



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

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Action to Strengthen Private Sector Integrity in the Arab Countries**

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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



Kuwait – Global Integrity Score 2008

<http://report.globalintegrity.org/Kuwait/2008/scorecard>

Kuwait: Integrity Indicators Scorecard

- Overall Score: 55 (+/- 1.72) - Very Weak
- Category I Civil Society, Public Information and Media 58 Very Weak I-1 Civil Society Organizations 83 Strong I-2 Media 76 Moderate I-3 Access to Information 15 Very Weak
- Category II Elections 55 Very Weak II-1 Voting & Citizen Participation 89 Strong II-2 Election Integrity 77 Moderate II-3 Political Financing 0 Very Weak
- Category III Government Accountability 48 Very Weak III-1 Executive Accountability 38 Very Weak III-2 Legislative Accountability 38 Very Weak III-3 Judicial Accountability 46 Very Weak III-4 Budget Processes 73 Moderate
- Category IV Administration and Civil Service 49 Very Weak IV-1 Civil Service Regulations 42 Very Weak IV-2 Whistle-blowing Measures 0 Very Weak IV-3 Procurement 67 Weak IV-4 Privatization 86 Strong
- Category V Oversight and Regulation 59 Very Weak V-1 National Ombudsman 5 Very Weak V-2 Supreme Audit Institution 61 Weak V-3 Taxes and Customs 79 Moderate V-4 State-Owned Enterprises 77 Moderate V-5 Business Licensing and Regulation 74 Moderate
- Category VI Anti-Corruption and Rule of Law 59 Very Weak VI-1 Anti-Corruption Law 89 Strong VI-2 Anti-Corruption Agency 0 Very Weak VI-3 Rule of Law 78 Moderate VI-4 Law Enforcement 69 Weak

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.

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.**

Business Anti-Corruption Portal

<http://www.business-anti-corruption.com/country-profiles/middle-east-north-africa/kuwait/>

- Risks of corruption in Kuwait:
- Kuwait's bureaucracy is often inefficient, non-transparent, and can be biased in favour of domestic interests.
- While Kuwait's public procurement process is cumbersome and susceptible to corruption, and many investigations and trials involving government officials accused of wrongdoing in the procurement process are ongoing, no one has been convicted for bribery since the end of the Gulf War.
- Kuwait neither has an independent anti-corruption agency, nor laws on whistleblower protection, anti-corruption, financial disclosure, conflicts of interests or the right to examine information. These shortcomings limit the capacity to combat corruption in the country. (Awaiting Implementation of March 2011 Draft Law)

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

