



***Strengthening Integrity in the
Private Sector:
Treaties, laws, enforcement and
effectiveness***

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National Round Table

Strengthening Integrity in the Private Sector in Tunisia
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Bribing Officials

- **Reasons for offering (active)**
 - Low salaries
 - Little accountability or oversight
 - Cultural tradition
 - Competitiveness: Advantage of uneven playing field
- **Reasons for accepting (passive):**
 - Greed
 - Privilege
 - Fostered by family or clan ties
 - Uncertainty fueled by instability
 - The dollar or the bullet



OECD Anti-Bribery Convention

- 34 OECD member countries (Europe, plus Australia, Canada, Mexico and the U.S.)
- five non-member countries - Argentina, Brazil, Bulgaria, Russia, and South Africa
- 199 individuals and 91 entities have been sanctioned 1999 and the end of 2010
- Unfortunately, Germany, Hungary, Italy and the U.S. make up 97% of all cases, and the U.S. half of the total.



OECD ABC Prohibits

Intentionally offering, promising or giving any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

- Complicity in, including incitement, aiding and abetting, or authorization of an act of bribery of a foreign public official. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.

OECD Bribery Reports

http://www.oecd.org/document/24/0,3746,en_2649_34859_1933144_1_1_1_1,00.html

- Turkey's Phase 2 b examination 2010
- i) inadequate awareness of the offence of bribing a foreign public official within the government & the private sector;
- ii) insufficient private sector and civil society participation in the Phase 2 on-site visit;
- iii) the repeal of the liability of legal persons for the foreign bribery offence in contravention of Article 2 of the OECD Anti-Bribery Convention; and
- iv) inadequate law enforcement regarding allegations of foreign bribery involving Turkish companies, including a large number of allegations in the UN Oil-for-Food Programme.

The Problem of Intermediaries

- TRACE International, Inc. is a non-profit membership association that pools resources to provide practical and cost-effective anti-bribery compliance solutions for multinational companies and their commercial intermediaries (sales agents and representatives, consultants, distributors, suppliers, etc.).

<https://secure.traceinternational.org/>



Foreign Corrupt Practices Act – US 1977

- Prohibits issuers, domestic concerns, and any person from making use of interstate commerce corruptly, in furtherance of an offer or payment of anything of value to a foreign official, foreign political party, or candidate for political office, for the purpose of influencing any act of that foreign official in violation of the duty of that official, or to secure any improper advantage in order to obtain or retain business.
- 1998 – International Foreign Bribery Act brought foreign companies doing business in the US under the law

Notable Cases under FCPA

- Wal-Mart,
- BAE Systems,
- Daimler AG,
- Halliburton,
- Lucent Technologies,
- Monsanto,
- Siemens
- **INTERESTINGLY: News of the World, Murdoch**
- **2010: 90 successful prosecutions; US\$1.8 billion in fines**



Notable Elements

- Whistle blowing
- Facilitation or Grease payments
- Politically exposed persons (PEPs)
- Government owned foreign companies
- Third party payments (intermediaries)
- Guide from the USDOJ:
<http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf>



Penalties under US FCPA

- Corporations and other business entities are subject to a fine of up to \$2,000,000;
- Officers, directors, stockholders, employees, and agents are subject to a fine of up to \$100,000 and imprisonment for up to five years.
- Alternative Fines Act, these fines quite higher -- the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment.
- Fines imposed on individuals may not be paid by their employer or principal.

- The Employment Law Group® law firm represents employees nationally who have blown the whistle on corporate fraud and abuse and who have been the victims of discrimination, harassment, or other violations of their civil rights. With offices in Washington, D.C., San Francisco, and Los Angeles, California, The Employment Law Group® law firm's seasoned trial attorneys have earned a record of favorable settlements and verdicts on behalf of its clients.
- Has your employer retaliated against you because you reported corporate fraud?
- Have you uncovered illegal activity that you wish to report?
- Have you reported or do you wish to report the bribery of foreign government officials by US companies or individuals?
- Do you need to protect your career because you reported your employer's illegal or unethical conduct?
- Are your reputation and financial stability on the line because you did the right thing and spoke out?
- No one should be punished for doing the right thing, especially those with the courage and integrity to blow the whistle on corporate fraud or other illegal activities. Congress has enacted several laws that provide corporate whistleblowers with both protection from retaliation and monetary rewards. *The Employment Law Group®* law firm is experienced in protecting whistleblowers

United Kingdom Anti-Bribery Law

- **Active bribery: promising or giving a financial or other advantage.**
- **Passive bribery: agreeing to receive or accepting a financial or other advantage. Bribery of foreign public officials.**
- **The failure of commercial organizations to prevent bribery by an associated person (corporate offence)**



UK BRIBERY ACT

- **Penalty: maximum of 10 years Imprisonment and unlimited fine.**
- **Companies are liable for bribery committed for their benefit by their employees or other persons.**
- **Culpable for board-level complicity in bribery, including bribery through intermediaries.**
- **Corporate entity is culpable for bribes given to a third party with the intention of obtaining or retaining business for the organization.**

UK-EU Business Anti-Corruption Portal

<http://www.business-anti-corruption.com/?L=0>

- Risks of corruption in Turkey:
- Despite many positive developments, corruption in Turkey remains rampant and enforcement of anti-corruption policies remains weak, as suggested by several sources.
- Public procurement is considered by companies to be particularly affected by corruption.
- Foreign companies in Turkey encounter excessive bureaucracy, a slow judicial system, weaknesses in corporate governance, unpredictable decisions made at the local government level, and frequent changes in the legal and regulatory environment.
- Judicial reforms, which were part of the September 2010 constitutional reform package, may decrease the judicial independence by giving parliament greater powers in appointing judges.

Other Measures for Creating Corporate Integrity

- **Hong Kong Model**
 - Integrity Systems are part of the business licensing procedure
- **Brazil CGU Model**
 - Utilizing a procurement portal to keep companies accountable
- **U.S. Corporate Sentencing Guidelines**
 - Makes it part of a risk management system
 - **Case Law: *In re Caremark*,**
 - “Credited organizational guidelines with providing “powerful incentives for corporations today to have in place compliance programs to detect violations of law, promptly to report violations to appropriate public officials when discovered, and to make prompt, voluntary remedial efforts.”

U.S. Sentencing Guidelines: Reducing the Penalty

- *Organizational implementation of compliance standards.*
- *The assignment of high-level personnel to oversee compliance*
- *Due care in avoiding delegation to individuals had a propensity to engage in illegal activities.*
- **Communication of standards and procedures, by requiring participation in training programs.**
- *Establishing monitoring, auditing, and reporting systems where individuals can report criminal conduct without fear of retribution.*
- *Enforcing standards through appropriate mechanisms, including discipline of individuals.*
- *Developing appropriate responses to offenses to respond appropriately and to prevent further similar offenses*
- **Can result in as much as a 90% reduction – e.g., \$100 million to \$10 million**

- **Anyone who seeks to destroy the passions instead of controlling them is trying to play the angel.**

Voltaire

