steering Committee drawn from business, NGOs, trade unions and academics and are supported by a range of tools.[6]

The Global Sullivan Principles (GSP) for Corporate Social Responsibility: These Principles were launched in 1977 by the Reverend Leon Sullivan and were re-launched in 1999. A company wishing to be associated with the Principles is expected to provide information that publicly demonstrates its commitment to them. To date, some 187 companies have signed up to become Charter GSP Endorsers. The Principles cover bribery and require signatories "to promote fair competition including respect for intellectual and other property rights, and not offer, pay or accept bribes."[7]

The International Chamber of Commerce (ICC) Rules of Conduct to Combat Extortion and Bribery: These Rules were initially adopted by the ICC in 1996. A tougher version issued in October 2005 includes 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.[8]

The Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery: Derived from the Business Principles for Countering Bribery, the PACI Principles were launched in 2004. Signatory companies make a commitment to either implement anti-bribery and anti-corruption practices based on the PACI Principles or use them to benchmark and improve their existing programmes.[9]

The Wolfsberg Principles: The Wolfsberg Group is an association of twelve global banks that aims to develop financial services industry standards, and related products, for Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies. The Wolfsberg Anti-Money Laundering Principles for Private Banking were published in October 2000 and revised in May 2002. The Group published a Statement on the Financing of Terrorism in January 2002 and released the Wolfsberg Anti-Money Laundering Principles for Correspondent Banking in November 2002. The Group's most recent statement, on Monitoring, Screening and Searching, was published in September 2003.[10]

Reporting frameworks and initiatives

Access to information and transparency are principal tools in the fight against corruption.

Various reporting instruments and initiatives collect data and report on integrity and corporate governance, where countering corruption forms only part of a wider review. These instruments include The AccountAbility Rating[11] and Governance Metrics International.[12] Other bodies that collect data and publish reports are sustainability consultants, SRI fund managers, research agencies and the professional firms.

There are no global indices yet that report on companies' anti-corruption practices. Since 1995, TI has published the Corruption Perceptions Index, an annual survey of perception of corruption in countries, and in 2002 it published the Bribe Payers Index (BPI), which looked at perceptions of business sectors most likely to pay bribes. Publication of a new BPI with an improved methodology is planned.

In its work with the private sector, TI encourages transparency and quality of reporting of anti-corruption processes and performance. Core to this work is the developing and encouraging use of standard indicators for reporting anti-corruption policies and practices of organizations. TI is developing tools and indices and consulting with stakeholders on defining the indicators to be used. In addition, TI is taking part in reporting initiatives and advising on which particular indicators should be used.

TI's reporting tools for the private sector

TI has in development a range of reporting tools for companies. These include:

Corporate Control of Corruption Index: TI is piloting an index using existing global data, all publicly available, on company provision of anti-corruption policies and management systems, in order to rank business sectors and company home countries.

Corporate Anti-Bribery Scoring Model: The TI scoring model will provide companies with a scoring model for self-assessment and internal benchmarking. TI used the model when judging entries to the 2005 United Kingdom Association of Chartered Certified Accountants (ACCA) Awards for Sustainability Reporting, whose theme this year was transparency of reporting on anti-corruption.

International reporting initiatives

A growing number of initiatives are developing indicators for reporting on anti-corruption.

United Nations Global Compact (UNGC): The UNGC requires its participating companies to submit an annual Communication on Performance and has provided a reporting guide[13] that includes, for each principle, indicators of the type of information that can be provided under the headings of commitment, systems, actions and performance.

Dow Jones Sustainability Indexes: These include anti-corruption reporting requirements based on the Business Principles for Countering Bribery.

FTSE4Good Index Series: Criteria for Countering Bribery were added in 2006. TI assisted in the development of the criteria.

Global Reporting Initiative: The GRI is preparing a new version (G3) of its Reporting Guidelines and a draft was published for consultation in early 2006. TI participated in the development of indicators and the draft contains extended indicators for countering corruption. The final version of the Guidelines is due to be published in fall 2006.

Business in the Community Corporate Responsibility Index: This Index, which includes such indicators for integrity as countering corruption, is now used in four countries.

FTSE4Good Criteria for Countering Bribery

The FTSE4Good Index Series identifies companies that meet globally recognized Corporate Responsibility standards in environmental sustainability, relationships with stakeholders, and universal human rights. Countering Bribery is the last outstanding criteria development commitment identified at the launch of the FTSE4Good Index Series.

The FTSE4Good Criteria for Countering Bribery are intended to set a standard for companies that is challenging but achievable. The objectives of the Criteria are to encourage high-impact companies who have not yet achieved best practice standards in the management of bribery and corruption to take action and put into place quality management systems to address these issues. Once applied, the new Criteria for Countering Bribery will ensure that all FTSE4Good constituent companies that are assessed as having a higher potential risk of exposure to bribery and corrupt practices are managing these risks appropriately.

The FTSE4Good Criteria for Countering Bribery take as a starting point the Transparency International Business Principles for Countering Bribery, which are designed to complement the United Nations and OECD conventions. FTSE4Good criteria indicators are generally set within a best practice generic framework of Policy, Management Systems and Reporting or Disclosure, and the higher the risk or impact of a company, the more it has to do to address those issues.

High risk: The FTSE criteria framework usually requires that the most demanding criteria apply to the highest risk companies, so the Criteria for Countering Bribery would initially apply only to companies that are at the highest risk of exposure to bribery and corruption. The generic criteria framework uses various means of identifying high-risk companies, depending on the nature of their work and the countries in which they operate.

Policy: FTSE recognizes that a policy is a statement of intent and that full implementation can take some time, particularly as many of the issues are sensitive and at present there is not unanimity in their definition and status regarding bribery (for example, facilitation payments). The key recommendations in the Transparency International Business Principles for Countering Bribery will be a policy requirement, as these strike the balance between being challenging and being achievable, as well as representing good practice in this area.

Management systems: An effective policy is one that is implemented via a management system. FTSE recognizes that the Transparency International Business Principles for Countering Bribery have identified elements of a management system to address bribery, without which the risks of potential bribery issues are not controlled or managed.

Reporting: While it is generally accepted as good practice for higher-risk companies to have some form of policy and system to counter bribery and corruption, very few report as yet in detail on performance indicators such as non-compliance and actions taken, as these are relatively new developments in company reporting. However, transparency is an underlying value behind the effective management and implementation of measures to counter bribery; therefore, disclosure is key.

When the FTSE4Good Criteria for Countering Bribery are announced, the usual procedure is that companies within the FTSE4Good Index will be notified and FTSE's company engagement programme will be extended to make provision for an appropriate implementation period.

Companies' reporting on countering corruption

Reporting on countering corruption by companies does not have the lengthy reporting history that environmental issues have. This has been due not only to a lack of perception for the need for such reporting but because reporting on countering corruption presents practical difficulties. Corruption by its very nature is secret, hidden and viewed as sensitive by companies. Its scope is wide, including such areas as bribery, conflict of interest and money laundering, and from the perspective of the general public, the topic is complex and does not carry the same emotive weight as human rights.

Examples of reporting companies

However, some companies are now identifying corruption as a key topic on which to act and report. Some instances of reporting are:

BP* provided information in its 2004 Sustainability Report on ethical issues and reported on the number of employees dismissed for unethical behaviour. BP reported that it was now asking for information on contracts they had not renewed.

Co-operative Insurance Society (CIS) introduced an Ethical Engagement Policy in 2005 following a stakeholder engagement survey of its policy holders who gave it "an overwhelming mandate to engage with companies on a broad and challenging ethical agenda that they would expect businesses to address." The new policy, which had the backing of 98 per cent of customers who responded to a detailed questionnaire, will guide CIS on such issues as human rights, the arms trade, environmental impact, labour standards and animal welfare. For corporate governance, CIS will challenge companies to have strong safeguards against fraud, bribery and corruption.

*United Nations Global Compact participant

GE: GE's 2005 Citizenship Report has a nine-page section on compliance. This covers topics such as communication with employees, GE leaders' responsibilities, review processes, ombudsperson process, data on integrity concerns reported, legal processes and systems including data on disciplinary actions, prevention, investigations and remedial actions.

Lafarge*: The Lafarge Sustainability Report 2004 reports on its corruption risk and prevention policies, including specific risk areas such as facilitation payments. A group-wide action plan will be established including specific training programmes and the creation of complementary guidelines.

Shell*: The Shell Report 2004 lists key indicators for countering corruption. Results of an employee survey that found that 82 per cent of staff (up from 78 per cent in 2002) believe their part of the organization does not tolerate bribery or other breaches of Shell's Business Principles, Shell also reported the numbers of incidents detected and related dismissals made.

Titan Cement *: The 2004 Social Report of Titan Cement included a report on implementation of its policy for countering bribery with a risk analysis and a description of the first phase of what will become a consistent system for monitoring its performance.

Performance and process indicators for reporting corruption

In considering reporting on countering corruption, companies need to consider:

- The scope or definition of corruption: The box (next page) lists some of the forms of corruption.
- The boundaries for reporting: Should the company confine its reporting to activities over which it has effective control or should it

refer to supply chain and business partners? What responsibility should it take for stewardship? For example, for a bank this might include assessing whether borrowing companies have adequate anti-corruption processes. For an extractive industry company, this could include revenue payments made to Governments.

- Should key indicators be used? This is described in the next section.
- The extent to which comparability of data is sought for benchmarking: Should it be numeric, narrative or a combination of these?
- To what extent should the indicators relate to any external norms, instruments, codes or reporting frameworks?
- What are the expectations or liabilities that might come from such reporting?
- Should improvement plan and targets be identified and published?

Defining corruption

The abuse of entrusted power for private gain

—Transparency International

Corruption includes:

- Bribery
- Conflict of interest
- Collusion, nepotism, cronyism
- Extortion
- Fraud and defalcation
- Illegal information brokering
- Money laundering

Indicators for reporting countering corruption

TI suggests that companies should consider reporting under eight headings:

Policies: Does the company have in place an anti-corruption policy that prohibits corruption and is published publicly?

Risk assessment: Has the company carried out an assessment of its risk profile related to corruption? There are two levels for risk assessment. First, the company will assess the risk of corruption relative to other risks. Then, if countering corruption is judged important, the company will carry out a risk assessment to identify the aspects of its activities, jobs and processes and business relationships that should receive most attention.

Organization: Has an organizational structure to implement the policy been developed? For a large company, this would include board ownership, leadership, and the role of the audit committee.

Planning and implementation: Does the company report that management systems are in place and operating? Does it give details of these?

Performance: Does the company set plans and targets? What indicators does it use? These could be such as reporting communication, training, numbers of violations, dismissals and employee surveys, use of hotlines or number of whistle-blowing instances.

Monitoring and improvement: Are the systems working? What are the review processes? Has the board reviewed progress?

Responsiveness: Are stakeholders consulted? Does the company report publicly and, if so, clearly and accessibly on matters material to stakeholders?

Verification: What credibility can be attached to what the company reports? Does the company use an external independent verifier? What are the quality and depth of the verifier's report?

Issues for reporting

Internal: A company's decision to report will be a function of any external commitment such as being a participant of the UNGC or a business association, the cost and workload or concern about any legal liability balanced with the business benefits such as reputation enhancement, risk management or continuous improvement. For smaller companies, the issue of resources is critical, and those seeking reporting information must convince the companies of the value of reporting, provide reporting formats that are seen to be relevant and concentrate on a few key indicators.

Common standards: To provide credibility, reporting has to provide data that is capable of analysis to furnish useful results both for stakeholders and the reporters themselves. This can happen only if common standards or indicators are created.

- The GRI Guidelines are the leading reporting framework. In the Top 50 companies in the 2004 survey, *Risk and Opportunity Best Practice in Non-Financial Reporting*,[14] 47 (94 per cent) of the reports were openly using the GRI, of which 12 (24 per cent) are reporting "In Accordance" with the GRI (Figure 12 and page 38). Among the "Other 50", 7 (14 per cent) report "In Accordance" with GRI while overall, 45 (90 per cent) referred to the GRI in some form.

- NGOs and research bodies such as the Ethical Investment Research Service (EIRIS) are also carrying out independent research and producing their own data points. For example, in 2005, the Save the Children Fund published a report measuring revenue transparency in the oil and gas industries[15] and this included a range of reporting indicators specific to revenue transparency. Global Witness, in the same year, published a paper calling for an International Financial Reporting Standard for the Extractive Industries.[16]

For countering corruption, TI is following this approach and is working closely with producers of key indices and reporting research to encourage the use of common indicators developed through consultation. TI will be aligning its own private sector tools to the generic indicators.

Numeric and/or narrative: In collecting information, organizations requesting information have to consider the balance between numeric and narrative indicators. Numeric data is capable of analysis and allows comparability which is important for building credibility and tracking progress. But numeric indicators can be blunt instruments and may not allow for or capture the variations between different reporting companies or particular issues. The importance of narrative reporting should not be overlooked, as it allows reporting companies to explain the depth, importance and specific circumstances of their activities. For corruption reporting, this is especially so as the use of numeric indicators is limited for topics such as opinions, hours of training, violations or dismissals. Countering corruption is dependent on an anti-corruption approach being embedded in an organization, and narrative input can be important to illustrate an organization's commitment and to provide examples of best practice or dilemmas.

Completeness in reporting: This is important to build credibility of reports. If reporting organizations are allowed to select or "cherry-pick" their reporting, substantive issues or concerns may be omitted. The 2004 ACCA survey on sustainability reporting commented that many reports fail to address the biggest issues, such as sector-specific impacts and global issues.[17]

Legal liability: For some companies, especially US companies, concern about legal liability may restrict their ability to report information.

SMEs: Smaller companies have specific challenges in countering corruption. They may not be as aware of some of the issues and legislation as a large company with access to specialists such as ethics and compliance officers. They do not have the negotiating power or influence of a large company when confronted by extortion, and their resources are limited. However, small companies are not immune to risks from bribery and corruption and cannot therefore ignore the issue. Further, clients and customers may demand that the company have in place adequate anti-corruption policies and processes. There are things that smaller companies can do. They can carry out a simple risk assessment, put in place policies for handling areas such as gifts and hospitality, work cooperatively through trade associations or with other companies to resist bribery and other forms of corruption, and they can report what they do.

But does the reporting have credibility?

Businesses must be convinced that reporting is valuable and that good use is made of the information produced whether this enhances the reputation of the business, is applied to internal improvement or contributes to the understanding and handling of key sustainability issues.

Credibility in the eyes of users is critical: They want data and information that is reliable, whether they are using it to address an issue or to understand a company's or a business sector's position on a particular topic.

Independent verification or assurance of reporting is the principal way in which reporters can build credibility. "Formal verification has also gained first place among the factors contributing to credibility."[18] The accounting profession, certification agencies and specialist consultancies are providing verification services, and two reporting standards, AA1000 AS and ISAEA 3000, provide a methodology that the leading verification reporters are using. There are also some national standards.

The AA1000 Assurance Standard (AA1000AS) was issued in March 2003 by AccountAbility to provide an assurance standard that covers the full range of an organization's disclosure and performance based on the principles of materiality, completeness and responsiveness.

In January 2005, the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC) published The Framework and Standard (ISAE3000) for Assurance Engagements. All professional accounting networks now have to comply with this.

The TI Self-Evaluation Module (SEM) is being developed to provide companies with a self-evaluation tool based on the Business Principles for Countering Bribery. It includes approximately 200 indicators. The model has been tested in focus groups and will be field-tested by early 2006.

The Self-Evaluation Module will form the core of the TI Independent External Verification Tool, which will be field-tested along with the SEM by early 2006. KPMG's 2005 international survey of sustainability reporting showed that for the GFT250 (Global Fortune) companies, the number of reports with a formal assurance statement had increased slightly to 30 per cent (48 reports) from 29 per cent in 2002, compared with 19 per cent in 1999. Earlier research in 2002 by UNEP and Sustainability showed that of the top 50 companies globally, only 4 per cent in 1994 had reports assured, rising to 28 per cent in 1997, 50 per cent in 2000 and 68 per cent in 2002.[19]

Issues such as human rights and countering corruption do not readily generate reporting information and data in the way that environment or health and safety issues do. The KPMG 2005 international survey of sustainability reporting showed that "many statements from the CR reports were restricted to an opinion on the health and safety and environmental information systems and data, perhaps indicating that assurance is still largely focusing on what 'can' be assured, based on existing data registration systems, rather than what 'should' be assured, taking account of the identified user groups."

"Reporting must focus on having adequate systems in place and key indicators that will measure the effectiveness of the management systems in countering corruption."

The challenge for countering corruption is to build standard indicators that will be useful to companies in preparing information that is relevant and material for reporting and for improving performance.

Conclusion

Signatories to the United Nations Global Compact have made a commitment to the 10th Principle against corruption, to work against corruption in all its forms, including extortion and bribery. This means not only having policies of not tolerating corruption but also implementing policies and processes to support the commitment. Companies have a responsibility to report progress on their implementation of the Principle, but corruption by its very nature is hidden. Reporting must therefore focus on having adequate systems in place and key indicators that will measure the effectiveness of the management systems in countering corruption.

There is evidence that while many companies may have anti-corruption policies in place, too few have adequately implemented them. Countering corruption is important to companies because it minimizes risk, contributes to continuous improvement, and enhances their reputation as responsible members of society.

Corruption is a risk to all companies, no matter what their size. Whether large or small, companies can report according to their particular resources and business circumstances. Risk assessment will be a key factor in deciding on the appropriate level of resources and attention.

There are few tools yet for reporting on countering corruption, but others are being developed. Common standards are necessary to achieve comparability between reporting companies to meet the needs of users of reporting. There is evidence that leading companies are developing reporting practices and indicators. The GRI is progressing on developing indicators with increased focus on numeric indicators. The importance of narrative reporting should not be overlooked as this allows reporting companies to explain the depth, importance and specific circumstances of their activities. For countering corruption, common performance indicators are being developed by companies and NGOs for use by key Socially Responsible Investment (SRI) indices and CSR initiatives.

Independent verification or assurance is central to building the credibility of reporting. A number of standard sustainability global assurance standards for verification exist, and TI is developing an independent verification tool for countering bribery. While few companies at present report substantially on countering corruption, this is expected to change. United Nations Global Compact participants are encouraged to lead in reporting, to demonstrate their progress and to share their experience.

Endnotes

1 *Perspectives: Generation lost: young financial analysts and environmental, social and governance issues*; World Business Council for Sustainable Development, Young Managers Team and UNEP Finance Initiative
2 *KPMG International Survey of Corporate Responsibility Reporting*, 2005
3 The United Nations Principles for Responsible Investment, 2005
4 Global Reporting Initiative, 2002 Sustainability Reporting Guidelines, p. 9.
5 **http://www.ifia-federation.org/**
6 **http://www.transparency.org/building_coalitions/private_sector/business_principles.html**
7 **http://www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC_Rules_of_Conduct_and_Recommendations%20_2005%20Revision.pdf**
8 **http://www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC_Rules_of_Conduct_and_Recommendations%20_2005%20Revision.pdf**
9 **http://www.weforum.org/site/homepublic.nsf/Content/Partnering+Against+Corruption**
10 **http://waww.wolfsberg-principles.com**
11 **http://www.accountabilityrating.com/**
12 **http://www.gmiratings.com/**
13 *A Practical Guide to Communication on Progress: Advice for United Nations Global Compact Participating Companies Preparing their Communication on Progress*
14 *Risk & Opportunity Best Practice in Non-Financial Reporting*, Standard & Poors, Sustainability and UNEP, 2004
15 *Beyond the Rhetoric – measuring revenue transparency in the oil and gas industries*; Save the Children Fund 2005
16 *Extracting Transparency: The need for an International Financial Reporting Standard for the Extractive Industries*: Global Witness, 2005
17 *Towards transparency: progress on global sustainability reporting 2004*, p 15; ACCA and CorporateRegister.com
18 *Accounting for Good: the Global Stakeholder Report 2005*, p22; Pleon, 2005
19 Sustainability, 2002

2B.III Agents, consultants and joint-venture partners in international business transactions

John Bray* | *Control Risks*

"International companies cannot adequately protect their own interests unless they understand and can monitor what local partners do on their behalf."

Particularly when moving into a unfamiliar jurisdiction for the first time, international companies are likely to seek local contacts who can offer an understanding of the local business environment, familiarity with the legal system and—perhaps most important—access to key decision makers. One way of acquiring such expertise is to employ well-placed individuals as agents or representatives: Such people can expect to be richly rewarded if they help win valuable contracts for their clients. Another approach is to set up a joint venture with a local partner with the right connections and expertise.

Agents and joint venture partners perform an important commercial function, and in some countries and sectors—notably in parts of the Middle East and in certain transition economies—foreign companies may be obliged to work through them. Problems arise when the ethical or business practices of these partners fall short of international standards. For example, a joint venture partner may seek political influence by employing the son of a minister and awarding him a high salary in return for little or no work; or an agent paid by commission may use part of his fee to bribe a Government official.

In the past, foreign partners have often argued that they have no legal or moral responsibility if local partners or agents pay bribes without their direct knowledge or explicit approval. Indeed, they may employ local partners precisely because of their ability to serve as a "buffer," protecting them from questionable local business practices. In the 2002 Control Risks survey regarding international business attitudes to corruption, 70 petr cent of respondents thought that US companies circumvented anti-corruption laws by using middlemen "regularly or occasionally"; and 77 per cent thought that companies from other OECD companies followed similar practices.

This article argues that this kind of approach was always flawed from a risk management perspective, and the risks will increase as the enforcement of anti-corruption laws becomes more effective. Local knowledge is of course essential, and it is important to build up trust between business partners. However, this trust must be based on a common understanding of what kinds of business practice are and are not acceptable. International companies cannot adequately protect their own interests unless they understand and can monitor what local partners do on their behalf.

*Director (Analysis) at the Tokyo office of Control Risks, the international business consultancy

"The implicit instructions [often] are 'to do whatever is necessary' according to local business practices."

Agents and consultants: defining the risks

When an international company acquires the services of a local partner, it is purchasing their expertise as well as their time and energy. However, the international partners cannot afford to remain wholly ignorant of conditions and developments in the host country. At the minimum, they need sufficient knowledge and safeguards to ensure that the local partner is carrying out the contracted services in an acceptable matter. From a practical management perspective, this sounds like common sense. Nevertheless, a different logic has all too often been applied to the management of agents and other intermediaries.

The intrinsic hazards of loose controls

In the experience of many international business people, the formal instructions given to agents differ from the implicit objectives of employing them (for examples of such contradictory messages see Moody-Stuart (1997) and the case studies in Transparency International (2005)). The formal instructions are to win business by ethical means: the implicit instructions are "to do whatever is necessary" according to local business practices. The international partner pays by commission rather than asking for detailed activity reports or itemized bills. If the intermediary is found to have paid a bribe, the company can deny responsibility, arguing that the middleman acted on his own initiative.

Deniability is supposed to afford the company a degree of legal protection. As will be seen below, this supposition is questionable. Moreover, plausible deniability implies a loss of control: the company cannot claim ignorance if it is found to have been closely involved in managing the intermediary's activities. Loss of control in turn has a "boomerang effect," exposing the company to new costs and risks in addition to the legal risks it is trying to avoid.

First, there are no cost controls. If the company is not actively involved in the bargaining process, it cannot judge what payments are justified, or even whether the agent's services perform a useful function at all. In a recent court case in the United States, a company was prosecuted for bribing a Government official via a consultant, even though the official did not in fact perform the service required. In such cases, companies have no means of redress because their own actions are illegal. Moreover, companies that use illegal means open themselves to the possibility of blackmail, particularly if there is a change of political regime. Contracts that are based on bribery or on personal favouritism are more exposed to political risks.

Legal risks

Recent legal developments have added to the intrinsic risks implied by the loose management controls.

Historically, the US has the strongest record of enforcing anti-bribery legislation through its US Foreign Corrupt Practices Act (FCPA), which was first passed into law in 1977 and has influenced similar more recent legislation in other countries. The FCPA explicitly contradicts the theory of plausible deniability. It says that knowledge of bribery is established "if a person is aware of a high probability of the existence" of circumstances that might involve bribery. A company that pays a large commission to an agent cannot say that it did not "know" that the commission was used to pay bribes if there is a high probability that such bribes would in fact be paid.

Between 1977 and 2005, the US Department of Justice initiated some 36 criminal prosecutions and five civil actions under the FCPA, while the Securities Exchange Commission prosecuted 21 foreign bribery cases (Newcomb 2005). An analysis of FCPA prosecutions shows that a large number have involved agents, consultants or other intermediaries. Recent examples include:

- An agricultural products company reportedly paid US$50,000 to a South-east Asian Government official to overturn an environmental regulation. The money was paid via a locally based consultancy. In early 2005, the company reached a settlement with the SEC whereby it agreed to pay a US$500,000 civil penalty without admitting or denying the SEC's charges.

"The commercial implications for companies convicted of bribery go beyond the financial penalties imposed by large fines."

- In March 2005, a telecommunications company paid a total of US$28.5 million in fines and other penalties after pleading guilty to FCPA charges concerning payments to an agent in a West African country, who claimed to have close ties to the President. The company acknowledged that it had failed to conduct any meaningful due diligence on the agent, and paid hundreds of thousands of dollars for services that were never properly documented. The funds appear to have contributed to the President's re-election campaign.

The principles behind the FCPA influenced the drafting of the 1997 OECD Convention against Bribery of Foreign Officials in International Business Transactions. Under the terms of the convention, all 30 OECD member states and six others have introduced laws criminalizing foreign bribery. Article 1 of the convention states that companies may not pay bribes to officials "either directly or through intermediaries." Similar wording has been introduced into the United Nations Convention against Corruption, which was signed in 2003 and came into force in late 2005. Articles 15 and 21 of this convention call on Member Governments to prohibit bribes paid "directly or indirectly" to Government officials or to private companies.

Compared with the US, there have so far been few prosecutions for foreign bribery in other OECD countries. However, cases have now been reported in Sweden, Norway, the Republic of Korea and Canada. Press reports suggest that further investigations are under way in several OECD jurisdictions and that—as in the US—many of these involve bribes paid via intermediaries.

Meanwhile, one of the most significant international prosecutions has taken place not in an OECD country but in the small southern African kingdom of Lesotho. The case involves the Lesotho Highlands Water Project (LHWP), a massive hydro-electric scheme that is designed to provide water and electricity to South Africa. The project is sponsored by—among others—the World Bank, the European Investment Bank and a number of commercial banks.

In 2002, the Lesotho High Court convicted Masupha Sole, the former Chief Executive of the LWHP, of receiving some US$1.6m in bribes from 12 international companies. The payments had been transmitted via Swiss bank accounts. The Lesotho Government then initiated proceedings against the companies that had paid the bribes. The first was a Canadian company, which in September was sentenced to a fine of US$2.2m. The Lesotho Appeal Court subsequently upheld the first of two charges against the company, but dismissed the second and therefore reduced the fine. In 2003 and 2004, a German and a French company were convicted of paying bribes in connection with the LHWP.

The legal arguments in the Canadian company's case focused on its Representative Agreement with a local agent (for a summary of the issues see Darroch 2004). Sole refused to testify, and the agent himself was now dead. However, many of the key facts were undisputed. The company had paid regular commissions to the agent who in turn had passed them to Sole: The question was whether the company knew that this was happening. The court's judgement was based on inference: There was no clear explanation as to why the agent's services were needed; there was no evidence that he had in fact performed them; the fees seemed unjustifiably high; he was not living in Lesotho at the time; and there was no obvious reason why the Representative Agreement should be kept secret unless it was intended as a vehicle for bribery.

The risk of debarments

The commercial implications for companies convicted of bribery go beyond the financial penalties imposed by large fines. In July 2004, the World Bank debarred the Canadian company convicted in the Lesotho case from bidding for Bank-sponsored projects for a period of three years. The Bank publishes a list of debarred companies and individuals on its website. US Government agencies likewise blacklist companies convicted of corruption, and Government agencies in other countries increasingly are following suit.

"The practice of conducting due diligence enquiries before employing agents is becoming more common."

Tighter export credit agency rules

Meanwhile, the various national export credit agencies (ECAs) are tightening their own rules on corruption under the coordination of the OECD Working Party on Export Credits and Credit Guarantees. Companies applying for export credits now have to make formal statements saying that no bribes have been paid in connection with the transactions for which they are seeking support. The statements apply both to the applicants and to others—such as agents and representatives—acting on their behalf. Most ECAs now require companies to declare details of agents' commissions (OECD Working Party 2005) and may seek to double-check the details through their own due diligence enquiries. Companies may be denied credit if agents' commissions appear to be too large or raise suspicions for some other reason.

Agents and consultants: Emerging best practice

Increased legal risks underscore the need for well-designed management systems to govern the employment of agents and consultants. The key principles are that there must be a clear business justification for recruiting them, and that their activities need to be monitored for as long as they are working for the company, not just at the beginning.

The practice of conducting due diligence enquiries before employing agents is becoming more common, although it is still by no means universal. *Facing up to Corruption*, the 2002 Control Risks report, showed that 80 per cent of UK firms surveyed, and 74 per cent of US firms had formal procedures for vetting agents or representatives before employing them. However, only 50 per cent of German companies did so.

As with other anti-corruption procedures, it is important to ensure that there is a division of responsibilities: The sales and marketing department responsible for identifying potential recruits should not at the same time be responsible for vetting or confirming the appointment.

Due diligence enquiries

A well-designed application form may be the first step in acquiring the necessary information. One example of good practice comes from a US engineering company whose standard application form for agents and consultants includes information on the management and beneficial owners of the applicant's company; bank and credit references; references from other clients; questions on the applicant's previous relationship with the company or its competitors; and questions about the applicant's relationships with serving or former public officials. Applicants are asked to sign a statement agreeing that the information in the form may be checked by a third party.

The double-checking process should take nothing for granted. For example, the would-be agent will cite a business address, but what does this actually consist of? Is it an office building or a private residence? Does he or she employ a staff commensurate with the size of his presumed operations? A visit to his or her office will give a much clearer view of the agent's personality and potential than can be gained from a telephone conversation or an interview in a hotel guest room.

Red flags

Red flags are warning signs that—at a minimum—require further investigation. Some of the warning signs outlined below are likely to be deal-killers. In other cases, it may be possible to address concerns through further investigation, or by imposing appropriate safeguards.

- *Agents with close family relationships to key official figures*. At a minimum, it is important that the agent should disclose all relevant information. If the official concerned is in any way responsible for the project under review, the agent should not be employed.

- *Agents who want to be paid in cash, via third party, or to a numbered bank account.* Cash payments raise obvious suspicions

that the agent wishes to impede any future attempt to establish an audit trail. In many of the cases that have come to trial, payments have been made via Swiss or other foreign bank accounts. In addition to concerns about transparency, this practice may well infringe the host country's foreign exchange regulations.

- *Would-be intermediaries who—by apparent coincidence—volunteer their services at a time when companies run into unexpected difficulties in their negotiations.* The apparent coincidence raises suspicions that they are responding to a tip-off from an official hoping for a bribe. See the unsolicited approach case story in the "cautionary tales" below.

- *An agent recommended by one of the officials with whom the company is negotiating.* Again, there would be suspicions that the official is nominating a trusted intermediary who may serve as a conduit for bribes.

- *Agents who wish to remain anonymous.* The representative agreement in the Lesotho Highlands Water Project case cited above was not publicized, and this was one of the factors leading the judge to infer that the agreement was a vehicle for bribery. A request for anonymity prompts the question of what the agent has to hide. One possibility is that he may be acting for more than one party (see the "serving two masters" case story below).

- *Agents who wish to be paid large amounts of money in advance.* As noted above, companies cannot easily enforce agreements that are in any case illegal; agents suffer from the same problem. Their own business risks include the possibility that their employers will renege on the agreement once the contract has been signed. Advance payments reduce the risk both to the agent and to the ultimate beneficiary of any bribes paid, but increase the financial and—potentially—legal risks of the employer.

Documenting decision-making

The decision-making process should be clearly documented. This is good business practice in any case, and companies may be required to demonstrate the basis for their decisions both when applying for external funds and guaranteed funds and—in the worst case—in the event of an enquiry into corruption allegations. The FIDIC Model Representative Agreement (see below) outlines the most important features of the documentation process.

Agreements

The key points in the agreement should include a statement that the agent understands and will comply with the company's anti-corruption rules and procedures. Similar confirmatory statements should be signed afresh each year. The scope of services provided should be clearly defined. The agreement may be terminated if the agent is found to have infringed the rules. The company appointing the agent has a right to inspect the agent's financial and commercial records relating to its project.

Remuneration

According to Article 3a of the International Chamber of Commerce (ICC) Rules of Conduct: Extortion and Bribery in International Business Transactions enterprises should ensure that "any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered by such an agent" (Davies 1999). The purpose of this recommendation is of course to ensure that "surplus" funds are not passed on as bribes.

"Local knowledge often includes connections. The question is whether the partners make use of those links transparently and honestly."

In many industries, it is the usual practice to calculate agents' commissions as a percentage of the contract: the range is typically between five and ten per cent, although higher percentages are not uncommon. However, it is difficult to argue that ten per cent of—say—a billion-dollar contract constitutes an appropriate remuneration for even the best-paid consultant. It is therefore better practice to define the commission as an absolute amount rather than a percentage. The scale of the fee will of course depend on the qualifications of the consultant and the time likely to be spent. An additional consideration is that many agents charge only "success fees"; they will expect the income from their successes to cover a portion of the time spent on unsuccessful projects.

Cautionary tales

The following examples illustrate the potential hazards of working with agents without proper checks and balances (names and other identifying details have been left out in order to preserve confidentiality):

- *An unsolicited approach*
  An international company was seeking a license to set up a new operation in the former Soviet Union. The project had official approval at the highest level of Government, and everything seemed to be in place except that the company still needed a document signed by a deputy minister. The company was assured that the document would arrive in due course but, after repeated delays, it became apparent that there was some kind of problem. At this point the company received an unsolicited visit at its Western European regional headquarters from a "consultant" who had heard about the problem and offered his services to resolve it. However, he expected to be paid in advance at a bank account in Switzerland.

  The company had never publicly disclosed the nature of its problems. The sudden arrival of the agent therefore immediately raised questions: How did he know his services might be required? On whose behalf was he acting? Further warning signs included the fact that he required a large fee in advance, and that it was to be paid into a foreign bank account. Confidential investigations showed that the consultant was closely associated with the deputy minister, who himself depended on the political patronage of the Head of Government. In effect, his main role was to collect a bribe. The company decided not to pursue the project.

- *Serving two masters*
  An international investor had been invited to join a consortium bidding for a major engineering project in Africa. Its due diligence procedures included an enquiry into the background and reputation of the agent working on behalf of the consortium. The enquiry confirmed that the agent had excellent commercial and personal credentials. However, it emerged that he was simultaneously working for a rival consortium bidding for the same project while also providing information to the Government. He stood to gain handsomely whichever consortium won. In the light of these manifold conflicts of interest, the investor decided not to go ahead.

Working with joint venture partners

Many of the integrity issues concerning agents and consultants apply equally to joint venture partners. International investors choose local partners for their local knowledge, technical expertise and (usually less importantly) their financial contributions. "Local knowledge" often includes connections with powerful figures in the Government or the ministries who award licenses and contracts. The question is whether the partners make use of those links transparently and honestly.

"Collective initiatives–preferably involving both business and other civil society actors–can be a highly effective weapon against corruption."

Close connections with the ruling elite may appear to be an advantage, at least initially, but can backfire. If there is a dispute between the foreign and local partners, the latter may use their links with the regime to strengthen their positions, and even to force through some kind of expropriation. Similarly, links with the ruling elite may turn into a liability if there is a change of Government at the local or national levels. Powerful commercial vested interests may try to oppose the joint venture, for example, by drawing on their own political connections, if they think that their position is threatened.

In the more extreme—but by no means unusual—cases, potential integrity hazards include the possibility that local partners have connections with criminal or semi-criminal interests.

Due diligence

As with commercial agents, the topics to be checked include: sources of capital; beneficial owners and political connections; the status of the company, including the length of time it has been working; and whether it is included on the World Bank or other blacklists.

Agreements

The type of agreements that you can negotiate depends, of course, on how large a stake the international partner has, and therefore the nature of the power balance between them. Ideally, the foreign partner would seek to gain or retain management control. Training in procedures to avoid corruption is all the more important if local staff are to be transferred from an existing operation: They may be accustomed to a style of business that would be unacceptable in an international context.

Cautionary tales

The following are examples of potential hazards that demonstrate the need for thorough due diligence enquiries:

- *Local contacts, opaque sub-contract awards*
  An international engineering company set up a project in South-east Asia in a joint venture with a local company. The local partner's main contribution was its assistance in winning the initial contract through its knowledge of the key players in its home market. No bribes were paid, but the local partner insisted on administering the award of sub-contracts. Awards were made on the basis of personal connections rather than merit, without a properly administered tendering procedure. Many of the immediate sub-contractors issued further sub-contracts to other companies, and much of the work had to be done twice. There was no corruption scandal, but high prices, poor quality and late delivery brought the entire project to the verge of bankruptcy.

- *Privatization purchase goes sour*
  An international manufacturing company set up a joint venture with a recently privatized local company in an ex-socialist transition economy. The plan was to introduce updated technology to a formerly Government-owned factory, thus increasing both productivity and profitability. Many of the original staff of the factory continued to work for the joint venture.

  The foreign partner conducted a due diligence review of the factory's finances and potential markets. However, it made no attempt to understand the network of relationships linking the factory with local suppliers and customers. Some two years after launching the joint venture, it discovered that senior employees had been taking kickbacks from local suppliers. The foreign partner had majority ownership, and therefore overall control, but the network of corruption inside the factory was so deeply entrenched that it had

to shut down the factory for a month while it overhauled the entire management structure. The international executive in charge of this operation received a series of death threats. Many of these problems could have been avoided if the purchaser had done a more detailed due diligence review at the outset, and given staff more thorough training in the new style of business.

Collective initiatives

The article by the International Business Leaders Forum (see below) correctly argues that collective initiatives — preferably involving both business and other civil society actors—can be a highly effective weapon against corruption (see article by Alexandra Wrage above).

The International Federation of Consulting Engineers (FIDIC) represents a different kind of collective initiative: It is a professional association that has played a very important role in raising integrity standards within its field of expertise. FIDIC's role in developing its Model Representative Agreement is discussed in the case story that follows.

Case story: The FIDIC model representative agreement

Eigil Steen Pedersen | *Past President of FIDIC and Chairman of Its Representative Agreement Task Force*

Introduction

In the past decade, the International Federation of Consulting Engineers (FIDIC) has worked intensively in the fight against corruption together with other relevant bodies, such as Transparency International, the United Nations Global Compact, the World Business Council for Sustainable Development (WBCSD), the United Nations Commission on International Trade Law (UNCITRAL), the World Trade Organization (WTO), and the major multilateral development agencies. Corruption in its many forms will not be eradicated overnight, and certainly not through a single act by any one of these organizations. It is therefore necessary to continue and intensify collaboration between these organizations, the private sector and civil society.

The need for transparency in all business transactions has been a key principle in FIDIC's work. By ensuring transparency, we may provide guidance to all participants in the development process, thus preventing them from entering into illegal activities. In cases of doubt, transparency may guide audits and give directions for modified approaches. And, of course, in cases of illegal transactions, transparency will assist in bringing the culprits to justice.

The Model Representative Agreement

The Model Representative Agreement was drafted in 2003-2004 in accordance with FIDIC's Business Integrity Man-

agement Guidelines, and joins a series of similar guidelines, including FIDIC's Client-Consultant Model Services Agreement (White Book), its Joint Venture Agreement and its Sub-Consultancy Agreement. After a review by several interested parties, including multilateral development agencies, the document was presented and approved at FIDIC's annual conference in 2004. Since then it has been available from FIDIC's online bookshop (www.fidic.org/bookshop).

The document contains the following main elements: Agreement, Particular Conditions, General Conditions and Notes for Guidance, including recommended anti-corruption principles and provisions. It also includes appendices specifying the scope of services provided and remuneration, as well as models for a Consultant's Code of Conduct and Business Integrity Policy Statement.

The document may be used as the final agreement between consultant and representative. Alternatively, the General Conditions may be used separately as an appendix to a specially tailored agreement, the other parts of which may be executed on the basis of the other chapters of the Model Agreement. As an example, most major international consulting firms will wish to insert their own code of conduct and business integrity policy statement.

Details with the particular aim of preventing corruption

One of the most important objectives of the document is to ensure transparency in all business dealings from the very first steps towards acquiring a specific project or entering into business relations in a particular country until completion of the project—or the general collaboration between the two parties. In general, this is required in order to make clear to the parties involved how responsibilities, risks and rewards are shared, as well as defining the territory of action and stipulating rules for execution of the collaboration.

FIDIC has paid particular attention to a number of areas where experience has shown that corruption could take place. The important ones include the following:

1. Limits of representation

The representative shall not, unless so authorized, be considered the consultant's agent.

He shall possess the necessary licenses and permits to perform the services specified in the country of the project.

2. Conflict of interest

The representative must warrant that neither he nor any senior employee of his firm are Government employees or closely related to Government employees.

He must further warrant that he is not and will not be involved in any contract or business arrangement that would create a potential conflict of interest.

3. Liability

Each party is fully liable for any claim, liability or damage resulting from acts or omissions on his part.

4. Corruption

The parties must agree to comply with applicable laws as well as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The parties must agree to adhere to a documented Code of Conduct, Business Integrity Policy Statement and associated compliance programme.

The Representative shall accept that his books and records be audited by an accredited accounting firm, if activities or events give rise to the suspicion of corrupt or illicit activities in connection with the services performed.

Termination of the agreement will be effected forthwith, if he is in default of his obligations under the clauses on corruption.

5. Scope of services/remuneration

Both parties, as well as the client and other parties to the main contract, must know the detailed scope of the services provided by the representative, in general as well as on a specific project. If possible, an estimate of the input in terms of time spent and expenses shall be established.

Likewise, the remuneration shall be specified, enabling a check that remuneration is commensurate with the value of services rendered. It is important here to remember that most representatives will be remunerated on a "no cure-no pay" basis. Thus, the remuneration on a project won must allow for providing pre-contract services on, say, between two to five missed opportunities. A total remuneration of three to five per cent of the consultant's net fees will be normal.

Concluding remarks

The Business Integrity Management System, which is described in another case story below by FIDIC President Dr. Jorge Diaz-Padilla, and the series of model agreements should all be seen as important elements of FIDIC's contribution to this work, assisting its members in establishing the necessary business transaction tools. These documents are surely also applicable in other sectors, e.g. contractors and suppliers, representing the potential "supply side" in corruption as well as in Government entities, or other client organizations, representing the potential "demand side".

Such tools, including the necessary self-audit of the individual organization, should be applied, but it will also be necessary to institute relevant monitoring entities. The international organizations mentioned above could play an important role in this work.

References and resources

Control Risks Group. 2002. *Facing up to Corruption. Survey Results*. Available on: www.control-risks.com. The survey analyses international business attitudes to corruption, drawing on telephone interviews with 250 companies in six countries.

Darroch, Fiona. 2004. "Lesotho a Sheep or a Springbok? The Herd Boy Tackles Goliath". Paper presented to the Institute for Security Studies (ISS) seminar held in Gauteng, South Africa, March 2004. www.iss.co.za/SEMINARS/2004/1503graft/lesotho.pdf. Analyses the legal issues at the Lesotho corruption trials.

Davies, Michael N. 1999. "The Role of Agents and Sales Representatives In Fighting Bribery". *A Corporate Practices Manual*, pp. 36-45. Edited by François Vincke, Fritz Heimann and Ron Katz. Paris: International Chamber of Commerce.

FIDIC website. www.fidic.org. FIDIC standard documents, including the Model Representative Agreement, can be ordered through: www.fidic.org/bookshop.

Martin, A. Timothy. 2000. "Developing a Corporate Policy on Foreign Corruption". Paper presented at the Third Annual Symposium on the Implementation of the OECD Convention on Combating Bribery. Bruges.

Moody-Stuart, George. 1997. *Grand Corruption*. Oxford. pp. 26-31. Analyses the role of representatives in commercial corruption, drawing on the author's own business experience.

Newcomb, Danforth. 2005. *Digests of Cases and Review Releases Relating to Bribes to Foreign Officials Under the Foreign Corrupt Practices Act of 1977 (as of 15 March 2005*). Available on: http://www.shearman.com/documents/LT_digest031505.pdf

Organization for Economic Co-operation and Development (OECD). 1997. *Convention against Bribery of Foreign Officials in International Business Transactions.* The text and other documents relating to the convention are available on: www.oecd.org/department/0,2688,en_2649_34859_1_1_1_1_1,00.html.

OECD Working Party on Export Credits. 2005. *Export Credits and Bribery: Review of responses to the 2004 revised survey on measures taken to combat bribery in officially supported export credits (situation as of 21 January 2005).* Available on: www.oecd.org/topic/0,2686,en_2649_34177_1_1_1_1_37447,00.html.

TRACE International website. www.traceinternational.org. The website includes *The Trace Standard. Doing Business with Intermediaries Internationally.* This summary of TRACE's own standard provides a general guide to best practice.

Transparency International 2005. "Preventing Corruption on Construction Projects". A set of papers discussing the sources of corruption in the construction industry and proposing measures to combat it. Particular focus is given to the role of agents. Available on: www.transparency.org.

United Nations 2003. *United Nations Convention against Corruption*. The text is available on: www.unodc.org/unodc/en/crime_convention_corruption.

2B.IV Case story: Integrity Due Diligence

Michael Price* | *Statoil*

"If carried out thoroughly and early enough, the Integrity Due Diligence process will provide valuable 'red flag' warnings."

Integrity Due Diligence is the process of mitigating risk arising from association with a third party who may be or may have been engaged in unethical or illegal practices. The risk may exist as a direct liability incurred by the company through its association, or it may take the form of reputation damage as guilt by association. This type of risk is particularly significant when the company is operating in an unfamiliar environment where local partners are previously unknown to the company and information on local ethical practices is scarce.

The process of Integrity Due Diligence seeks to secure as much information as possible about a prospective third party before any business relationship is entered into. The process covers the third party's interests, reputation, activities, associations, track record and motives, and may be used for assessing any type of business associate, from prospective partners, suppliers, customers, consultants or agents to candidates for prospective mergers.

The Integrity Due Diligence process is progressive and layered. It begins with the acquisition of basic information directly from the third party and open inquiries made to follow up the business and financial references provided. Depending on what this information shows, specific issues may then be examined in more depth. Open sources such as the Internet can be supplemented with the services of external consultants and some confidential field work in order to identify and further investigate specific indicators. The extent and level of detail of this further research will depend on several factors, including the financial value involved, the commercial importance of the third party, and how much is already known about them.

If carried out thoroughly and early enough, the Integrity Due Diligence process will provide valuable "red flag" warnings indicating that further checks and mitigation are needed or even that the business relationship being considered should not be pursued at all. Integrity Due Diligence also provides useful documentation of a company's own risk management. The very fact of having executed an Integrity Due Diligence process may help to meet criticism if a business relationship should later lead to liability or reputation damage in spite of the investigation.

The risk environment

In short-term relationships involving agents or intermediaries, a company may be at risk by association if these third parties pay or take bribes on its behalf. The third parties may also have vested interests that are unknown to the company and in conflict with its own interests. In

*Vice President Business Integrity, HSE, Statoil ASA

"The level of risk to which companies are exposed through their relationships with third parties is increasing as business becomes more international."

longer-term partnerships and joint ventures, the company's risk exposure may also stem from hidden differences, concealed information and ulterior motives, or there may be a failure to comply with applicable laws. In the case of a merger or acquisition, the acquiring company should be aware of additional so-called legacy risks if the enterprise being acquired is engaged in unethical or illegal practices or is in possession of assets that have been obtained through such practices.

Generally, the level of risk to which companies are exposed through their relationships with third parties is increasing as business becomes more international. Opportunities now arise more often in unfamiliar environments where the ground rules may be different or unclear. At the same time, international legislation is becoming stricter, and practices that were generally accepted less than a generation ago are now criminal offences with serious legal, commercial and reputation consequences.

The United Nations Convention against Corruption, which came into force at the end of 2005, is the first global legally binding instrument on corruption and includes measures on prevention, criminalization and international cooperation, as well as specifying ground-breaking provisions on asset recovery. The Convention is the latest and most wide-reaching addition to an expanding legal framework to combat corruption, in which the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the pioneering US Foreign Corrupt Practices Act of 1977 are also important elements.

Basic information

The extent of the initial screening in preparing an Integrity Due Diligence will depend on the nature and reputation of the third party under consideration. The scope should be decided in consultation with people who are familiar with the due diligence process and the applicable laws and regulations. The process should then be explained fully to the third party in order to secure their cooperation, possibly extending to the provision of a formal letter of authorization for the Integrity Due Diligence team to use when carrying out their research.

The research team should request basic information about the third party, including ownership information, corporate structure, place of incorporation, composition of boards and higher level committees, and the names, locations, telephone numbers and c.v.'s of officers and key personnel. Ownership interests in the company should also be given with company registration details for the parent company and any holding companies. A full description of the company, including a brief history, should also be requested.

Ownership and interests held by the third party, key management personnel and their immediate family in other organizations should be stated, in order to identify possible conflicts of interest. The third party's business, Governmental and political affiliations, including those of key management personnel and their immediate families should also be documented and particular attention given to any relationships with Government officials.

Local laws protecting privacy need to be considered in carrying out this research. In countries with unstable political regimes, a confidentiality agreement may be useful in persuading a third party to provide details of political affiliations.

Business and financial references capable of verification should be obtained and the third-party asked to notify referees. Obtaining audited financial statements for the previous two years is advisable, but failing this, unaudited accounts certified by senior management may be accepted.

The standard terms of business, if any, of the third party should be requested together with instructions required for invoice payment. Legal disclosures should be requested regarding any involvement by the third party or key management personnel in previous, pending or potential insolvency proceedings, criminal convictions or investigations, or civil litigation.

Finally, it may be a good idea to compare local market rates with rates quoted by the third party for the supply of any goods or services.

Verification and further research

The next phase of the Integrity Due Diligence work comprises verification and follow-up of the basic information. It may be that this work can be completed using only open sources such as the Internet, subscription databases, media searches, public records and industry information. However, independent field work may be needed to supplement these results, involving the use of external sources. Here it should be borne in mind that any information obtained will be only as good as the source that provides it and that checking the credentials of external sources may also be a necessary, if time-consuming, feature of this work. In order to ensure impartiality, personnel independent of the business unit concerned should be responsible for any external research.

A growing demand for support services related to Integrity Due Diligence has unfortunately encouraged some unqualified individuals to pass themselves off as specialists. This problem, and the likelihood of unacceptable methods being used to obtain information, can mean a company risks compromising its own standards in the process of trying to document that they are being met.

The following areas should be considered in carrying out the verification and completion of an Integrity Due Diligence process:

Business and financial references

Independent confirmation of reputation, integrity and political relationships should be obtained directly from the referees provided by the third party. If personal interviews cannot be obtained, then a telephone conversation or a written statement on a reference form may be acceptable. Audited financial records for at least two years should be examined, but failing that, a financial referee may give an opinion on reliability, probity and financial capability. A bank reference should always be obtained.

Ownership interests and accounts

Official registries of companies and other organizations usually make their records available to the public in some form, by personal application at the office concerned, by written request or even on-line. Examples of company registries available over the Internet are the UK Companies House on www.companieshouse.gov.uk and the United States Securities and Exchange Commission on www.sec.gov.

Key personnel and officers

For information on individuals connected with the third party, a variety of sources may be used, including electoral records, local Government business records and commercial business libraries. Local resources may be useful in tracing the appropriate sources. Criminal records should be checked for key personnel, if this is legally permissible in the country concerned and if necessary with the authority of the subject of enquiry. Court judgements, like the official registries of organizations, are normally available for public scrutiny, either by visits to the court involved, through websites, or, if sufficiently serious, in local or international media reports. An example of an on-line service is the site for judgements handed down in the UK High Courts on www.courtservice.gov.uk/judgments/judg_home.htm.

Credit ratings and restrictions

Credit ratings are available for many companies from one of the reputable commercial sources offering a rating service on individuals and organizations. Other facilities for checking bankruptcy or insolvency records include registers available to public scrutiny and Internet listings. Such a service covering insolvency notices and databases, creditor meetings, liquidations, receiverships and administrations in the UK can be viewed at www.insolvency.co.uk. A check should also be made to see that the third party does not appear on local or international listings of individuals or organizations restricted by trade regulations imposed by certain countries or debarred from bidding for contracts. The World Bank site at www.worldbank.org/html/opr/procure/debarr.html provides a list of debarred individuals and companies judged to have committed acts of bribery or corruption in bid processes.

Media search and local legal assistance

Free and subscription databases should be used to research the third party, beginning with a simple Internet search using one of the larger search engines, such as www.google.com. If the third party has a website, this should be examined together with Government sites designed for use in combating cartel activity or fraud. Here too, there are many large international commercial concerns that will carry out media searches for a fee. If advice on the local legal system and practices is not available from internal resources, a reputable local legal firm could explain their significance. Such a firm would also be able to assist with the verification of local corporate registration, or in checking local criminal or civil court records.

Field work

Some information may be obtained only through discreet and sensitive research in the field. This should be carried out by qualified professionals. Considerable caution needs to be exercised to avoid methods that may compromise the company ethically and legally.

"Red flag" warning signals

The following sections give examples of so-called "red flags," the warning signals indicating that further research is needed or that a relationship with the third party may not be advisable:

"Red flags" in the basic information provided by the third party:

- A public official holds interests in the third party in a personal capacity rather than in an official one;
- The third party has been recommended by an official who has discretionary authority or influence over the business in question;
- An officer, executive or key employee of the third party has interests in a competitor or is related to someone there;
- The business or financial references are ambiguous or missing information;
- The third party's normal terms of business differ significantly from local business terms and conditions;
- Payment instructions given by the third party include split payments, payments to unrelated entities or payments to a bank account in an offshore tax regime;
- Company auditors have qualified the accounts produced by the third party;
- The information makes mention of a criminal charge, the conviction of an employee for bribery and corruption, or the unsuccessful defence of a civil action for such an offence;
- The third party discloses previous involvement in insolvency proceedings;
- There is a significant difference between the remuneration rates quoted by the third party and local market rates;
- The third party refuses to sign a statement promising to abide by all local and international laws regarding bribery and corruption or by the company's business ethics policy;
- The third party refuses to disclose the identity of the directors, owners or employees.

"Red flags" in verification and further research:

- Qualifications claimed by the company are denied by the issuing body, or the issuing body is not a bona fide professional entity;
- Written business references differ significantly from what the referees say in interviews;
- Financial referees express reservations regarding the financial probity of the third party;
- The third party is a shell company or has some other unorthodox corporate structure.

- Records from the official registry of companies do not agree with the information given by the third party on ownership, directorships or any other details in required official documentation;
- The company or its holding company is registered in an offshore tax haven;
- The company representative refuses to reveal the identity of the owners or directors;
- Records show a different location for the company;
- There is a record of a criminal charge, a conviction of an employee for bribery and corruption, or the unsuccessful defence of a civil action for such an offence, which has not been disclosed by the third party;
- A reputable credit agency has provided a poor credit rating on the third party or has drawn attention to previous liquidity problems not disclosed by the applicant;
- The third party appears on a list of organizations debarred from bidding on local, national or international contracts;
- Media searches reveal potentially damaging information regarding the applicant;
- Research uncovers close associations with local or national politicians, potential competitors, criminals or political activists.

Documentation and conclusions

A final Integrity Due Diligence report should be prepared documenting the scope and individual phases of the investigation, summarizing the findings, specifying areas of uncertainty and drawing conclusions on their potential consequences for the company. This will form the basis for management to decide whether or not to proceed with the business relationship.

Case studies

Case story A: Beta Energy

Business opportunity

Beta Energy was a Western oil and gas exploration and production company with interests in several developing countries, including B_____. Statoil was considering the acquisition of Beta Energy's B_____ portfolio by purchasing the company's local subsidiary outright.

Reasons for Integrity Due Diligence

Any business relationship between Statoil and Beta Energy would be limited to the purchase of the subsidiary company and would cease as soon as this was completed. However, corruption was known to be endemic in B_____, and as Beta Energy was a company unknown to Statoil, there were questions related to how it had acquired its assets.

Basic information

A preliminary study showed nothing irregular in the formalities concerning Beta Energy's establishment as a company and its initial domestic trading. However, a look at its more recent history showed that Beta Energy had experienced a rapid expansion into international exploration beginning less than ten years ago. This came after many years of unremarkable performance in its domestic oil and gas business. Beta Energy's international attention was quickly focused on B_____, where it soon acquired the central assets in its current portfolio in negotiations with the national oil company, NOCB. The speed with which these negotiations were concluded and the successful outcome for Beta Energy were said to have surprised many observers, especially as the company's evident optimism was soon vindicated by the discovery of substantial reserves. The suspicion that the main asset may have been secured by unethical or illegal means made further investigation advisable.

Verification and "red flags"

- During further investigations, it became clear that Beta Energy had encountered a certain Dr F_____, working for Gamma Services, a foreign petroleum consulting company, as their business development expert for B_____. Dr F_____ had also previously worked at NOCB;
- When inviting bids for the license in which Beta Energy later made their hydrocarbon discoveries, NOCB made 30 per cent of their technical information available to interested parties. According to a reliable source, Dr F_____ had paid a named NOCB technician to gain privileged access to a further 40 per cent of the technical information on the relevant area. This gave Beta Energy prior knowledge that the license had a high potential for a discovery, prompting the company to make a more generous offer than its competitors, and ensuring its success;
- After the license had been awarded, it was alleged that the same NOCB technician had continued to receive payments from Dr F_____, acting on behalf of Gamma Services, for further information supposedly required by Beta Energy prior to drilling;
- Two years after the license award, Beta Energy granted a 10 per cent net profit interest in the asset to another company, Delta Petroleum, of which Dr F_____ was believed to be part-owner. No contracts between this company and Beta Energy, apart from the net profit interest agreement, could be traced. Based on subsequent estimates of producible reserves, the agreement was said to be worth over US$80 million at the time it was made.

Assessment

- Although the reported account of Beta Energy's acquisition of its main asset in B_____ was impossible to verify, two independent investigating entities had encountered the same story;
- The payments allegedly made to the NOCB technician implied bribery of an official, which indicated that Beta Energy had acquired its assets in an unethical and illegal manner;
- The net profit interest granted to Delta Petroleum was substantial and raised serious questions as to whether it was appropriate and proportionate to services rendered.

Conclusion

Statoil's evaluation of Beta Energy's assets in B_____ with a view to negotiating their acquisition was terminated.

Case story B: Omega Offshore

Business opportunity

Statoil was looking for a service company to act for it in marketing a drilling rig it wished to sub-contract. The rig was available for use in an area off the coast of C_____, a developing country with an established oil and gas industry. The most competitive terms had been offered by a local company, Omega Offshore.

Reasons for Integrity Due Diligence

Corruption was endemic in C_____, Omega was a company not well known to Statoil, and there were questions related to its ownership and associations.

Basic information

Omega Offshore responded to Statoil's request for information by filling in the candidate questionnaire satisfactorily and providing external business references, which included two international oil companies. Among the entities specified in the questionnaire as owners, part-

ners or shareholders, the name of a holding company, Epsilon Investments, appeared as owning over 90 per cent of Omega Offshore's shares. This entry was followed by a breakdown of the ownership of Epsilon Investments, in which appeared the following:

"14 per cent held by Caicos Trust Company in a blind trust for the benefit of Mr J_____, serving politician in the Government of C_____."

This information was confirmed further on with affirmative responses to the questions "Have any of the key people mentioned above ever held a Government job or served in the military?", "Do any...perform services for any Government-controlled entity?" and "Do any...currently hold any position with or have any duties for any political party or political campaign?"

In each case the name of Mr J_____ appeared. The question "Will Omega Offshore market to a Government or Government agency, including the military?" was also answered in the affirmative, and the agency was identified as the national oil company of C_____.

Verification and "red flags"

- In following up the references provided by Omega Offshore, it became evident that several of the referees had not been aware of the interest held by Caicos Trust Company for the benefit of Mr J_____, although there was no evidence from their response to Statoil that Omega Offshore had ever intended to conceal the fact;
- The concept of an interest being held for someone in a "blind trust" was then discussed in detail with a specialist, who confirmed that this was an acknowledged step that could be taken in order to minimize the risk of a conflict of interest in such a case. The trust had total discretion to invest, buy or sell assets and to gather the benefit of the assets on behalf of the beneficiary of the trust, who had no insight into the management of the assets and so, in theory, had no motivation to act in a manner that might benefit any of the holdings. This arrangement was mandatory under the laws of C_____.

Assessment

- The Integrity Due Diligence check had been carried out openly with Omega Offshore, and without the need for any investigation other than the questionnaire and reference verification.
- The arrangement of placing Mr J_____'s interest in a "blind trust" appeared to mitigate the risk of an actual conflict of interest, especially as the trust itself was based outside C_____.
- The senior position of Mr J_____ in the Government of C_____, and the possibility of their rig being marketed to the national oil company of C_____ made it extremely important for Statoil to err on the side of caution, to avoid not only actual conflict of interest but also any appearance of such a conflict.
- The security given by the "blind trust" arrangement was not considered to be evident enough to outside observers to mitigate sufficiently the risk of reputation damage to Statoil in the event of controversy about Mr J_____'s interest in Omega Offshore.

Conclusion

Omega Offshore was dropped from the list of bidders for the services required by Statoil.

Case story C: Alpha Exploration

Business opportunity

Statoil was offered the opportunity to participate in an exploration license in A_____, by entering into partnership with a local oil and gas company, Alpha Exploration. The license

in question was to be awarded to Alpha Exploration independently of the normal oil and gas bidding rounds in A_____.

Reasons for Integrity Due Diligence

Corruption was endemic in A_____, Alpha Exploration was a company unknown to Statoil, and there were questions related to its associations and to the process by which it expected to acquire the asset it was now offering to share.

Basic information

A candidate questionnaire submitted to Alpha Exploration was returned completed and accompanied by c.v.'s for officers and references for the company. On examination these were found to contain nothing to raise suspicions. However, the recent date of registration of the company, only a little over a year previously, seemed to limit significantly the value of these findings. It was therefore decided to carry out further research.

Verification and "red flags"

- The personal references provided for officers of Alpha Exploration were checked and revealed nothing that contradicted the positive impression given by the initial information. In the course of further investigations, however, the name of a certain Mr G_____ was mentioned by several independent sources as having recently been an adviser to Alpha Exploration;
- Mr G_____ had attracted a lot of negative publicity in recent years because of the activities of a company belonging to a group owned by him, which had allegedly been involved in criminal activity. An external investigation of the matter was still ongoing and, in the meantime, several libel actions brought by Mr G_____ against those who had made or repeated the accusations against him had been dropped;
- When researchers took up with Alpha Exploration the matter of their use of Mr G_____, the company claimed they had since severed their connections with him but that, in any case, they had not believed the allegations against him;
- Further investigation showed that other business connections might exist between Mr G_____ and several key officers of Alpha Exploration, as well as members of the ruling family in A_____. The main representative of Alpha Exploration in A_____ was said to be a personal friend of a member of the President's family, while the registered owner of Alpha Exploration was also reported to be employed as general manager of a company in Mr G_____'s group. Another of Alpha Exploration's owners was said to have been a technical director for the same group and to have graduated from the same college and at the same time as Mr G_____.

Assessment

- The possibility that Mr G_____ was still associated with Alpha Exploration could not be ignored, and it may even have been the case that he was the company's real beneficial owner;
- The reputation damage that Statoil risked by being seen to be associated with Mr G_____ was considerable;
- The connection to the ruling family in A_____ raised the possibility that the expected licence award would be made to Alpha Exploration on a discretionary basis in which personal relationships and privilege would play a part;
- Taking advantage of a business opportunity that existed because of a possible abuse of entrusted power was not consistent with Statoil's values;
- No conclusive evidence was likely to be obtainable to finally confirm or deny continuing connections between Alpha Exploration and Mr G_____ and Mr G_____ and the ruling family in A_____.

Conclusion

Statoil decided to refuse the offer of participation with Alpha Exploration in the license it expected to be awarded.

2C

Collective action

2C.I The power of joining forces — The case for collective action in fighting corruption

Peter Brew and Jonas Moberg* | *International Business Leaders Forum (IBLF)*

"Collective action offers an effective way to create a level playing field."

All too often, business leaders take the view that although it would be desirable to exclude all forms of corruption from their operations, it is a problem they cannot do much about. There is a perception that corruption—from petty bribery and facilitation payments to state capture—is so much part of accepted business practices or local custom that there is no remedy for the individual company if it is to remain competitive in local markets. Although business managers increasingly recognize that corruption is a serious business challenge, they may not always accept that they have a responsibility and key role in changing practices that have become endemic. The dilemma is to balance doing what is right against putting business operations at a competitive disadvantage. This is not to suggest that there are any circumstances in which corruption is acceptable, merely to acknowledge that business managers may perceive that promoting a change in accepted local business practices could jeopardise their business interests. It is often relatively easy to get business managers to acknowledge that it would be beneficial to both them and their competitors if corruption were eliminated. What is more difficult is for them to take the first steps to act together in combating corruption, for fear of losing out to each other.

Understanding the need for collective action

In practice, collective action with other companies offers an effective way to create a level playing field on which to compete and increases the impact on local business practices beyond the capacity of any one company. Knowing that other companies in your sector or location are committed to good practice helps to build mutual confidence and the sustainability of changes in behaviour.

The Extractive Industries Transparency Initiative (EITI) is possibly the most high-profile example of collective action by companies, in this case in cooperation with non-governmental organizations and Governments, to improve transparency and fight corruption (http://www.eitransparency.org). At the same time, there are a good number of examples from around the world where local businesses or business associations have combined to tackle particular aspects of corruption that were proving to be a barrier to business development. However, if the fight against corruption is going to result in noticeable improvements of business practices, many more of these local initiatives will be needed. This chapter provides a brief review of how companies can best join forces to improve business practices.

*Peter Brew is Director of Corporate Policy and Practice at the International Business Leaders Forum. Jonas Moberg was Programme Director at the International Business Leaders Forum and has now joined the United Nations Global Compact Office in New York.PACI

"There are no 'one size fits all' solutions to corruption that can be applied universally."

> "Unless there is coercion or some other special device to make individuals act in their common interest, rational, self-interested individuals will not act to achieve their common or group interest. In other words, even if all of the individuals in a large group are rational and self-interested, and would gain if, as a group, they acted to achieve their common interest or objective, they will still not voluntarily act to achieve that common or group interest."
>
> — Mancur Olson
> *The Logic of Collective Action*

From the outset it should be appreciated that corruption manifests itself in a myriad of ways depending on local customs and practice, economic forces and industry sectors. It follows therefore that there are no "one size fits all" solutions that can be applied universally. Experience shows that when business leaders are brought together to address specific challenges and circumstances, they are themselves best at identifying what needs to be done in practice, so the early challenge is to convince them that they have a mutual interest in addressing the issues and can best do so collectively. Nevertheless it is possible to identify some of the mechanisms that can provide frameworks for action, for example:

- The use of integrity pacts when bidding for and executing public contracts;
- The application of codes of conduct to all public tenders;
- Ensuring transparency in all business transactions so that all parties have the information they need to make informed decisions;
- Establishing common rules about revenue transparency in business relations with national and local Governments (along the lines of the EITI);
- The collection and sharing of data about the existence of corruption and how it manifests itself in practice;
- Identifying and agreeing on the key priorities for action;
- Presenting a cohesive and collective voice of business in addressing the issue of corruption with public agencies and non-governmental organizations who can and should play a role in building improved practices;
- Creating neutral platforms, forums or other "safe haven" mechanisms through which discussions between companies and other organizations can be conducted, sensitive information shared and allegations addressed;
- Sharing examples of successful practice against corruption to reinforce and encourage sustained initiatives;
- Organizing training on ethics and anti-corruption processes that can be applied in each company and collectively. (There is real value to be gained when staff from competitors attend seminars and workshops about responsible business practices together and then take their learning and experience back to the workplace.)

Recognizing the need for facilitation/convening

The increasingly widespread recognition that it often takes companies working together to tackle corruption has led to a growing body of experience and examples of companies joining forces in different ways, in different places and in different business sectors. A common thread running through

these kinds of initiatives appears to be the importance of some kind of external facilitation—a business organization, Government body or non-governmental organization to act as an intermediary. Such an intermediary organization can act as a convenor and provide a neutral platform or "safe haven" from which collective action initiatives can be built. Any such initiative needs to be jointly owned by those involved, but the intermediary provides "coordinating energy." Often there are already locally represented organizations that can provide this facilitation, for example Transparency International's national chapters, local business chambers and the United Nations Global Compact's local networks.

Auditing firms and larger consultancies can also play an important role in facilitating this collective action by working with clients who have encountered similar corruption issues. They often have extensive knowledge and experience of the impact and manifestations of corruption and malpractices as a result of the work they do with their clients. If they have a large enough client base, they will be able to draw on practical examples for discussion and reinforcement without having to identify the companies or Government institutions involved. There are few other business sectors that are in a similar position to share insights gained locally.

A challenge for any company considering a collective approach is to recognize that corporate cultures normally prepare management for unilateral action, whereas a collective approach demands something quite different. The more traditional way of companies unilaterally adopting codes of conduct, managerial procedures and taking the necessary steps to prevent malpractices will have to be combined with a set of practice norms agreed to as part of the collective effort.

Supporting environment

Although much of the effective action against corruption has to take place at a local level, a number of overarching support mechanisms are available to raise awareness and to provide frameworks for sustainable improvement.

Global initiatives

These include:

- The United Nations Global Compact's 10th Principle;
- Transparency International's Business Principles;
- The World Economic Forum's Partnering Against Corruption Initiative (PACI);
- The Extractive Industry Transparency Initiative (EITI).

Each of these has emerged from quite a different genesis but each has provided a valuable foundation on which to build sectoral and local initiatives, which can then accommodate particular needs and priorities. Some initiatives, such as the EITI, have come about through a multistakeholder dialogue facilitated by one or several Governments. Others, for example the PACI-principles, have been largely business-led without official Government involvement. These global initiatives have gained considerable attention, have become high profile and have begun a process leading to the relatively quick development of new international standards. A challenge with international processes of this kind, however, is that it may be difficult to obtain genuine local buy-in in the countries where they need to be implemented. An emerging international standard may need to be adapted to suit local requirements, laws and cultures, and it may take time before international commitments translate into local action.

Local initiatives, on the other hand, tend to emerge in response to specific needs and challenges. They often have a high degree of local relevance and are driven by the individuals or companies that have encountered a particular problem. Transparencia por Colombia's efforts to collaborate with a number of textbook publishers in establishing commonly accepted standards for relationships with schools and other relevant purchasing authorities are an example of this. Unfortunately, without international backing, many such promising initiatives do not get the profile they deserve nor are they always able to create a momentum that attracts the attention of business leaders and leads to replication and taking to scale.

"Local collective action initiatives flourish best when they are addressing locally relevant issues."

Sector-specific initiatives

Some collective initiatives are sector-specific, focused on the specific challenges a particular group of companies or business sector have encountered (again, EITI is a good example). These initiatives have the obvious advantage that they can be tailor-made and focused in terms of the issues and the outcomes expected. The fact that they may emerge out of needs identified by a group of competitors contributes to ensuring that they remain relevant and address real issues of concern.

Business-led v. multistakeholder

Through the involvement of a wide range of actors, companies, non-governmental organizations and Governments, initiatives such as the United Nations Global Compact can quickly obtain a high degree of legitimacy and authority. Other multistakeholder initiatives, such as the EITI, have come about because of the campaigning of non-governmental organizations. The Initiative created an important forum for businesses, non-governmental organizations and Governments to come together to discuss issues of joint concern. A potential drawback with multistakeholder initiatives is that they often grow rapidly and consequently may become cumbersome to manage. Also, it may be difficult to turn aspirations into tangible action. As the number of participants increases, the early dynamism and confidence of the original smaller group of participants can be dissipated. On the other hand, business-led initiatives that are focused on solving specific business challenges can often be more results-driven, but they may not satisfy the expectations of other stakeholders.

In practice, it is important for business-led initiatives to engage with and seek support from other stakeholders. Governments and multilateral institutions can play an important role by promoting and facilitating initiatives that are essentially voluntary for companies to adopt. Again, the EITI can serve as an example. The British Government's convening has been critical in building the international support for the initiative. At the same time the OECD Guidelines on Multinational Enterprises highlight how a multilateral organization can use its authority and outreach in promoting responsible business practices to add legitimacy to a wide range of initiatives around the world. At a local level, adoption by procuring Government agencies of the Integrity Pacts that Transparencia por Colombia has been developing to achieve transparent bidding processes is another example of how Government institutions in a voluntary way can initiate a process that lowers the risks of corruption.

What it takes to make collective business action happen

If we accept that making a significant impact on corruption demands more than companies adopting stringent standards on their own, that collective action is often required to reinforce and achieve real progress, and that such joint solutions need some kind of facilitation, then we need to explore what it takes to get such joint actions off the ground. Why are some initiatives more successful than others? Are there some success factors that, if we were more aware of them, would help us in replicating successful initiatives? The following are some of the experiences that have emerged so far:

Local practical relevance

Local collective action initiatives flourish best when they are addressing locally relevant issues. Some initiatives, such as Tranparencia por Colombia's collaboration with a group of textbook publishers, have emerged from needs identified locally. In cases like this, there has been a relatively limited input from elsewhere. Other times, organizations such as the United Nations Global Compact, Transparency International, the World Economic Forum, the International Business Leaders Forum and the Ethics Resource Center have joined forces with local companies with the aim of initiating local projects. In these circumstances, it is critical that the agenda is "localised" early on and adapted to the challenges encountered locally. The relevance of a general international policy initiative may not always seem

obvious to daily work in a particular country, unless it is adapted and developed into a detailed local project.

Driven locally—The case of the China Business Leaders Forum

In 2003 the International Business Leaders Forum started exploring issues of corporate governance and corruption with a group of Chinese and foreign business leaders and other appropriate institutions in Beijing in the expectation that, drawing on a wider international experience, a basis for collective action could be developed, The result has been the launch of the China Business Leaders Forum (CBLF) in partnership with the Renmin University in Beijing. CBLF provides a "safe haven" for business leaders to meet around an agenda of business standards challenges, including governance, transparency, tendering and procurement, recruitment and employee development, setting and meeting expectations on product and service delivery, improving joint venture relationships and the like. It also serves as a network of communication on other corporate governance initiatives taking place in China and will publish appropriate materials and research. CBLF has a three-year action programme funded jointly by the Global Opportunities Fund of the UK Foreign and Commonwealth Office and a group of multinational companies. For further information, see www.cblf.org.cn

Facilitation

Experience suggests that having a neutral party bring key stakeholders together to determine local priorities is often critical for progress. Facilitation is largely about managing the process and providing a framework of internationally recognized principles and ambitions within which the practical realities can be addressed. It is clearly important for the facilitating organization to have an understanding of both worlds—of basic international research and what has emerged internationally as best practice and, on the other hand, what challenges a local businessman encounters. Facilitation is about providing examples of how forces can be joined to stimulate local business leaders to identify local priorities and initiate efforts.

Building confidence

It takes time to build confidence amongst groups of business leaders who may initially be sceptical about what can be achieved and concerned at the implications of working with competitors and others outside their normal set of relationships. Focusing on issues that have important current impacts on business and the community and then conducting a series of individual and group meetings to explore the opportunities and barriers to cooperation are essential steps leading to the formalisation of any initiative. These steps take time, but it is time well spent. Having someone who has previously been a business executive to act as a coordinator may give participants the confidence required to ensure that a process gains momentum.

Funding of collective initiatives

If it is concluded that some kind of facilitated initiative is required, funding of course needs to be raised to pay for such a joint effort. The costs will normally arise from the coordination of the initiative, research, meeting arrangements, translation, access to expertise, facilitation, travel and the like. It is important to recognize that if facilitation as outlined here—helping to steer and guide companies to jointly address some needs for improvement—is essential, it is largely dependent on external organizations with experience and capacity and with the necessary understanding of both the local business environment and joint efforts to fight corruption. Given the relatively recent development of collective action initiatives, there are not yet many persons and organizations that have the experience and competence to provide facilitation of this kind. Thus, the main challenge

"The fight against corruption will be more effectively fought by companies acting together."

may not be cost but rather finding an appropriate organization and person to coordinate an initiative.

Current experience suggests that there are many advantages in sharing the costs among the companies, not-for-profit organizations, multilateral or bilateral agencies and Government agencies involved. Organizations that make a financial contribution are always more likely to remain engaged, take a project seriously and demand practical results.

The role of leaders

The successful initiation and building of collective business action often depends on identifying one or a small group of companies to take the lead and to act as a champion for the project. This reinforces the importance of ensuring that the issues being addressed are priorities for the business community and are likely to deliver tangible results for the participating businesses and the communities within which they are operating.

Conclusion

The fight against corruption will be more effectively fought by companies acting together to reinforce and enhance the impact of the application of codes, policies and processes within their own operations, supply and distribution chains. Businesses, often competitors, have a mutual vested interest in improving the environment within which they operate, and by acting together they can also be a stronger influence on other sectors in reducing corruption.

There is a growing body of experience of how companies, sometimes with other actors, have acted collectively to address a range of social, economic and environmental challenges. Tackling corruption and improving business standards lends itself particularly well to the collective approach.

Collective action requires careful preparation and facilitation, must address locally relevant issues and must be developed within the framework of accepted international standards. It is vital that these initiatives focus on achievable results and improvements to provide the foundations upon which to build more challenging initiatives.

2C.II Case story: Integrity Pacts

Juanita Olaya* | *Transparency International*[1]

> "The Integrity Pact allows companies to refrain from bribing in the knowledge that their competitors are bound by the same rules."

Transparency International's Integrity Pacts offer a good example of collaborative action to prevent corruption in public contracting. Originally called "Islands of Integrity," the Integrity Pact (IP) is a tool developed during the 1990s by Transparency International (TI) to help Governments, businesses and civil society fight corruption in the field of public contracting.

What are Integrity Pacts?

The Integrity Pact consists of an agreement between a Government or a Government department (to which we refer here as the Authority) and any company bidding for a public sector contract. The agreement contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes of any sort, or collude with competitors to obtain the contract, or while carrying it out. Bidders agree to disclose all commissions and similar expenses paid by them to anybody in connection with the contract, with the understanding that sanctions will apply if they violate the agreement. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the Government.

Many companies and Government officials would rather not get involved in corruption. The Integrity Pact allows companies to refrain from bribing in the knowledge that their competitors are bound by the same rules and the assurance that the Government agency will not request bribes either. This allows Governments to reduce the high cost of corruption on procurement, privatization and licensing.

The IP has shown itself to be adaptable to many legal settings and flexible in its application. Since its original conception, this TI-developed tool has been now used in more than 14 countries worldwide and has benefited from the feedback of a variety of individuals and organizations.

The IPs, conceived for application to individual contracting processes, are initially aimed at providing transparency and preventing corruption within that particular process. However, in some circumstances, IPs have contributed to changes beyond those specific instances or have triggered wider change processes. Beyond the impact on the contracting process in question, the IPs are also intended to create confidence and trust in the public decision-making, a more hospitable investment climate and public support for the Government's own procurement, privatization and licensing programmes.

*Integrity Pact and Public Contracting programme Manager at Transparency International's Secretariat office in Berlin.

Integrity Pacts at work

The IP concept is suitable not just for procurement, construction and supply contracts, but equally, for example, for the selection of engineering, architectural or other consultants, the buyer/recipient of state property as part of a Government's state asset privatization programme, the beneficiary of a state license or concession (such as for oil or gas exploration or production, mining, fishing, logging or other extraction rights), or for Government-regulated services (such as telecommunications, water supply or garbage collection services). The IP may cover the planning, design, construction, installation or operation of assets by the Authority, the privatization sale of assets and the issuing by the Authority of licenses and concessions, as well as corresponding services such as consulting services and similar technical, financial and administrative support. The Pacts are also suitable for private contracting. Nowadays, many companies perform substantial procurement activities that follow closely and even overtake those of the public sector.

Whenever possible, the IP should cover all the activities related to a contract, starting with the pre-selection of bidders, continuing with the bidding and contracting proper, and extending through the implementation, completion and operation of the contract. In fact, the IP protection can and should be applied to the following full range of activities concerning a particular investment, sale, license or concession:

- Feasibility and preparatory stages relating to the earliest alternative choice and design documents to prevent the possibility of a dishonest consultant misdirecting the entire preparation process for the benefit of certain contractors or suppliers;
- Selection of the main contractors/suppliers/licensees;
- Implementation of the main activity, which is the execution of the construction or supply contract (especially regarding compliance with contract specifications and all change and variation orders), until the final decommissioning and disposal of the project assets (especially for projects such as big dams or nuclear power plants).

What makes an Integrity Pact an Integrity Pact?

The Integrity Pact is more than just an attractive name. Each Integrity Pact has the following essential elements, without which they could not operate to achieve the goals set for them by Transparency International:

- A *pact* (contract) with a Government office (the principal) inviting public tenders from bidders for any type of contract related to goods and services;
- An *undertaking by the principal* that its officials will not demand or accept any bribes or gifts, with appropriate disciplinary or criminal sanctions in case of violation;
- A *statement* by each bidder that it has not paid, and will not pay, any bribes "in order to obtain or retain this contract";
- An *undertaking by each bidder* to disclose all payments made in connection with the contract in question to anybody (including agents and other middlemen, as well as family members);
- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation, as well as the corresponding

"The political will to reduce corruption and to revive honesty and integrity is a sine qua non for success."

sanctions, *remain in force* for the winning bidder until the contract has been fully executed;

- The installation by bidder companies of a *code of conduct* (clearly rejecting the use of bribes and other unethical behaviour) and a compliance programme for the implementation of the code of conduct throughout the company;

- A *conflict resolution mechanism* (for example, arbitration) with the authority to impose sanctions;

- A pre-announced set of *sanctions* for any violation by a bidder of its commitments or undertakings, including some or all of the following:

  - *Denial or loss of contract;*
  - *Forfeiture of the bid security and performance bond;*
  - *Liability for damages to the principal and the competing bidders;*
  - *Debarment of the violator by the principal for an appropriate period of time.*

- An *independent monitoring system*, which can be performed with active civil society participation or any other structure with independence, accountability and credibility;

- A maximum of *transparency* all along the various steps leading up to the contract and throughout its implementation, with easy public access to all relevant information, including design, justification of contracting, pre-selection and selection of consultants, bidding documents, pre-selection of contractors, bidding procedures, bid evaluation, contracting, contract implementation and supervision.

From the outset, it has been expected that *civil society* in the respective country will play a key role in overseeing and monitoring the correct and full implementation of the IP. The legitimate confidentiality of proprietary information, to which civil society representatives will gain access, can be protected adequately through an appropriate contractual stipulation. While a clear and unrestricted oversight and monitoring role for civil society in any country is highly desirable, it is understood that in some countries the Government will not, at this time, be prepared to allow civil society such a role. In those cases, the oversight and monitoring function could be performed in one of several ways: through credible independent Government (or mixed) agencies or commissions, through an independent expert committee or through the ombudsman system, among others.

The IP can function only if all bidders submit to it. It is therefore highly desirable to make the *signing* of the IP *mandatory*. Some countries have chosen to make the signing voluntary, and then they begin a campaign to convince all bidders of the advantages of having an IP in place. However, the danger here is that if even one bidder refuses to sign, all the others will naturally withdraw their commitment, since the objective is, after all, the creation of a level playing field—for all players.

A fascinating and possibly highly relevant recent development is the use in several countries of the Internet for total *transparency of procurement*. In Mexico, all public procurement activities countrywide are recorded and made available in great detail through a website that is accessible to all. In Colombia, a State Contracting Information System (SICE) is meant to be widely accessible. Similar electronic information systems are being applied in Chile, Ecuador, Brazil, Pakistan and South Korea. The high degree of transparency achieved through this real-time access to public decision-making should reduce the opportunity for manipulation and should enhance the willingness of officials and bidders alike to commit to a corruption-free contracting procedure, such as through the IP.

"The IP does not duplicate the law but enables compliance to it by levelling the playing field."

Finally, experience shows that the *political will* to reduce corruption and to revive honesty and integrity in Government contracting is a sine qua non for success. That is why we recommend starting any IP process by establishing the existence of that political will—at the highest available political level. Experience shows that it is often easier to establish that political will at the municipal level than at national level.

In judging the *suitability of the IP* model one should take into account that on 15 February 1999, the OECD Convention made bribing a foreign official a criminal act in all States that ratified the Convention. In most of those countries, the tax deductibility of bribes, which had been allowed previously, has been abolished. Bidders from many countries thus face a fundamentally different legal situation from the one they had operated under for years. They should therefore be prepared to enter into agreements designed to provide a "level playing field" for all competitors irrespective of whether they come from countries bound by the OECD Convention rules or not.

Why do we need an IP if we have anti-corruption laws? The persistence of corruption problems in public contracting despite laws that forbid it show the need for developing mechanisms that increase compliance with the law and make it more difficult to ignore it. In this sense, the IP does not duplicate the law but enables compliance to it by levelling the playing field and assuring the contenders that all parties will conform to the same patterns.

There is an increasing number of cases where all the essential principles of the IP are being applied. While there is some variety in the approach, the documents and the process, we have observed that aspects such as the independent monitoring, the enforceable sanctions and a genuine political will are key for the concept to work and to be rightfully considered an Integrity Pact.

Integrity Pact case stories

Integrity Pacts in more complete versions have been used and are currently being used in Argentina, Colombia, Ecuador, Germany and Mexico, as well as in Pakistan and Indonesia. Essential elements of the IP (like monitoring, for example) are being used in other applications in several countries, among them Peru, Paraguay and Bulgaria. In sum, over 14 countries through the efforts of our Chapters have implemented adapted versions of Integrity Pacts.

The global overview of experience indicates that the IP concept is sound and workable. One of the strengths of the concept is that it is flexible enough to adapt to the many local legal structures and requirements as well as to the different degrees to which Governments are willing to proceed along the lines set forth here. Nevertheless, within our experience up to now, these lines contain the essential elements that must appear in an IP in order to be designated as such and supported by TI.

Argentina

One interesting feature of the Integrity Pacts is that they can be implemented in less competitive situations (markets) by introducing transparency measures and even fostering participation and accountability. This is the case, for example, of the IP implemented in Argentina in 2003 for the supply of textbooks for the Ministry of Science and Education.

The Ministry of Education Science and Technology in Argentina (the Ministry) opened up a process to buy 3,315,000 textbooks at the high school level. The textbooks were to be distributed among the provinces in Argentina for 1,815,000 public school students with meagre resources. The first attempt at a procurement process took place in 2002. The process was designed to have a competitive pre-qualification stage where the books were to be selected by a committee. During this stage, various publishing companies expressed concerns regarding the evaluation criteria used to select the texts, the qualities of the experts involved in the selection process, and the procedure within the provinces. Based on these concerns, the process was later declared invalid.

For the second attempt, the Ministry invited Poder Ciudadano, Transparency International's Chapter in Argentina, to introduce transparency into the process and to

guarantee abundant and fair participation from all interested publishing houses.[2]

TI added three elements to the process:

First, an Integrity Pact among all participating publishing companies and the Ministry was implemented. The Pact introduced a level playing field by determining the same rules for all contestants. Its main purpose was to reduce the incentives and opportunities for bribery and corruption in this process.

Second, a public discussion of the textbook selection criteria (terms of reference) and of the bidding documents (procurement process design) was arranged. This knowledge was introduced by providing all bidders with access to the draft bidding documents and by facilitating their discussion within a workshop specially designed for that purpose. Although the results of the discussion were not mandatory for the Ministry, all suggestions for changes were accepted and introduced.

Third, rules to manage conflict of interest among the selection committee members were established. This included both a mechanism to identify potential conflicts of interest and conflict of interest management guidelines. The identification mechanism consisted of a sworn declaration by the committee member that included: research and academic history, teaching experience, positions held in public agencies and private businesses, publications, relationships with publishing companies (work, ownership, etc.) and the sources of copyright royalties. These declarations were made public on TI's website. This allowed for any participant to indicate the existence of a conflict of interest in a selection committee member. It also enabled the Ministry to implement the rules and to exclude members that could not qualify.

In terms of the process design, some important elements stand out from this case:

- The existence of a pre-qualification stage designed to introduce competition into an otherwise non-competitive bid.
- The bidding process, because of the nature of the goods to be procured, focused mainly not on prices but rather on quality determined by the contents of the textbooks and their pedagogical strengths. The bidding was part of the pre-qualification process undertaken by the award committee members.
- The introduction of transparency measures at various levels through:
  - *The intervention of a third party and independent actor (TI Argentina) with a specific facilitator role;*
  - *The agreement on the ground rules included in the Pact and in the guidelines for conflict of interest management;*
  - *The availability and access to information equally guaranteed for all participants and the public and in all relevant aspects of the process (including conflict of interest situations);*
  - *The involvement of participants in the process (workshop, discussion of terms of reference and conflicts of interest situation); and*
  - *The enforcement of the agreed rules (for example, through the effective exclusion of committee members in conflict of interest situations).*

The results of the process, as reported by the TI Chapter in Argentina,[3] are as follows:

- 48 publishing companies participated in the process and signed the Integrity Pact.

- Participating bidders presented in total 631 books, from which:
  - *51.66 per cent were among those recommended by the committee;*
  - *19.96 per cent were not among those recommended by the committee;*
  - *28.33 per cent did not match the conditions established under the terms of reference.*
- The contract awards resulted in the following distribution:
  - *48.21 per cent of the participating bidders had at least one book selected;*
  - *Two publishing houses were awarded 15.3 per cent and 14.7 per cent of the total selection respectively;*
  - *Only two bidders had only one book awarded (0.3 per cent of the total selection), and three bidders had contract awards for two books each.*

Colombia

The Colombian Chapter of Transparency International (Transparencia por Colombia) has implemented more than 60 Integrity Pacts in a wide variety of sectors. In this opportunity we will refer to one of the cases in the telecommunications sector, a sector that is perhaps far less competitive than the school textbooks just explored in the Argentinean case.

In our Colombian case, an Integrity Pact was implemented within a bidding process called "Compartel," a rural communications project that aimed at providing access to telephone services in poor and distant rural areas.[4] We focus here on one specific process within this project called Compartel I. The bid took place in 1999 to contract the operators and suppliers of 6,500 public telephone access points.

The telecommunications market in Colombia was opened for private investment in 1993, allowing foreign and national investors to receive equal treatment. Telecom, the then state-owned monopolist provider of long-distance telecommunications service, and the project Compartel sought specifically to open competition and investment opportunities to the rural and distant area markets.

The goals of the IP as spelled out by the TI Chapter were:

- To increase the transparency of public bids, generating trust and credibility on all stakeholders;
- To create a voluntary cultural change among participants, to help them modify their behaviour to meet the ethical standards and the legal standards spelled out in Colombian law;
- To agree on rules of the game in order to level the playing field between the contractor and the public agency;
- To produce information on the corruption risks map identifying vulnerabilities, common and special elements among different bidding processes.

The Ministry of Communications invited TI Colombia to implement an Integrity Pact in the Compartel project when the terms of re ference were ready for the Compartel I process. Therefore, in this case the process could not start with a participatory discussion of the terms of reference. However, with the support of experts, the Chapter revised the terms as a precondition to participate in the process. The process included:

"The IP had eased some of the concerns the [bidders] had in entering the market."

1. The discussion and signature of a voluntary Integrity Pact, which included disclosure by the winner, under a confidentiality agreement, of all payments made to third parties on the occasion of the contracting process;

2. The implementation of an ethics declaration signed by the officials and advisors from the Ministry involved in the process. This declaration laid out a range of prohibitions for public officials to follow, regulating possible current and future conflicts of interest.

In the case of Compartel I, all bidders signed the Pact. Two aspects of the process design specially stand out:

1. The intervention of a third independent party (TI Colombia) acting as facilitator to introduce transparency measures in the process, with experts providing input on substantial aspects of it;

2. The discussion promoted by TI around the Integrity Pact, its process and consequences. This enabled the participants to talk about the risks in the process and take explicit steps against them. For example, the ethic declaration signed by the officials contained explicit measures that guarded them from situations that would concern how they handled the information on the process.[5]

In all other aspects, the process continued as foreseen and originally designed. Once the contract was awarded, there were no allegations from any of the participants on violations of the Pact or any acts of corruption. The monopolist participated competitively in the bids and was disqualified for presenting a bid without matching the bid terms.

When bidders who lost were interviewed,[6] they underscored the role that the IP process played in encouraging them to participate in the bids. In one case, the bidder specifically expressed that it was their first time bidding on a public contract and that the IP had eased some of the concerns they had in entering the market.

Clearly, in a less competitive sector like this, there are few players, and these same few appear even at the international level. Therefore, the incentive to collude may be higher than in other sectors. This may also be problematic in terms of corruption prevention as the costs of whistle-blowing are higher in less competitive markets. This means that measures to prevent horizontal collusion need to be in place. The Integrity Pact itself provides mechanisms to enforce sanctions in case of breach. The contract winner's disclosure of payments to agents or other involved parties also raise the hurdle to corruption. However, in this case, there have been no signs or allegations of collusion.

Germany

The experience so far in Germany illustrates how the IP can work in settings where governance and law enforcement standards are perceived to be stronger. While this case, to the date of publication, is still ongoing, it shows the type of tools at hand for concerned stakeholders.

Berlin-Schönefeld Airport (FBS) and Transparency International Germany have joined together to introduce a no-bribes Integrity Pact to prevent corruption and illegal transactions in the course of a major expansion for FBS to become the Berlin Brandenburg International Airport (BBI). This is the largest and most significant infrastructure project in eastern Germany, anticipating a total investment of ca. EUR 2 billion between 2005 and the planned opening of BBI airport in 2010.

The Integrity Pact is effective immediately for tendering procedures for selecting suppliers, construction companies, planning, engineering and consulting companies. It is valid for the duration of orders. Should the bidder violate the regulations of the Pact in the course of the selection process, the bidder can be excluded from tendering for FBS. In addition, the bidder and contractor

are threatened with significant fines in case of violations, including lump sum damages of up to 5 per cent of the contracted sum. In some cases, higher damages are possible. The bidders are also obligated to insist that subcontractors maintain the terms of the agreement.

TI Germany assisted FBS in developing the concept but does not participate in the monitoring activities. The monitoring activities are performed by two independent monitors who contracted with FBS for that purpose. The monitoring agreement includes a clause to manage confidential information.

More information

More detailed information is available electronically through Transparency International's website: http://www.transparency.org. There you will also find updated and new materials regarding Integrity Pacts and Anti-corruption in Public Contracting.

Endnotes

1 Transparency International (TI) is an international not-for-profit, non-governmental organization devoted to curbing corruption worldwide. TI is also politically non-partisan. Since its foundation in 1993, TI has earned widespread recognition for its achievement in placing the fight against corruption on the global agenda. The challenge of keeping the issue at the forefront of global consciousness is a leading element of TI's continuing mission. TI is committed to building, and working with, broad coalitions of individuals and organizations to curb corruption and introduce reforms. Rather than focusing on "naming names" and denouncing corrupt individuals, governments or companies, TI tackles corruption at the national and international levels by building stronger integrity systems. The coalition-building approach brings relevant actors together, from government, business, academia and the professions, the media, and the diversity of civil society organizations. Internationally, the movement's main aim is to infuse transparency and accountability into the global value system as generally recognized public norms. The International Secretariat works with the private sector and with international organizations, such as the OECD, to strengthen the policy and legal framework for international business. While the International Secretariat leads the organization's international agenda, more than 85 national chapters spearhead TI's grassroots involvement within their respective countries. TI has approximately 60 staff at the International Secretariat offices in Berlin and London. In addition, a team of experienced professionals volunteers time, expertise and extensive contacts that enhance TI's resources and networks.

2 For more details on this case, see Poder Ciudadano (2004).

3 Ibid

4 For a complete report, consult: **http://www.transparenciacolombia.org.co**. We have selected here only one of those cases, and therefore the whole of the experience is not reflected here.

5 This meant both confidential information and information that legitimately would concern other bidders.

6 Interviews performed by Juanita Olaya during 2001 for Transparency International.

2C.III Case story: Convention on Business Integrity

Soji Apampa* | *SAP Nigeria Ltd.*

"The primary purpose of the CBI initiative is to encourage the establishment of a minimum standard for business integrity in Nigeria."

The Convention on Business Integrity (CBI) is a project to facilitate business transactions in or with Nigeria without corruption. The vision of the CBI is to convince Nigerian society to be intolerant of corruption, which strikes at the heart of the market economy, distorting decision-making and rewarding the corrupt and manipulative rather than the efficient and the productive. CBI's ultimate goal is to change the perception of Nigeria as one of the most corrupt countries in the world. This may be a great expectation, but each journey begins with the proverbial first step.

The negative perception of Nigeria since the 1990s has not only hindered the growth of businesses within the country but has also dampened economic investment by foreign companies. Fortunately, a concerted determination to change the situation is on the rise. A strong consensus has formed among the Nigerian Government, international organizations and donor agencies, civil society, and now also the business community, to battle against corruption and bring new life to Nigerian enterprise. Many of the country's Government-led development efforts in the past were unsuccessful. Today, increased privatization has given the private sector a greater responsibility for development.

In the 1990s, a concerned Nigerian businessman named Soji Apampa took up the cause of doing away with corruption in business. Today Managing Director of SAP Nigeria, at the time Apampa was representing AB Sandvik International. AB Sandvik International was unable to scale up their involvement in Nigeria during that time due to fears generated by the widespread lack of integrity and corruption in the market. The late Mr. Arne Ekfeldt, Swedish Ambassador to Nigeria at the time, repeatedly challenged Apampa regarding the state of affairs in his country, asking him, "If someone like you does not drive change, who will? What heritage would there be for your children and future generations if people like you don't try to do something, no matter how small, now?"

In 1995, the challenge was taken up by Soji Apampa and Yemi Osinbajo, a partner in the law firm of Osinbajo, Kukoyi & Adokpaiye. Having served as special adviser to Prince Bola Ajibola, then Attorney-General of the Federation, Osinbajo had had his own share of first-hand experiences with public sector corruption.

Together, Apampa and Osinbajo founded Integrity, a not-for-profit organization with the goal of empowering people, systems, and institutions against corruption by

*Managing Director, SAP Nigeria Ltd

"CBI does not assume perfection on the part of signatories but rather a willingness to participate in a coalition that expects high moral standards."

promoting truth, civility and accountability. This led two years later to the formation of the Convention on Business Integrity (CBI) to tackle head-on the issue of integrity in the private sector.

Formally launched in Lagos on 2 October 1997, the Convention promotes ethical conduct in business, as well as competence, transparency, accountability, and a commitment to doing what is right, just, and fair. Its member organizations include Integrity; Transparency in Nigeria, a national chapter of Transparency International; and numerous local and multinational businesses.

In essence, the Convention is a declaration against corrupt business practices. It is worth noting that the document is not a legal document but it represents a moral agreement between consenting parties. It is binding in honour only.

The primary purpose of the CBI initiative is to encourage the establishment of a minimum standard for business integrity in Nigeria. By certifying the integrity of its members, the Convention hopes to gradually change the perception that all Nigerian business is fraudulent. This will increase the level of business confidence within the country and foster productive international relationships.

Getting companies in Nigeria to sign such a Convention was very difficult. For instance, during a presentation to the assembly of the Lagos Chamber of Commerce and Industry on the CBI seeking to persuade them to sign up, the effort was rejected immediately by most of those present. One member shouted "I would like to sleep in my own bed!"—meaning that he didn't want to be locked up by the authorities. Only three key members of the Chamber rose up in support of the Convention, including Dr. Christopher Kolade, who was then Chairman of Cadbury Nigeria plc and today is Nigeria's High Commissioner to the UK.

After signing Cadbury Nigeria plc as the first member of the CBI, Dr. Kolade assisted with presentations to other potential participants, such as Nigeria's first chartered accountant, Mr. Akintola Williams of Akintola Williams-Deloittes and Professor Gabriel Olusanya, the Director-General of the Nigerian Institute of Management.

CBI does not assume perfection on the part of a signatory but rather a willingness to participate in a coalition that expects high moral standards and demonstrated efforts at self-reform. Assistance in achieving the standards is provided through the CBI Secretariat. Once a company has signed the Convention and ratified it by implementing the Code of Business Integrity, compliance is largely self-policing. All stakeholders are empowered by the code to act as whistle-blowers. Even junior employees in large organizations can blow the whistle without fear of victimization. Periodic compliance checks are also carried out by the CBI Secretariat.

The principle of membership works in a way analogous to the revolving micro-credit schemes popular in Africa, called *ajo*, *esusu*, etc, in some parts of Nigeria. Under these schemes, members contribute equal amounts on a periodic basis, and the whole pot is given to one member. The rate of default in these schemes is generally accepted to be very low because they operate through a mutual accountability network where sanctions are applied through peer pressure and each member submits to peer review. This process continues until all the members benefit in terms of credit finance from the scheme.

CBI signatories are well known for their credibility. They help define minimum standards that will allow them to lend their credibility to other companies that are perhaps less well known but deserving of their support.

During the early days of the CBI, the biggest debates in the group were around processes for responsible whistle-blowing and how compliance monitoring would be effected. Signatories wanted to be sure their reputation could not be damaged by disgruntled employees or stakeholders making spurious reports just to hurt an individual or an organization. It was agreed in the end that whistle-blowers would have to remain anonymous to the company or persons involved.

The process begins by presenting allegations of questionable practices to a core group of signatories. If the whistle-blower's claims are substantiated, the core group then approaches the company in question. Such companies have a responsibility to deal with the issues as

well as they can internally and for this purpose they need to appoint an ethics counsellor: "The intending signatory must appoint an Ethics Counsellor to counsel with those wishing to resolve ethical dilemmas, and those seeking clarification of ethical values, or core values of the organization. He or she will counsel in confidence with those wishing to report unethical and corrupt practices taking place within their organization and take appropriate action. An Ethics Counsellor must be a member of senior management that enjoys the trust and confidence of both management and employees. He or she must have a good knowledge of organizational processes and the core values of the organization. He or she shall also monitor organization compliance with this Code of Business Integrity."

In 1999, two years after the Convention was established, Nigeria returned to Civil Rule. One of Integrity's cofounders, Yemi Osinbajo, was appointed Attorney-General and Commissioner for Justice, Lagos State Government. Another key core group member, Mr. A. Olawale Edun, CEO of Denham Management, was appointed Commissioner for Finance, Lagos State Government. That same year, Soji Apampa joined SAP.

The new career paths of the founders reduced the push for the CBI; therefore funding and momentum waned. However, recognizing the potential of the CBI for the Nigerian economy, SAP agreed that Soji Apampa could continue to spend a portion of his time working on the initiative.

It soon became clear, however, that CBI needed a Secretariat with full-time trained staff to carry out its mission and to assist the signatories.

In 2000, SAP AG signed on to the United Nations Global Compact. As a first project, the company decided to engage with the CBI and signed the Convention in 2002. Hasso Plattner, SAP chairman at the time, said: "We felt a natural chemistry between the aims of the convention and our own corporate conduct and services. The convention's principles are very much in line with SAP's philosophy. Strengthening business process transparency in Africa will help increase investor confidence and bring about greater investment inflows, benefiting all."

The engagement of companies such as SAP brought about the interest of key players in the Nigerian economy as well as the Department for International Development (DFID) of the UK Government. DFID found the reports on CBI very encouraging and recognized its potential as a driver of great change in Nigerian society. They offered technical assistance to develop a strategic plan for the initiative and extended a three-year grant to provide funding while the Convention recruited new members.

Baroness Chalker of Wallassey, Chairwoman of Africa Matters Ltd., started a campaign to get the CBI adopted across Africa. She presented the concept to the Presidents of Ghana, Uganda, and Kenya with the result that the CBI was invited to come and set up chapters in those countries. Other efforts brought about interest in Zambia and Rwanda as well.

In 2004, the Ministry of the Federal Capital Territory (MFCT), the seat of the federal Government of Nigeria, decided to sign on to the Convention as a pilot for the public sector. Admitting that the MFCT was one of the most corrupt ministries in the Government of Nigeria, the Minister declared at the signing ceremony that by 2005 he would like to have implemented all the provisions of the CBI within his ministry. He insisted that all contractors doing N50m (US$350k) or more business with the MFCT would now have to comply with the same standards as CBI.

The Minister for Finance for the Government of Nigeria, Dr. Ngozi Okonjo-Iweala (a former Vice-President of the World Bank), and Chair of the public sector reform team in Nigeria, stated that as soon as the MFCT had successfully implemented CBI provisions, his Ministry would follow suit and insist that all their contractors sign up to the Convention standard.

These two accomplishments of the CBI represented a major breakthrough into the private-public interface of grand corruption.

In 2005, Express Discount Limited (EDL), traders in Government bonds and other securities, signed on. Before publicly indicating an interest to sign, they adopted the standards of the code and implemented all of its provisions

internally. They said they had been inspired by the signing ceremony of SAP AG, which they attended. EDL will be the first of all CBI's signatories to have implemented all the provisions and thus qualify for the stamp of accreditation. The next step will be external, third-party verification of their claims. While interest in the CBI is growing rapidly, there have been challenges. In fact, CBI almost lost some existing signatories due to misunderstandings.

In one instance, a new member of CBI staff, who was an ex-internal auditor, gave the impression to a particular signatory that compliance monitoring would function like an intrusive financial audit. The signatory strongly objected to opening up his organization to the CBI and threatened to walk away from the scheme. The misunderstanding was cleared up when compliance monitoring was properly described.

Another challenge occurred when management of a CBI member company changed hands. The whole idea with its benefits had to be re-marketed to the new management.

The momentum of the Convention on Business Integrity has steadily accelerated and now cannot be stopped. Company by company, corruption in Nigeria is being driven back, and fair business practices are being promoted more and more. The ideas of Integrity and the Convention are spreading beyond Nigeria. and real change is being demonstrated throughout Africa.

If someone had asked Soji Apampa in the early 1990s whether he thought Nigeria would some day take a more powerful role on the world stage and that corruption would be dramatically reduced, he would have said: "Very difficult if not impossible, but it is worth a try." This just goes to show what the determination of one individual can do to change people's perception and promote fair and ethical behaviour even in what was once perceived to be the most corrupt country in the world.

Links

www.theconvention.org
www.sap.com/company/citizenship

2C.IV Case story: FIDIC Business Integrity Management System[1]

Jorge Díaz Padilla* | *International Federation of Consulting Engineers (FIDIC)*

> "To operate successfully in an increasingly globalized world, ethical behaviour toward the entire firm's stakeholders must be key and visible."

Consulting engineering has evolved to become a major industry worldwide. The International Federation of Consulting Engineers (FIDIC)[2] estimates that this activity represents almost US$500 billion in annual consulting fees, of which more than half is delivered by independent, consulting firms in private practice.

Business integrity in consulting engineering

To operate successfully in an increasingly globalized world while subjected to the competitive pressures of a free market, ethical behaviour toward the entire firm's stakeholders—clients, owners, employees, suppliers and society in general—must be key and visible. During recent years, there is a growing awareness of corruption. Clients are increasingly requiring assurance that consulting firms operate in a corruption-free environment since the selection of a consulting firm, as the basis of a mutual client-consultant trust, may be completely undermined if the process is tainted by corruption. This is especially so in Government procurement, where the implementation of adequate anti-corruption measures is becoming a condition for awarding work.

Corrupt practices can occur at different stages of the project execution process: in the selection of consultants; during design; while preparing tender documents and specifications; in the pre-qualification of tenders; while evaluating contractors; in supervising the execution of construction works; while issuing payment certificates to contractors; and during the review of claims.

In 1996, FIDIC issued a policy statement as a first step in exploring ways to protect the consulting industry from corruption. This policy statement concludes that corruption is basically unacceptable because it undermines the values of society, breeds cynicism and demeans the individuals involved. It is more than stealing funds; it is stealing trust. A formal effort to identify specific courses of action that could reduce corruption in consulting began in 1998. As a result of that initiative, the proposal to develop a practical tool, namely a comprehensive Business Integrity Management System (BIMS®) for consulting firms, was developed and field-tested.

*President of FIDIC. Managing partner of a consulting firm headquartered in Mexico City, with a quality and integrity management system certified under the ISO 9000 Standard.

"Many lack consistency in the day-to-day implementation of anti-corruption policies and fail to obtain systematic feedback that may improve their integrity management process."

FIDIC chose the term "integrity management" purposely. The Federation advocates ethical integrity to fight corruption on the supply side, and integrity management, as opposed to corruption control or integrity assurance, reflects the all-encompassing importance of integrity throughout an organization's entire operations and delivery of services. Integrity is the ability of the firm to fulfil its commitment to a code of conduct on behalf of all participants.

FIDIC has identified a number of principles of integrity management aimed at preventing corruption in all of its forms: bribery, extortion, fraud and collusion. The adoption of these principles by a consulting firm is a precondition for achieving integrity.

Leadership

The top management of the firm must demonstrate, in a clear and visible way, its full commitment to integrity management. This allegiance must be evident to all staff in words and deeds: The CEO must lead in the formulation of the code of conduct and in the allocation of resources to the integrity management initiative. All staff should understand that top management demands compliance to integrity values, and that it is prepared to take the necessary actions to achieve integrity.

Involvement of staff

The involvement of every employee is critical to the successful implementation of integrity management in a firm. All those who carry out the day-to-day operations and the professional services must commit to integrity and seek it out in their daily responsibilities. The prerequisite for successful teamwork is that all parties obtain and maintain the same understanding of the principles throughout the delivery of consulting services; this requires proper communication and coordination.

A process approach

Process, as the orderly sequencing of defined activities, can be guided by integrity protocols; the holistic nature of integrity management implies that the processes performed by a firm to provide a service need to be carried out with integrity. Hence, identification of potential elements for corruption and control of key processes becomes critical.

A systems approach

Identifying potential areas of corruption and managing interrelated processes for the objective of integrity management require a systems approach. It is essential that consulting firms pay attention to the system as a whole, and to all its activities, including the relationships between its various processes.

A documented process

Business integrity needs to be documented so that it can be managed. Documenting information should be a continuous process, rather than taking place on a single occasion with the risk that important integrity events may be missed. Management should periodically analyse and review the firm's BIMS to insure its continued suitability and effectiveness and to keep it permanently updated.

Developing a BIMS®

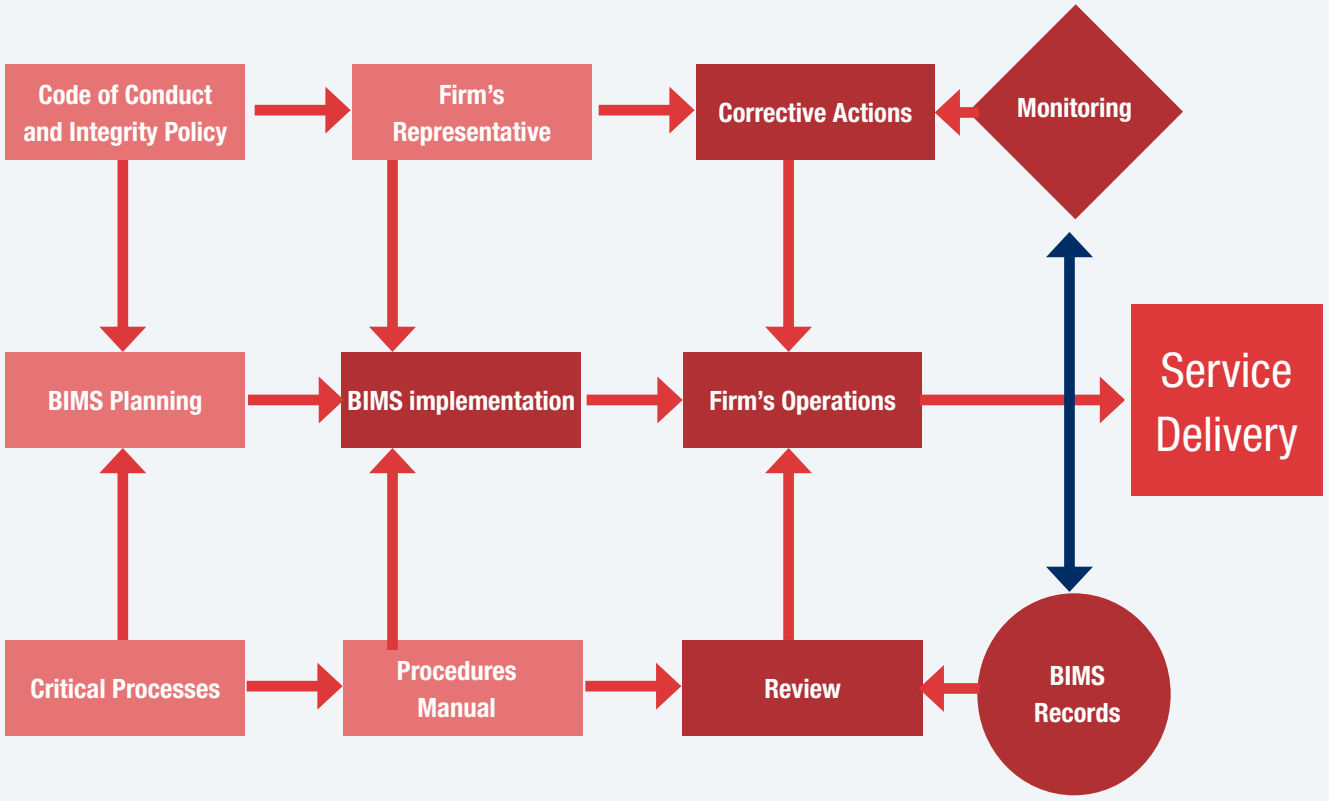
Most consulting firms are "doing their best" to define and implement anti-corruption policies. But while companies establish their own procedures to assure integrity and fight corruption, many lack consistency in the day-to-day implementation of anti-corruption policies and fail to obtain systematic feedback that may improve their integrity management process. What is missing is an integrity baseline to connect and transform isolated acts of integrity assurance into what FIDIC calls a complete Business Integrity Management System (BIMS), with formal procedures to identify potential risks, prevent and combat corruption, and implement business integrity policies for every project throughout the organization.

In 2001, FIDIC issued a policy statement on integrity and published *Guidelines for Business Integrity Management in the Consulting Industry*. The *Business Integrity*

Management Training Manual was published in 2002.

.

Business Integrity Management System components and interrelationships



Many companies have since developed and implemented a BIMS following the FIDIC guidelines, and some have obtained a certification based on the ISO 9000 Standard.

A Business Integrity Management System is a set of interrelated components designed to enable consulting firms to manage by integrity principles. thus ensuring that its work flow is corruption-free. The components and their interactions constitute a practical system for preventing, detecting and sanctioning corrupt practices. The components of a firm's BIMS include:

- The code of conduct and the business integrity policy;
- The organizational structure;
- Specifications of responsibilities and training programs;
- Corruption-free procedures for the firm's critical processes;
- Resources, manuals, forms, check-lists and records that facilitate business integrity management within the firm.

The main steps for designing and implementing a BIMS are:

1. Formulation of a code of conduct

In order to ensure commitment, it is essential that the board of directors and senior management develop a code of conduct, which should be clear, simple and easy to communicate and to apply.

2. Formulation of a business integrity policy

The guideline requirements for an integrity policy are based mainly on the OECD Anti-Bribery Convention and FIDIC's code of conduct. The integrity policy hinges upon the fact that corruption is eliminated only by across-the-board honesty and integrity. Honesty is interpreted as freedom from fraud or deception, and integrity as the firm‘s refusal to obtain or keep what does not fairly belong to it. The policy should cover the accountability for integrity and ensure that requirements meet all local rules and regulations, as well as the company's code of conduct. The integrity policy must be documented, implemented, communicated internally and externally, and be made publicly available.

3. Appointment of a representative

A senior member of the firm's management staff should be appointed as a representative to ensure that all the BIMS' requirements are met.

4. Identification of requirements for the BIMS

Requirements for a given firm should focus on the processes that are vulnerable to corruption. The requirements might depend on the size and structure of the firm; the nature of its services; local and national regulation and market forces or the expectations and requirements of stakeholders.

5. Analysis and evaluation of current practices

An assessment should be made of how the firm currently deals with anti-corruption issues. The gap between current practices and the BIMS' requirements should be identified. How this gap is recognized and corrected will depend on past management commitments and policies practised by the firm. Some organizations might have a fully compliant business integrity system; others may have to take steps to implement the BIMS guidelines.

6. Implementation tools for the BIMS

A consulting firm should use the following tools to support the planning and implementation of its BIMS:

- Code of conduct;
- Integrity policy;
- Definition of roles, responsibilities and authority;
- Business integrity procedures for the main processes;
- Proposal bidding/negotiation;

- Project execution and delivery;
- Project collection;
- Accounting structure;
- Enforcement measures;
- Declaration of business integrity in the annual report.

Owing to the nature of the consulting work, a BIMS may require that the firm establish a procedure to evaluate its sub-consultants and external advisers based on their own integrity policies, and document their ongoing commitment to business integrity management.

7. Documentation

A BIMS must be well documented in order to provide evidence that all processes that may affect the business integrity of the services offered by the firm have been thoroughly anticipated. The extent of documentation is critical since over-documentation may reduce staff and management interest in using the procedure. The BIMS should be documented in a general business integrity manual and, if required for significant projects, in a project integrity records file.

8. Analysis of current practices

The BIMS must establish actions to be taken in case of failure to comply with the business integrity policy. Appropriate actions in cases where corrupt practices are proven range from admonition to suspension or dismissal from the firm.

Once the BIMS is operating properly, and the consulting firm is confident that the guidelines are met, the firm may wish to initiate an evaluation process to ensure continuous compliance. A number of alternatives are available:

First-party evaluation

The management and the staff representative evaluate how the BIMS is operating.

Second-party evaluation

Based on client feedback. Client satisfaction dealing with ethical behaviour of the firm provides the best evidence of how effectively the BIMS is operating.

Third-party evaluation

By an outside body. If an external evaluation is undertaken, it may be performed as part of an ISO 9000 quality certification process. In this case, however, it should be noted that certification is not a seal of corruption-free status since the "Registrar" may only attest that a BIMS that has been implemented for a firm's particular set of processes is being followed in accordance with its original design.

At present, companies with certified BIMS have expanded their quality systems to include integrity management principles based on the FIDIC guidelines. In the future, a new ISO standard could be developed to certify that a company has a functioning BIMS. FIDIC has been the promoter with ISO for setting such a standard that need not be industry-specific; FIDIC's experience with integrity management could lead to an integrity standard for business as a whole, or even for other business sectors.

Integrity pays off

It makes economic sense to curb corruption, since it is a zero-sum game, with a heavy cost to society. It is also becoming evident that the world cannot accept the potential financial risk caused by corrupt practices. A legal framework to help limit risk has been put in place and is being strengthened. In terms of the consulting industry, the

harmonization of Government procurement practices includes strong prerequisites to curb corrupt practices.

FIDIC firmly believes that in the medium to long term, the existence of a Business Integrity Management System will be crucial for successful companies. FIDIC is convinced that integrity is the only way to stay in business, and therefore that the pursuit of integrity is a prerequisite for consulting firms. Eliminating corruption will reduce costs and increase the volume of work. By leading the initiative to curb supply side corruption, the consulting industry will be in a position to regain its spearheading role in society, and to set in place the terms for Business Integrity Management, instead of having international pressure establishing them on the industry's behalf.

Endnotes

1 This paper is based on the work developed by the FIDIC Integrity Management Task Force, chaired by Felipe Ochoa, and the Joint Working Group on Integrity, created under FIDIC's leadership, with participation of the World Bank, the Inter-American Development Bank and the Pan-American Federation of Consultants (FEPAC).

2 FIDIC, *Fédération Internationale des Ingénieurs-Conseils*, is the world's leading organization representing the international consulting engineering industry. Founded in 1913, with its headquarters in Geneva, it represents more than 35,000 firms in 74 countries.

2C.V Case story: World Economic Forum Partnering Against Corruption Initiative

Dr. Christoph Frei and Dr. Valerie Weinzierl* | *World Economic Forum*

"The goal of reducing and eventually eliminating bribery and corruption can be met only if companies develop specific codes of practice that drive measurable action."

Corruption and bribery are key impediments to sustainable development and economic growth, and research shows that foreign direct investment is lower in countries that are perceived to be corrupt. Hence, to advance economic development, corruption and bribery must be overcome. To tackle this challenge, leading CEOs have launched the Partnering Against Corruption Initiative (PACI) within the framework of the World Economic Forum. The multilateral development banks have agreed to work with PACI to explore ways to enforce proper anti-corruption standards within the private sector as a means of promoting sustainable development.

To ensure a level playing field and to export the good governance that exists in some regions, leading CEOs from World Economic Forum partner and member companies launched the Partnering Against Corruption Initiative (PACI) at the Annual Meeting in Davos in January 2004 and mandated the initiative with three objectives:

1. To create a common language on corruption and bribery valid for all industries;
2. To develop a mechanism for ensuring public commitment from the top level of companies;
3. To support companies in implementing their commitment and developing appropriate means of verification and compliance.

To date, the PACI has made substantial progress on all three objectives:

Creating a common language on corruption and bribery valid for all industries

Recognizing that the global public policy goal of reducing and eventually eliminating bribery and corruption can be met only if companies develop specific codes of practice that drive measurable action, industry representatives engaged in the PACI drafted a voluntary code for companies to counter bribery and corruption on the basis of Transparency International's Business Principles for Countering Bribery. Named "The Partnering Against Corruption—Principles for Countering Bribery (PACI Principles)" the aim of the code is to provide a framework for good business practices and risk management strategies for countering bribery. In that sense, the PACI Principles are meant to assist companies to

*Dr. Christoph Frei is Director, Energy Industries and PACI of the World Economic Forum; Dr. Valerie Weinzierl is Senior Project Manager, PACI, Centre for Public-Private Partnership at the World Economic Forum.

eliminate bribery, demonstrate their commitment to countering bribery, and make a positive contribution to improving business standards of integrity, transparency and accountability wherever they operate. The PACI Principles and their widespread adoption will raise standards across industries and contribute to the goals of good governance and economic development.

Ensuring public commitment from the top level of companies

The PACI constituency, believing that commitment from the top level of a company is of central importance, has developed a support statement for company leaders to sign, thereby publicly demonstrating their commitment to act against corruption.

Signatories to the support statement commit themselves to two fundamental actions: the adoption of a "zero tolerance" policy on bribery and the development of a practical and effective programme of internal systems and controls for implementing that policy. In practical terms, this means that the company will either implement anti-bribery practices based on the PACI Principles or use the Principles to benchmark existing programs. All companies, regardless of industry sector, whether public or private, domestic or multinational, and whether or not they are members of the World Economic Forum, are encouraged to sign the support statement to the PACI Principles.

To date over 90 companies from multiple industries representing an annual turnover of more than US$500 billion have signed the support statement to the PACI Principles. Amongst them are companies from the aviation, information technologies, engineering and construction, mining and metals, food and beverage, professional services, and energy sectors.

Supporting companies in implementing their commitment and developing appropriate means of verification and compliance

A task force of the PACI signatory companies meets twice a year to discuss future plans, share experience and work on supportive processes. The aim of the task force is to ensure that the commitment of the signatory companies does not end with their signature to the support statement. The task force not only supports companies in the implementation of the PACI Principles but also helps to advance issues of relevance for countering corruption and bribery in a coherent manner. In this context, the task force representatives have established three working groups:

1. The *Working Group on Collaboration with Other Anti-Corruption Initiatives, Implementation and Best Practice* aims to streamline activities and collaborate with other anti-corruption initiatives like Transparency International, the International Chamber of Commerce's Anti-Corruption Commission, the OECD Working Group on Bribery, and the United Nations Global Compact 10th Principle on Corruption. This Working Group also identifies and shares potential support tools for companies implementing codes of conduct on countering corruption and bribery, and it develops opportunities for sharing good practice among the participating companies.

2. The *Working Group on Verification and Compliance* aims to answer the question: "How can a company demonstrate that it is doing what it claims it would do?" and accordingly fosters continued focus on anti-corruption implementation and company compliance. It works towards levelling the playing field by exploring potential means of third-party verification. This Working Group also works with the multilateral develop-

ment banks to explore methods of enforcing effective anti-corruption standards within the private sector.

3. The *Working Group on Communications* develops not only an overall communications strategy for the initiative but also internal and external communications tools for PACI signatory companies to implement their anti-corruption commitment amongst employees and other stakeholders.

Overall, the Partnering Against Corruption Initiative reflects a recognition by the corporate sector that corruption and bribery corrode economic progress and good governance. It recognizes the need for anti-bribery principles that can be applied industry-wide and that are based on a profound commitment to fundamental values of integrity, transparency and accountability.

The work of the Initiative is guided by the PACI Board, and the World Economic Forum manages the initiative's operations.

PACI Board members

- Alan L. Boeckmann, *Chairman and Chief Executive Officer*, **Fluor Corporation, USA**
- Jermyn Brooks, *Member of the Board of Directors*, **Transparency International, Germany**
- Hassan Marican, *President and Chief Executive Officer*, **PETRONAS (Petroliam Nasional Bhd), Malaysia**
- Wayne W. Murdy, *Chairman and Chief Executive Officer*, **Newmont Mining Corporation, USA**
- Mark Pieth, *Chairman*, **Working Group on Bribery, OECD, Paris and Basel Institute on Governance, University of Basel, Switzerland**
- Richard Samans, *Managing Director*, **World Economic Forum**

In summary, the Initiative seeks to:

- Offer a neutral platform enabling companies to consolidate their efforts to counter bribery and corruption;
- Extend to a wider group of companies the ongoing efforts to implement measures to fight corruption and bribery;
- Communicate to a wider public the active commitment of leading companies to the principles of countering bribery and corruption;
- Identify and implement mechanisms to turn the principles into a tangible instrument;
- Explore and develop self-evaluation and verification mechanisms to ensure programme efficacy;
- Integrate anti-corruption experts, NGOs, international organizations and Governments in the activities of the PACI in order to develop a wider and more comprehensive effort to fight corruption and bribery;
- Effectively collaborate with other anti-corruption initiatives on a common objective.

Milestones

- At the World Economic Forum Annual Meeting 2006 in Davos, the heads of the World Bank, the European Bank for Reconstruction and Development, the Asian Development Bank and the Inter-American Development Bank have jointly agreed to work with the World Economic Forum's Partnering Against Corruption Initiative (PACI) to require an anti-bribery certificate from bidders on large contracts; to explore requiring a copy of the bidders' codes of conduct/anti-bribery policies as further evidence of commitment and ability to abide by the certificate; and to work with PACI at the regional and country level at workshops and anti-corruption awareness raising events.
- On World Anti-Corruption Day (9 December 2005), the World Economic Forum Partnering Against Corruption Initiative, the International Chamber of Commerce, Transparency International and the United Nations Global Compact 10th Principle agreed to coordinate their efforts to support business's fight against corruption and bribery.
- The Arab Business Council (ABC) of the World Economic Forum endorsed the Partnering Against Corruption Initiative and invited its members to join PACI.
- The United Nations Global Compact agreed to acknowledge signature to PACI as "communication on progress" for its participating companies.
- A PACI Country Peer Group was successfully launched in Romania in September 2005.
- Based on the PACI Engineering and Construction Task Force and Transparency International engagement, the World Bank has agreed to include anti-bribery language as part of the bidding process for infrastructure projects financed by the World Bank.

About the World Economic Forum

The World Economic Forum is an independent international organization committed to improving the state of the world by engaging leaders in partnerships to shape global, regional and industry agendas. Incorporated as a foundation in 1971, and based in Geneva, Switzerland, the World Economic Forum is impartial and not-for-profit; it is not tied to any political, partisan or national interests.

Contact

Christoph Frei or Valerie Weinzierl
World Economic Forum
91-93 route de la Capite
1223 Cologny/Geneva, Switzerland
Tel: +41 (0) 22 869 1212, Fax: +41 (0) 22 786 2744
E-mail: paci@weforum.org
Website: www.weforum.org/paci

Visionary leaders at work: Expanding the fight against corruption

Alan Boeckmann | *CEO, Fluor Corporation*

Our anti-corruption challenge could grow in the years ahead. If, as some predict, 60 per cent of all construction 10 to 15 years from now will take place in developing countries and bribery continues to be a way of life in those nations, then engineering and construction firms—that refuse to do business that way will be heavily penalized. So will those who work for or with them.

I was intrigued to learn that, as a professor, Albert Einstein gave examinations using questions identical to those on the prior year's test. He explained that the questions might be the same, but that each year's answers should be different. Change, in other words, is a constant, and I am pleased to report that the anti-corruption environment is rapidly changing for the better. In fact, yesterday's tolerance for corruption is diminishing faster and more dramatically than is commonly appreciated, dramatically changing the stakes for all concerned.

By any measure, the scope and nature of reform over the past 10 years has been historic. The single most important change has been the "globalization" of American-style anti-corruption standards. Prior to 1998, few industrialized countries outlawed foreign bribes. Some even encouraged them by allowing companies to treat such payments as deductible business expenses. But that began to change when more than 30 nations—including all of our major trading partners—implemented rigorous anti-bribery commitments mandated by the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

More progress was made two years ago when over a hundred nations joined in signing a new comprehensive United Nations Convention against Corruption. The United Nations action greatly expands the OECD Convention, with new commitments to transparency in public works procurement and practical measures that encourage transnational enforcement and cooperation. It also established the first universal commitment to tough anti-corruption standards, applicable not only to OECD countries but also to so-called "demand" countries—that is, countries whose officials demand bribes from international firms. The necessary 30 countries have now ratified this United Nations Convention, although more G8 nations need to sign on to make it fully effective.

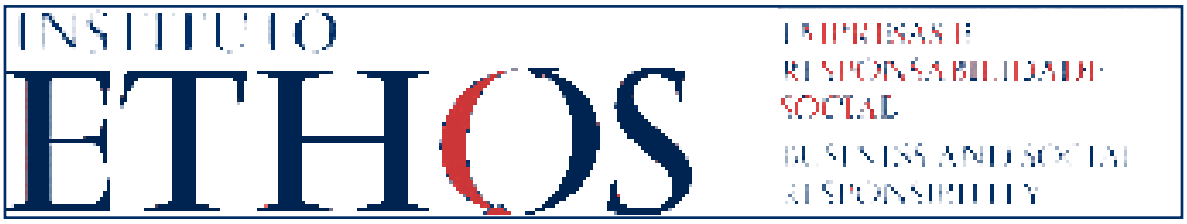
Over time, such reforms will expose companies that engage in public bribery to multiple and coordinated enforcement. The risk of discovery will rise as probing eyes search for signs of nefarious business dealing while the probability of prosecution increases. All this is driving change in business perceptions and practice, and for the first time, leading companies are talking seriously about this problem and how to solve it. That is encouraging because the challenge needs to be approached from both the demand and supply sides.

2D

National and regional campaigns

2D.I Case Story: The Brazilian Programme for Promoting Integrity and the Fight against Corruption

Ricardo Young* | *Ethos Institute* and
Oded Grajew | *Global Compact Committee, Brazil*



"The purpose of the Pact is to promote social responsibility through public policy in order to create an environment of transparency and active participation in the fight against corruption."

On 9 December 2005, the International Day against Corruption, Brazilian businessmen presented the Private Sector Pact for Promoting Integrity and Fighting Corruption at the Stock Exchange in Sao Paolo.

The Pact was initiated to reduce corruption in Brazil by increasing transparency in relations between the public and private sectors. Inspired by the United Nations Convention against Corruption and the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the Pact was developed by Ethos Institute of Business and Social Responsibility in partnership with Patri Relacoes Governamentais and Politicas Publicas, United Nations Development Programme (UNDP), United Nations Office against Drugs and Crime (UNODC), and the Brazilian Committee of the United Nations Global Compact.

The Pact consists of nine recommendations for businesses that will bring transparency to their transactions, particularly regarding contributions to electoral campaigns. Those who sign the document commit to making contributions within the strict limits of the law, to verify the accurate registration of contributions and to declare any irregularity.

Ricardo Young is the President of the Ethos Institute, and Oded Grajew is the President of the United Nations Global Compact Committee.

Context

In the recent history of Brazil, the democratic progress lives side by side with both documented and suspected cases of corruption. The population alternates from celebrating democratic achievements to lamenting the destructive effects of corruption. This situation provides a test for those who built democracy and who are trying to exercise their citizenship.

The enactment of the Federal Constitution of 1988, which provided for direct elections for president, were part of the achievement of democracy. After 29 years, the right to vote for president of the republic was re-established. Two years after the election, the press published accounts of great scandals. Discontentment mobilized most segments of the society, including members of the Congress.

Over the last decade, many cases of corruption have occurred in different states and municipalities. Legislators and leaders of the executive power have had their mandates revoked and have even suffered penal sanctions. Public agency and judiciary officials have also been investigated. Some of the people responsible for those illegal actions were convicted, while others have gone unpunished.

Nationwide, the situation has been no different. From the beginning of the 1990s, the press have published accusations involving executive, legislative and judiciary officials, as well as public and state companies. Currently, there are several corruption charges under investigation by CPIs (Comissões Parlamentares Mistas de Inquérito, "Parliamentary Commissions of Enquiry") and public institutions, including the federal government controller (CGU), federal audit office (TCU), federal police and the federal Public Prosecutor.

There seems to be no end to the fight against the evil of corruption with its horrific social, economic and political effects. Corruption destroys the possibility of reducing inequalities and sabotages the prospect of growth and sustainable development.

On the other hand, the extreme situation awakened a feeling of urgency. Values and attitudes are being discussed in several sectors of the Brazilian society. Now is the time to act. Corporations have begun to establish procedures for fighting corruption. The first step is to make relations between the public and the private sectors transparent.

Response of civil society and the private sector

In response to the recognized need to combat corruption, the Ethos Institute of Companies and Social Responsibility in partnership with Patri Relações Governamentais and Políticas Públicas, United Nations Development Programme (UNPD), United Nations Office against Drugs and Crime (UNODC), Brazilian Committee of the United Nations Global Compact created the "Business Pact for Promoting Integrity and Fighting Corruption."

The success of company pacts to fight slavery and to eradicate child labour encouraged more businesses to participate in this new anti-corruption initiative.

The draft of the new Pact was based on the following documents: Letter of Social Responsibility Principles, United Nations Convention against Corruption, the 10th principle against corruption of the United Nations Global Compact, the Organisation for Economic Co-Operation and Development (OECD) Guidelines for Multinational Enterprises, and records of the seminar "Challenges to Fight against Corruption–The Role of Companies" held in São Paulo and Rio de Janeiro.

History of the Pact

The first seminar of Pact adherents was held in September in Sao Paulo, gathering around 50 company executives and CEOs. It addressed four themes connected to the practice of corruption: public acquisitions, financing of voting campaigns, misuse of public resources and government advertising. On the day of the seminar, *Jornal Valor Economico*, a major periodical for economics and busi-

"The Pact will be one of the strongest mechanisms for integrating anti-corruption criteria in the field of self-regulation."

nesses, circulated with the enclosure "Companies against Corruption" (in Portuguese), presenting situations, cases and legislation.

The second seminar in November, gathered 30 executives and CEOs of companies to address the following issues: tax dodging and bribery of public agents in small and medium companies, organized crime, and money laundering.

In the seminars the businessmen deepened the debate about alternatives and realistic possibilities to reduce practices of corruption. The outcomes were integrated into the draft of the Pact. This draft contains a set of suggestions, guidelines and procedures to be adopted by companies and entities in their relationships with legislative, executive and judiciary powers.

To expand the participation of companies in the process and to legitimate the initiative, the coordination group formed a Mobilization Council with company and civil society members (see list below).

On 9 December, the World Day of the Fight against Corruption, the coordination entities and the Mobilization Council launched the draft of the Pact opening it to public review and consultation for a period of three months, so the interested parties could suggest changes they deemed necessary.

The Council will promote the review and consultation process, and incorporate new additions from the participating entities.

Many effective changes can be incorporated in the relationships between private sector and government, and between companies and the market, as well as in the company culture. The continuous fight against corrupt practices can be adopted by companies as an element present in all business relationships.

The Pact promises to be one of the strongest mechanisms for integrating anti-corruption criteria in the field of self-regulation.

What needs to be done

Four steps are fundamental for the success of the Pact and need to be implemented in 2006 and 2007:

1. Conclude the public consultation process:

- Complete the review and consultation process together with the Mobilization Council;
- Continue the process of disseminating information through seminars, meetings of the Council members and other entities;
- Record and organize all suggestions and integrate them into the draft of the Pact.

2. Promote commitment to the Pact:

- Launch the Pact nationwide;
- Hold seminars in partnership with members of the Mobilization Council to increase adherence to the Pact;
- Maintain a permanent and updated list of the companies committed to the Pact.

3. Provide guidance in implementation of the Pact:

- Create and distribute guidance material for the companies implementing the commitments of the Pact;
- Event for launching the manual;
- Support service hotline for companies committed to the Pact to further implement the principles and procedures in their interactions with collaborators, suppliers and other market forces;

- Organize seminars to present success stories on relevant themes to promote integrity and fight against corruption.

4. Install and manage a website for the Pact:

- Publish the terms of the Pact;
- Disseminate case scenarios, mechanisms and common practices of corruption to aid companies in adhering to the Pact;
- Present the best practices for promoting integrity and fighting against corruption;
- Publicize "real-time" seminars, expanding their impact and allowing virtual participation;
- Promote online debates.

Follow-up actions

After implementing the above actions, it will be necessary to:

- Create a database with the best practices of integrity for the company's relationships, including the various possible corruption scenarios and methods for handling them;
- Structure a permanent forum (real and virtual) about concrete situations affecting one or more companies to promote discussion and collective action;
- Develop a project to compile, analyse and forward suspected cases of corruption to the competent authorities.
- Create a toll free number for denunciations.

The Programme for Promoting Integrity and the Fight against Corruption

The Pact is the engine that drives all actions of the Programme for Promoting Integrity and the Fight against Corruption. The Fight Against Corruption Programme was jointly initiated by the Instituto Ethos and Patri (Brazilian Government Relations and Public Policies Company) on September 2005. Its cooperating partners are the Avina Foundation, the Brazilian Committee of the United Nations Global Compact, the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC) and the newspaper Valor Economico.

The initiative is based on the adoption of the 10th Principle to the United Nations Global Compact, which targets Anti-Corruption and intends to tackle economic, ambient and social instability, including common corruption practices of politicians. In order to reduce corruption on a global level, the United Nations Global Compact encourages and supports companies and entrepreneurs to form coalitions against all kinds of corruption practices.

General purpose

The purpose of the Programme is to promote practices of corporate social responsibility in public policies and to subsequently create an environment of transparency and active participation in the fight against corruption. In order to do so, the Programme strives to mobilize businessmen to adopt the fight against corruption and implement integrity policies.

Specific purposes

To fulfil the goal of the Programme, members must take the following steps:

- Promote an environment for debate about the issues related to political campaigns, transparency and methods to fight corruption;

"Only those companies that proactively tackle existing corruption will be capable of strengthening their position among competitors."

- Stimulate ongoing discussions between public and private agencies to establish parameters for public acquisitions and public-private partnerships;
- Engage an increasing number of companies in alliances and partnerships to fight corruption;
- Implement methods for tracking the chain of production and mechanisms for fighting corruption;
- Implement mechanisms to monitor and evaluate established relationships (transparency monitoring);
- Improve the legal mechanism—Law 8.666, Administrative Law—that regulates public biddings and tenders;
- Finish the process of public consultation about the Private Sector Pact for Promoting Integrity and Fighting Corruption, and promote debate about the principles within the Pact.
- Mobilize companies and guide them in implementing and adhering to the Pact;
- Promote discussion and dissemination of Pact principles, practices and results (on the Pact website).

Activities

- Publications:
  - *Manual of Best Practices to Fight Corruption*
  - *How to Finance Political Campaigns in Voting Processes*
  - *Manual—How Corruption Happens*
- Private Sector Pact for Promoting Integrity and Fighting Corruption (9 December 2005);
- Sector pacts to fight corruption;
- Seminars and round-tables:
  - *Inaugural debate—September 2005: Jornal Valor Auditorium*
  - *Suggestions presented by union and business leader*
  - *Second Seminar—November, 2005; Rio de Janeiro (Suggestions presented by union and business leader)*
- Mapping of established methods for corruption monitoring;
- Establishment of a satisfactory relationship between public and private agencies through regulation mechanisms (improvement/reformulation of bidding law 8.666);
- Specific website about the theme, with an area to exchange information, experiences and news.

Conclusion

In the context of the global Corporate Social Responsibility movement, combating corruption is one of the key challenges. To achieve sustainable economic growth, private sector principles and practices need to reach a sound level of social and environmental sustainability, and companies need to ensure competitiveness in local, regional and global markets.

As social inequalities constitute one of the major barriers for prospering markets and societies, only those companies that proactively tackle existing corruption, among other obstacles, will be capable of strengthening their position among competitors.

To provide fair and equal opportunities to all companies, democratic governments have to explicitly foster transparency and vigorously counter corruption, which has a negative effect on democracy in the medium and long terms. Governments must also formulate public policies that distinguish legal and legitimate practices from illegal practices within private and non-governmental sectors.

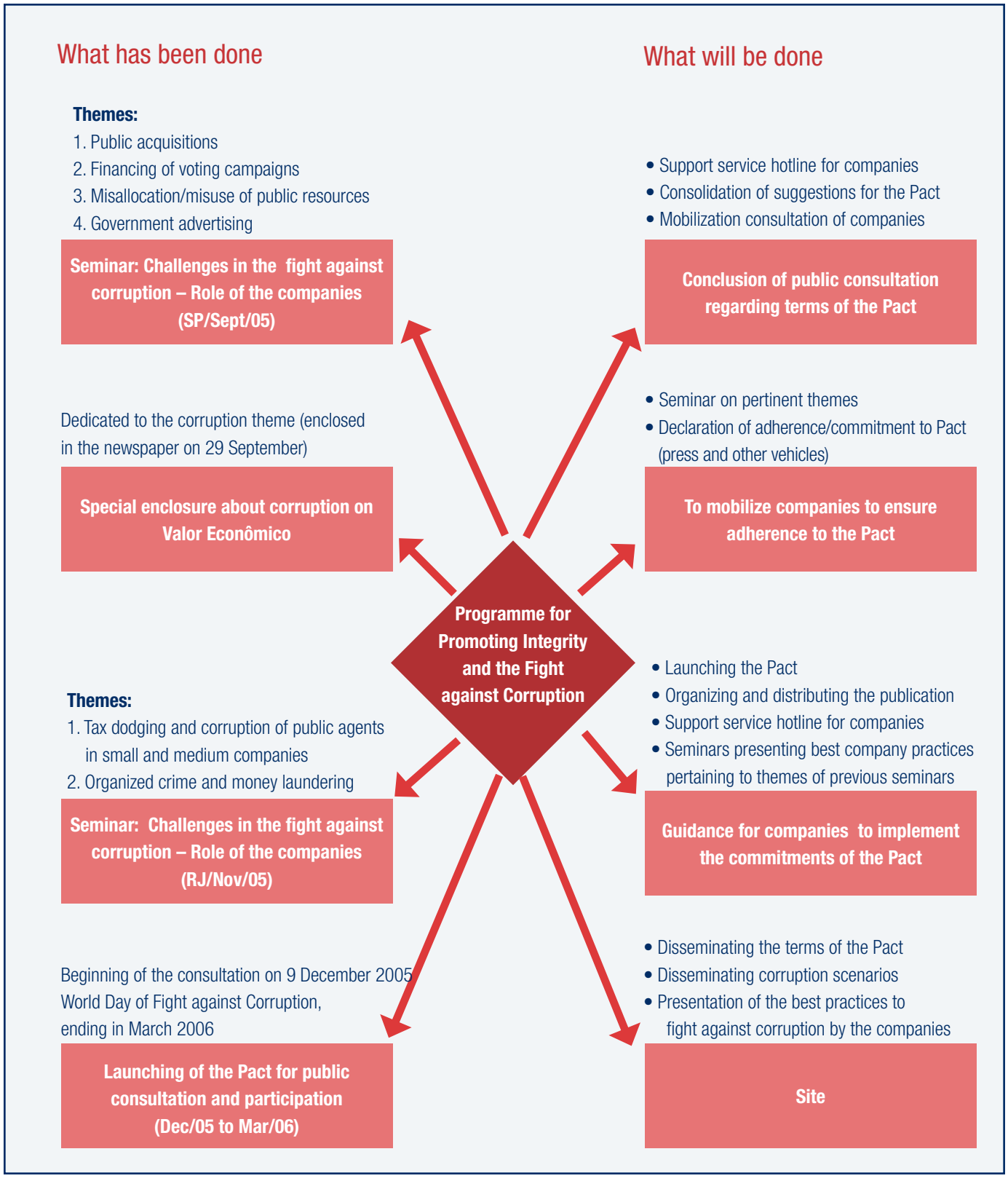
By expressing a clearly dismissive position towards corruption and taking explicit measures to eliminate it, companies can contribute to the reduction of economic and political vulnerability not only through their own actions but also by insisting on the application of ethical principles and practices in their supply chain.

Entities that organized the Pact

- Brazilian Committee of the Global Compact
- Ethos and Uniethos Institutes
- PATRI—Relações Governamentais E Políticas Públicas
- UNDP—United Nations Development Programme
- UNODC—United Nations Office Against Drugs And Crime

Members of the Pact's Mobilization Council

1. Associação dos Analistas e Profissionais de Investimento do Mercado de Capitais —APIMEC
2. Associação Brasileira das Entidades Fechadas de Previdência Complementar —ABRAPP
3. Associação Brasileira da Indústria Têxtil e de Confecção—ABIT
4. Associação Brasileira de Empresários pela Cidadania—CIVES
5. Centro das Indústrias do Estado de São Paulo—CIESP
6. Confederação das Associações Comerciais e Empresariais do Brasil— CACB
7. Conselho Empresarial Brasileiro para o Desenvolvimento Sustentável—CEBDS
8. Federação das Indústrias do Estado de Minas Gerais—FIEMG
9. Federação das Indústrias do Estado do Paraná—FIEP
10. Federação das Indústrias do Estado do Rio de Janeiro—FIRJAN
11. Federação das Indústrias do Estado de São Paulo—FIESP
12. Fundação SEMCO
13. Instituto Akatu pelo Consumo Consciente
14. Instituto Brasileiro de Governança Corporativa—IBGC
15. Instituto DNA Brasil
16. São Paulo Stock Market—BOVESPA


What has been done
What will be done
Themes:
1. Public acquisitions
2. Financing of voting campaigns
3. Misallocation/misuse of public resources
4. Government advertising
Seminar: Challenges in the fight against corruption – Role of the companies (SP/Sept/05)
• Support service hotline for companies
• Consolidation of suggestions for the Pact
• Mobilization consultation of companies
Conclusion of public consultation regarding terms of the Pact
Dedicated to the corruption theme (enclosed in the newspaper on 29 September)
Special enclosure about corruption on Valor Econômico
• Seminar on pertinent themes
• Declaration of adherence/commitment to Pact (press and other vehicles)
To mobilize companies to ensure adherence to the Pact
Programme for Promoting Integrity and the Fight against Corruption
Themes:
1. Tax dodging and corruption of public agents in small and medium companies
2. Organized crime and money laundering
Seminar: Challenges in the fight against corruption – Role of the companies (RJ/Nov/05)
• Launching the Pact
• Organizing and distributing the publication
• Support service hotline for companies
• Seminars presenting best company practices pertaining to themes of previous seminars
Guidance for companies to implement the commitments of the Pact
Beginning of the consultation on 9 December 2005 World Day of Fight against Corruption, ending in March 2006
Launching of the Pact for public consultation and participation (Dec/05 to Mar/06)
• Disseminating the terms of the Pact
• Disseminating corruption scenarios
• Presentation of the best practices to fight against corruption by the companies
Site

Purposes	Results expected	Activities to carry out	Result Indicators	Means of monitoring
To finish the process of public consultation about the Private Sector Pact for Promoting Integrity and Fighting Corruption, and to promote the debate about the principles within the Pact	Pact procedures finalized with full participation of the companies Increase in Pact participation and expansion of Mobilization Council	• To make the Terms of the Pact available for consultation by various means of communication • To create a support service to clear doubts	• Number of calls to support service hotline for companies • Number of suggestions recorded	• Reports of Pact adherents • Record of the support service hotline for companies
To mobilize companies to ensure they adhere to Pact principles and procedures	Mobilization Council in action	• Support service to clear doubts • Visits to the entities • Seminars promoted by the entities to clear doubts about the Pact	• ▪ Number of companies adhering to the pact • Number of adherents from each member entity in the Mobilization Council	• Letters from companies declaring commitment to Pact
To guide companies in implementing Pact procedures	Exchange of information between Pact companies and the public	• Publication completed and distributed • Support service to clear doubts • Five regional seminars on best practices for Pact companies	• Number of pieces of information required • Number of companies participating in the seminar • Number of cases of best practices presented	• Records of phone calls, e-mails and letters received • Records of seminars held
To promote dialogue among the committed companies, interested companies and the public in general (via Pact website)	Companies and public exchanging information	• Create a Pact website • Keep information updated	• Number of hits to the website • Number of cases recorded • Number of chats held	• Records of hits to Pact website • Articles published on Pact website

2D.II Case story: Cities against corruption– Introduction of transparency programmes in the city of Veracruz/Mexico

Elisabeth Thaller and Marco Pardave* | *Global Supplier Progress*

In collaboration with

Julen Rementeria del Puerto, *Mayor of Veracruz, Ver.*

Gabriela Reva, *Treasurer of Veracruz, Ver.*

This case story concerns the implementation of the 10th Principle of the United Nations Global Compact in the city of Veracruz, which has been a participant of the United Nations Global Compact's city programme since June 2005. Veracruz is a major port city on the Gulf of Mexico. With a population of about 700,000, it is Mexico's third largest Gulf city and an important port on Mexico's east coast.

Mexico is one of the countries that is perceived as having a serious corruption problem (see Transparency International, Country Index), an image that has been enhanced by political scandals and the uncovering of irregular use of public resources.

Transparency International (TI) defines corruption as the abuse of public office for private gain and measures the degree to which corruption is perceived to exist among a country's public officials and politicians. Any country that scores below 5.0 is TI's Country Index is considered seriously riddled with corruption. Mexico's score in the 2004 annual survey was 3.6. In the face of this corruption, the people of Veracruz were eager for transparency and for a balance between the burden of taxation and the quality of public services. This created the conditions for positive change in the city.

One of the candidates for mayor in an upcoming election was conscious of the urgent need for transformation of the municipal Government and restoration of the citizens' trust in Government and public institutions. During his campaign, he promised the citizens of Veracruz that he would take steps to build integrity, transparency and accountability to prevent and combat corruption, enhance public sector performance and strengthen the local government's role in orchestrating development and providing better services.

In order to demonstrate how serious he was about his campaign promises, the candidate did something unprecedented in the city's history: He converted his promise into an official commitment and had the respective document certified by a notary public. After winning the election, the new Mayor made sure that the commitments were integrated into the city's Development Plan, which would determine the programmes, projects and actions for his three-year term of governance. It has been the Mayor's endeavour to prove with facts the fulfilment of all his electoral promises.

This article is about the particular actions and programmes that have been implemented to prevent corruption and provide a transparent public administration within the local government. Changes do not occur from one day to the next; they are a process that involves many steps. A political administration system that has persisted for many decades needs a strategy and strong leadership to make significant, long-lasting changes, especially if these changes interfere with the personal interests of involved parties.

Elisabeth Thaller is President of Global Supplier Progress and Marco Pardave their Vice President Operations.

"A political administration system that has persisted for many decades needs a strategy and strong leadership to make significant, long-lasting changes."

One of the critical factors of public sector management is the lack of continuity in the management of public resources. This may be reflected in elevated costs for the community, since with every change the whole or part of the organization is confronted with reorganization, provoking delays and interruptions in public services.

The actions taken by the Mayor and his team were based on the principles of ethics and leadership that were transformed into plans, programmes and actions aimed at satisfying the needs of the people. Some of these commitments were related to the ten principles of the United Nations Global Compact, in particular to transparency, which is the subject matter of this article.

Actions implemented by the city Government to achieve transparency at all levels and functions

Transparency through the creation of the Municipal Transparency Committee

A Municipal Transparency Committee was created to monitor areas traditionally prone to corruption. The Committee is composed of prominent residents of Veracruz with a proven record of honesty, integrity and good citizenship who are not directly involved with the public administration. It also includes councillors of the opposition party who, together with the Controller, monitor the most vulnerable areas of public administration to avoid irregularities within the public functions and resources.

The Committee's responsibilities include:

- Guarantee the protection of confidential information including personal data, which is accessible to municipal public servants.
- Disseminate information in a clear and simple manner by means of public communications and the municipality's website.
- Promote the culture of transparency and accountability, the respect of citizens' rights and the honouring of ethic values at the workplace for municipal public servants.
- Propose to the city Government programmes and actions to assist in consolidating an administrative system that guarantees the application of resources in an efficient and effective manner, resulting in better management systems, methods and processes in relation to the bidding of public works and the procurement of goods and services.
- Control and evaluate periodically the progress and results of the Transparency Committee, to assess the impact of the Committee on public opinion and to consider suggestions for improvements.
- Approve the annual work programme of the Committee.
- Obtain necessary public information to carry out the Committee's mandate from the Controller, who acts as the technical secretary of the Bid and Procurement Commission.

Transparency through the creation of the Bid and Procurement Commission, whose decisions are supervised by the Municipal Transparency Committee

The Commission's responsibilities include:

- Monitor conformity of public bid procedures with the Law of Procurement and Public Works, under the principles of publicity, concurrence and equal opportunity in terms of transparency, economy, quality and opportunity.
- Voice opinions on the programmes and budgets for procurement, leases, divestiture and services of the city, as well as on public works and related services.

"One of the critical factors of public sector management is the lack of continuity in the management of public resources."

- Dictate policies in reference to the Law of Procurement and the Law of Public Works.
- Analyse reports submitted by public servants and the private sector with the purpose of guaranteeing transparency and improving efficiency.
- Assist the Department of Internal Control in maintaining transparency within the city Government.

Transparency through the permanent fight against corruption within all the areas of the city Government

The citizens are requested to collaborate by reporting any irregular conduct of any public servant through the System of Citizen Service and Complaints by calling a designated telephone number or filing a complaint online. All reports are being treated confidentially.

A database of public servants is published on the city's webpage and a hard copy is available in the Controller's office.

Emphasis on enforcement of laws and regulations, with public servants being expected to comply with this commitment and serve as examples for the rest of the population

- All personnel of the Department of Treasury who handle public resources are requested to provide a bond that is backed up with personal property in order to guarantee correct application of resources and ensure accountability.
- Ongoing verification audits are being performed within the Department of Treasury.
- External audits are being performed by the Municipal Controller and the Treasury Commission.
- All public servants are required to present an annual declaration of personal properties which is reviewed by State legislators.

Enforcement of a code of ethics for all public servants

All public servants at the municipality swear to a code of ethics that includes the following principles:

1. Honesty—No personal gain from function; no presents or compensations that could bias decisions or actions.
2. Public Wellbeing—Wellbeing of the community over personal interest.
3. Integrity—Behaviour to achieve credibility and a culture of trust and truth.
4. Transparency—Access to public information; transparent use and application of public resources; and accountability.
5. Impartiality—No preference or privileges.
6. Justice—Compliance with law and justice.
7. Generosity—Generosity, sensibility and solidarity with those who need it most.
8. Respect—Comprehend and respect different ideologies and preserve cultural environment of the city.
9. Effectiveness—Quality, continual improvement, innovation, optimization of resources.
10. Congruency—Promote the ethical commitments and be an example to others.

Indicators to monitor performance and progress towards a reliable local government

Headed by the Municipal Controller, an integral municipality-wide improvement programme has been established that provides implementation of the parameters determined by ISO—IWA 4 (Guidelines for the implementa-

"The municipal Government decided to implement and certify a quality management system that guarantees transparency, accountability and continual improvement."

tion of ISO 9001 in local governments) and leads to being considered a "Reliable Local Government" by meeting the minimum requirements of four areas of influence. Some of the criteria are aligned with the ten principles of the United Nations Global Compact. This implies the creation of a series of indicators applicable to work programmes and activities. At the time of publication of this article, the improvement programme is in the process of implementation.

Implementation and third party certification of an ISO Quality Management System in all departments of the municipal government, starting with the Treasury as a pilot project.

Focusing on achieving transparency, accountability and continual improvement of the service rendered to the public, the municipal Government decided to implement and certify a quality management system (QMS) that guarantees these three aspects in all functions. The Treasury was selected to serve as a pilot. The main responsibility of the Treasury is to ensure effective and efficient administration of public resources, an area where transparency is critical in order to regain the citizens' trust in the institution. The processes to be certified are collection and payments, since these are considered the most critical because of the following:

1. One hundred per cent of municipal money is being handled through these two processes, making it the most vulnerable area for corruption.

2. Several people and departments are involved in the payment process from receiving the invoice to signing the cheque. Without a clear definition of time frames, checkpoints along the path of payment authorization and adequate monitoring, this area is extremely vulnerable to personal interests and opacity.

3. Tax payers' ignorance of their rights and obligations may lead to personal interests and abuse by collectors.

After the ISO certification of the Treasury by an accredited registrar, the QMS will be expanded to other departments. Public Works has been identified as the second most critical area within the municipal Government, since it receives around 80 per cent of the city's annual budget.

A continual improvement approach was adopted as a basis for successful public administration and, at the same time, a management model was created to provide concrete strategies to achieve accountability and transparency within the institution and to the public. The model would include the simplification, streamlining and evaluation of processes, as well as the establishment of performance indicators to measure process effectiveness and efficiency. In order to assure continuity of the processes, it would also be necessary to undergo a third party independent audit and obtain certification.

To further these goals, a quality management system was set up in conformity with the requirements of the international ISO 9001 standard and its Guidelines for Local Governments (Draft version IWA 4), as well as the ten principles of the United Nations Global Compact, in alignment with the Municipal Development Plan.

Key players in the process were the Mayor, whose firm commitment was crucial to the project, the Treasurer, who provided strong leadership and a dedicated team that participated actively during the whole process, and the city Council, who accepted and were open to positive changes without unnecessary political struggling. A consulting firm was hired to lead the process and to serve as a neutral point at times when there were different opinions and interests.

QMS implementation process

Before applying any improvement methodology, the municipal team needed to know the current situation of the Department of Treasury in relation to the ISO standard relating to transparency. An initial assessment was performed in all involved departments. The following table shows critical issues found during the initial assessment in the left column, and actions during the implementation of the QMS and results achieved in the right column.

"Every significant change in a system needs to start with a change of mindset of everyone who is actively involved."

BEFORE	AFTER
Findings / critical areas	**Actions / results**
1. Confusing and inefficient process of supplier payment consisting of multiple steps and involving several departments. The payment status was not always clear, leaving room for potential manipulation of payment process in exchange for personal favors.	Implementation of a single-step counter providing all services from invoice receipt to payment with a unique control number. The payment status may be checked online on the city's website and unconformities or doubts may be resolved directly at the counter or through a complaint to the hotline 072. http:www.veracruz-puerto.gov.mx/tesoreria/cheque_opago_all.asp?valor=3
2. The time frame for the authorization of payments to suppliers varied between 60 and 70 days, involving several different signatures. Small companies were not always able to finance their projects for such long periods of time, or financing costs were built in the price, hence increasing the expenditure for the city.	Reduction of time between invoice receipt and payment to 15 – 20 days average, allowing a broader base of suppliers to compete, hence promote a healthier competition.
3. The collection and execution process was inefficient because residents lacked trust in the collectors and a lack of understanding of laws, regulations and the residents' rights.	When being served, the citizens receive a copy of the applicable law or regulations and their rights. Unconformities may be reported to the hotline and are treated confidentially. Enhanced information and education about processes and city personnel identification through ongoing campaigns provide transparency and trust in the process.
4. Ineffective budget planning caused last-minute changes and violation of procedure, with the risk of obscuring the process.	Clear definition and enforcement of policies for control of expenditures. The transparency committee oversees the city's finances; the financial statements are audited by two external accounting firms and verified by the internal control department and the federal supervisory body. The financial and income statements are published on the city's website. http/www.veracruz-puerto.gov.mx/tesoreria/cpublica.asp?valor=3
5. Processes were overlapping or incomplete.	Establishment and implementation of clear SOPs and job descriptions for all activities plus enhanced training and internal communication to assure a smooth effective operation.
6. Personnel were discontented because revenue related bonuses were distributed equally among all employees without considering performance.	Determination of performance indicators, making it possible to distribute bonuses based on performance, hence increased motivation for cashiers and collectors to increase their efficiency.
7. The public had no access to information regarding the municipality's revenues and expenditures.	The municipality's financial and income statements are published monthly on the Internet, so are public bids, assigned contracts with contract value, suppliers' invoices for services or products, project results and overall performance indicators of the treasury department.

Based on these findings an action plan was developed which included the following steps:

Step 1. Training

Every significant change in a system needs to start with a change of mindset of everyone who is actively involved. Therefore, the first training was dedicated to preparing those employees who were directly involved in the processes and opening their minds to new ways of doing things. Basic training regarding the standard and the changes to be expected was also given to the employees of other departments that are indirectly related with these processes, such as Human Resources and Information Technology, and that are considered internal clients and suppliers.

During these first encounters, friction was noticed between the consulting team and the public servants. At this point based, many people's minds were set and opposed to change. Through the application of specific training methodologies, most of the employees became convinced that the changes were for their own good. Positive changes regarding personnel performance that were expected as a result of the implementation of a Quality Management System included a better definition of function, responsibilities, scope of the function and chain of command. Such changes would result in:

- Higher work efficiency, avoiding duplication of efforts;
- Performance evaluations through the establishment of indicators, allowing fair allocation of bonuses;
- Platform for targeted training and better career opportunities through internal advancement;
- Accountability.

Step 2. Creation of a quality policy

The second step was the creation of a quality policy, where the team determined principles, actions and commitments for improvements.

Quality policy of the Department of Treasury of Veracruz:

> *All public servants who are part of the Department of Treasury of the City of Veracruz are committed to collecting and administrating financial resources effectively, efficiently and in conformity with the applicable laws, and to respecting the principles of order, honesty and transparency, as well as to providing timely service to the citizens. We will contribute to the integral development of the city Government by continually improving our processes and results through assessments to assure compliance with the requirements established by the users of our services.*

Objectives of the quality policy:

a) Lower costs: Reduce costs resulting in more benefits to the society.
b) Better quality: Satisfy and exceed the users' expectations of our services.
c) More professionalism: Attract, motivate, develop and retain the most qualified personnel for public service.
d) Modernized: Offer access to services and information via digital means.
e) Honesty and transparency: Recuperate confidence of citizens.
f) World-class: Promote the protection of human rights and the environment.
g) Innovation: Total quality.

All personnel involved in the processes to be certified participated in the creation of a quality policy during workshops. This contributed to a better understanding and improved commitment to the objectives of the institution.

Step 3. Development of process flow charts

The introduction of standardized processes may seem very confusing, especially if it involves many different activities,

"The more complex a process, the more difficult it is to monitor its performance at all stages."

people and input. The more complex a process, the more difficult it is to monitor its performance at all stages. A flow chart helps visualize the whole process and its activities, and is essential in determining potential points of conflicts, bottlenecks and duplication of activities, as well as unnecessary activities that do not add any value to the process. Critical control points were identified where delays or irregularities could easily occur, and respective control mechanisms were implemented to prevent violations of policies, laws and regulations and to guarantee the desired results within the accepted parameters.

Step 4. Documentation and implementation of quality objectives, performance indicators, a quality manual, documented procedures, job descriptions and other documents required by the ISO standard

A work group was formed with representatives of all involved departments in order to create performance indicators and the documentation that is required for the QMS. During the implementation process, resistance was encountered in some areas where people felt threatened by the new control mechanisms. However, strong leadership by the department directors left no space for protest. The message was clear: "We'll do it—with or without you!" Through the establishment of performance indicators per job function, it was now easy to identify the contributions of each individual and apply the performance bonus accordingly.

Step 5. Assessment and certification

An independent verification of conformance to the standard and compliance with the municipality's policies and objectives was performed by an independent accredited certification body according to international auditing guidelines determined by ISO 19011. Critical topics for the third-party audit regarding transparency were the transparent financial reporting and accounting, meaning that all financial revenues are accounted for and that the public has access to examine the finances of the municipality.

The overall aim of third-party certification is to give confidence to all parties, and the main principles for inspiring confidence are ethical conduct and independence of the auditors as the bases for impartiality and objectivity of the audit conclusions. An accreditation body oversees that the certification body is competent and independent based on its procedures and policies.

After the certification audit, the certification body will perform a surveillance audit once a year; after three years, recertification is required.

ISO IWA 4 is an international Workshop Agreement with the title "Quality Management Systems – Guidelines for the application of ISO 9001:2000 in local government". Veracruz is the first local Government in the world to implement these guidelines within their QMS.

Transparency through enhanced public communication

Transparency may be achieved only when information is available and accessible to the stakeholders. The public has a right to be informed on how their tax money is being spent and on the progress of all actions of the municipal government. The website of the municipality www.veracruz-puerto.gov.mx serves as the primary means of public communication of actions and achievements and financial reporting but also as a means of monitoring and control. Following are examples of information that may be obtained online.

Online and other publications:

- Monthly newsletter of progress and achievements;
- Requests for proposals for public bids;
- Regulations of Transparency, the City Council, the Procurement Committee;
- Real-time transmission of Committee and Council meetings;
- Archive of the City Council meetings;
- Archive of bids;
- Invoices from suppliers;
- On-line tracking of payments to suppliers;
- Monthly publication of consolidated financial statements;

"Transparency may be achieved only when information is available and accessible to the stakeholder."

- Applicable laws and regulations;
- Approved programme of public works.

Personalized communication:

- "Citizen Monday"—a direct encounter between public servants and citizens facilitating direct two-way communication;
- "072"—toll-free 24/7 telephone assistance for complaints and reports of irregular or suspicious acts and behaviours of public servants; all complaints treated confidentially by personnel of the Office of the Controller.

Conclusions

The local Government of the City and Port of Veracruz has implemented groundbreaking changes to the traditional public administration to show its citizens that transparency, accountability and quality service are achievable goals. (http://www.veracruz-puerto.gob.mx/transparencia/index.asp?valor=7)

Important factors that allowed the successful implementation of a transparency campaign were:

- A strategy that involves all level and functions within the local government;
- Absolute commitment of the mayor and other key players;
- Strong leadership at all levels;
- Separation of tasks between the political and administrative functions given through legislation;
- Continuous communication of objectives and goals as well as reporting of milestones to retain commitment and avoid the creation of controversial influences;

"The application of a QMS guarantees continuity throughout the terms of governance."

- Establishment of a communication programme that provided orientation, training and follow-up to the department directors to ensure that citizen's needs would be identified and translated into excellent service;
- Creation, implementation, evaluation and monitoring of clear policies that add value to the system and assure transparency;
- Implementation of strategies for the planning and continual evaluation of core programmes for each department of the local government;
- A permanent strong communication programme allowing interchange of information between the municipal Government and the citizens in order to combat corruption and as a basis for continual improvement.

The implementation of the QMS allowed the Government to establish clear evidence with supporting documentation, providing transparency within all functions and activities. A second tangible benefit is an effective and efficient service that benefits all stakeholders. In the long term, the application of a QMS guarantees continuity throughout the terms of governance, no matter what political party or candidate wins the following elections.

At the time this article is being edited, ten months have passed since the first steps towards QMS actions. A series of indicators have been established to measure the impact of these actions. However, available data are limited due to the lack of information from the previous years. Some of the direct impacts that have been perceived are:

- A 13 per cent increase in tax collection compared to the same period last year, which demonstrates an enhanced trust in the management of public resources by the tax payers as a result of noticeable improvement of public services, infrastructure, social benefits and communication;
- An increased number of complaints against public servants (over 80 per cent more than last year) as a result of better informed citizens and enhanced trust in the institution;
- An increasing number of new service suppliers to the local Government due to the publication by different means of public bids and a transparent bid and procurement process, which is expected to lead to a more efficient use of public resources and enhanced quality of the services and products received;
- An improvement in the public's perception of Treasury service according to surveys conducted both before and after implementing QMS, which revealed a drop in negative perception from 37 to 9 per cent and a rise in positive perception from 35 per cent to 59 per cent.

Other impacts expected from the above actions are a more efficient use of public resources, hence more resources available for areas that need to be reinforced, an improved work environment for public servants despite political breaches, and better-informed citizens who know what they can demand and expect from their government,

By the end of its three-year term, the municipal Government of Veracruz expects to have a transparent and modern management system in place, with no room for opacity, where all players are accountable for their actions, and where citizens have regained trust in their institutions.

2D.III Case Story: Eastern Cape – Introduction of regional anti-corruption programmes

Willem Punt* | *Ethics Institute of South Africa*

"We run the risk of unethical activities becoming systemically embedded in our society."

There is a saying, "May you live in interesting times"—that saying can be used either as a blessing or a curse. The ambivalence in this statement rings especially true in South Africa. While "interesting" is a desirable adjective when describing holidays and trips to museums, it is not a descriptor that you want to apply to persons tasked with performing important services on your behalf.

Turning the tide of corruption in South Africa: How the Eastern Cape Province is meeting the challenge

Many citizens would very much prefer the somewhat monotonous humdrum of competent but low-key officials governing private and public sector organizations. We do not want public officials or the captains of industry to be overly interesting. Rather, most of us would prefer them to be anonymous and boringly reliable in the way they manage their, and ultimately, our affairs.

Unfortunately, there are public and private sector officials that make the prime-time news more often than ill-behaving pop stars. Today in South Africa, we cannot open a single newspaper without being confronted by reports relating to a wide range of unethical activities, from the lowest levels of municipal service delivery to the highest echelons of Government and enterprise.

There are daily exposés of corrupt officials claiming that detection matters only when you are unconnected to someone with a broad broom and a plush carpet. If you compound this with many recent high-level corruption cases, for example, the widespread abuse of parliamentary travel vouchers, it indicates that we run the risk of unethical activities becoming systemically embedded in our society.

While Africa has suffered from various personality cults, South Africans have also been subjected to villains cultivating auras of victimhood, using their ill-begotten limelight to further their own selfish causes. It would not be difficult to paint an even bleaker picture if we add increased dilution of traditional values and dwindling social awareness, especially among the youth, with widespread materialism and a sense of unbridled entitlement.

Fortunately, it is not all doom and gloom. South Africans have not met this sorry state of affairs with apathy. There is a growing realisation that if we do not stem the tide of corruption, then the dream of a free and prosperous South Africa will fail, and along with her, the entire continent's hope for a better future. Most fundamentally, our young democracy is at stake.

From within Government, business and non-governmental platforms like the Ethics Institute of South Africa (EthicSA), various responsible and committed leaders have emphasized that our country needs to undergo a moral regeneration to exorcise the spectre of corruption and decay that threatens to overwhelm us.

*Business Ethics Manager, Ethics Institute of South Africa

A strategy should be developed in which society will honour and respect citizens, not for their material excess, but for their ethical virtues. Furthermore, we need to educate our citizens to realize that our rights are not blind entitlements but privileges guaranteed by our dutiful commitment to respect the rights of others.

In order to affect such a culture change, all sectors of society need to cooperate. Corruption is not limited to certain sectors of society. It occurs everywhere, but it is especially in the public sector that its effects can be most destructive. The reasons for this are:

- The public sector is a direct receptacle of societal trust, the abuse of which erodes local and foreign investment in the widest sense. This means that, unlike disgruntled stakeholders in corrupt private sector concerns who target specific organizations in their complaints, corruption in the public sector tends to create a negative reputation of a country as a whole.

- Whereas private sector institutions compete on the open market, the public sector primarily holds monopolies on basic and essential services like state housing, welfare grants and primary health care. Recipients of these services are thus highly vulnerable, often suffering from exploitation and human rights abuses. Think of an AIDS patient being required to pay a bribe to receive anti-retroviral treatment, without which the person will die.

- While private sector institutions are increasingly scrutinised internationally according to emerging world governance standards due to economic globalization, the public sector is still largely enveloped and shielded by national sovereignty. Coupled with the presence of poverty and the absence of proper oversight and management skill to prevent, detect and sanction abuses, citizens are largely defenceless against exploitation.

It is for these reasons that the United Nations Global Compact does not address corruption prevention in isolation but in conjunction with the protection of human rights, the upholding of responsible labour standards and environmental protection.

For the very same reasons, this article will explore how South Africa, in particular the Eastern Cape Province, is responding to the challenge of turning the tide of corruption.

Relevance to the private sector

Corruption is by its very nature a team sport. In many cases, it is characterised by interplay between inappropriate influences originating from the private sector with undue benefits accrued by those in the public sector. In practice, this means that corruptors are mostly private sector entities bribing corruptees holding strategic public servant positions. Invariably, this happens in a procurement environment, where bribes are paid to affect the awarding of tenders.

The South African Government is highly aware of this dynamic, and in an attempt to discourage public servants from engaging in corrupt activities, their salaries have been significantly hiked up in the last few years. While corruption in South Africa can be partly explained by deprivation resulting from poverty, many of the corrupt officials cite a sense of *relative deprivation* as a motivating factor. They have enough to live comfortably, but want more to live in luxury.

Furthermore, these officials often service communities deeply mired in poverty and ill-equipped to speak out against their exploitation. The raising of public servants' salaries alone has therefore not stemmed the tide of corruption emanating from Government. A more holistic approach is needed, in which the Government develops strategies to manage the ethical conduct of its employees while instituting fair and effective procedural and legal sanction against corruptors—often being private sector entities.

"Without national senior executive commitment, the organizational fight against corruption is doomed to fail."

This can only be done within the context of a public-private pact to combat corruption. Government has to seize the opportunity of leading by example where required and learning from the private sector where necessary.

Addressing the challenge

The Eastern Cape Province is one of nine provinces in the Republic of South Africa. Although rich in material and cultural resources, it is regarded as one of the least developed regions in the Republic.

Furthermore, the region has suffered countless wars in the last two centuries and institutional neglect dating back to the Apartheid era. It needs to contend with low levels of education and widespread poverty, as well as with the HIV infection so prevalent among its population.

The public service is also the dominant employer in the region with a large number of Government initiatives undertaken to improve the physical and social infrastructure. It is especially with regard to the latter that the Government contracts a large number of private sector concerns to build and maintain roads, clinics, schools, et cetera. Considering this unique combination of social circumstances, and the access and opportunities it represents to criminal elements, it is not without reason that this province has a reputation for being among the most corrupt.

Conditions for effectively combating corruption

There are three vital components or conditions that make up an effective battle plan against corruption, without which such an endeavour will fail. These conditions are:

1. High level commitment from the most senior echelons of Government;
2. Investment in the building of corruption prevention infrastructure;
3. Implementation and management of such infrastructure with the aim of affecting ethical culture change.

In South Africa, the first condition is well met, with President Mbeki himself referring to corruption as a "cancer" that needs to be eradicated.

The second condition is partly met, being well presented on a legislative level but less so on an organizational management level.

Unfortunately, the third condition has not been met. It is here where the greatest challenge lies. Although these conditions need to be sustained in tandem, there is a chronological and logical sequence to them. Simply put, you need sincere commitment from the politicians before you can get the resources to build the infrastructure, and without the support of the politicians and the infrastructure, attempts to affect an ethical culture change is fatally compromised.

It is therefore valuable to briefly provide an overview of South Africa's progress in meeting these conditions for combating corruption. A review of the response of the Eastern Cape Government follows.

Condition 1—Ensuring high level political support of anti-corruption initiatives within the public sector

Without national senior executive commitment, the organizational fight against corruption is doomed to fail. Commitment is defined as acknowledging the problem of corruption, recognizing that combating corruption is a basic expression of responsible leadership, and making available human and material resources to combat corruption.

Differing from many other African counterparts, whose official standpoint is one of blatant denial, the South African Government has formally and repeatedly acknowledged that corruption is widely prevalent and should be combated irrespective of where it occurs or who is involved. Therefore, South Africa is enjoying high-level executive commitment, benefiting from increased awareness of the urgent need to combat corruption from the most senior levels of national Government, the private sector and civil society.

This acknowledgement is especially valuable given that prominent public figures have started to emphasize the link between the combating of corruption and the struggle

"The fear of prosecution, in absence of fear of detection, societal rejection or dismissal, is not an effective deterrent."

against Apartheid. It is a link that further enforces that corruption should not only be understood as a criminal issue, but as a human rights issue, often robbing the most vulnerable elements of society of their constitutional rights and human dignity.

Consequently, the State is showing increasing leadership and political will by providing national and provincial agencies with some of the resources required to combat corruption. The Eastern Cape Province has commendably shown resolve and commitment in making use of these resources. On a provincial level, this need for responsible leadership has also been clearly reflected by the highest-ranking public servant in the province, the Eastern Cape Premier, making a public pledge to personally uphold the highest ethical standards and to lead by example.

Condition 2—Building of corruption-combating infrastructure

Since 1994, South Africa has seen a gradual building of corruption-combating infrastructure. From an organizational standpoint, the adoption of a public service Code of Ethics (1997) was a major milestone, coinciding with the significant strengthening of the legislative arsenal available to prosecute fraud and corruption. These efforts provided the rationale for hosting the First National Anti-Corruption Summit in 1999 and the creation of the National Anti-Corruption Forum (NACF) in 2001, both with the aim of galvanising broader society in the battle against corruption.

However, most efforts in building corruption-combating infrastructure have focused on developing prosecution capacity through legislation. Recent examples were the promulgation of the Protected Disclosures Act (2003) designed to protect whistle-blowers, and the Prevention of Corrupt Activities Act (2004) designed to improve the capacity of the State to prosecute corrupt entities. In addition, concerted effort has been made to build investigative and prosecution capacity through the creation of special investigative units and dedicated economic crime courts.

However, reported levels of corruption have kept rising in spite of these efforts. Warnings were sound that corruption is becoming endemic. Commentators noted that corruption has a direct impact on the capacity of the lowest levels of Government to deliver services, with the associated risks of social instability. On the highest levels, corruption can erode confidence in the State's ability to manage a just society.

Gradually, from within the public service and the non-governmental community, the call came that the full value of preventive approaches to complementing prosecution capacity was not being realized. An example of this is the public service Code of Ethics receiving very little institutional support apart from it being distributed to the various departments and agencies.

From anecdotal evidence, it emerged that corrupt officials did not view prosecution as an effective deterrent, but rather cited detection as having a deterring effect. The corrupt expend most energy to avoid detection, with fear of prosecution only following as a consequence of detection. Therefore, the fear of prosecution, seen in isolation, in the absence of fear of detection, is not an effective deterrent.

What is worrisome is that society often does not fulfil this primary deterrent function. Instead it places a heavy burden on many public officials, expecting them to contribute liberally to their communities and to live a lifestyle far beyond their legitimate means. So, instead of known corrupt officials being vilified, they are often respected in their communities for their largesse and opulence.

Furthermore, the public service has not consistently integrated the principles of the Code of Ethics into reward and disciplinary processes. In many cases, the public sector does not have the will to discipline deviant officials or reward those that are ethical, although there is positive indication that this is changing for the better. Therefore, the fear of prosecution, seen in isolation, in the absence of fear of societal rejection or dismissal, is not an effective deterrent.

It is clear that through the support of its leaders and a well-developed legislative infrastructure, South Africa is in the fortunate position to successfully combat corruption, provided it pursues a strategy that would target raising ethical standards of both society and organizations simultaneously.

"The law is only as good as those that manage it."

The ultimate aim is to secure an ethical culture change reaching into the homes of citizens. A key way to raise societal standards is to start where most employed people spend most of their time—their place of work.

Condition 3—Institutionalising an ethical culture

With some of the best legislative infrastructure in the world, it is the failure to implement the principles of these laws that leads, for instance, to whistle-blowers still being victimised in spite of legislative protection.

The law is only as good as those that manage it. Therefore, a structured programme to build management capacity is needed, while instilling universal values underpinning our laws, the Bill of Rights and the Constitution, in order to promote good consequences, right principles and fair actions throughout organizations. The implementation of such a programme is premised around a simple set of principles:

1. It is the responsibility of the organization to set a clear set of standards and to assist employees in meeting those standards by providing institutional support in the form of:

   a) Functioning codes of ethics;
   b) Aligned rewards and disciplinary procedures;
   c) Good communication strategies;
   d) Sustained training and awareness programmes;
   e) Safe and effectively managed whistle-blowing facilities.

2. It is the responsibility of employees to meet those standards.

Within this context a Second National Anti-Corruption Summit was held in March 2005. It resolved to implement a series of resolutions focusing on:

1. Increasing ethics awareness and prevention capacity;
2. Promoting and supporting inter-sectoral and interdepartmental combating initiatives;
3. Strengthening oversight, transparency and accountability capacities within Government and civil society;
4. Strengthening national and provincial co-ordinating bodies such as anti-corruption councils/forums.

The intention was that provincial Governments make use of these resolutions to develop their own anti-corruption programmes.

The Eastern Cape Provincial Anti-Corruption Action Plan

The provincial anti-corruption strategic planning session

Armed with a national mandate, the Eastern Cape Provincial Anti-Corruption Council agreed on the need to conduct a strategic planning session to investigate methods of implementing the Second National Anti-Corruption Summit resolutions. This resulted in a two-day Provincial Anti-Corruption Strategic Planning Session, hosted in July 2005 by the Anti-Corruption Unit situated within the office of the provincial premier.

This session, facilitated by EthicSA, was attended by approximately 70 delegates representing various Government departments, law enforcement agencies, private sector organizations and civil society. The objective was to develop a Provincial Anti-Corruption Action Plan with the resolutions of the Second National Anti-Corruption Summit as a guide. It also provided an opportunity for government, business and civil society leaders to publicly pledge support for the initiative.

The Provincial Anti-Corruption Strategic Planning Session comprised presentations delivered in plenary and

"It is expected that Governments will increasingly value long-term mutually beneficial relationships with entities that adhere to the highest ethical standards."

work commissions tasked to develop proposals to successfully turn the tide of corruption in the province.

Resolutions and Action Plans

Based on findings derived from plenary presentations, three work commissions were constituted, each to address a specific series of problem statements.

- Commission 1 developed resolutions encompassing broader societal aims; and
- Commissions 2 and 3 developed concrete management action plans for the province.

Eastern Cape provincial Resolutions

The Resolutions indicated a series of objectives that all sectors of society directed the provincial public service to pursue in order to combat corruption. The Resolutions are not meant as an exhaustive list but as a tool indicating immediate priorities. The Resolutions found that there should be:

1. Increased and sustained senior commitment in the fight against fraud and corruption;
2. High ethical standards set by those in positions of authority;
3. Diligent and consistent communication on these high ethical standards;
4. Education and encouragement for civil servants to meet these standards;
5. Firm action against those that do not meet these standards;
6. Honour and reward for those that do meet these standards;
7. Consistent and high efforts made to institutionalize and integrate these high ethical standards throughout the public service;
8. Proper implementation and utilisation of existing capacity and legislation;
9. Concerted efforts made to build new fraud and corruption-combating capacity;
10. Ongoing efforts to identify loopholes in the system;
11. Increased cooperation between various agencies and departments, especially in the fields of law enforcement and data sharing;
12. Strengthening of prevention programmes and methods throughout the province, especially in the fields of:
    a) Training;
    b) Whistle-blowing;
    c) Data sharing;
    d) Blacklisting.

Eastern Cape provincial Action Plans — blacklisting and greylisting

The Action Plans organized key objectives around the proposals of the Second Anti-Corruption Summit. Each key objective reacts to a number of pressing concerns and is guided by the Resolutions. It contains a number of strategic activities with measurable outputs. For the sake of brevity, only the provision for blacklisting is discussed at greater length, as it will directly impact private sector service providers' engagement with Government. The complete set of Eastern Cape Provincial Anti-Corruption Action Plans is included as ADDENDUM A.

Blacklisting

The Prevention of Corrupt Activities Act (2004) provides for the creation of a list of national tender defaulters, commonly known as a blacklist. Within seven days of successful prosecution, the prosecuting authorities need to request a judge to make a court order instructing the South African National Treasury to blacklist the convicted entity and its directors. A blacklisted entity will be forbidden from providing services to the State for up to 10 years. These are currently no listings on the database, but the first is expected to occur in 2006.

For Government, the challenge is in managing relationships with alleged corruptors in the period between

the commencement of an investigation and eventual judgement in a court of law. The legal process is often slow, with the high burden of proof demanded by criminal prosecution resulting in, on average, between one and three years of investigation and litigation. During this window period, Government is often contractually bound to continue trading with these suspected corrupt entities.

Greylisting

A need arose for a management response while the legal process continues. Such a response is required to balance the constitutional rights of individuals to be considered innocent until proven guilty, with the constitutional obligation of the State to protect its citizens and assets from abuse. A proposed solution to this dilemma is the creation of a greylist. With sufficient prima facie evidence and on condition that the South African prosecution authorities commence with legal action, the entity under investigation will be placed on a greylist. Importantly, greylisting is not dependent on investigation but the decision to prosecute. If the prosecuting authorities decide not to proceed with legal action for whatever reason, the entity will not be greylisted.

With the representatives of a greylisted entity fully informed of the nature of the charges and constitutionally guaranteed the right to defence in a court of law, Government reserves the right to suspend the greylisted entity from dealing with the State, pending judicial outcome. If the entity is found guilty, it will be blacklisted as provided for in the above-mentioned act. If the entity is found to be not guilty, it will be removed from the greylist and again fully entitled to provide services to the State. It is also foreseen that future service contracts with the State will clarify this position. The State in turn will intensify its efforts to root out corruptees in its midst by strengthening preventative and investigative capacities.

Conclusion

The Eastern Cape Province, armed with a national mandate in terms of the Second National Anti-Corruption Summit, developed provincial resolutions and action plans that conform to international best-practice standards. This is testimony to the commitment and prudent application of resources by the Office of the Premier Anti-Corruption Unit and other key stakeholders. The private sector can also expect a greater amount of scrutiny. It is, however, expected that governments will increasingly value long-term mutually beneficial relationships with entities that adhere to the highest ethical standards.

It is hoped that this pioneering work will inspire private sector concerns, other provinces in South Africa, and the public services of fellow African countries to follow suit. It has been possible to get this far through sustained executive commitment, which is Condition for the successful combating of corruption. With regard to Condition 2, the resolutions and action plans fill vital gaps in the corruption-combating infrastructure of the Eastern Cape Province. It does so mainly by complementing legislation and prosecution capacities with the building of organizational ethics management infrastructure.

However, the ultimate worth of what has been achieved so far lies in the ability to go beyond mere compliance and affect real ethical culture change within the public sector. If consistent and sustained implementation of the resolutions and action plans is achieved, Condition 3, as yet elusive, has the very real potential of being met in the public service. Condition 3 has such a good chance of success because, based on the view that the institutionalization of an ethical culture cannot be affected by external consultants, prosecutors or special investigators alone, it places strong emphasis on building internal corruption-combating capacities. These role players are only valuable if they supplement the process of culture change managed from within by custodians of organizational ethics management programmes.

The dream of turning the tide of corruption can be achieved, not by dreaming alone, but, as we see in the Eastern Cape Province, by doing. It will take time, resources and resilience, but it can be done. It must be done! Corruption has brought South Africa to the precipice, the abode of both the visionary and the suicidal. We must choose whether we cross the divide, or fall.

Bibliography

Tyikwe Z, Punt W 2005. The Eastern Cape Anti-Corruption Action Plan, Version 1.

Addendum A

Eastern Cape Provincial Anti-corruption Action Plans

For ease of reading, the information is presented in table format.

1. Key objective: Increasing ethics awareness and prevention capacity.

There is:

- A dire need to raise societal ethical standards;
- Tolerance for corruption with the resultant lack of societal sanction;
- A danger of fraud and corruption embedding itself into what is perceived as a normal or even desirable way of earning a living;
- A need to build ethical role models by recognizing and rewarding people for their ethical virtues and their ability to accumulate symbols of wealth;
- A need to clearly state public service ethical standards;
- A need for public services to meet these standards.

Key objective	*Strategic activity*	*Output*
Raising ethical awareness in the provincial public service	Human Resources (HR) to include Code of Ethics awareness at induction.	Ethics training of employees in all departments.
	Departments to institutionalise and culturally instil the Batho Pele principles with ethics management and training.	Training of ethics and compliance managers.
	Office of the Premier (OTP) to drive the process of ethics training and awareness.	OTP Ethics and compliance managers ensuring compliance by departments.
	Reflect cases of corruption and misconduct and how departments dealt with it.	• Heads of Departments to ensure that annual reports accurately reflect cases of corruption and misconduct; and • Promotion and recognition of case of ethical leadership.
	Encourage safe and responsible whistle-blowing.	• Development of provincial whistle-blowing policy; and • Ongoing management of hotline reports.
	Disseminate provincial whistle-blowing policy to departments.	OTP Anti-Corruption Unit ensuring implementation and management of whistle-blowing policy.

2. Key objective: Promoting and supporting inter-sectoral and interdepartmental combating initiatives.

There is:

- Lack of capacity in many departments to effectively combat fraud and corruption.

Key objective	*Strategic activity*	*Output*
Combating corruption	All departments to establish minimum anti-corruption capacity. .	• Provincial Anti-Corruption Council to develop a framework detailing minimum anti-corruption capacity for departmental Anti-Corruption Units; and • Heads of Departments to institutionalise minimum anti- corruption capacity according to framework.

3. Key objective: Strengthening oversight, transparency and accountability capacities

There are:

- Multiple fraud and corruption-combating initiatives on national and provincial levels, with obvious duplication and overlap in goals, objectives and even zones of operations;
- Multiple data bases that are not communicating to ensure effectiveness of use;
- Input and control standards that are not uniform or standardised, resulting in data integrity concerns;
- Windows of opportunity, between commencement of investigation and eventual legal judgement, for potential corrupt parties to further exploit State resources.

Key objective	*Strategic activity*	*Output*
Strengthen oversight transparency and accountability.	Archiving annual reports, Auditor General and Public Service Commission reports to national and provincial public libraries and departmental websites.	Heads of Departments to ensure distribution of relevant reports.
	Establish a proactive, supportive and collaborative relationship between the Provincial Legislature and the Provincial Executive Council.	Heads of Departments to engage standing committees in developing two-way communication channels.
	Centralise databases.	• OTP Provincial Anti-Corruption Unit to ensure that centralised database of all departmental suppliers are created; • OTP Provincial Anti-Corruption Unit to ensure maintenance of data integrity and vetting of suppliers; • In the interim, OTP Provincial Anti-Corruption Unit to develop best practice standards in consultation with various supply chain management units; and • OTP Provincial Anti-Corruption Unit to co-develop protocols for inter-departmental and inter-sectoral information sharing.
	Develop a data base of suspected corrupt service providers (greylist) preceding listing of convicted corrupt parties on the National Treasury List of Tender Defaulters (blacklist).	Administrative process of preventing corrupt activities: • ***Greylist model*** = risk management tool: ✦ Precedes possible ***blacklisting;*** ✦ National Prosecuting Authority (NPA) - test is prima facie evidence; ✦ Listing dependent on decision to prosecute by NPA; ✦ Transparency balances rights of defendant and public; ✦ Reduces window of opportunity for potential corruptees or corruptors; ✦ In the event of a guilty verdict, name of party to be ***blacklisted*** (see next strategic activity); and ✦ In the event of a not-guilty verdict, party to be removed from ***greylist.***
	Enter convicted parties on blacklist as provided for under the Prevention of Corrupt Activities Act 2004.	• Provincial Anti-Corruption Units to liaise with NPA, to seek court order within 10 days instructing National Treasury to list convicted parties on National Tender Defaulters list (***blacklist)***; and • High level cooperation between provincial Anti-Corruption Units, National Treasury and the NPA.

4. Key Objective: Strengthening of Anti-Corruption Councils/Forums

There is:

- A tendency for work to progress very slowly within such forums if no clear direction is provided and no common vision and urgency is shared;
- A need to pay special attention to maintaining communication between forum constituents and other parties because of such a forum being inter-sectoral and inter-departmental.

Key Objective	*Strategic Activity*	*Output*
Strengthen the provincial Anti-Corruption Forum/ Council	Develop joint programmes around awareness and combating	• OTP Anti-Corruption coordination of all related initiatives; • Coordination of activities of relevant law enforcement agencies and Chapter 9 institutions; and • The Anti-Corruption Unit in the Office of the Premier should facilitate exchanges with the National Anti-corruption Forum.

Published by the
United Nations Global Compact Office
April 2006 | 2M
www.unglobalcompact.org