Motivating business to counter corruption

Best Practice on Anti-Corruption Incentives and Sanctions for Business

Regional Workshop: Enhancing Transparency in the Private Sector in Arab Countries and the Roles of Different Stakeholders

Tunis / June 8, 2012
Objectives of this presentation

- Provide an overview of anti-corruption incentives and sanctions for business and the roles of different stakeholders

- Highlight key findings from Global Expert Survey

- Outline key considerations regarding implementation

- Initiate discussion on anti-corruption incentives and sanctions for adherence to transparency standards
Roles of different stakeholders

Businesses act in complex environments with a variety of different stakeholders, such as public procurement agencies, business suppliers, civil society organizations etc.

- **Public Sector**
  - Governmental Institutions
  - Intergovernmental Organizations, etc.

- **Business Sector**
  - Business
  - Business Associations, etc.

- **Civil Society**
  - Civil Society Organizations
  - Media
  - Academia, etc.

- **Incentives**
  - Preferred supplier status
  - Public naming & shaming
  - Increased risk premium
  - Reduced sanctions
  - Fines
  - Public award
  - Lower tax rates

- **Sanctions**
  - Debarment
  - Confiscation
  - Termination of contract

This illustration shows the two-sided role of businesses: a business may receive an incentive from a public sector stakeholder to apply good-practice standards (e.g. obtain preferred supplier status for public tenders), while the same business may apply itself sanctions to its suppliers for not cohering with its own anti-corruption standards.
Stakeholders from the Public Sector, Business Sector, and Civil Society can **reward business** for adherence to anti-corruption standards (**incentives**) or **punish business** for non-adherence to anti-corruption standards (**sanctions**).

- **Rewards** for adherence to anti-corruption standards:
  - Refrain from corrupt act
  - Demonstrate commitment to good practice anti-corruption standards

- **Punishments** for non-adherence to anti-corruption standards:
  - Commit or attempt corrupt act
  - Lack of commitment to good practice anti-corruption standards

**Anti-Corruption INCENTIVES** for Business

**Anti-Corruption SANCTIONS** for Business
Categorizing anti-corruption incentives and sanctions

- Stakeholders can apply a variety of **commercial & operational, legal, and reputational incentives and sanctions** either on the business as a whole and/or on individual representatives.

<table>
<thead>
<tr>
<th>Anti-Corruption INCENTIVES for business</th>
<th>Anti-Corruption SANCTIONS for business</th>
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</thead>
<tbody>
<tr>
<td><strong>Commercial &amp; operational</strong></td>
<td><strong>Legal</strong></td>
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<tr>
<td>- Access to opportunities</td>
<td>- Reduced legal sanction</td>
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<tr>
<td>- Assignment of preferential conditions</td>
<td></td>
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<tr>
<td>- Reduced commercial &amp; operational sanction</td>
<td></td>
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<tr>
<td>- Termination of relationship</td>
<td>- Fine</td>
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<tr>
<td>- Exclusion from opportunities</td>
<td>- Compensation for damages</td>
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<tr>
<td>- Assignment of unfavorable conditions</td>
<td>- Confiscation of proceeds of corruption</td>
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<tr>
<td></td>
<td>- Imprisonment (only business representatives)</td>
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<tr>
<td><strong>Reputational</strong></td>
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<tr>
<td>- Reward through case-specific publication</td>
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<tr>
<td>- Reward through analysis of comparative performance</td>
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<tr>
<td>- Reduced reputational sanction</td>
<td></td>
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<tr>
<td>- Punishment through case-specific publication</td>
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<td>- Punishment through analysis of comparative performance</td>
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Results of Global Expert Survey

- A Global Expert Survey was conducted at HUMBOLDT-VIADRINA School of Governance between October 2011 and January 2012 to provide information regarding:
  - The assessment of anti-corruption incentives and sanctions in motivating business to counter corruption
  - The importance of different stakeholders in setting anti-corruption incentives and sanctions for business
  - The impact of different commercial & operational, legal and reputational incentives and sanctions on business

- 223 international anti-corruption experts from the Public Sector, Business Sector, and Civil Society answered the survey.
**Ranking of incentives and sanctions**

**Overall results:**

<table>
<thead>
<tr>
<th>Incentive/sanction</th>
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<tr>
<td>1. Restriction of business opportunities</td>
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<tr>
<td>2. Imprisonment of business representatives</td>
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<tr>
<td>3. Restriction of operations (e.g. revocation of business licenses)</td>
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<tr>
<td>4. Negative publicity (e.g. naming &amp; shaming campaign)</td>
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<td>5. One-time financial loss (e.g. criminal fines, compensation)</td>
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<tr>
<td>6. Confiscation of proceeds of corruption</td>
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<td>7. Occupational ban for business representatives</td>
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<tr>
<td>8. Preferred access to business opportunities (e.g. preferred supplier status)</td>
</tr>
<tr>
<td>9. Favorable commercial conditions (e.g. lower interest rates, tax breaks)</td>
</tr>
<tr>
<td>10. Positive publicity (e.g. award)</td>
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<tr>
<td>11. Unfavorable commercial conditions (e.g. higher risk premium)</td>
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</tbody>
</table>

- Respondents from the **Business Sector** identified the following Top 5 incentives and sanctions:
  1. Restriction of business opportunities
  2. Imprisonment of business representatives
  3. Restriction of operations
  4. Negative publicity
  5. One-time financial loss

- Responses from **Business Sector** and **Civil Society** aligned; deviations with responses from **Public Sector**.

- Positive publicity ranked higher in the **Middle East & Africa** (8th), preferred access to opportunities lower (10th).
Ranking of stakeholders

Overall results:

1. Governmental Institutions
   - %: 85.2
   - Score: 10.3
   - Rank: 1

2. Media
   - %: 45.3
   - Score: 10.3
   - Rank: 2

3. Business (financial services)
   - %: 46.6
   - Score: 8.3
   - Rank: 3

4. Intergovernmental Organizations
   - %: 46.4
   - Score: 15.2
   - Rank: 4

5. Export Credit Agencies
   - %: 40.2
   - Score: 17.5
   - Rank: 5

6. Business (goods and non-financial services)
   - %: 44.8
   - Score: 18.8
   - Rank: 6

7. Multi-Stakeholder Initiatives
   - %: 37.2
   - Score: 18.8
   - Rank: 7

8. Business Associations
   - %: 39.9
   - Score: 24.2
   - Rank: 8

9. Civil Society Organizations
   - %: 30.0
   - Score: 32.7
   - Rank: 9

10. Labor Unions
    - %: 32.3
    - Score: 11.9
    - Rank: 10

11. Academia
    - %: 30.0
    - Score: 20.6
    - Rank: 11

- Respondents from the Business Sector identified the following Top 5 Stakeholders:
  1. Governmental Institutions
  2. Business (financial services)
  3. Intergovernmental Organizations
  4. Media
  5. Business (goods and non-financial services)

- Responses from Business Sector and Civil Society aligned; deviations with responses from Public Sector.

- Business Associations ranked higher in the Middle East & Africa (5\textsuperscript{th}), Export Credit Agencies lower (8\textsuperscript{th}).
Other key findings

- 92% of respondents agreed that **preferential treatment** should be applied to companies that demonstrate adherence to anti-corruption principles.

- 77% of respondents agreed that an independent, **third-party assurance** of a business’ anti-corruption program is needed to grant incentives.

- 77% of respondents agreed that a **public corruption ranking of businesses** should be established, a view shared by a clear majority of respondents from the Business Sector (63%).

- 72% of respondents agreed that **Civil Society Organizations** do not focus on businesses enough when fighting corruption.

- 61% of respondents agreed that irrespective of the occurrence of an act of corruption, the absence of an **adequate anti-corruption program** should constitute a legal offense.
Findings from the Middle East & Africa*

- When asked about the **most important factor** in motivating business to counter corruption, respondents from the **Middle East & Africa** named **commercial & operational conditions** more often (41%) than average (31%) and reputational considerations less often (22%) than average (31%).

- Fewer respondents from the Middle East & Africa agreed that an increased use of **streamlining prosecutions** encourages self-reporting (56% versus 70% average).

- More respondents from the Middle East & Africa than average agreed that:
  - **peer pressure** is the most important factor in motivating business to counter corruption (85% versus 69% average)
  - **business representatives** with a history of corruption should be **ineligible for public contracts** (96% versus 88% average)
  - settlements with governmental bodies should include the temporary **disqualification from public funds** (93% versus 82% average)
  - **public campaigns and press articles** should target **business representatives** rather than businesses (89% versus 73% average)
  - **a public corruption ranking** of businesses should be established (93% versus 77% average)

* It should be noted that the majority of responses in this regional group are from Sub-Saharan Africa.
7 key principles for implementing and/or benchmarking anti-corruption incentives and sanctions

**ESTABLISHING**

1. Appropriateness and relevance
2. Communication
3. Monitoring

**EVALUATING**

7. Impact assessment

**ENHANCING**

4. Multipliers
5. Inheritance of responsibility
6. Mitigation options for sanctions
Expected results of group discussion:

- Select 3-4 incentives and/or sanctions for detailed study to advance implementation of private sector transparency standards among Arab companies

- Solicit inputs on feasibility and applicability (drawing on experiences from attending stakeholders)

- Discuss readiness of attending stakeholders to engage in taking concrete steps toward implementation in Arab countries
Should incentives be applied to increase private sector transparency in Arab countries?

Which incentives and sanctions seem feasible to enhance the implementation of transparency standards regarding:
- Disclosure of organizational and ownership information
- Disclosure on supply chain responsibility
- Disclosure on corporate sustainability (focus on compliance / anti-corruption standards)

Which stakeholders are most important in setting such incentives and sanctions?

Which approaches should be used (e.g. law-based regulations, voluntary standards)?

What are the biggest challenges for implementation? etc.
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The School is advised by respectable global governance practitioners, including Peter Eigen, Pascal Lamy, Joseph Nye, Mary Robinson, Richard von Weizsäcker, and Festus Gontebanye Mogae.

http://www.humboldt-viadrina.org/anti-corruption/

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