



Fighting Corruption through corporate actions

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- Corruption has a **negative impact** on :
- Economic growth; impacts most the poor and women so harms inclusive growth;
- Investments and innovation due to less competition;
- Allocation of resources towards private interests away from the state's capacity to deliver social services ;
- Infrastructure projects biased to maximize bribery receipts and minimize the chance of detection ;
- Higher tax burdens and fewer services ;
- SMEs and formalised economy development is restricted by the state regulatory apparatus;
- Often involves ODA and official export credit financing ;
- Can result in significant environmental damage (e.g. palm oil industry) – health and safety standards – displacement of populations.

Corruption is commonly attributed to the public sector

Areas of government activities most vulnerable to corruption

- Public procurement ;
- Licencing and permits ;
- Extractive industries ;
- Rezoning of land ;
- Revenue collection ;
- Government appointments; and
- Local government

It also exists in political parties, the private business sector, and NGOs



Key instruments to support
corporate compliance

Anti-Bribery: preventive measures

- ***Under the UNCAC, preventive measures*** include - model preventive policies, establishment of anticorruption bodies, delivery of public services that are efficient and transparent, recruitment of public officials based on merit. They also covers preventive measures in the private sector.
- ***Under the OECD Convention***, preventive measures have a slightly different focus although they obey to the same principles. In both the public and private sectors, it is about creating the conditions for detecting and reporting foreign bribery through internal mechanisms. This entails protecting whistleblowers.

Some specific provisions

- UNCAC devotes Chapter 2 to prevention in private and public sectors.
- Articles 5-14 focus on implementing specific measures and requirements to prevent and fight corruption.
- UNCAC Article 61 stresses the importance of promoting and sharing good practices in corruption prevention.
- OECD Convention devotes Article 8 to prevent bribery via accounting regulations.
- 2009 Recommendation focuses on implementing specific measures and requirements to prevent and report bribery.
- Annex II of the 2009 Recommendation is addressed to companies for establishing and ensuring effectiveness of internal controls, ethics and compliance programs.

Corporate social responsibility (CSR):

To support a healthy business environment and a level playing field, companies are expected to act responsibly over and above compliance with national laws and regulations, especially where such laws do not exist or are poorly enforced.

The principle: By acting socially responsibly, enterprises should **contribute to economic, environmental, and social progress with a view to achieving sustainable development** even in non regulated instances.

Through their commitment, enterprises act on their own operations.

Through their organisational relationships they also act on those of **contractors and sub-contractors as well as supply chains, customers** and the community in which they operate at large to help improve the foreign investment climate and enhance the contribution to sustainable development.

CSR relates to all **major areas of business ethics** such as for information disclosure, human rights, employment and labour, environment, **anti-corruption**, and consumer interests.

CSR: Internationally-recognised standards

- The [UN Guiding Principles on Business and Human Rights](#),
- The [OECD Guidelines for Multinational Enterprises](#) (and its subsequent [Due Diligence Guidance](#)),
- The [ILO Multinational Enterprise Declaration](#).

It is also echoed in other standards, such as :

- the [International Finance Corporation \(IFC\) Performance Standards](#),
- the [10 UN Global Compact Principles](#),
- various Global Reporting Initiative (GRI) standards, and [ISO 26000 Guidance on Social Responsibility](#).



Anti-bribery sanctions: a vector for
corporate compliance

Express corporate compliance to fight against corruption

Domestic and foreign bribery provisions and enforcement, including the *World Bank Sanction System*.

OECD Members' approach and sanctions :

Bribery by high level managers (HLMs).

Bribery directed or authorised by HLMs.

Bribery by lower level persons – failure of HLMs to prevent through failure to supervise and/or failure to implement adequate compliance measures.

No avoiding of responsibility by bribing through intermediaries.

2018 enforcement data of legislation in line with the OECD Anti-Bribery Convention

- 560 individuals and 184 entities have received criminal sanctions for foreign bribery between the time the Convention entered into force in 1999 and the end of 2017.
- At least 125 of the sanctioned individuals have been sentenced to prison for foreign bribery, including at least 11 for prison terms exceeding 5 years.
- For the 97 individuals for whom information is available on the length of (non-suspended) prison terms, 11 were for more than 5 years, 41 were in the 2-5 year range, 26 in the 1-2 year range and 19 were less than 1 year.
- Over 500 investigations are ongoing in 30 Parties.
- At least 155 criminal proceedings (against 146 individuals and 9 entities) are ongoing for foreign bribery in 11 Parties.

Some corporate monetary penalties in the US

- **Ericsson Expects to Pay \$1 Billion in U.S. Corruption Probes for** business ethics breaches in six countries, including China, Djibouti, Indonesia, Kuwait, Saudi Arabia and Vietnam (29 September 2019)
- In 2018 : 16 companies paid \$2.89 billion to resolve FCPA cases with mega-cases - Petrobras (\$1.78 billion), SocGen (\$585 million), and Panasonic (\$280 million).
- In 2017, 11 companies paid just over \$1.92 billion to resolve FCPA cases.
- In 2016, 27 companies paid \$2.48 billion to resolve FCPA cases.
- In 2015, 11 companies paid \$133 million.
- In 2014, 10 companies paid \$1.56 billion.
- In 2013, 12 companies paid \$731.1 million.
- In 2012, 12 companies paid \$259.4 million.
- In 2011, 15 companies paid \$508.6 million.
- In 2010, 23 companies paid \$1.8 billion.
- In 2009, 11 companies paid \$644 million, and
- In 2008, 11 companies paid \$890 million.

Other Earlier Major Cases

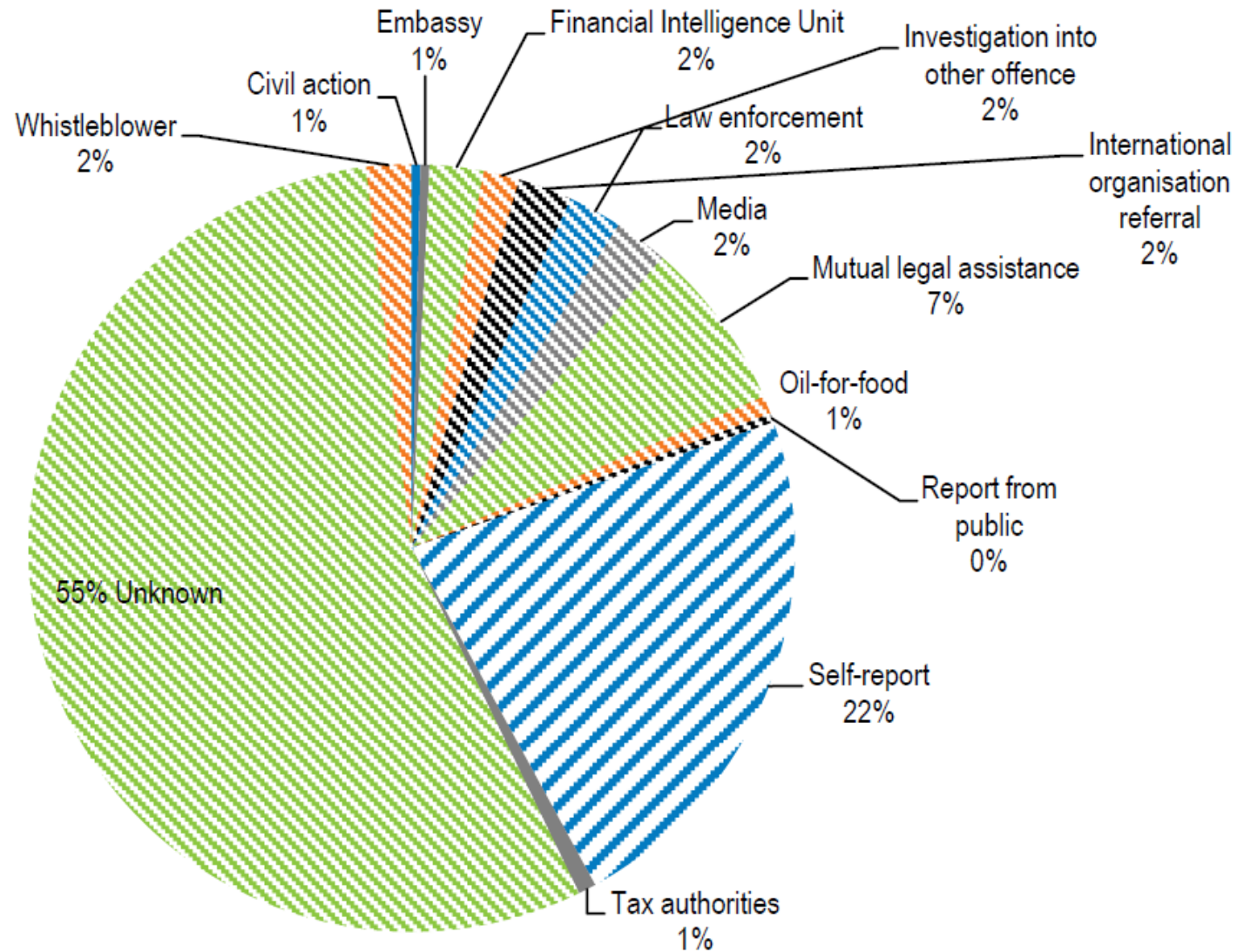
- Siemens – EUR 1.8 billion combined (2008)
- Alstom – USD 700 million (2014)
- KBR/Halliburton – USD 579 million (2009)
- BAE – USD 400 million (2010)
- B.V./ENI – USD 365 million (2010)
- Technip S.A. – USD 338 million (2010)
- SBM Offshore – USD 240 million (2014)
- Daimler AG – USD 185 million (2010)
- Baker Hughes – USD 44 million (2007)
- Willbros – USD 32.3 million (2008)
- Chevron – USD 30 million (2007)

Analysis of the enforcement data of the OECD Anti-Bribery Convention (1999-end 2015)

- 1/3 of cases detected through voluntary reporting (though not defined)
- Over 50% of cases -- High level managers involved in offering, promising, giving bribe or authorising/directing bribery
- **75% of cases – bribery through intermediaries (business partners)**
- 57% of cases – bribery in relation to public procurement contracting
- 80 % of total bribe paid went to officials of SOEs

Lack of communication, evidence and status of limitation – **insufficient follow up on public officials of the receiving end** (OECD, December 2018)

The Detection of Foreign Bribery (2017)





Corporate compliance trends

Corporate compliance trends

- Financial, organisational and reputational →
- Prevention by **large listed companies** (domestic legislation and wider extra-territorial reach of foreign anti-bribery laws eg. UK, US)
- SMEs have low levels of awareness of foreign bribery risks and weak or no compliance measures.
- Compliance measures include:
 - self-regulating anti-corruption programmes, codes of conduct including disciplinary sanctions and whistleblower channels – also for entities directly controlled
 - increased independence and responsibility of board members, directors, internal audit function and auditors
 - reporting incidents to relevant law enforcement authorities
 - attention to third party risks (business partners)
- **Better protection of whistle-blowers: new EU-wide rules to kick in in 2021:** The EU is to guarantee a high level protection to whistle-blowers across a wide range of sectors including public procurement, financial services, money laundering, product and transport safety, nuclear safety, public health, consumer and data protection.

Core elements of company anti-bribery policies, incl. third party relations

- Leadership commitment and statement
- Risk assessments (business sector, international)
- Due diligence of new hires, agents and intermediaries incl. on frequency and nature of contact with foreign public officials
- Identifying beneficial owners of business partners
- Communication, training, oversight, monitoring
- Joint actions : declarations, industry policies and codes, integrity pacts, collective action involving like-minded companies

Leadership commitment in corruption prevention and detection – the French AC Agency

- The clear and unequivocal commitment of the governing bodies to behaviors and business ethics that meet strict rules of integrity is a cornerstone of an organization's anti-corruption approach.
- It is recommended that this commitment be based on 4 pillars:



Adoption of a zero tolerance policy against corruption risks

(i.e. dissemination of values, porting of the code of conduct, development of firm disciplinary rules, etc.)

Taking anti-corruption into account in the organization's procedures and policies

(HRM, alerting device, risk assessment cartography, etc.)

Governance of the compliance program at the highest level of the organization

(designation of a compliance officer, allocation of appropriate resources, definition of responsibilities, etc.)

Establishment of an internal and external communication policy adapted to the structure and issues

The risk mapping : foundation risk management strategy

The risk mapping aims to:

- identify, assess, prioritize and manage corruption risks to ensure an effective and organization-specific compliance programme
- inform the governing body and give compliance officers the necessary visibility to implement prevention and detection measures commensurate with the issues



The main features of the cartography:

- ✓ Covers from start to end managerial, operational and support processes
- ✓ Takes into account the specificities of each organization: sector of activity, stakeholders, job, geographical area, etc.
- ✓ It has to be formalized: written documentation, structured, synthetic & inform on the methodology chosen to build the cartography
- ✓ Scalable through periodic risk reassessment

The risk mapping must be available for immediate submission to AFA



Organisations must put in place effective third party evaluation procedures (1)

These decision support tools are based on:

- a risk mapping of all third parties in order to identify those for whom an evaluation will have to be carried out and adapted according to the level of risk
- collect information and documents to identify and assess the risks of corruption to which the organization is exposed. Choice of documentation left to the discretion of the organization: open sources, paid databases, etc.

The points to be assessed include the following:

Identity	Shareholders
Country risk	Sector of activity
Expertise	Integrity and reputation
Conformity	Co-operation
Nature and purpose of the relationship	Other participants/stakeholders
Interactions with public officials, EPP	Financial aspects at stake
Compensation terms	Terms and payment flows



Evaluation based on objective and quantifiable criteria + taking into account qualitative elements



Result: ranking of third parties by level of risk: low / medium / high

Third party evaluation (2)

- It is recommended to involve 3 levels of actors:



Relations with the third party in the event of approval of the relationship with or without reservations :

Preventative measures
Communicate the code of conduct
Make the third party aware of the risk of corruption
Exercute a third party written commitment to fight against corruption
Exercute a third party verification of the integrity of subcontractors

Follow-up of the relationship
- Existence of contractual specific provisions on services performed, remuneration and payment methods
- Complete visibility into the accounting system payments received from third parties or made to third parties

Renewal and update of the evaluation
-Recurring the evaluation periodically according to the category and risk of the third party
-New evaluation with each significant change (acquisition, etc.)

Accounting procedures

The organization adopts organized, formalized and permanent arrangements guaranteeing the regularity, the sincerity and the fidelity of the accounting and financial operations which must be held so that they do not present the risk of masking corruption facts.

The quality of an anti-corruption accounting system is based on:

- ✓ Control of access rights to the accounting system
- ✓ Distinction manual writes / scripts generated automatically
- ✓ Identification of the service and the collaborator having passed and validated the writing
- ✓ Retention of postings
- ✓ Provision of lists / journal entries to record the manual entries recorded by day and by department
- ✓ Blocking system in case of account imbalance, attempt to delete writing, etc.
- ✓ Specific targeting of operations defined at risk within the framework of the cartography, and in particular:
 - donations, legacies, sponsorship, patronage, gifts & invitations, fees & commissions, etc.
 - atypical flows (suspense or transient account, etc.)
 - exceptional or stakes transactions (acquisition of a company, etc.)
 - operations related to the use of third parties (intermediaries, consultants, etc.)
 - flow to third parties with high risks.



Corruption risk training system

Training is a founding element for wide dissemination of anticorruption commitments made by managers and for their appropriation by employees



Priority public to train: managers and staff most at risk of corruption on the basis of risk mapping.

However, it is recommended to develop a more comprehensive system so that all employees are gradually trained or sensitized to the prevention and detection of corruption.



Officials	Objective	Content	Modalities
Most exposed executives and staff	Understand and know : -the process and the risks - due diligences to accomplish -the behaviour to adopt -the sanctions	-engaging the leaders in the code of conduct -corruption, impact, forms & sanctions -legal obligations -elements of compliance -what behaviour to adopt, role and responsibility of each and every one -whistle blowing + specific trainings (markets, etc.)	Direct learning (to privilege) internally or externally (controlled by the Compliance or Designated Official)
Other persons	Acquire an anti-corruption culture	-engaging leaders in the codes of conduct -corruption, impact, forms & sanctions -what behaviour to adopt, role and responsibility of each and every one	Direct learning or e-learning

Corporate compliance in the MENA countries


- **Only limited actions have been taken by** business and their associations to combat bribery and adopt preventive integrity measures.
- Almost all countries have ratified the UNCAC, set up dedicated anti-corruption agencies, adopted some more or less effective anti-corruption strategies or frameworks.
- Predominantly cash-based with high levels of informality → easier to conceal bribes or more difficult to prevent and detect through maintenance of accurate books and records
- Poor access to information – difficulty for companies to conduct appropriate due diligence (on third party business, intermediaries, links with possible final owner, criminal record checks)
- Regulatory and legislative environments :
 - Insufficient criminalisation of promising & offering;
 - Few countries have established responsibility of legal persons;
 - No or insufficient definition of facilitation payments, gifts, donations, conflict of interest,
 - Inefficiencies in the business environment affect small and medium-sized firms disproportionately
 - Low enforcement impacts internal control mechanisms to prevent bribery

Increasing momentum

- Parties to OECD Anti-Bribery Convention will further increase enforcement impacts business operations worldwide, including by ensuring impact on receiving end.
- MNEs and SMEs will increase efforts to address recurring compliance issues (third party risks, integrate compliance systems for related risks, improve incentives structure, improve internal audit function).
- Economies not Party to OECD ABC are impacted by global economy and trends.

Indicative and non-exhaustive Anti-Corruption Resources For Business

- [OECD Guidelines for Multinational Enterprises](#)
- [United Nations Convention Against Corruption](#)
- [United Nations Global Compact, Guidance Document: Implementation of the 10th Principle against Corruption](#)
- [Center for International Private Enterprise](#)
- [REFORM Toolkit - Combating Corruption: A Private Sector Approach](#)
- [International Chamber of Commerce Guidelines on Whistleblowing](#)
- [International Chamber of Commerce Rules of Conduct and Recommendations for Combating Extortion and Bribery](#)
- [Transparency International Business Principles for Countering Bribery](#)
- [Business Anti-Corruption Portal](#)
- Transparency and Integrity in [Lobbying](#), incl « The 10 Principles for Transparency and Integrity in Lobbying »



Thank you for your attention
Any question?

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