



CORPORATE ANTI-CORRUPTION MEASURES TO SUPPORT SUSTAINABLE BUSINESS

# Corporate Anti-corruption Compliance Drivers, Mechanisms and Ideas for Change





# **Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change**

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# Foreword

Anti-corruption compliance was a topic of interest in a limited number of countries ten years ago, but the past decade has seen the emergence of anti-corruption compliance systems in companies across the globe. Various factors have driven private sector companies to design systems to prevent, detect, and respond to the risk of corruption. These factors include legal and regulatory requirements, enforcement and reputational risks, and company changes warranting a closer look at transactional risk.

In 2010, the OECD Working Group on Bribery, which brings together the 44 Parties to the OECD Anti-Bribery Convention, adopted the *Good Practice Guidance on Internal Controls, Ethics, and Compliance* as part of the 2009 Anti-Bribery Recommendation. The Guidance sets out fundamental elements that should be included in companies' anti-bribery compliance programmes in order to effectively prevent and detect bribery. Since the adoption of the *Good Practice Guidance* ten years ago, compliance has taken an increasingly important role in corporate liability regimes, through the adoption of legislation requiring the establishment of compliance models and requirements from law enforcement or the judiciary. Several countries have developed their own compliance models, sometimes going beyond the standards of the *Good Practice Guidance*. Concomitantly, a growing number of private sector companies have adopted anti-corruption compliance systems and in 2016, the adoption of ISO Standard 37001 marked the emergence of global anti-corruption compliance standards.

This study forms part of a three-part project on corporate anti-corruption measures to support sustainable business. This project supports the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs). SDG 16 specifically deals with "Peace, Justice and Strong Institutions," and target 16.5 of this goal is "Substantially reduce corruption and bribery in all their forms." In particular, the target seeks to decrease the "[p]roportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months." This target and indicator recognise that the private sector is a primary actor in the supply side of corruption. More effective anti-corruption compliance programmes and policies will help cut off the supply of bribes, strengthen developing countries' institutions, and promote their sustainable development.

This project component looks at why companies adopt anti-corruption compliance mechanisms, with an eye towards encouraging more companies (including small- and medium-sized enterprises) to adopt such measures. In addition to desk research, this study relies on results of the OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance, which were collected from business personnel from 12 November to 12 December 2019, as well as interviews with personnel from 15 international firms.

This study informs policy-making on how to incentivise anti-corruption compliance, supports the private sector (including small- and medium-sized enterprises) in the adoption of compliance systems, and provides insights for the current review of the *Good Practice Guidance* in Annex II to the 2009 Anti-Bribery Recommendation. We also hope that it can form a useful tool for international firms in assessing their anti-corruption mechanisms and identifying best practices for their compliance systems.

# Acknowledgements

The OECD would like to thank the Government of Sweden for their generous financial support of this study. The development of this report benefited from the inputs of Business at the OECD (formerly known as the Business and Industry Advisory Committee to the OECD, or BIAC) and the Center for International Private Enterprise (CIPE). We also wish to express our gratitude to the BIAC, CIPE, and The FCPA Blog for disseminating the OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance to their networks. In addition to thanking those individuals who participated in the survey, we would also like to express gratitude to the 15 survey respondents who chose to participate in interviews, which form the basis for many of the examples shared in this study.

This report was prepared by OECD Consultant Melanie Reed, under the direction of France Chain, Senior Legal Analyst in the Anti-Corruption Division of the OECD Directorate for Financial and Enterprise Affairs.

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# 1 Introduction

When the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention) entered into force in 1999, it created a responsibility for the countries that were members of the OECD Working Group on Bribery (WGB) to pass laws criminalising the crime of foreign bribery, that is, bribery of foreign public officials in connection with international business transactions. The thought was that if companies in exporting countries were to stop providing bribes and other improper benefits in connection with their international activities, the supply of bribes would be reduced and, consequently, public officials would also limit their bribe demands.<sup>1</sup>

Since the time of its adoption, adherents to the OECD Anti-Bribery Convention have grown from 29 to 44 State Parties,<sup>2</sup> and many other international anti-corruption instruments are currently being implemented, including the United Nations Convention against Corruption (2003), the Inter-American Convention against Corruption (1996), the African Union Convention against Corruption, and the Council of Europe Criminal Law Convention on Corruption (1999). All members of the WGB now have laws banning foreign bribery, along with other corruption offences, and more and more countries' law enforcement agencies are taking steps to hold companies and individuals accountable for their wrongful conduct. Major enforcement actions, such as that which settled against Siemens in 2008 and the current ongoing investigation of Odebrecht and its partners, have brought the issue of corruption to the forefront, highlighting the importance of companies in furthering—or fighting—this harmful practice.

This study aims to better understand the extent to which companies are currently motivated to take measures to prevent and detect bribery and other forms of corruption in their business dealings. Understanding why companies choose to expend the time and resources to build up an anti-corruption programme and embed it in their organisations is key to helping policy-makers incentivise private sector compliance as well as enabling the private and public sector to better work together to fight corruption in all its forms.

Although an awareness of compliance has grown generally over the past decade, many corporations, notably small and medium enterprises (SMEs), continue to face challenges in setting up adequate anti-corruption systems that, beyond ticking the boxes, function effectively in practice. By relying on data from a survey of corporate representatives and interviews with compliance professionals, this study aims to provide concrete examples of the challenges facing firms, along with some ideas for overcoming these challenges.

In particular, this study aims to examine drivers of compliance and examples from businesses to inform both policy makers and the private sector on the following:

- What motivates companies to adopt anti-corruption compliance measures, and how companies (including SMEs) could further be incentivised to do so;
- What types of measures companies currently adopt to prevent and detect corrupt conduct, including what measures could be further developed; and
- How governments, international organisations, and civil society could better support and accompany companies in their anti-corruption efforts, and how companies utilised resources from these sources.

This information should support public and private stakeholders in their efforts to create more robust incentives for the private sector to undertake anti-corruption measures, to develop resources for compliance and other personnel to use when building up their compliance programmes, and to strengthen legal frameworks governing corporate compliance in all areas.

The study proceeds as follows: The next sections describe the steps taken to gather data from the study participants and provides an overview of the 130 individuals that participated in the study, either through completing the survey or by also participating in an interview. Chapter 2 discusses the reasons companies decide to develop anti-corruption compliance programmes, finding that enforcement risk, legal changes, company growth, influence from other businesses, and intrinsic motivations all contribute to this decision. Chapter 3 discusses the specific corruption risks faced by the study participants, followed by Chapter 4, which discusses the specific steps companies take to guard against these risks. Chapter 5 discusses the resources companies use to develop and implement their programmes, while Chapter 6 delves into the most significant challenges for companies in establishing their anti-corruption compliance programmes.

Chapter 7 provides a summary of the most important issues raised by study participants with regard to what they would like governments, international organisations, and civil society to do to support them in their efforts to fight corruption. Chapter 8 concludes with separate recommendations for companies and other members of the international community.

## Data collection and methodology

This study relies heavily on information obtained through a survey of business representatives throughout the world. The survey was developed in October and November 2019, and responses were collected from 12 November to 12 December 2019. In sum, 130 respondents from 28 countries and representing a variety of industries responded to the survey. Out of the 130 survey respondents, 29 indicated a willingness to participate in telephone interviews, which were eventually conducted with 15 of these individuals participated in in December 2019 and January 2020.<sup>3</sup>

In addition, this study takes account of research and reporting by the OECD from the inception of the Anti-Bribery Convention, including recent reports on non-trial resolutions of foreign bribery offences,<sup>4</sup> detecting foreign bribery,<sup>5</sup> corruption in the extractive industries,<sup>6</sup> enforcement of the foreign bribery offence,<sup>7</sup> and international cooperation in anti-corruption cases.<sup>8</sup> Finally, the study takes note of guidance provided by WGB governments, other international organisations, business and civil society groups, and anti-corruption researchers.

## Overview of study participants

### *Respondent roles and countries*

Respondents to the survey represented a variety of industries and countries. As Table 1 shows, the overwhelming majority of respondents served in a legal or compliance role in their companies. Five of the nine respondents who indicated “other” as their company role had an audit role in their company, a function that can straddle both finance and accounting and legal and compliance.

The response group included 69 men, 55 women, and 6 individuals who indicated “other” or “prefer not to disclose.” Respondents had varied lengths of service at their respective companies: 18 had been at their company less than 1 year, 51 had been there from 1 to 5 years, 22 from 5 to 10 years, and 39 over 10 years.

Respondents were located throughout the world, as shown by Table 2. The individual countries most represented by respondents were the United States (19 respondents), France (16), Colombia (15), United Kingdom (10), Germany (9), Italy (7), and Japan (6). The inclusion of Colombia at the top of the list is

interesting and may reflect an increased awareness of foreign bribery issues as a result of its current involvement in OECD accession processes.<sup>9</sup>

**Table 1. Company roles of respondents surveyed**

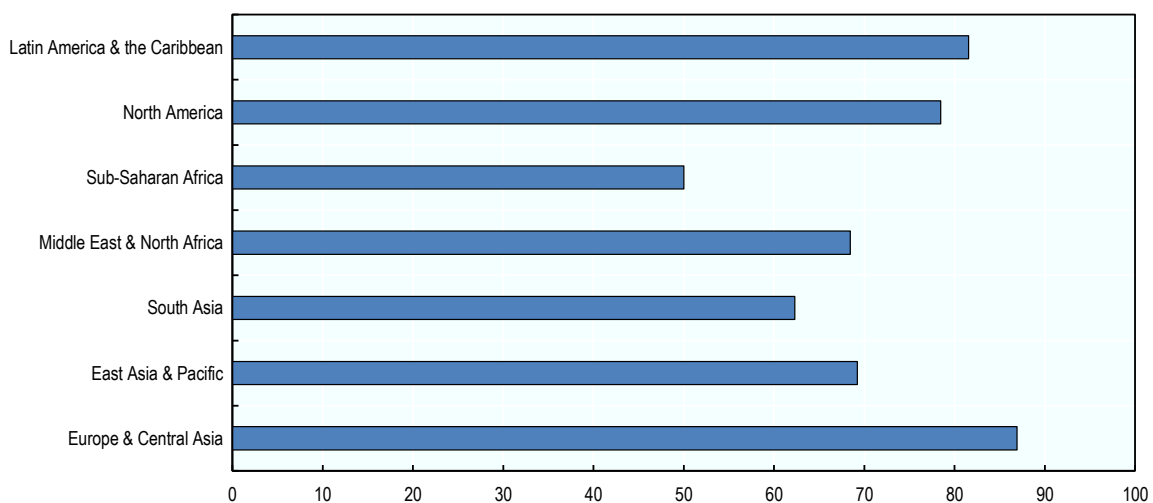
Respondent's role in company	Number of respondents (%)
<i>Chief executive</i>	12 (9.23%)
<i>Sales &amp; marketing</i>	3 (2.31%)
<i>Finance &amp; accounting</i>	2 (1.54%)
<i>Legal &amp; compliance</i>	102 (78.46%)
<i>Operations</i>	2 (1.54%)
<i>Other</i>	9 (6.92%)
	130 (100.00%)

**Table 2. Regional location of respondents surveyed**

Area of the world*	Number of respondents (%)
<i>North America</i>	21 (16.15)
<i>Latin America &amp; the Caribbean</i>	23 (17.69)
<i>Europe &amp; Central Asia</i>	70 (53.85)
<i>East Asia &amp; Pacific</i>	10 (7.69)
<i>South Asia</i>	2 (1.54)
<i>Sub-Saharan Africa</i>	1 (0.77)
<i>Not indicated</i>	3 (2.31)
	130 (100.00%)

\* Based on the geographical subdivisions used in the World Bank's SDG Atlas (2018), <http://datatopics.worldbank.org/sdgateas/the-world-by-region.html>.

**Figure 1. Areas of the world where respondents' companies engage in business (% respondent companies in each area)**



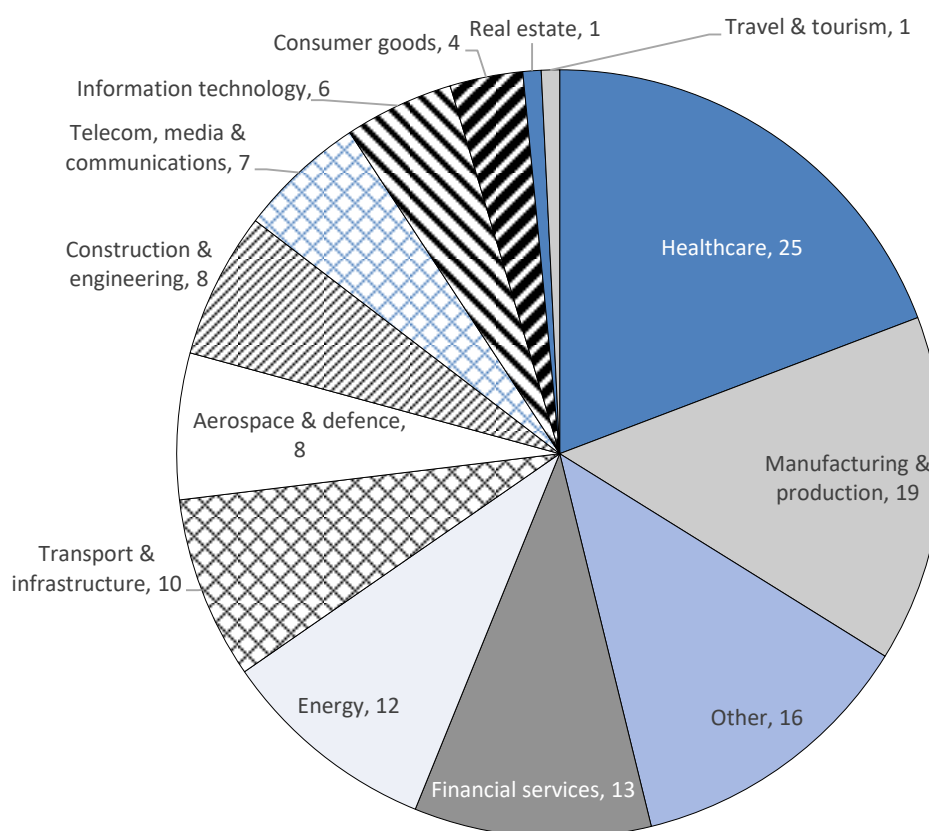
Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

The companies represented by respondents all conducted business internationally. Figure 1 shows the percentage of respondents' whose companies engage in business activities in each part of the world, whether that be through selling goods or services to customers or maintaining facilities or employees.

### **Industries represented**

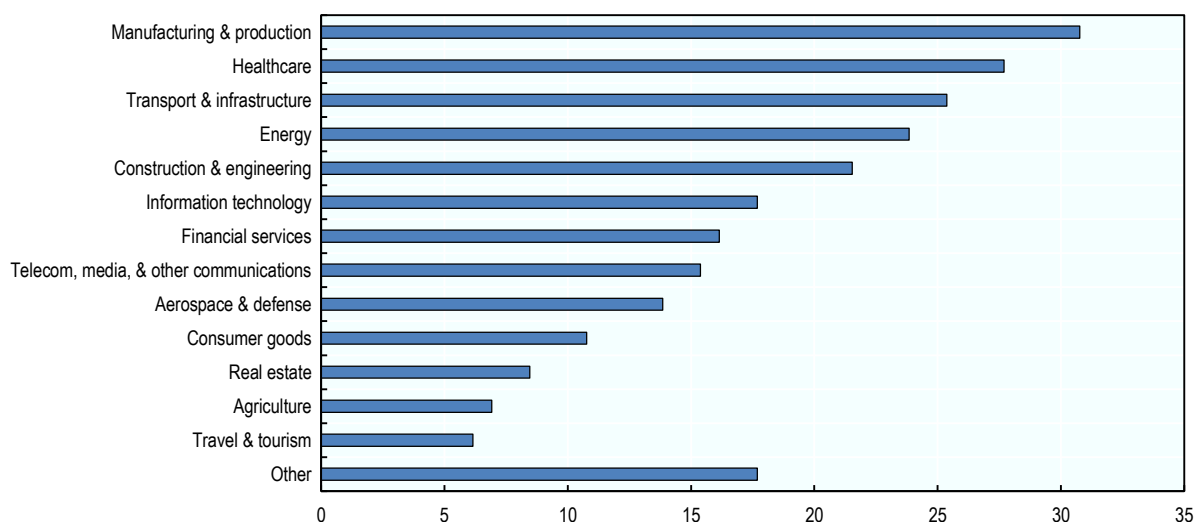
Respondents to the survey were asked to indicate their company's primary industry, and the results are shown in figure 2. The largest number of respondents (25) worked in the healthcare industry, followed by manufacturing and production (19), and "other" (16). Companies represented by "other" included respondents from entertainment, logistics, consulting, and other service companies, along with two representatives of conglomerates (with no primary industry) and one representative of an industry body.

**Figure 2. Respondents' primary industries (% respondents)**



Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

Of course, many companies work in more than one industry. Accordingly, figure 3 shows the percentage of respondents who indicated that their company did *any* work in an industry evaluated in the study. The survey results show that about 31 percent of respondents engaged in manufacturing and production work, followed by 28 percent in healthcare, and 25 percent in transport and infrastructure.

**Figure 3. Industries represented by respondents (% respondents)**

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

### **Company size and type**

The majority of respondents worked for public or private stock companies, although other types of companies were also represented (see Table 3). The overwhelming majority of respondents (116, or 89.2%) represented companies that were *not* state-owned. Of the remaining respondents, 9 indicated that their companies were less than 50 percent state-owned, while 5 indicated that their companies were more than 50 percent state-owned.

**Table 3. Types of companies represented by respondents**

Company type	Frequency (%)
<i>Public stock company</i>	60 (46.15)
<i>Private stock company</i>	40 (30.77)
<i>Limited liability company</i>	14 (3.08)
<i>Not-for-profit / foundation / charity</i>	6 (4.62)
<i>Sole proprietorship</i>	6 (4.62)
<i>General partnership</i>	4 (3.08)
	130 (100.00)

Nineteen of the companies represented by respondents were SMEs, which we defined to include companies with fewer than 250 employees or less than EUR 50 million in yearly turnover.<sup>10</sup> Corruption can “pose particular problems to SMEs, which often lack the capacity to cope with an opaque public sector, design and implement anti-corruption strategies and lobby for their needs.”<sup>11</sup> For this reason, this study seeks to provide additional information for SMEs, whenever possible.

### **Interviewees**

All of the companies conducted business internationally. Respondents themselves came from all populated continents except Australia. However, most respondents came from Europe (53.9%), followed by Latin America and the Caribbean (17.7%), and North America (16.2%). The majority of respondents (78.5%)

served a legal and compliance role in their companies. Other respondents represented the categories of chief executive, sales and marketing, finance and accounting, operations, and “other.”<sup>12</sup>

Fifteen respondents took part in telephone interviews to further discuss their companies’ compliance efforts. As with the surveys, the interviews were conducted on a confidential basis. All of the interviewees worked at large companies (rather than SMEs), and served in a legal or compliance function. Throughout this report, the company representatives interviewed will be referred in reference to the company identifier in Table 4.

**Table 4. Overview of companies represented by interviewees**

Company Identifier	Primary Industry	Respondent Location
<i>Company 1</i>	<i>Consumer goods</i>	<i>Latin America &amp; the Caribbean</i>
<i>Company 2</i>	<i>Healthcare</i>	<i>North America</i>
<i>Company 3</i>	<i>Healthcare</i>	<i>Europe &amp; Central Asia</i>
<i>Company 4</i>	<i>Manufacturing &amp; production</i>	<i>Europe &amp; Central Asia</i>
<i>Company 5</i>	<i>Telecom</i>	<i>Europe &amp; Central Asia</i>
<i>Company 6</i>	<i>Healthcare</i>	<i>Europe &amp; Central Asia</i>
<i>Company 7</i>	<i>Healthcare</i>	<i>Latin America &amp; the Caribbean</i>
<i>Company 8</i>	<i>Construction &amp; engineering</i>	<i>North America</i>
<i>Company 9</i>	<i>Transport &amp; infrastructure</i>	<i>Europe &amp; Central Asia</i>
<i>Company 10</i>	<i>Energy</i>	<i>Europe &amp; Central Asia</i>
<i>Company 11</i>	<i>Energy</i>	<i>Latin America &amp; the Caribbean</i>
<i>Company 12</i>	<i>Architecture &amp; design</i>	<i>North America</i>
<i>Company 13</i>	<i>Construction &amp; engineering</i>	<i>Europe &amp; Central Asia</i>
<i>Company 14</i>	<i>Healthcare</i>	<i>Latin America &amp; the Caribbean</i>
<i>Company 15</i>	<i>Energy</i>	<i>North America</i>

Please note that survey and interviewee responses were edited grammatically, as appropriate to clarify the meaning in English.

## 2 Why do companies adopt anti-corruption measures?

The vast majority of survey participants indicated that they had an anti-corruption compliance programme (124 out of 130, or 95.4%). This is not surprising, since a company that does not have a compliance programme probably would not have an interest in participating in a study of such programmes. Thus, it is important to remember that the percentage of respondents who indicated that their companies have such a programme is not at all indicative of the percentage of overall companies in the world that have such programmes.<sup>13</sup>

In fact, there are many reasons why companies do *not* establish anti-corruption compliance programmes, or even compliance programmes in general. They may not recognise a need for such a programme because their country does not enforce its anti-corruption laws. Or they may feel that they are too small or inconsequential to be targeted by enforcement authorities. Even if they recognise the importance of having compliance measures in place, they may simply lack the financial resources, personnel, or know-how to engage in such measures.<sup>14</sup> This is especially the case for SMEs who may lack the resources for effectively implementing anti-corruption measures, even if they recognise the risk of corruption in their international business. Accordingly, it is not surprising that 111 of the 112 large companies that responded to the survey (99.1%) indicated that they had an anti-corruption compliance programme, while only 13 of the 18 SMEs that responded (72.2%) indicated that they had such a programme.

There tends to be a general assumption that the main reason companies engage in anti-corruption compliance measures is a fear of enforcement and the consequent reputational outfall of an enforcement action. Perhaps it is for this reason that the need to strengthen enforcement is so often cited as a panacea for ending corruption worldwide. While enforcement *is* an important motivator for many companies and enforcement efforts in many countries could be greatly improved, in reality, the decision to adopt an anti-corruption compliance programme is usually more multi-faceted.<sup>15</sup>

As a practical matter, the decision to establish an anti-corruption programme was most often taken because of one of the following three reasons: (a) a government agency required the company to establish the programme (perhaps as a result of an investigation or prosecution, 26 of the 124 respondents with an anti-corruption compliance programme, or 21.0%), (b) the company board asked the company to establish the programme (37 or 29.8%), or (c) the company's executive management made the decision to create the programme (41 or 33.1%).<sup>16</sup>

The survey asked respondents to indicate the *primary* reason that a company took steps to establish an anti-corruption programme. Importantly, however, external motivations (such as a government agency requirement) and internal motivations (such as a decision of the board or executive management) often work in tandem and have cumulative effects on a company. For example, a company's board may decide to establish a compliance programme as a result of an incident of misconduct, even if enforcement authorities simultaneously require the company to do so.

This chapter discusses the various reasons study participants gave for deciding to establish or strengthen their anti-corruption compliance programmes.



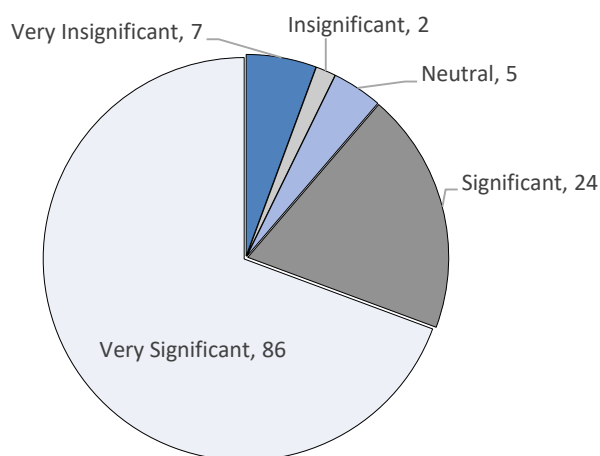
### Box 1. Five scenarios that give rise to a desire to strengthen anti-corruption compliance tools

1. A concern with prosecution and a resulting loss to reputation, whether because of an enforcement action against it or because of seeing enforcement actions taken against other companies in its industry;
2. Intrinsic motivations arising out of the company's culture or the values of key leaders;
3. Customer or investor influence;
4. Incentives created by legal changes in the company's home country; and
5. Changes in company business activities.

### Enforcement and reputational concerns

The overwhelming majority of survey respondents (100, or 80.7%, of the 124 respondents whose companies had an anti-corruption compliance programme) indicated that avoiding prosecution or other legal action was a “significant” or “very significant” factor in their decision to establish the programme. An even greater percentage (110, or 88.7%, of the 124 companies) indicated that a desire to protect the company's reputation was a “significant” or “very significant” factor.

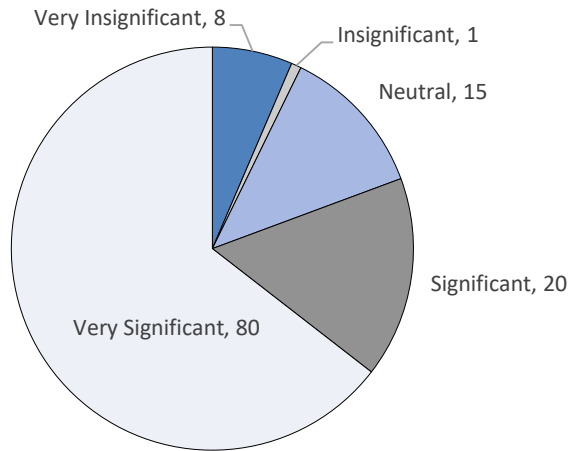
**Figure 4. The significance of protecting company reputation to the decision to establish an anti-corruption compliance programme**



Note: Out of 124 respondents with an anti-corruption programme

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

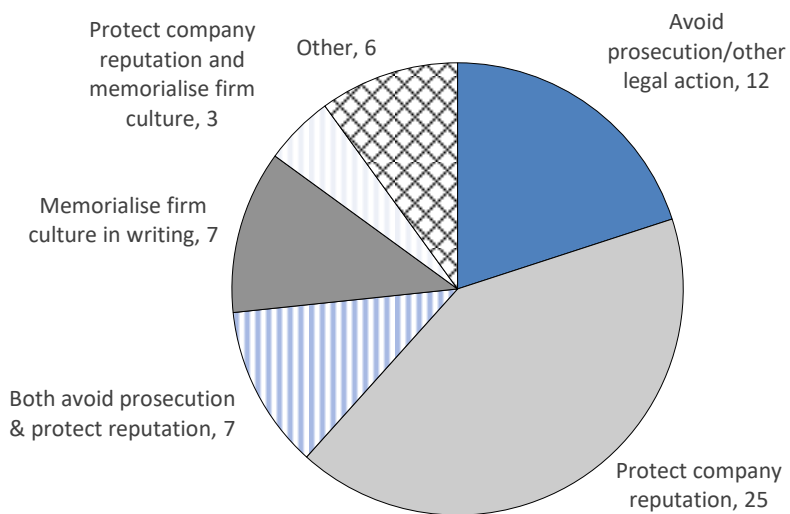
**Figure 5. The significance of avoiding prosecution to the decision to establish an anti-corruption compliance programme**



Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

Respondents were also asked which factor was the strongest motivation for developing an anti-corruption compliance programme. Of the 60 respondents who wrote a response to this question, 25 (41.7%) indicated that protecting the company’s reputation was the top factor, with an additional 12 (20.0%) indicating the avoidance of prosecution/other legal action, 7 (11.7%) indicating that avoiding prosecution and protecting reputation were tied as the top factor, and 3 (5.0%) indicating that protecting reputation and memorialising firm culture in writing were tied as the top factor. In all, over half of the 60 respondents who answered this question (35, or 58.3%) included reputation as a top motivation, while about a third (19, or 31.7%) included prosecutorial concerns as a top motivation.

**Figure 6. The most important factors motivating the establishment of an anti-corruption compliance programme**



Note: Out of 60 respondents who answered the question

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

Concerns regarding enforcement and reputational risk can take a number of different forms. First, a company may decide to adopt an anti-corruption compliance programme because it observes the damaging effects that an investigation or prosecution – and associated news reporting – has had on other companies in its industry. A number of countries have created direct incentives for companies that establish an anti-corruption programme, for example, by providing that they will get “credit” for having a programme if they ever come under investigation for corrupt conduct. Of course, when a company or its representatives has engaged in corrupt conduct, this creates a powerful incentive for the company to develop or strengthen its anti-corruption controls, not only to avoid repeating the offence but also to show law enforcement authorities that the company is taking the issue seriously. In some cases, enforcement authorities may actually require a company to hire a compliance monitor to assist it in establishing or improving its programme.

In short, enforcement and reputational concerns can create motivations to take both preventive and corrective measures against corruption. Corrective measures themselves are also in part preventive, as they not only serve to deal with current shortcomings in a company’s compliance system, but also serve to prevent similar misconduct in the future.

### ***The bystander effect: Watching similarly situated companies face enforcement***

Enforcement and reputational concerns often arise from watching similarly-situated companies face difficulties due to incidents of corruption. In the words of one survey respondent, a company’s reputation is its “most valuable asset.” “You can easily lose [your reputation] by one bad action,” noted another. A third survey respondent noted that it wanted to avoid “bad buzz around the company” and the “heavy risk of fines.”

For example, one survey respondent indicated that it established an anti-corruption programme after “watching other pharma companies being prosecuted and learning from their mistakes and/or resulting best practices.” An interviewee, the compliance counsel of another company, explained, “Many of our competitors have been under investigation by the DOJ [US Department of Justice] or the SEC [US Securities and Exchange Commission], and we have seen the financial results for them. . . . We consider that the size of our company would not support the cost of a prosecution or settlement.”<sup>17</sup> In particular, large multinational prosecutions raise awareness in particular sectors or areas of the world. The compliance representative of a South American company explained that the Odebrecht case has been a “wake-up call for South and Latin America,” noting that news about the case continues to be reported “every day.”<sup>18</sup> The Siemens case, which settled in 2008 had a similar effect on companies.<sup>19</sup>

Respondents pointed out that an enforcement action can have very tangible effects on a company’s viability, recognising that fines for corruption offences have become significant. For example, one survey respondent indicated that the costs of a prosecution would be “difficult to bear” and another noted that the “repercussions [of a government enforcement action would] shut the business.” Yet another noted that the board wanted “to ensure that [the] company has a future and realised that without a robust compliance programme this would not be possible.” One respondent explained that a prosecution could lead to debarment in “key markets such as the US.” Companies also recognise the potential individual implications of an enforcement action. For instance, one survey respondent wrote, “Desire to avoid prosecution/other legal action is most significant because we do not want any director/employee of our company to receive criminal prosecution/receive punishment.”

Table 5 below shows the relationship between enforcement of the crime of foreign bribery in one’s country and having an anti-corruption compliance programme. Not surprisingly, the overwhelming majority of companies from country’s where the foreign bribery offence has been enforced (94 of the 98 respondents from such countries, or 95.9%) had anti-corruption compliance programmes. However, even respondents from countries that did not have enforcement of the foreign bribery offence – or were unaware of enforcement – have adopted anti-corruption compliance programmes. What is the incentive for these companies?

A number of factors are likely at play. First, it may be that the company has adopted an anti-corruption compliance programme due to a corruption risk other than foreign bribery (domestic bribery, for example). Second, it could very well be that the respondent was based in a different country than his or her company, and an enforcement action may have taken place in the company's headquarter country. Third, and perhaps even more importantly, cross-border enforcement of foreign bribery offences is becoming more and more prevalent. Often, a company may be prosecuted in a foreign country for foreign bribery if, for example, it is registered on the foreign country's stock exchange or if part of the foreign bribery offence occurred in that country (e.g., wiring money through a bank account in that country). Thus, companies operating internationally often must consider their enforcement risks in a variety of countries outside of their home country or even the countries where they conduct their business activities.

**Table 5. Actual enforcement and the decision to establish an anti-corruption compliance programme**

Has the crime of foreign bribery been enforced in your country?	Company has anti-corruption compliance programme		Total
	Yes	No	
Yes	94	4	98
No	16	1	17
Do not know	14	1	15
<i>Total</i>	124	6	130

### **Credit for compliance programmes**

A company may also adopt an anti-corruption compliance programme because of positive incentives created by governments. The large majority of foreign bribery cases are resolved through non-trial resolution – over three-fourths (78%) of cases resolved from 15 February 1999 and 30 June 2018.<sup>20</sup> An important mitigating factor in determining the penalty assessed a company in such cases often turns in part on whether or not the company had a corporate compliance programme in place at the time of the offence. In fact, 30 of the 52 systems for resolving foreign bribery cases without a trial in countries Party to the OECD (or 58%) considered this as a factor.<sup>21</sup>

### **Box 2. Incentives for an anti-bribery compliance programme in the United States**

The US Foreign Corrupt Practices Act, enacted in 1977, prohibits bribery by US-affiliated companies in connection with international businesses. However, it creates no incentives for companies to engage in anti-corruption compliance.<sup>1</sup> In 1991, the US government adopted sentencing guidelines that gave “companies the carrot needed to develop such systems. The guidelines impose much lower penalties if a company has an effective compliance system and can prove that any unlawful activity was the work of a rogue employee rather than established company practice.”<sup>2</sup>

In November 2017, the US Department of Justice (DOJ) adopted an FCPA Corporate Enforcement Policy that requires prosecutors to consider the mitigating factors of voluntary self-reporting, full co-operation, and timely and appropriate remediation (as well as the consideration of possible aggravating circumstances) when they decide whether to issue a declination (decision not to prosecute) in a particular case.<sup>3</sup> “Remediation” includes the “[i]mplementation of an effective compliance and ethics program.”<sup>4</sup>

1. WB PREM Note, note 15 *infra*, at 2.

2. *Ibid.*

3. US DOJ, FCPA Corporate Enforcement Policy, 9-47.120 (version updated in March 2019) [hereinafter FCPA Enforcement Policy]. The policy was originally adopted as a pilot programme in April 2016.

4. *Ibid.*, section 3.c.

Over half of the respondents (89, or 68.46%) indicated that having an anti-corruption compliance programme would give them some sort of “credit” in their country, if their company were to be investigated or prosecuted for an alleged foreign bribery offence. This credit could be in the form of a defence for the company (for example, under UK or Italian law) or a mitigation of damages assessed against the company (for example, under US law).

### Box 3. Is having a compliance programme a complete defence from liability?

The Working Group on Bribery has taken steps to clarify that having an anti-corruption compliance programme alone should not exempt a company from liability for a foreign bribery offence.<sup>1</sup> In Italy, for example, Legislative Decree 231/2001 “provides a defence from liability for a legal person that has put in place an organisational model aimed at preventing an offence that has nevertheless occurred.”<sup>2</sup> However, to take advantage of the defence, the legal person must show the following:

That, prior to the offence, the company’s “management had adopted and effectively implemented” an organisational model to prevent the kind of offence that occurred;

The legal person “set up an autonomous organ to supervise, enforce and update the model”;

The “autonomous organ had sufficiently supervised the operation of the model”; and

The individual “committed the offence by fraudulently evading the operation of the model.”<sup>3</sup>

If an incident of corruption were to occur, the court trying the case would “ultimately decide whether the organisational model was adequate to prevent the offence that occurred . . . by examining both the substance of the organisational model and how it was implemented.”<sup>4</sup>

1. OECD NTR Study, at 101 (citing Spain, Phase 3 Report, ¶¶52; Chile, Phase 3 Report, ¶¶151–152).

2. Italy Phase 3 Report ¶39.

3. Italy Phase 3 Report ¶39.

4. Italy Phase 3 Report ¶40.

The possibility of using a compliance programme as a defence or to mitigate damages in a criminal prosecution shows the importance that law enforcement authorities place on companies taking steps to prevent corruption in their business dealings. Interestingly, however, the opportunity to receive some sort of positive reward for a compliance programme *in the case of a problem* did not appear to materially affect whether or not a company in this study had established such a programme. As Table 6 below shows, 14 of the 124 respondents with an anti-corruption compliance programme were not in countries where having such a programme would give them any credit in the case of an offence.

**Table 6. Enforcement credit and the decision to establish an anti-corruption compliance programme**

Does having a compliance programme provide enforcement credit in your country?	Company has anti-corruption compliance programme		Total
	Yes	No	
<i>Yes</i>	87	2	89
<i>No</i>	14	2	16
<i>Do not know</i>	23	2	25
<i>Total</i>	124	6	130

This result is not surprising, however. The decision to establish an anti-corruption compliance programme is a decision about avoiding risk in the first instance, not only by preventing substantive misconduct but also by being able to detect (and potentially report) misconduct when it occurs. Whether or not a company receives some enforcement benefit by having such a programme, the company still faces the prior risk of paying a bribe (and facing the legal and reputational consequences) if it does not have in place measures to prevent and detect bribery and other forms of corruption.

### ***Coming under investigation***

A company that has itself come under investigation or prosecution for corruption concerns will almost certainly have established a compliance programme to avoid similar incidents and perhaps even to obtain credit in sentencing.<sup>22</sup> The study participants bore out this issue. For example, one survey respondent indicated that its programme came about as a “result of a major compliance scandal.” Another respondent noted that after the company faced a scandal, the “board wanted to establish [a] best in industry class programme and subsequently did.” Following a scandal, a company may have a strong “desire to restore operations and faith in the company,” as a survey respondent pointed out. This includes showing enforcement authorities that the company is trying to turn its practice around. Another respondent explained that it was “under ongoing prosecution by governments in various countries when the new compliance programme was established.”

One company’s chief compliance officer explained that after a couple of individuals engaged in a corruption incident that brought the company under investigation, the board realised that it needed better controls to prevent similar conduct from happening again. It began strengthening these controls even while the government investigation was underway, knowing that if it were criminally convicted it could be debarred in its home country, which would have had an enormous financial impact on the business.<sup>23</sup> In making these changes, the company utilised the assistance of a compliance monitor assigned to it by the World Bank.

The effect of enforcement is often felt, not only in the company directly involved, but also in other companies in the group. A company representative explained that its parent company came under investigation by US authorities and was assigned a compliance monitor as part of the settlement. Although the daughter company was not itself involved in the investigation, the parent was a majority shareholder, so the compliance programme was also implemented in the daughter company.<sup>24</sup>

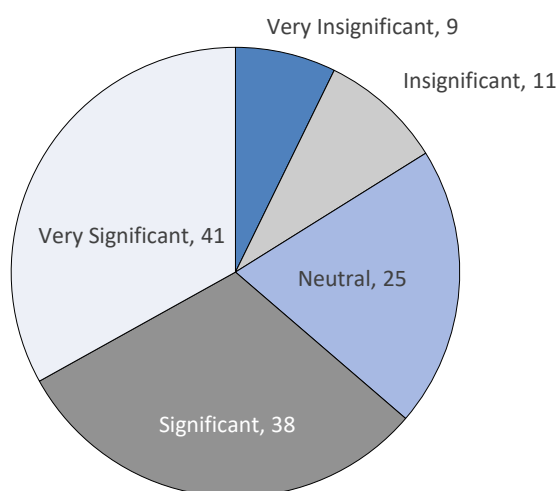
The decision to establish anti-corruption compliance measures following an incident of wrongful conduct is not always entirely by choice. Twenty-eight (54%) of the 52 non-trial resolution systems identified in WGB member countries allow prosecutors or courts to require a company to establish or strengthen an anti-corruption compliance programme as a condition for out of court settlement.<sup>25</sup> Twenty-one (40%) allow for the appointment of a compliance monitor to oversee this programme.<sup>26</sup> This makes out-of-court case resolution a unique forum for incentivising companies to put in place anti-corruption measures, as the opportunity to require a company to strengthen its compliance measures may not be available following a trial.<sup>27</sup>

Finally, even if an enforcement action does not involve corruption, it can still motivate a general change in attitude towards compliance. For example, a compliance officer explained that the company was involved in a scandal in the late 1990s. As a mitigating measure following the scandal, the company put a code of conduct in place for the first time. This code of conduct did not initially address corruption, but it placed the idea of compliance on the company's agenda and paved the way for the company to grow its programme to include anti-corruption along with a number of other social and sustainability issues.<sup>28</sup> Similarly, in financial institutions, anti-corruption compliance programmes often grow as part of anti-money laundering compliance programmes.<sup>29</sup>

## Internal motivations

A large number of respondents (79, or 63.1%) indicated that a desire to memorialise their firm's culture in writing was a "significant" or "very significant" factor in their decision to establish a compliance programme. Seven respondents (11.7%) indicated that this factor was the most important motivation to their desire to establish the programme, with an additional 3 respondents (5.0%) indicating that this factor was tied for the top spot with the desire to protect the company's reputation.

**Figure 7. The significance of a desire to memorialise firm culture in writing to the decision to establish an anti-corruption compliance programme**



Note: Out of 124 respondents with an anti-corruption programme

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

Survey respondents who indicated that this was a significant factor explained that they wanted to do the following:

- "Establish a new ethical culture";
- "Keep an ethical culture, especially as the firm grew in number and expanded offices and clients around the world."
- "Document our commitment to doing business the right way, and that our values (manifest in our culture) are not just words on paper";
- "Create a virtuous circle protecting reputation, promoting brand and winning further business of correct profile";

- “Assure company reputation and to underline our commitment to integrity and ethical standards”;
- “Formalise firm values and culture as part of institutionalisation of the programme”;
- “Show ethical leadership for being a good company”;
- “Have new employees be aware of the importance of anti-corruption”; and
- “Strengthen the organisational culture of fraud and corruption risk prevention”.

As one respondent explained, “Our values establish who we are and drive how we do business. [It is v]ery important to leadership and all employees to document our commitment to doing business the right way, and that our values (manifest in our culture) are not just words on paper.”

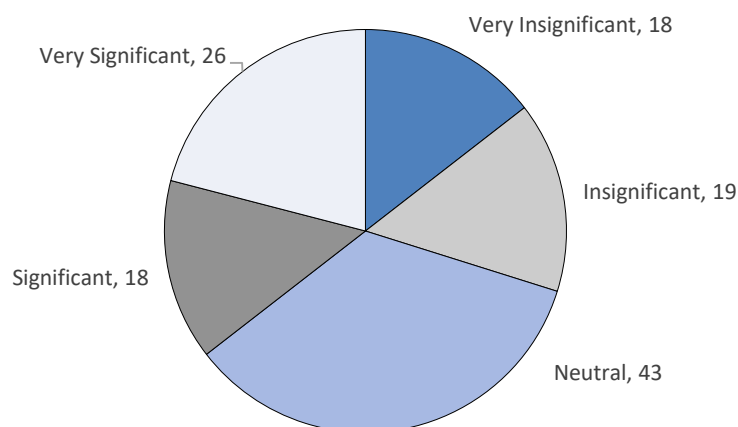
Another stated simply that it was “Just the right thing to do.” Another explained, “As [a] global player, the company needed to have a compliance programme.”

Even considering these statements, establishing and implementing an effective compliance programme can be a costly endeavour. For this reason, it seems likely that the above responses, related to a desire to memorialise firm culture in writing, stem, at least in part, from a desire to boost the company’s image and to avoid the negative effects of not having a written compliance programme if an incident occurs.

## Customer and investor influence

A company may decide to establish an anti-corruption compliance programme in order to be in a stronger position to bid on contracts with customers that require them to have certain compliance measures in place. In fact, 44 (or 35.5%) of the 124 respondents whose companies had an anti-corruption compliance programme indicated that an interest in obtaining government contracts was a “significant” or “very significant” factor in their decision to establish an anti-corruption programme, while 59 (47.6%) indicated that an interest in obtaining non-governmental contracts was a “significant” or “very significant” factor.

**Figure 8. The significance of an interest in obtaining government contracts to the decision to establish an anti-corruption compliance programme**



Note: Out of 124 respondents with an anti-corruption programme

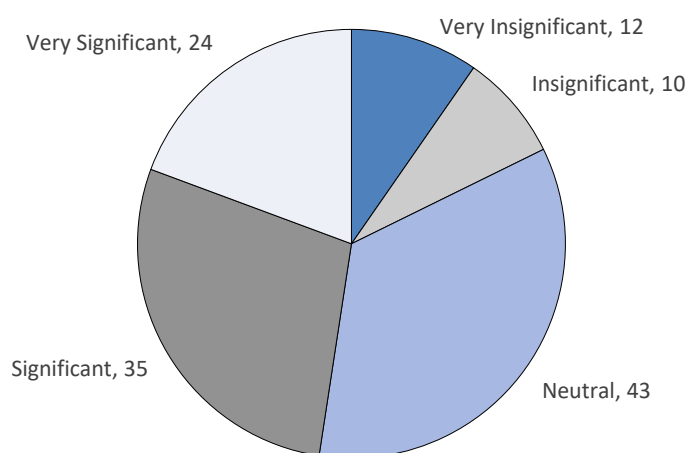
Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

This appears to have been a secondary motivation for establishing a compliance programme, however. For example, when asked what the most significant motivation for establishing a programme was, a survey



respondent noted that it was the desire to avoid prosecution/other legal action *because* this “could result in debarment from key markets such as the US.” None of the survey respondents indicated that a desire to obtain contracts was the primary reason for establishing a programme, but a few did note how other business entities influenced their decision to adopt a programme. For example, one survey respondent noted that a joint venture partner and investor mandated that it have a programme. Another said that having a programme was a requirement from a majority shareholder. Still another noted that “customer interest” led it to implement a programme. Finally, one respondent indicated that it developed a compliance programme to “create a trustworthy and reliable supply chain, based on shared values and respect of the law.”

**Figure 9. The significance of an interest in obtaining non-government contracts to the decision to establish an anti-corruption compliance programme**



Note: Out of 124 respondents with an anti-corruption programme

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

Pressure from the supply chain may be a particularly strong motivator in the case of SMEs, which may not fear enforcement of corruption offences, but do want to maintain business relationships with larger companies. Often, large companies that have already adopted an anti-corruption programme may encourage – or even require – smaller companies with which they do business to adopt similar measures.<sup>30</sup> For example, a large company might require its subcontractors to sign a certification that they will abide with the larger company’s anti-corruption compliance policy. If this happens often enough—and with enough different companies—the small companies may choose to adopt their own policies.<sup>31</sup> A case study from a 2017 study illustrates how this pressure may build:

[The SME’s] managing director and compliance manager explained that all of the large companies it did work for either required it to have a code of conduct, or required it to answer a lengthy list of additional questions about ethics in order to get hired. It was easier for [the SME] to develop its own code of conduct rather than having to go through the lengthy vetting process each time it entered a contract. The managing director explained, “The process is simple, if you can just produce [a code of conduct].”<sup>32</sup>

Another company involved in that study emphasised the importance of educating suppliers that do not have a compliance programme and “spreading the idea of anti-corruption with its partners in general.”<sup>33</sup> A representative of an Italian company involved in that same study explained that it “will not qualify a supplier or other third party if it does not demonstrate its commitment to certain ethical standards” and it “puts clauses in its contracts with business partners that require them to comply with anti-corruption, antitrust, and other ethical and legal requirements.”<sup>34</sup> Another company representative explained that it opens up its anti-corruption training to its suppliers and provides them with advice about its anti-corruption programme.<sup>35</sup>

#### Box 4. Helping smaller firms as an opportunity for large firms

A 2017 study reported on an interesting initiative undertaken by a large German company to assist the SMEs with which it did business (as well as to protect itself). The management of the company, anonymised here as Delta, asked the question, “What does Delta stand for?” and concluded that the company wanted to reduce the potential bad impacts of its operations on the societies in which it operated. Accordingly, in 2012, the company began to create procedures for conducting due diligence of its 30,000 suppliers. As part of its process of learning about these companies, Delta undertook exceptional measures:

*In order to inform its development of due diligence procedures process, Delta reached out to randomly selected companies with the offer to provide a risk assessment. . . . [P]articipating in the review was purely voluntary and helped Delta understand the risks that its suppliers faced, as well as helping its suppliers to understand how they could ameliorate these risks. One thing that was important to Delta was to take the fear from its suppliers that they would be “shot at the end” if the results of the assessment were bad.<sup>1</sup>*

As part of this initial review, Delta contacted one of its Italian suppliers, an SME anonymised here as Sigma. At the time, the SME “had a strong sense of ethics, but it did not have any policies or procedures dealing with the risk of foreign bribery.” Sigma agreed to Delta’s offer of “free consulting advice regarding compliance issues and readily agreed to the project.”<sup>2</sup>

In early 2013 Delta sent representatives to Sigma to audit the company, conduct interviews with key personnel, and visit its factories. The review was done in complete confidentiality and involved not only corruption issues but also a host of other issues, such as child labour and gender equality. Following the review, which lasted a few days, Delta provided Sigma with a document that provided recommendations for Sigma. One gap Delta found was that Sigma had an ethical corporate culture, but its commitment to ethics had not been memorialised in writing.<sup>3</sup>

Sigma’s marketing manager used these recommendations to begin strengthening their compliance standards. The marketing manager “explained that the opportunity to have outside representatives do a deep dive of the company was ‘incredible.’ She further explained that it was a ‘great opportunity because for a company of our size it’s hard to keep up to date on best practices.’”<sup>4</sup>

Delta used information it gained from companies like Sigma to assist it in implementing a global due diligence system for suppliers in 2014. The process involves two tools, a quick review process for less risky suppliers and a more rigorous review process for suppliers from risky foreign markets, that show “red flags” in a quick review, or that are randomly selected. When Delta undertakes a more rigorous review of a supplier, it “provides a risk map to the supplier following the review, so that the supplier can see where its processes are weak or strong.”<sup>5</sup> Delta may also request that a supplier “undertake certain measures to guard against certain risks.”<sup>6</sup>

1. Reed, “International Business Community,” at 205, 284.

2. Ibid. 282.

3. Ibid., 282–283.

4. Ibid., 283.

5. Ibid., 284.

6. Ibid., 284.

## Legal changes in the home country

Two additional factors came out through comments and interviews, although they were not directly addressed in the survey. First, survey respondents and interviewees indicated that changes in the laws of their countries has influenced them in adopting or strengthening an anti-corruption compliance programme.

For example, at the time of the survey, one of the newest legal developments among OECD Working Group on Bribery countries was the French Law 2016-1691 of 9 December 2016 regarding transparency, anti-corruption, and economic modernisation (Sapin II).<sup>36</sup> Four survey respondents included comments about the new French law (out of 16 respondents based in France). As one survey respondent from France explained, “While we’ve had a programme in place for over a decade, Sapin II has driven us to embrace a distinctly higher standard of controls.”

### Box 5. The requirements of France’s new anti-corruption law

Sapin II came into force on 1 June 2017 and requires any French company with over EUR 100 million yearly turnover and more than 500 employees to implement a preventative compliance programme.<sup>1</sup> The compliance programme must include eight elements:

1. An assessment of corruption risks;
2. A code of conduct;
3. An internal whistleblower reporting system;<sup>2</sup>
4. Due diligence of third parties (such as suppliers and consultants);
5. Accounting controls to ensure that books and records do not conceal illicit expenses;
6. Compliance training;
7. Internal controls to evaluate and monitor the programme’s effectiveness; and
8. Disciplinary measures.

Sapin II also establishes a French anti-corruption enforcement agency, the Agence Française Anti-Corruption (AFA). The agency is tasked with overseeing the effectiveness of company compliance programmes, disciplining companies that do not comply with the legal requirements, and providing advice.<sup>3</sup>

1. Interview with Company 10 representative.

2. This provision entered into force on 1 January 2018.

3. Interview with Company 10 representative.

Another country that has become more aware of anti-corruption compliance issues is Colombia, which, at the time of this study, is in the process of OECD accession. Colombia’s Law 1778 of 2016 (*Ley Antisoborno*, or Anti-Bribery Law), adopted as result of the recommendations from the Working Group on Bribery, requires any company in the pharmaceutical, infrastructure, mining, energy, manufacturing, and information and communication technology (ICT) sectors—as well as any other company meeting certain levels of gross income, total assets, or employees—to undertake an anti-corruption compliance risk assessment and then adopt a compliance programme.<sup>37</sup> Failure to do so can subject a company to financial penalties.<sup>38</sup> About 1,000 companies are currently required to comply with this requirement.<sup>39</sup> One company representative in the country explained that the idea of compliance “is quite new in Colombia.”<sup>40</sup> She shared that adoption of the 2016 law has moved companies to think about the issue for the first time, stating, “Before we didn’t hear about compliance, and now we are thinking about it.”

Similarly, after the United Kingdom adopted the UK Bribery Act 2010, many UK companies that had not focused on anti-corruption measures previously began to take anti-corruption compliance more seriously.<sup>41</sup> Under that act, if “a person associated with a relevant commercial organisation” engages in bribery, “[t]he onus then shifts to the organisation to prove . . . that it had in place adequate procedures designed to prevent persons associated with the organisation from” engaging in such wrongful conduct.<sup>42</sup>

However, a law does not have to be directly aimed at creating a compliance programme to have impact on company actions. Under EU law, large companies are required to report “non-financial” information on “the way they operate and manage social and environmental challenges.”<sup>43</sup> The European Commission has also published non-binding guidelines to assist companies in complying with this requirement.<sup>44</sup> This requirement, accompanied by individual country laws regarding corporate social responsibility (CSR) reporting, has encouraged companies to think about their social impact, including in the area of corruption. As one European compliance officer explained, “It is mentioned in our annual reporting legal framework that we need to report on CSR. Within that, anti-corruption is an element. Because of that legal framework, all . . . companies of a certain size are forced to have an opinion and write what they do. This brings it to mind.”<sup>45</sup>

## Changes in company business activities

The second factor that came out through comments and interviews was the effect of changes in business activities on a company’s decision to take a closer look at its anti-corruption compliance. For example, one US company undertook a risk analysis on an acquisition it was considering in Latin America. As part of that risk assessment, one of its external auditors recommended that the company develop an anti-corruption compliance programme and hire a compliance director in Latin America. The company hired an experienced professional to assist in developing and implementing a compliance programme that included components dealing with corruption.<sup>46</sup> In particular, because of the acquisition, the company had increased interactions with the government, due to special regulatory requirements in the new market, and the company desired to assist its employees in carrying out this work effectively and legally. Ultimately, the new acquisition came to represent over 70 percent of the company’s global revenue.<sup>47</sup>

Another company (a state-owned enterprise, or SOE) established a compliance programme when it decided to sell some of its stock to the public. The company’s management wanted to convey confidence to potential investors (both locally and internationally), as it was a majority government-owned company. It was particularly interested in helping potential investors recognise that the company’s decisions were not politically motivated. To address this issue, management implemented a number of best practices in corporate governance, including robust internal controls and a compliance function.<sup>48</sup>

# 3 How do companies assess their corruption risk?

## The importance of pre-programme and ongoing risk assessments

The OECD's *Good Practice Guidance* provides that conducting a risk assessment is a key first step in developing an anti-corruption compliance programme:

*Effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery should be developed on the basis of a risk assessment addressing the individual circumstances of a company, in particular the foreign bribery risks facing the company (such as its geographical and industrial sector of operation).<sup>49</sup>*

Conducting a risk assessment prior to engaging in a compliance programme allows a company to identify the business nodes where it is most likely to have problems and create mechanisms and controls up front to guard against wrongful conduct. It also allows a company to identify those personnel and business areas where training and other awareness-raising activities should be targeted, as well as to determine potential areas of conflict between the compliance programme's requirements and other corporate policies and procedures and resolve these conflicts before they occur.<sup>50</sup> "[E]ach enterprise's own risk assessment exercise is unique, depending on that enterprise's industry, size, location," and so forth.<sup>51</sup> The compliance, legal, internal audit, accounting/finance, procurement, sales and marketing, supply chain, human resources, corporate affairs, and risk management functions of a company may all have a role to play in helping a company to determine its unique risks.<sup>52</sup>

Ten years ago, it was not uncommon for a company to adopt an anti-corruption policy or procedures without really thinking through what specific corruption risks it faced in its business sector and areas of business. Now conducting a risk assessment prior to setting up an anti-corruption compliance programme is viewed by governments, companies and others as an integral first step in compliance.<sup>53</sup> As one corporate compliance company has stated, "Performing a risk assessment is not just the most important thing a compliance officer might do. Usually, it's also the first thing a compliance officer does, for any hazards or risks that come along."<sup>54</sup>

About two-thirds of 123 respondents<sup>55</sup> with an anti-corruption compliance programme (79 respondents, or 64.2%) indicated that their company undertook a risk assessment prior to establishing its anti-corruption compliance programme.

The obligation to engage in a risk assessment does not end once the programme has been established, however. The OECD's *Good Practice Guidance* provides the following:

*Such circumstances and risks [of foreign bribery] should be regularly monitored, re-assessed, and adapted as necessary to ensure the continued effectiveness of the company's internal controls, ethics, and compliance programme or measures.<sup>56</sup>*

### Box 6. Steps in an effective risk assessment

In 2013, the OECD, the United Nations Office on Drugs and Crime (UNODC), and the World Bank jointly issued the *Anti-Corruption Ethics and Compliance Handbook for Business*.<sup>1</sup> The handbook synthesises international best practices and principles regarding anti-corruption compliance. It suggests the following steps for a corruption risk assessment:<sup>2</sup>

1. Establish a process for the review of the company's corruption risks, including identifying key stakeholders, the type of data that should be collected, and the framework for evaluation.
2. Identify the risks inherent in the company's operations. This may include, for example, an assessment of the types of transactions and arrangements involving government employees and third parties, the locations of business, etc. It may also involve the review of past audit reports, surveys of current employees or external parties, and brainstorming sessions.
3. Rate the inherent risk for each of the situations that could lead to potential corruption by examining both probability of the situation occurring and the potential impact if it were to occur. This rating looks at "the overall risk level of each scheme [of potential corruption] without consideration of existing controls."<sup>3</sup>
4. Identify and rate the current company controls that could mitigate the inherent risks, including both controls that prevent the risk and controls that detect the risk.
5. Calculate the "residual risk," that is, the risk that remains "even after considering the risk reduction impact of mitigating controls."<sup>4</sup>
6. Develop a plan for taking further steps to mitigate the residual risk.<sup>5</sup>

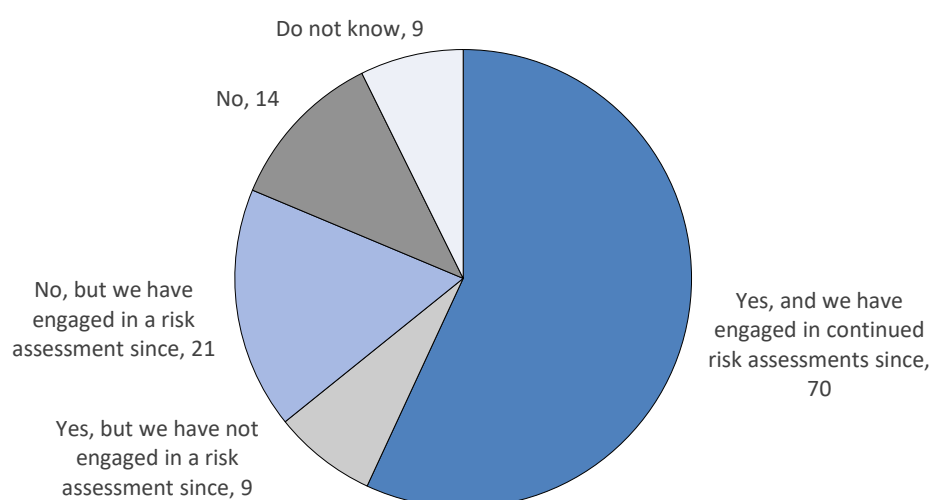
Regardless of what is learned from the risk assessment, the risks should be documented, so that they can be followed as the compliance programme is implemented.<sup>6</sup>

Management involvement is critical at all stages of the risk assessment. The handbook explains,

*Without high-level management support, risk assessments run the risk of being an academic exercise without any practical impact on an enterprise. To mitigate this risk, active involvement of management is paramount. Management should be responsible for performing the risk assessment and reporting periodically to those charged with governance on the status and results of the anti-corruption risk assessment as well as on the implementation of any resulting risk mitigation action plans.<sup>7</sup>*

1. Ethics and Compliance Handbook.
2. Ibid., at 10–14; see also UNGC Risk Assessment Guide.
3. Ethics and Compliance Handbook, at 11.
4. Ibid., at 12.
5. Ibid., at 10–12.
6. Ibid., at 13.
7. Ibid., at 14.

**Figure 10. Did your company engage in a risk assessment prior to establishing its anti-corruption compliance programme?**



Note: Out of 123 respondents with an anti-corruption programme

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

Engaging in ongoing risk assessments allows a company to understand the potential weaknesses in its programme, as well as to align its programme with new circumstances, both within the company itself and in the sectors and countries in which it operates.

Nearly all of those 79 respondents (70, or 88.6% of the 79) indicated that they have engaged in additional risk assessments since their companies established their programmes. On the other hand, 21 of the 35 respondents that did not conduct an initial risk assessment (or 60.0% of that group) engaged in an anti-corruption risk analysis since developing their programme. In all, 100 respondents (81.3%) had engaged in an anti-corruption risk analysis at some point in time.

### Box 7. Ongoing risk assessment and review

A company's business activities may change, as may the anti-corruption risks facing the company in the areas of the world where it conducts its business. For this reason, the OECD's Good Practice Guidance recommends that companies engage in "periodic reviews of the ethics and compliance programmes or measures, designed to evaluate and improve their effectiveness in preventing and detecting foreign bribery, taking into account relevant developments in the field, and evolving international and industry standards."<sup>1</sup>

Similarly, the Ethics and Compliance Handbook explains,

*"Effective anti-corruption risk assessment should be performed periodically, e.g. on an annual basis. There also may be triggering events such as entry into new markets, significant reorganisations, mergers, and acquisitions that will create opportunities for refreshing the risk assessment. Continually deploying resources in the most effective manner requires a current and accurate understanding of the risks."<sup>2</sup>*

1. OECD Good Practice Guidance, part A.12.

2. Ethics and Compliance Handbook, at 14; see also SFO, "Evaluating a Compliance Programme," SFO Operational Handbook (17 January 2020) [SFO Evaluation Standard], at 6, <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/sfo-operational-handbook/>.

## Perceived areas of greatest risk

As indicated above, 79 respondents indicated that their company engaged in a risk analysis before they developed and implemented their anti-corruption programmes. For these 79 respondents, Table 7 shows the areas covered by these companies' anti-corruption risk assessments.

**Table 7. Areas of anti-corruption risks addressed by companies setting up compliance programmes (out of 79 respondents that engaged in a pre-programme risk assessment)**

Areas of Anti-corruption Risk Analysis	Number of respondents	%
<i>Interactions business has with government representatives</i>	72	91.1
<i>Geographical areas where company does business</i>	64	81.1
<i>Regulatory frameworks governing the company's business</i>	63	79.8
<i>Accounting systems</i>	46	58.2
<i>Employee readiness to deal with corruption risks</i>	46	58.2
<i>Other</i>	6	7.6

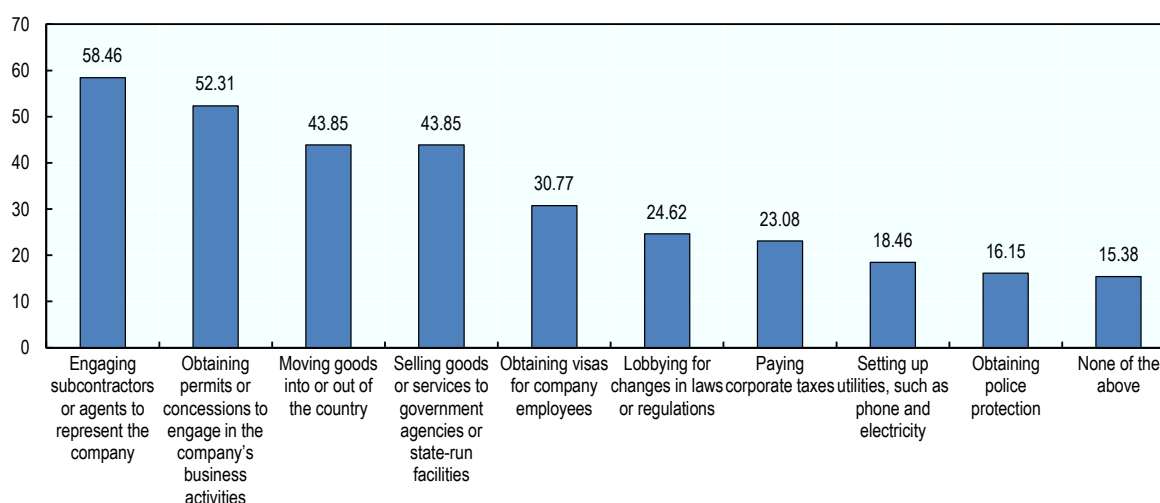
Not surprisingly, dealing with third parties, such as subcontractors, partners, and other representatives, figured particularly prevalently in companies' assessments of their corporate risk. Government enforcement agencies have made clear that a company cannot use a third party to accomplish a corrupt act that the company itself would be barred from doing.<sup>57</sup> Many of these areas of risk assessment are quite industry specific, however. For example, the healthcare sector (including pharmaceutical and medical device companies) is highly regulated, due to the high impact that healthcare goods and services have on the lives of individuals.<sup>58</sup> Thus, the risk of running afoul of regulations that deal with the manufacture and sale of healthcare goods to public hospitals is a risk that healthcare companies would be highly concerned about. In addition, since many healthcare goods are sold through representatives to state-owned healthcare facilities, healthcare companies must be very sure that its employees and external sales representatives understand the rules by which they are bound. On the other hand, an extractive industries company deals with the government, but in a very different way. A mining or forestry company may need to deal with national governments to obtain permits or concessions to use public land. It also may need to work with government agencies to obtain the infrastructure to access to the public land, such as roads and electricity. Furthermore, large extractive projects often occur in countries with cultural sensitivities, vulnerable populations, and weak rule of law; these must all be taken into account when an extractive company considers its corruption risks.

Respondents to the survey also shared the situations they believed were most likely to present a risk of corruption when their company operates abroad (see Figure 11). Not surprisingly, the factors companies take into account in their pre-programme risk assessments largely correspond to the perceived areas of greater risks.

Survey respondents were most likely to cite the use of third parties, such as subcontractors or agents, as an area of high corruption risk, followed by obtaining permits or concessions from the government. However, the fact that some areas of potential risk, such as obtaining police protection or setting up utilities, were only ticked as important to some respondents does not necessarily mean that they are less problematic for those who must deal with them. In fact, a plethora of resources are available to assist companies in dealing with the risk of using third parties in their business transactions, but few resources are available to assist companies with dealing with local government entities. For a company that relies on local officials to provide security, water, or electricity, the ability to obtain these services without paying a bribe may make or break the company's ability to survive on the ground.



**Figure 11. Respondents' perceived areas of risk for their companies (out of 130 total respondents)**



Note: Out of 130 total respondents

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

## Benefits likely to be requested

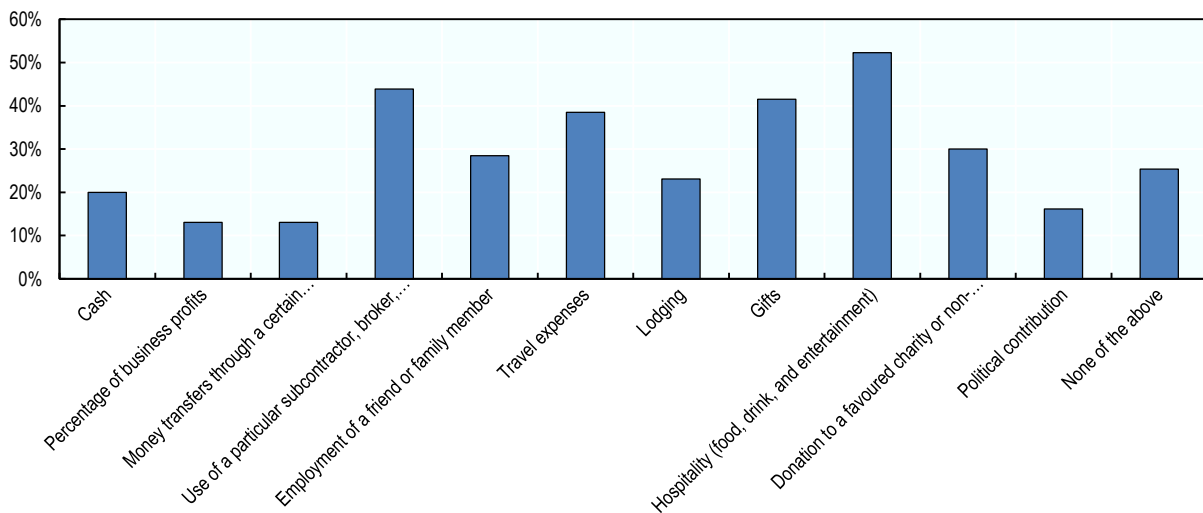
What types of benefits are government officials and agents likely to request from companies? Some benefits, such as a request for cash or a percentage of business profits, are almost always illegal for a company to provide to government officials and agents. Other benefits, such as hospitality, may often be provided in the normal course of business and only become illegal when particularly lavish or provided with a motivation to influence the official or agent in some way. But the large majority of benefits that may be requested fall into an uncertain grey area that may turn on the purpose and value of the benefit. For example, providing a small gift of little intrinsic value (such as a ballpoint pen containing a company's logo) would generally not be considered corrupt conduct, but providing an expensive crystal vase very well might. Similarly, it may be appropriate in some circumstances to provide travel expenses to a government official for a distinct purpose (for example, to transport a crop inspector to a field site for an inspection), but it is often inappropriate to provide travel and entertainment expenses when they constitute a significant portion of the travel and are unrelated to the business purpose of the trip.<sup>59</sup>

In other cases, the procedure used to provide the benefit may raise red flags, such as a request for money transfers through a certain company or bank account or the use of a particular agent. Since these are often tools used to hide bribes and other illicit proceeds of crime, they always warrant a close look, even though in some instances there may be a justifiable reason for complying with the request.<sup>60</sup>

Companies were asked to indicate which benefits an official or agent was most likely to request from their companies. Figure 12 shows the results of this survey question.

Given the fact that many business meetings involve food or drink, it is not surprising that the largest percentage of respondents indicated that they were likely to be asked for hospitality, such as food, drink, or entertainment. In fact, in many cultures there is an expectation that such hospitality will be provided in connection with a business meeting. Requests for travel expenses or lodging may also be closely related to business purposes, although companies often must take care to ensure that such reimbursement of such expenses is not abused. Gifts may present a particularly tricky dilemma because of cultural expectations in some parts of the world, as well as differing views about what gift value would be considered "reasonable and proportionate."<sup>61</sup>

**Figure 12. Benefits government officials and agents are most likely to request from respondent companies**



Note: Percentage of all 130 total respondents

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

About a third of respondents indicated that government officials or agents were likely to request that they make a charitable contribution. If “given in good faith to a reputable institution or organisation,” a charitable contribution may well be acceptable.<sup>62</sup> However, companies must take care to ensure that the gift is being given for an appropriate purpose (that is, not to improperly influence the official); this often includes due diligence of the charity to make sure it is not tied to the official in some way.<sup>63</sup> Political contributions are often more problematic, as they are given to directly benefit the official, and therefore must be treated with great care.

Requests for the use of particular subcontractors or agents is a particularly thorny area. In some countries, companies are required to conduct business through local agents, and public officials may be the best positioned to advise them on who to hire. But relying on the recommendation of a public official without conducting appropriate independent due diligence creates the risk that the agent has been recommended because of its connection to the official instead of its technical skills. Given that three-fourths of all foreign bribery resolutions in WGB countries have involved bribery through an intermediary,<sup>64</sup> companies are well-advised to be very cautious about the individuals and companies they hire to interact with the government. In fact, hiring anyone – including an official’s friend or family member – on an official’s recommendation requires extra due diligence. For example, providing a job to an official’s daughter might very well be construed as providing an indirect benefit to the official him/herself.

Interestingly, fewer respondents indicated that government officials and agents were likely to request “traditional” bribes, such as cash (26 respondents, or 20.0%) or a profit share (17, or 13.1%), from their company. Nonetheless, this risk can be significant for some companies. For example, manufacturers trying to move goods in or out of a country may be asked for small payments from customs agents to process their goods. Although small in amount, to prevent and detect such payments companies need to put in place accounting, training, and oversight measures.

## Actual solicitations

About half of the survey respondents (60, or 46.2% of the 130 survey participants) indicated that they had heard of an employee or agent of their company being solicited for a bribe at some point in time. Forty of those who reported a known solicitation indicated that the bribe was not provided, while 11 indicated that the item requested was provided (7 of those 11 noted that the item was provided without company approval and later discovered).<sup>65</sup> Of course, these responses need to be viewed with caution, as companies may be unlikely to report solicitations or bribes given, even in an anonymous survey. What the responses to these questions can tell us, though, is that a good portion of respondent companies *do* receive solicitations for inappropriate benefits. Having an anti-corruption compliance programme in place does not prevent a company from receiving solicitations; however, by putting in place measures to prevent and detect corruption, a company is in a better position to provide guidance and avenues for those confronted with the risk, as well as creating a plan for remedial action if the a corrupt benefit is actually provided. Finally, publicising its policy can put those who might attempt to solicit a bribe on notice that such behaviour will not be tolerated by the company.

# 4 What anti-corruption measures do companies adopt?

As noted in previous chapters, 124 of the 130 companies that participated in the survey indicated that they had an anti-corruption compliance programme. This does not suggest that the vast majority of companies have anti-corruption compliance programmes, but only that the vast majority of companies that had an interest in taking part in this study had anti-corruption compliance programmes. But what does it actually mean to have adopted an anti-corruption compliance programme?

At its heart, an anti-corruption compliance programme consists of those mechanisms that a company undertakes in order to prevent and detect corrupt conduct by its employees and other representatives. The UK Serious Fraud Office has explained,

*A “compliance programme” is an organisation’s internal systems and procedures for helping to ensure that the organisation – and those working there – comply with legal requirements and internal policies and procedures.*<sup>66</sup>

The exact framework of such a programme can vary widely among companies, based on their business activities, perceived risks, and even the resources and effort they put into developing and implementing the programme. Nonetheless, most compliance programmes include, at a minimum the elements listed in box 8.

## Box 8. Common elements of an anti-corruption compliance programme\*

1. A company code of conduct;
2. A policy that explicitly prohibits corruption;
3. Training mechanisms and oversight mechanisms for employees;
4. Oversight mechanisms for partners, suppliers, consultants, and other company representatives;
5. Additional policies and procedures aimed at preventing and detecting the most common kinds of corruption the company is likely to face; and
6. Procedures for dealing with suspected incidents of corruption when they arise.

\* See, e.g., Transparency International, *Business Principles for Combating Bribery* (2013) [hereinafter TI Business Principles]; WB Prem Note.

This chapter discusses the elements in the above box, based on responses by participants in the study. It begins by discussing the importance of a company code of conduct, which often covers a number of compliance issues other than corruption, and an explicit policy prohibiting corrupt conduct. It then discusses more specific compliance mechanisms adopted by companies, including measures with regard to employees and third parties, a plan of action for dealing with suspicions of corruption, and other policies specific to certain types of activities that may present particular corruption risks (such as gift-giving and travel). It ends by discussing how companies provide oversight of the programme.

### Box 9. Developing the anti-corruption compliance programme

Transparency International suggests that companies develop anti-corruption compliance programmes that “clearly and in reasonable detail, articulate[] values, policies and procedures to be used to prevent bribery from occurring in all activities under [their] effective control.”<sup>1</sup> In developing the programme, TI makes the following suggestions:

- The programme should be designed and improved based on a “continuing risk assessment”;
- The programme “should be consistent with all laws relevant to countering bribery in each of the jurisdictions in which the enterprise transacts its business”;
- The programme should be developed “in consultation with employees, trade unions or other employee representative bodies and other relevant stakeholders”; and
- The programme should take into account “emerging best practices.”<sup>2</sup>

1. TI Business Principles, at 6.

2. Ibid.

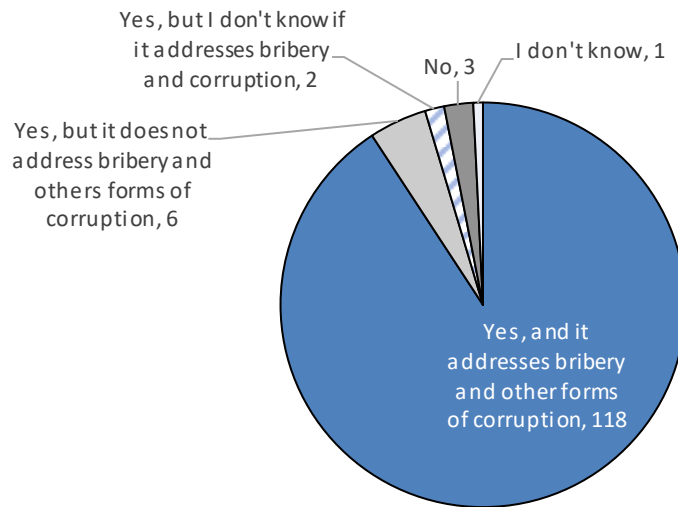
## The code of conduct

A code of conduct is a high-level policy document that sets forth an organisation’s mission, values, and beliefs, along with general principles of conduct that guide its work. One could describe it as the ethical compass of the organisation. A code of conduct will generally begin with a mission statement before it sets forth rules for employees. These rules should be clear, but may be somewhat broad. For example, a code of conduct may require employees to act professionally and ethically and to avoid inappropriate conduct such as corruption, fraud, conflicts of interest, and harassment.

A code of conduct should set forth clear rules about what type of behaviour is expected from company employees. However, because it is a broadly applicable policy document, it will not generally set forth specific procedures for complying with those broad rules. For example, a code of conduct may explicitly bar bribery, but likely will not set forth detailed procedures to clarify when inviting a customer to dinner would be considered a bribe or how to deal with a solicitation for a bribe. This is the purpose of the anti-corruption policy and related policies and procedures.

Nevertheless, a company code of conduct is an important foundation upon which an effective anti-corruption compliance programme is built.<sup>67</sup> It “testifies to the top management’s decision at the highest level to commit the organization to prevent and detect corruption.”<sup>68</sup> The vast majority of survey respondents indicated that their company had a code of conduct (126, or 96.9%). Three respondents indicated that they did not have a code of conduct and one did not know. Of the 126 respondents that indicated that they had a code of conduct, 118 (or 93.7%) indicated that their code of conduct addressed bribery and other forms of corruption, with 6 respondents (4.8%) indicating that their codes of conduct did not address bribery and corruption and 2 respondents (1.6%) not sure.

Interestingly, only 121 of the 124 respondents (97.6%) with an anti-corruption compliance programme indicated that their company has a code of conduct. Of those 121 respondents, 4 (3.3%) indicated that the code of conduct did not address bribery and corruption, and one (0.8%) did not know. In some companies, the code of conduct is a document that sets forth broad aspirational principles, so it is perhaps not entirely surprising that some codes of conduct do not explicitly reference bribery and corruption. However, all companies that have an effective anti-corruption compliance programme should have a clear, written policy prohibiting corruption and bribery. The next section discusses this aspect.

**Figure 13. Companies with codes of conduct**

Note: Out of 130 total respondents

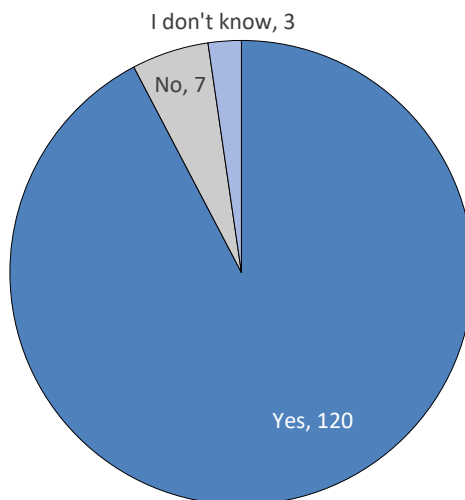
Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

### An explicit and visible anti-corruption policy

Having a code of conduct is an important first step towards creating a corporate compliance culture. However, as mentioned above, a code of conduct may be quite general and thus may not even explicitly address bribery and corruption. The OECD's *Good Practice Guidance* recommends that companies adopt a “clearly articulated and visible corporate policy prohibiting foreign bribery.”<sup>69</sup>

Respondents to the survey were asked whether they had a policy that “clearly prohibits corruption and bribery” (the reference to foreign bribery was excluded from the survey to capture general corruption results). The majority of respondents (120, or 92.3%) indicated that they had such a policy, 7 (5.4%) indicated that they did not have such a policy, and 3 (2.3%) indicated that they did not know (see figure 14). One statistic of concern is that only 118 of the 124 respondents (95.2%) who indicated that their company had an anti-corruption compliance programme were able to confirm that their company had an explicit policy prohibiting corruption as part of this programme. Four respondents (3.2%) responded that they did not have such a policy and 2 (1.6%) did not know. Employees and other company representatives should have a clear rule that defines their responsibility not to engage in corruption.

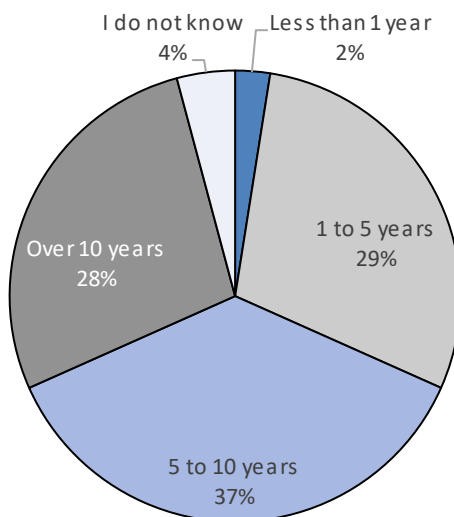
**Figure 14. Companies with anti-corruption policies**



Note: Out of 130 total respondents  
 Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

As the graph below shows, several of the companies that participated in this study have had a policy prohibiting corruption and bribery for quite a long time; in fact, 33 respondents (27.5% of the 120 respondents with an anti-corruption policy) indicated that their company has had an anti-corruption for longer than 10 years.

**Figure 15. Length of time anti-corruption policies have been in place**



Note: Percentage of 120 respondents with an anti-corruption policy  
 Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

### Box 10. What is a clearly articulated corporate policy?

The OECD's Good Practice Guidance recommends that an anti-corruption policy be "clearly articulated."<sup>1</sup> What does this mean? For a start, the policy must be clear. For example, it may be helpful for a company to define what types of corrupt conduct it means to prohibit. It must be clear that corruption refers not only to providing cash, but also to many other benefits that are provided with the purpose of improperly influencing an official. In addition, it should be clear that corruption includes not only providing an improper benefit, but also offering, promising, authorising, or accepting such a benefit.<sup>2</sup>

Furthermore, the scope of application of the policy must be absolutely clear. A best practice is that the policy apply to all directors, officers, and employees, as well as to controlled subsidiaries.<sup>3</sup> In addition, the company should ensure that other individuals and entities that represent it, such as joint venture partners, agents, consultants, brokers, suppliers, and other intermediaries are prohibited from engaging in prohibited corrupt conduct when acting on the company's behalf.

1. OECD Good Practice Guidance, part A.2.

2. See, e.g., TI Business Principles, at 4, 7–8; International Chamber of Commerce, ICC Rules on Combating Corruption (2011) [hereinafter ICC Rules], art. 1(a); Asia-Pacific Economic Cooperation (APEC), Anti-Corruption Code of Conduct for Business (2007) [hereinafter APEC Code of Conduct], principle 1, <http://publications.apec.org/Publications/2007/09/APEC-Anticorruption-Code-of-Conduct-for-Business-September-2007>; see also OECD Good Practice Guidance, part A.6.

3. ICC Rules, art. 1.

Box 10 discusses how a company might ensure that its policy is "clearly articulated." However, an effective policy must also be "visible."<sup>70</sup> Even if a company has a policy against corrupt conduct, this policy will only be meaningful if personnel know about it. A company should not naively believe that it has fulfilled its obligation to fight corruption by its employees and representatives if the anti-corruption policy is not both readily available to read and deeply embedded as part of the company culture. As the UK SFO has explained, "A key feature of any compliance programme is that it needs to be effective and not simply a 'paper exercise.'"<sup>71</sup> There are a number of ways companies can ensure that employees know about the anti-corruption policy, and Table 8 shows the methods used by the 120 respondents whose companies had such a policy. Many respondents indicated that they make their anti-corruption policies available through more than one means.

**Table 8. Publication of the company's anti-corruption policy, percent of 120 respondents whose companies have a clearly articulated anti-corruption policy (% respondents)**

Where is the company's anti-corruption policy available?	%
<i>On the company's intranet site</i>	90.0
<i>On the company's internet site</i>	53.3
<i>In a hard copy employee handbook</i>	31.7
<i>In a stand-alone hard copy form distributed to all employees</i>	20.0
<i>Posted in a visible place in the company's premises</i>	19.2
<i>Other</i>	6.7

One thing that is evident from Table 8 is that companies today rely more heavily on online resources (such as an intranet or internet site) than on hard copies. About half of the respondent companies with an anti-corruption policy publish this policy on their publicly available internet site. As discussed previously, more and more companies recognise the reputational benefits of having an anti-corruption programme in place, which explains why they might want their customers, investors, and other potential stakeholders to be able to view the policy. The use of electronic resources to circulate the anti-corruption policy reflects society at large, but it also shows that employees do not have to be at their office to access their company's anti-corruption policies. So long as they can access the internet, the policy is available to them.



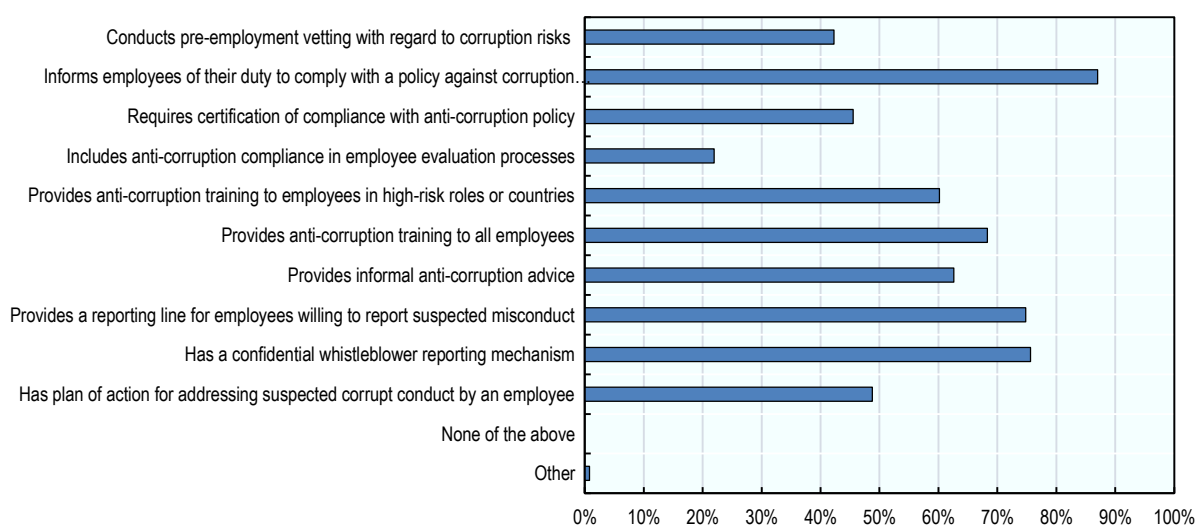
Some survey respondents shared additional, creative ways that they ensure that personnel have access to the anti-corruption policy, such as including it an app on employees' phones, attaching it to e-learning modules, or including it as part of labour agreements. Other respondents indicated that the anti-corruption policy is often reiterated in internal communications, during annual training sessions, and as part of the company's management system (see discussion in next section). That said, whether the policy is actually embedded into the company culture goes beyond what is printed online or on paper. The measures companies take to ground the policy (and the anti-corruption programme as a whole) within company personnel is discussed in the following section.

## Employee oversight

Employees are the backbone of any business, and participants in this study recognise their role in a company's anti-corruption efforts. As one company representative explained, "The most important thing is to transmit the company's principles and values to your people and hope that they acquire them and use them as a tool in the work. We try to give them the instruments, and the culture is the basis of the anti-corruption compliance programme."<sup>72</sup>

Figure 16 shows the different mechanisms companies with anti-corruption programmes use to ensure that employees adhere to their anti-corruption programmes. These mechanisms generally fall into three categories: (i) holding employees to an anti-corruption duty, (ii) training employees about this duty, and (iii) receiving and responding to suspicions of corrupt conduct.

**Figure 16. Actions respondents take regarding employees**



Note: Out of 123 respondents with an anti-corruption programmes and employees\*

\* One respondent indicated that its company did not have any employees.

Source: OECD Survey on Drivers and Models of Corporate Anti-Corruption Compliance

### ***Holding employees to an anti-corruption duty***

The OECD's *Good Practice Guidance* recommends that companies make clear that compliance with the anti-corruption policy and related measures "is the duty of individuals at all levels of the company."<sup>73</sup> The large majority of respondents with an anti-corruption compliance programme (107, or 87.0%) indicated that their company informs employees of their duty to comply with an anti-corruption policy; 56 respondents

(45.5%) require employees to certify their compliance with the policy. Finally, about a fifth of respondents with a compliance programme (27, or 22.0%) include anti-corruption compliance in employee evaluation processes.

Some companies seek to assure themselves that employees will be committed to anti-corruption compliance even before they are hired. Fifty-two respondents with compliance programmes (42.3%) indicated that their companies conducting pre-employment vetting with regard to corruption risks.

### **Teaching employees about the anti-corruption programme**

The OECD's *Good Practice Guidance* also recommends that companies take "measures designed to ensure periodic communication, and documented training for all levels of the company, on the company's ethics and compliance programme or measures regarding foreign bribery, as well as, where appropriate, for subsidiaries"<sup>74</sup> Training is an important component of any anti-corruption compliance programme, and, "like almost every other aspect of an effective anti-corruption compliance programme, must be targeted, and based on the risk profile of the company."<sup>75</sup> For example, employees who are not dealing with customers or finances may be at a lower risk of engaging in corrupt conduct. For this reason, companies often will provide general anti-corruption compliance training to all employees and provide specialised training to employees in certain high-profile or high-risk positions, such as senior management, accounting/finance, sales and marketing, or individuals working in riskier markets. Regardless, anti-corruption compliance training "should aim to create and maintain a trust based and inclusive internal culture in which bribery is not tolerated."<sup>76</sup>

Eighty-four respondents with anti-corruption compliance programme (68.3%) indicated that training was provided to all employees, and 74 of these respondents (60.2%) indicated that training was provided to employees in high-risk roles or countries. Table 9 below illustrates the breakdown between companies. One can see from the table that 110 of the respondents (48+36+26, or 89.4%) provided training to at least some groups of employees. More troubling is the fact that 13 respondents (10.6%) who indicated that their company has an anti-corruption programme also indicated that no training is provided to either group, particularly given that government enforcement agencies view employee training as a fundamental part of an anti-corruption compliance programme.<sup>77</sup>

**Table 9. Employee training provided by companies with anti-corruption compliance programmes (out of 123 respondents with programmes and employees\*)**

		Does your company provide anti-corruption training to employees in high-risk roles or countries?		
		Yes	No	Total
Does your company provide anti-corruption training to all employees?	Yes	48	36	84
	No	26	13	39
Total		74	49	123

\* As previously noted, one of the 124 companies with an anti-corruption compliance programme indicated that it did not have employees and, accordingly, was not included in this data.

One company representative shared an employee awareness-raising initiative that has been implemented in his company.<sup>78</sup> Each year, in early December, the company has a worldwide compliance event deriving from a United Nations initiative (International Anti-Corruption Day). All employees are invited to participate in this event, which is available "live" through a dedicated internet stream accessible on their computers. During the live event, the employees have the opportunity to ask questions about compliance, ethics, and related issues. The event is focused on business ethics generally, rather than just anti-corruption, and each year the focus is on a different topic related to compliance, such as the code of conduct or speaking

up about compliance issues. The company representative shared that the event has been viewed as providing practical and concise guidance for employees worldwide. The event also gives company management a chance to demonstrate “tone at the top” (see chapter 6 for more information on the importance of this concept).

The OECD’s *Good Practice Guidance* suggests that companies create effective measures for “providing guidance and advice to directors, officers, employees, and, where appropriate, business partners, on complying with the company’s ethics and compliance programme or measures, including when they need urgent advice on difficult situations in foreign jurisdictions.”<sup>79</sup> Seventy-seven respondents (62.6%) with an anti-corruption compliance programme indicated that employees have an avenue to obtain informal advice about avoiding corruption risks, including 3 respondents whose companies did not provide anti-corruption training.

### **Handling employee reports and suspicions**

An important part of any anti-corruption compliance programme is detecting bribery and corruption when it occurs. For this reason, the OECD’s *Good Practice Guidance* suggests that companies implement effective measures for the following:

- ii) *internal and where possible confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employees, and, where appropriate, business partners, willing to report breaches of the law or professional standards or ethics occurring within the company, in good faith and on reasonable grounds; and*
- iii) *undertaking appropriate action in response to such reports.*<sup>80</sup>

About three-fourths of respondents with an anti-corruption compliance programme provide a reporting line for employees willing to report suspected misconduct (92, or 74.8%) and/or have a confidential whistleblower reporting mechanism (93, or 75.6%). However, 16 respondents with programmes (13.0%) provide neither a reporting line nor a whistleblower mechanism. This leads one to question whether employees at these companies feel able and empowered to share concerns about corruption.

#### **Box 11. The importance of whistleblowers**

Reporting violations (that is, whistleblowing), is “the disclosure of information about actual or perceived corruption in the company to individuals or bodies believed to be able to effect action.”<sup>1</sup> The UN Office on Drugs and Crime has explained the importance of such “reporting persons”:

*Reporting persons have been recognized as an important source for the detection of misconduct because corruption can involve a high degree of complexity and a sophisticated system to obscure evidence. The reporting of violations can be highly valuable in combating corruption as the reporting persons are usually insiders who can provide information which would not be detected or available through the company’s internal control system. The information may not always constitute evidence but it may provide an indication of a wrongdoing and lead organizational authorities to launch an investigation. Companies can develop a set of support mechanisms in order to facilitate the reporting of violations.*<sup>2</sup>

1. UNODC, *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide* (2013), at 82, [https://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

2. Ibid.

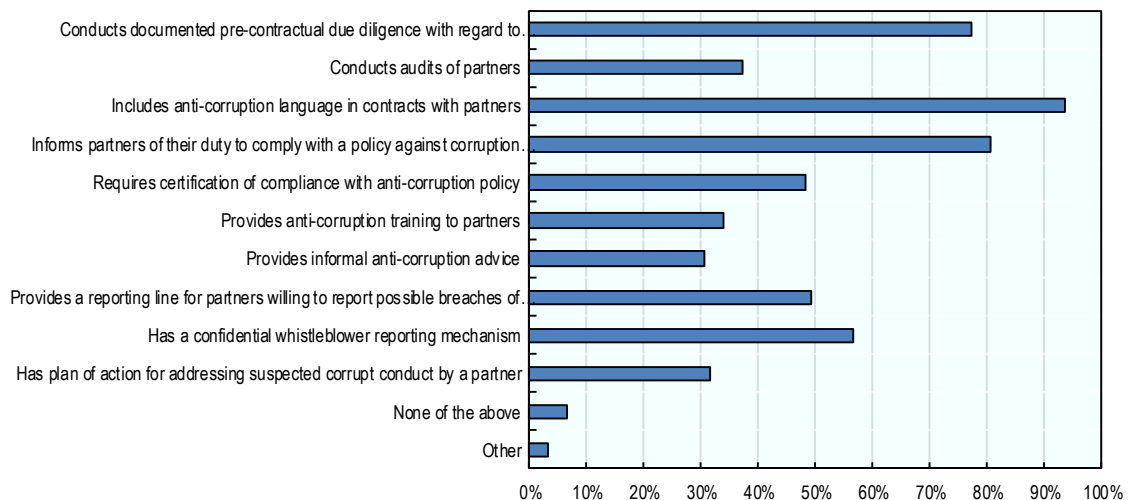
## Third party due diligence and oversight

The 2014 *OECD Foreign Bribery Report* found that three in four cases of foreign bribery involve some sort of third party intermediary, such as an agent, consultant, distributor, broker, or even subsidiary.<sup>81</sup> The risk that a third party agent will engage in corrupt conduct that will be imputed to the agent means that nearly all companies that have an anti-corruption compliance programme engage in some sort of oversight of the business partners with whom they work. Accordingly, the OECD's *Good Practice Guidance* suggests that companies attempt, where appropriate, to apply anti-corruption measures to "third parties such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter 'business partners')." <sup>82</sup> Such measures should include (among other things), the following:

- i) *properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of business partners;*
- ii) *informing business partners of the company's commitment to abiding by laws on the prohibitions against foreign bribery, and of the company's ethics and compliance programme or measures for preventing and detecting such bribery; and*
- iii) *seeking a reciprocal commitment from business partners.*

Conveying the importance of ethical and non-corrupt conduct to business partners can be a challenge when companies implement an anti-corruption compliance programme (see chapter 6). Figure 17 shows the types of activities respondents to the survey indicated that their companies undertook in order to protect against bribery or corruption by a business partner. This section discusses these mechanisms as they align with the three measures outlined above and then addresses measures for business partners to report suspected bribery or corruption.

**Figure 17. Actions respondents take regarding third parties (out of 124 respondents with anti-corruption compliance programmes)**



### ***Risk-based due diligence and regular oversight of third-party business partners***

Law enforcement agencies have made clear that a company cannot escape liability for the acts of a third party if it has not taken measures to ensure that the third party is not likely to engage in corrupt conduct.<sup>83</sup> About three-fourths of respondents who had anti-corruption compliance programmes (96, or 77.4%) indicated that their companies conduct due diligence on the third parties with whom they work. As one company representative explained,

*We have a long vendor list of about three to four thousand suppliers and many subcontractors also related to these suppliers. . . . We have, therefore, a huge responsibility towards all our people, as well as toward all third parties. . . . We perform third party due diligence at different stages of the relationship [e.g., before qualification, signing of non-disclosure agreements, signing of the contract] in order to have a safe and trustworthy supply chain.*<sup>84</sup>

Another company representative related that its company relates the level of due diligence to its assessment of risk in the country where the third party operates:

*The first thing we do is a risk-mapping to identify where our major risks may be, based on revenue generated by the business partner and the risk level of the country by Transparency International's Corruption Perceptions Index. We make a classification and then we spend more time and do due diligence on all partners, but also conduct audits on the ones with more risk.*<sup>85</sup>

The compliance procedures that companies adopt with regard to their business partners do not just protect them from liability for potential corrupt conduct. These third-party procedures may also influence a company's suppliers and agents to undertake their own due diligence procedures. For example, one interviewee representative explained that it follows up with its suppliers whenever it sees any red flag. The interviewee explained that often, as a result, the supplier at issue will implement new rules or procedures, so that it can continue working with the company: "So we can say that our compliance programme has caused them to be more compliant with the law."<sup>86</sup>

At the same time, companies often recognise that their business partners may not be able to adopt the same level of compliance procedures as they have. A company representative acknowledged,

*We cannot pretend that SMEs have the same structure of a [compliance] system. . . . Because it means a lot of resources, a lot of people, it's not always so easy for them. But they have to have a minimum standard. If they implement standards and appropriate rules, it's not so important that they have a model 231. If they have a model, but they don't implement it, it doesn't have much effect. We try to understand what they are actually doing and if they are doing their best.*<sup>87</sup>

Nevertheless, international companies can create a virtuous circle by assisting the companies with which they work to develop and maintain anti-corruption policies, procedures, and controls (see chapter 5).

### ***Informing third party business partners of their duty and obtaining a reciprocal commitment***

The large majority of respondents with compliance programmes (100, or 80.6%) stated that they inform their partners of their duty to comply with a policy against corruption and bribery, although a smaller number (60, or 48.4%) require partners to certify their compliance with this policy. Even more respondents with programmes (116, or 94.3%) indicated that they include anti-corruption contractual language in at least some contracts with agents, suppliers, contractors, and other business partners. In fact, 117 of all respondents to the survey (90.7%) indicated that they include anti-corruption language in at least some third-party contracts (see figure 18). Over half of all respondents (73, or 56.6%) indicated that they "always" include such language.<sup>88</sup>

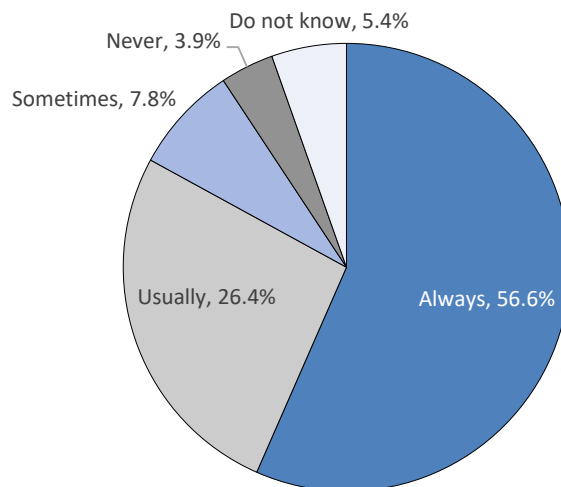
This does not necessarily mean that the other 43.4% of respondents are not being conscientious in their third-party dealings; it could reflect the fact that not all third-party contracts create corruption risks.<sup>89</sup> For example, a company may make the business decision to include such language in contracts based on the risk exposure of a particular contractor's activity (cleaning the office may pose less of a corruption risk than lobbying on behalf of the company, for example). Nonetheless, the fact that 5 companies (3.9% of all respondents) "never" include such language suggests that some companies could do more.

More and more companies are taking the task of informing business partners of their anti-corruption compliance duty even further by providing compliance training to members of their supply chain. In fact, about one-third of the respondents with anti-corruption programmes (42, or 33.9%) indicated that they provide training to business partners. One individual interviewed explained,

*One thing we do with our supply chain is that we train them with our compliance programme and how we deal with those risks. If they protect themselves and we protect ourselves, we are all protecting our supply chains. We share our practices and how we built our compliance programme, what are the main things we are doing with our ethics, goods, anti-money laundering system, and how they can deal with those risks.<sup>90</sup>*

She went on to share that her company has an annual meeting with its suppliers. A part of that meeting is devoted to talking about the company's compliance programme and reiterating that the company is willing to assist its suppliers in starting their own compliance programmes. The company freely shares its programme with suppliers that request assistance.<sup>91</sup>

**Figure 18. The inclusion of anti-corruption language in third party contracts (out of 129 respondents\*)**



\* This data only includes 129 respondents, since one respondent's answer to this question was invalid.

### **Measures for business partners to report suspected bribery or corruption**

Finally, about half of the respondents with anti-corruption compliance programmes indicated that business partners have access to a line for reporting possible breaches of the compliance programme (61, or 49.2%) and/or a confidential whistleblower reporting mechanism (70, or 56.5%). In addition, about a third (39, or 31.5%) have a plan of action in place for addressing suspected corrupt conduct by a partner.

## Other anti-corruption measures

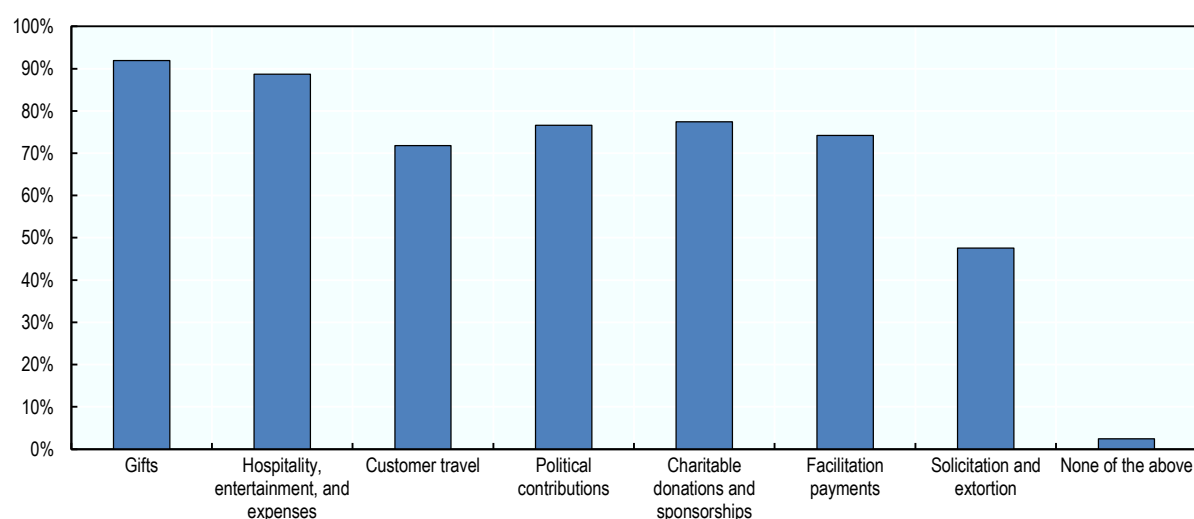
### ***Policies that address particular benefits and risks***

As discussed in chapter 3, companies face a variety of corruption risks that may turn in large part on the nature of their business activities. For a company heavily involved in marketing goods to public institutions (such as hospitals, schools, or prisons), sales representatives may often be expected to provide hospitality or gifts to potential customers. Companies that rely on regulatory oversight by government officials may feel obligated to pay for travel expenses, so that inspectors can visit their manufacturing facilities. A risk analysis can define the potential areas where a company needs to take additional measures to guard against corruption. The OECD's *Good Practice Guidance* suggests that companies may want to include specific anti-corruption measures that relate to the following risk areas:

- gifts;
- hospitality, entertainment, and related expenses;
- travel by customers;
- political contributions;
- donations to charity and sponsorships;
- facilitation payments; and
- solicitation and extortion of improper benefits.<sup>92</sup>

Figure 19 shows the percentage of respondents with anti-corruption compliance programmes that have these types of policies and controls in place.

**Figure 19. Policies and controls respondent companies put in place to guard against corrupt conduct (out of 124 respondents with an anti-corruption compliance programme)**



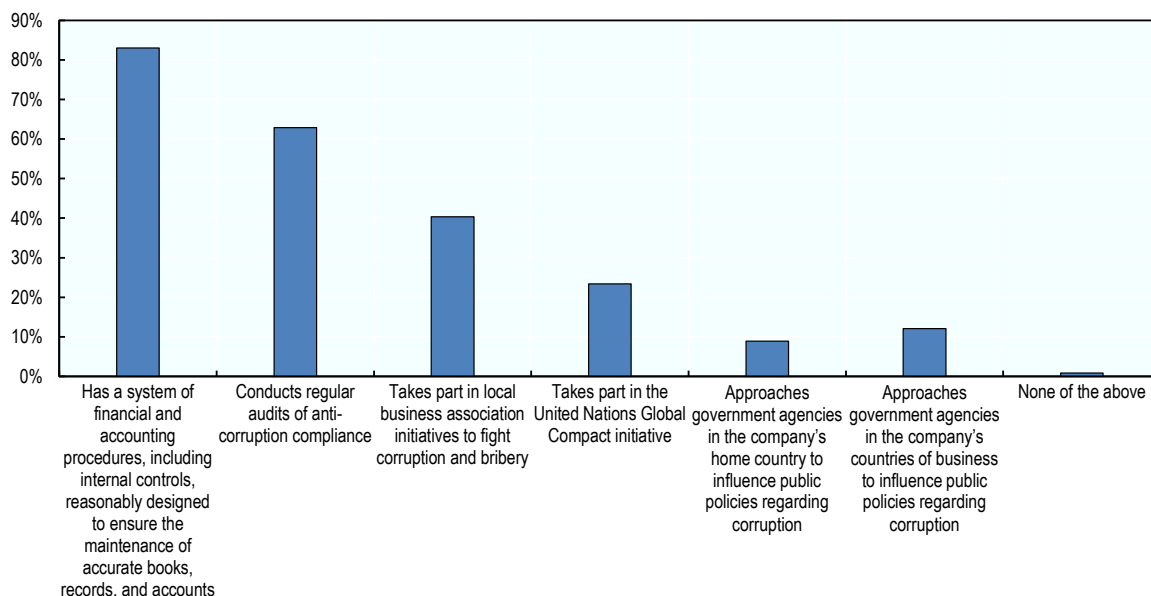
A high percentage of respondents have put in place policies regarding gifts, hospitality, charitable donations, political contributions, facilitation payments, and customer travel, suggesting that such policies represent best practices. In addition, a significant number of respondents have in place policies that provide guidance on what employees and/or agents should do when faced with solicitation or extortion of a bribe. Most of these policies have repercussions outside of the anti-corruption context. Policies on expenses for gifts, travel, and entertainment make good business sense for a number of reasons, including simply ensuring that monetary outlays are appropriately accounted for and that company coffers are not abused.

In fact, a number of respondents indicated that the policies they have in place are meant not only to prevent corrupt conduct, but also to ensure compliance in all areas of the business.<sup>93</sup>

### **Other activities to prevent and detect corruption**

In addition, the *Good Practice Guidance* suggests that companies put in place “a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of foreign bribery or hiding such bribery.”<sup>94</sup> As figure 20 shows, most respondents with anti-corruption compliance programmes (103, or 83.1%) have in place a system of financial and accounting procedures to prevent and detect corrupt conduct, and many (78, or 62.9%) conduct regular anti-corruption compliance audits. Some companies also engage in business association initiatives (50, or 40.3%) or work with governments in their own country (11, or 8.9%) or in their foreign countries of business (15, or 12.1%), to try to change the context in which corrupt conduct may occur.

**Figure 20. Other anti-corruption actions respondents take (out of 124 respondents with an anti-corruption compliance programme)**



In addition, 29 respondents with anti-corruption compliance programmes indicated that they take part in the United Nations Global Compact (UNGC). This initiative is discussed further in chapter 5.

### **Plans of action for dealing with solicitations**

One hundred and five of the 130 respondents (80.8%) indicated that their company has a written policy explaining how reports of suspected corruption are to be dealt with by the company, including one respondent whose company does not have an established anti-corruption programme. Seventy-three of those 105 respondents (69.5%) indicated that the policy sets forth detailed, clear guidelines regarding reporting, investigating, disciplining, and remediating suspected corruption, while the other 32 respondents (30.5%) indicated that their written policies set forth only a basic structure (e.g., that the legal or compliance department will take the lead on handling the report). Of the 21 respondents who indicated that their

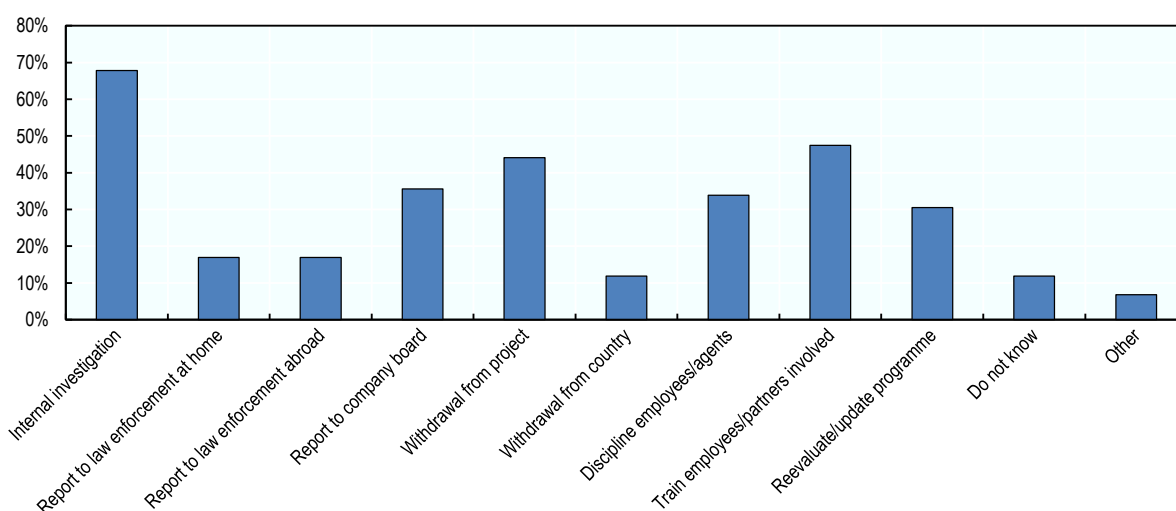


companies did not have a written policy, 14 (66.7% of those 21) indicated that the legal or compliance department handles such reports on a case-by-case basis.

In practice, companies may take any number of actions when an incident of suspected bribery or corruption occurs. Figure 21 illustrates some of the possibilities, based on responses by 59 respondents who were aware of a solicitation of someone in their company. An internal investigation of the conduct is generally the first order of business, although a relatively low percentage of these respondents indicated that such an investigation occurred (67.8%). Nonetheless, this graph shows a relatively small set of observations, and there may be benign reasons why an incident is not investigated (e.g., the allegation on its face does not allege wrongdoing or there is insufficient information upon which to act).

It is interesting to note that 8 of the 10 respondents who indicated that they reported the incident to their home countries also reported the incident in the country of business, suggesting that compliance personnel recognise the potential for repercussions of a corruption incident in both countries. Based on this limited data set, it is also notable that more respondents reported that their company withdrew from a project (26 of the 59, or 44.1%) than reported that they withdrew from an entire country (7, or 11.9%). This likely reflects the fact that companies make significant investments of time and resources to enter a country and pulling out because of an incident of corruption is rarely an easy solution. Nonetheless, some companies do pull out of a country based on an incident of corruption, which hints at the disruptive effects corrupt conduct can have on a company's business.

**Figure 21. Actions taken by respondents following suspected misconduct**



The OECD's *Good Practice Guidance* indicates that companies should adopt "appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company's ethics and compliance programme or measures regarding foreign bribery."<sup>95</sup> Twenty of the 59 respondents who knew of a solicitation (33.9%) indicated that an employee or agent was disciplined on account of the event. The solicitation report also led some respondents to engage in further training of employees or partners involved (28 respondents, or 47.5%) and/or to re-evaluate and/or update the programme (18, 30.5%). These percentages are notable given that respondents were only asked if they had ever heard of a company employee or representative being solicited for a bribe. In fact, only 11 respondents who had heard of a solicitation (18.6%) were able to confirm that a bribe was actually provided. This suggests an important best practice: Even when corrupt conduct cannot be confirmed, allegations of corrupt conduct often lead companies to re-evaluate their anti-corruption mechanisms to verify whether they are sufficient to guard against corruption and to ascertain whether employees have been appropriately trained to identify and report suspicious conduct.

## Oversight of anti-corruption programme

The OECD's *Good Practice Guidance* suggests that companies consider the following measure as part of an anti-corruption compliance programme:

*[O]versight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority. . . .*<sup>96</sup>

In practice, oversight of an anti-corruption compliance programme can take a number of forms. Ultimately, the executive board “bears the final responsibility for compliance.”<sup>97</sup> “The ‘tone from the top’ should demonstrate ownership of the anti-corruption programme. This implies that senior management regards the prevention of corruption as its own responsibility” (see also chapter 6).<sup>98</sup> When the compliance function is part of the corporate board, the oversight function may more easily be able to garner the appropriate authority, resources, and autonomy to ensure that the programme functions effectively. This turns in part on the independence of the particular board member involved. In some companies a Corporate Compliance Officer is chosen as a member of the board, but in other companies, the compliance function is combined with another board position. If care is not taken, this may lead to conflicts of interest. For example, a Chief Financial Officer or a Chief Operating Officer may be seen as the appropriate individual to oversee corporate anti-corruption compliance; however, both of these individuals have other primary responsibilities (overseeing the financial health of the company or overseeing company operations), and these responsibilities could come into conflict with the compliance function (for example, if an anti-corruption compliance programme is seen as too great a financial burden on the company’s resources to invest in).<sup>99</sup>

Other companies’ boards delegate the compliance function to a lower level of the organisation. It must be remembered that in such situations, the board still retains responsibility for the compliance function. “The board has a key role in setting the ethical tone of a company, not only by its own actions, but also in appointing and overseeing key executives and consequently, the management in general.”<sup>100</sup> Delegating the compliance function can operate successfully, so long as the compliance function has sufficient authority and autonomy to oversee compliance at all levels of the company. Among other things, this means that the compliance function has ready access to the company’s highest governing body.<sup>101</sup> For example, one company’s chief integrity officer explained in an interview that one of his personal professional goals was to “be connected to company leadership.”<sup>102</sup> Although he does not sit on the board, he reports directly to the ethics and governance committee of the board in monthly one-on-one meetings and provides quarterly updates to the entire board. He also has regular meetings with the external board members, where he can “speak freely” about concerns he might not want to raise in front of company management, such as whether he is getting sufficient support and resources. He concluded, “I feel supported.”<sup>103</sup> A best practice is that the compliance function not only have access to the executive board, but also (when available) to the company’s supervisory board or another independent supervisory body.<sup>104</sup>

### Box 12. Creating a supervisory board to oversee compliance

The *Ethics and Compliance Handbook* sets forth an example of how a company might set up a supervisory board to oversee a company's compliance:

An Italian engineering service company adopted a new compliance programme after it fell afoul of World Bank anti-corruption rules. Part of the new programme included setting up a supervisory board to “ensure compliance.” The supervisory board was an independent body with three members, “who were selected for their experience on the board of similar companies.”<sup>1</sup> As provided by Legislative Decree 231 (2001), the supervisory board had “full autonomy in its power of initiative and control” and could, when needed, “rely on the support of independent external consultants and advisors, using a budget that is specifically allocated by the company.”<sup>2</sup> A senior engineer from the company was appointed as a liaison to the supervisory board, so that the board's work could be coordinated with the company's internal structure. In addition, all employees received the board's email address, so that they could reach out to the board with questions or concerns.<sup>3</sup>

1. *Ethics and Compliance Handbook*, at 25.

2. *Ibid.*

3. *Ibid.*, at 26.

In addition, the compliance function needs sufficient resources, in terms of time, personnel, and budget, to carry out its function.<sup>105</sup> Often, the employee tasked with handling compliance has another corporate function, and this can lead to a squeezing out of the employee's time, as well as substantive conflicts between the employee's “business hat” and “compliance hat.” Such conflicts can even arise when the function is assigned to an area that is thought to be closely related to compliance, such as legal. The legal function may be called upon when needed to investigate cases of misconduct or to deal with enforcement authorities, and such “putting out of fires” may get in the way of the day-to-day work that a company needs to engage in to keep its compliance programme current and effective.

Eighty-five respondents to the survey (69.7%) indicated that an individual with a function that is primarily compliance had oversight of their company's compliance programme (see Table 10). Over half of these respondents (44 of the 85 respondents, or 51.8%) indicated that the individual with compliance oversight sat on the company's executive board, while the other half indicated that the individual was an employee. The survey did not delve into the level of autonomy and authority an employee who is tasked with oversight has, so this could vary among companies. Other companies assigned oversight of the compliance programme to an individual who performed the compliance function in addition to another corporate function.

SMEs face special challenges when it comes to oversight of an anti-corruption compliance programme. An SME may be governed by a single owner or a small group of managers, which may make it difficult for the compliance function to maintain independence from other business decisions.<sup>106</sup> It may not be practical to establish a unit entirely dedicated to compliance. Nonetheless, a best practice for SMEs is to “ensure that one person is given responsibility” for the anti-corruption compliance function.<sup>107</sup> At the same time, an SME may have certain advantages when it comes to oversight of the programme. It may be easier for an SME to gather information about its business activities, and company management may be in a better position to see what is actually happening on the ground. Nonetheless, SMEs should still establish documented roles and responsibilities for compliance and ensure that it provides the compliance function with sufficient resources.<sup>108</sup>

**Table 10. Oversight of compliance programmes (out of 122 respondents with anti-corruption compliance programmes<sup>1</sup>)**

Who has oversight of your company's anti-corruption compliance programme?	Large companies	SMEs	Total
A member of the executive board whose primary role is compliance (e.g., Chief Compliance Officer)	42	2	44
A company employee whose primary role is compliance (and is not on the executive board)	38	3	41
A member of the executive board who handles compliance in addition to another role (e.g., Chief Legal Officer who also handles compliance)	10	5	15
A company employee who handles compliance in addition to another role (and is not on the executive board)	12	2	14
Do not know	3	1	4
Other	4	0	4
Total <sup>2</sup>	109	13	122

1. Two respondents' answers were dropped because they provided unclear responses to this question.

2. The total does not include 2 respondents who provided insufficient data to determine which group they fell into.

# 5 What resources are available for implementing anti-corruption compliance programmes?

Undertaking appropriate anti-corruption compliance measures can require a significant outlay of time and resources, something that may be a luxury in many corporations, and perhaps especially in SMEs (see chapter 6 on challenges to implementing such programmes). Finding easily available resources to assist with developing a programme is therefore critical for many firms, and companies are constantly looking for sources of best practices.

Study participants heavily relied on advice provided by governments when developing their programmes, but they also looked to international sources of guidance. In fact, the “country neutral” aspect of international organisation or international business association advice was seen by some as helpful when sharing the compliance programme with those outside their home countries. Business associations, both at the international and local level, also play an important role in providing guidance to companies, particularly with regard to the corruption risks unique to particular sectors, such as healthcare. The role of these business organisations and professional associations is recognised as essential in the OECD’s *Good Practice Guidance* in assisting companies in their efforts to develop effective anti-corruption compliance measures. Companies also look to their peers for ideas about best practices in compliance.

## Governmental guidance on applicable law

Ninety-two of the 130 survey respondents (70.8%) indicated that advice from a home country government was either a “significant” or “very significant” factor in helping companies to overcome a lack of resources to develop an anti-corruption compliance programme. In fact, 29 of the 124 respondents who had actually implemented an anti-corruption compliance programme (23.4%) indicated that they relied on materials provided by government agencies in developing their compliance programmes. Legislation, regulations, guidance, or programmes by the governments of the United States, United Kingdom, France, Germany, Colombia, and Denmark were specifically mentioned by survey respondents or interviewees. This section discusses these initiatives and what they meant to those surveyed and interviewed.

### ***Guidance on corporate compliance programmes***

Companies with ties to the United States or the United Kingdom repeatedly mentioned the importance of guidance from those countries’ governments as an important part of developing their anti-corruption compliance programmes.<sup>109</sup> For example, the UK Serious Fraud Office’s (SFO’s) guidance on the UK Bribery Act 2010 was considered a key document for understanding what is expected from UK companies that want to rely on the defence against prosecution the Act provides to companies that have established “adequate procedures” to prevent bribery.<sup>110</sup> (Since the time of the survey and interviews, the SFO has

also made public the section of the *SFO Operational Handbook* that sets forth standards for evaluating a compliance programme, as discussed in box 13.)<sup>111</sup>

### Box 13. The Serious Fraud Office's Operational Handbook

In January 2020, the UK SFO released a portion of its Operational Handbook that sets forth standards for evaluating a compliance programme. The 8-page document provides important additional context to the UK Bribery Act Guidance that was previously released in 2011. This handbook sets forth specific concerns that prosecutors should consider when deciding whether to prosecute a company for bribery or corruption, such as the state of the anti-corruption compliance programme at the time of the offence, the current state of the compliance programme, and how the compliance programme is to be changed going forward (following the offence).

The US DOJ and SEC's resource guide for the Foreign Corrupt Practices Act (FCPA) is also seen as a key tool for understanding what is expected of companies subject to US law.<sup>112</sup> The US Sentencing Guidelines (USSG) provide that a company with an "effective compliance and ethics program" can receive credit towards reduced sanctions if a prosecution occurs,<sup>113</sup> and companies look to recent US DOJ guidance on how it evaluates corporate compliance programmes to better understand what is expected in practice.<sup>114</sup>

Even companies based outside of the United Kingdom or the United States may rely on these guidance documents, given that they represent some of the earliest guidance documents for companies. For example, a European company's representative indicated that it initially based its corporate anti-corruption compliance programme on US guidance because the company's original headquarters was in the United States.<sup>115</sup> Even after the company's headquarters moved elsewhere, it made sense for the company to keep its programme because, according to the interviewee, it represented current best practices. Another company representative indicated that when the company expanded from the United States into Latin America, it relied heavily on the USSG in creating a compliance programme.<sup>116</sup>

### Box 14. Country-led social initiatives: Alliance for Integrity

One survey respondent noted its use of Alliance for Integrity as a resource in developing its anti-corruption programme. Alliance for Integrity is a German initiative in operation since 2014. The German Federal Ministry for Economic Cooperation and Development (BMZ) began the initiative, which is currently implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.<sup>1</sup> The Alliance "brings together multinational companies, SMEs, business associations, civil society, public actors and international organisations" to create a platform for sharing experiences and best practices, awareness raising, and compliance training on anti-corruption issues. Among other things, Alliance for Integrity provides compliance training to officers at large companies, so that they can pass on knowledge to train SMEs.<sup>2</sup>

1. Alliance for Integrity, "About Us," [https://www.allianceforintegrity.org/en/alliance-for-integrity/about-us/#anchor\\_6596ff93\\_Accordion-2-Global](https://www.allianceforintegrity.org/en/alliance-for-integrity/about-us/#anchor_6596ff93_Accordion-2-Global) (last visited 16 Jan. 2020).

2. Interview with Company 1.

Governments that require companies to put compliance programmes in place have fortunately also provided resources for companies seeking information about complying with these legal requirements. For example, in addition to its controlling role, the AFA established under France's Sapin II law is tasked with

providing advice to companies on complying with the law. The Colombian initiative Empresas Activas Anticorrupción (Active Companies in Anti-Corruption, or EAA) also issued standards aligned with its Law on Transnational Corruption and held workshops for companies to address legal requirements, risk assessment, and anti-corruption policies.<sup>117</sup>

## International resources

A company must ultimately ensure that its compliance programme complies with any legal requirements of the countries in which it does business. International organisations are often well positioned to offer additional advice on anti-corruption in a “country neutral” manner that may be more acceptable for some company stakeholders.

For example, one company representative indicated that she prefers relying on resources such as the OECD’s *Good Practice Guidance* and the OECD, UNODC, and World Bank joint *Anti-Corruption Ethics and Compliance Handbook for Business* because suppliers and government partners are more apt to accept these as authoritative sources.<sup>118</sup> She noted that she is likely to get pushback if she relies only on US government guidance regarding the FCPA, as business partners will argue that the US law does not apply to them (whether or not it actually does).

### **OECD Good Practice Guidance**

The OECD Working Group on Bribery issued its *Good Practice Guidance on Internal Controls, Ethics, and Compliance* in 2009 to assist companies in understanding the requirements of an effective compliance programme.<sup>119</sup> The guidance – under review at the time of the present study – was the first intergovernmental anti-corruption guidance for businesses. It sets out the fundamental elements that should be included in companies’ anti-bribery compliance programmes in order to effectively prevent and detect bribery. The guidance sets forth 12 general “good practices”, ranging from senior management support to controls over specific high-risk areas to a confidential reporting system. It also highlights the important role that business organisations and professional associations can play in supporting companies, in particular SMEs, in the development of compliance mechanisms. Such support includes disseminating information on foreign bribery, providing technical support to companies (for instance in the form of training, or making available due diligence tools), and offering advice.

Roughly half of the respondents from companies with anti-corruption compliance programmes (56 of 124, or 46%) indicated that they utilised this guidance in developing their programmes.

#### **Box 15. The purpose of the OECD’s Good Practice Guidance**

The introduction to the OECD’s Good Practice Guidance makes clear that it is aimed at helping companies develop effective compliance programmes that are specifically tailored to their individual circumstances and risk profiles:

*This Good Practice Guidance (hereinafter “Guidance”) is addressed to companies for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting the bribery of foreign public officials in their international business transactions (hereinafter “foreign bribery”), and to business organisations and professional associations, which play an essential role in assisting companies in these efforts. It recognises that to be effective, such programmes or measures should be interconnected with a company’s overall compliance framework. It is intended to serve as non-legally binding guidance to companies in establishing effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery.*

*This Guidance is flexible, and intended to be adapted by companies, in particular small and medium sized enterprises (hereinafter “SMEs”), according to their individual circumstances, including their size, type, legal structure and geographical and industrial sector of operation, as well as the jurisdictional and other basic legal principles under which they operate.<sup>1</sup>*

The Good Practice Guidance is currently being revised, as part of a review of the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>2</sup>

1. OECD Good Practice Guidance, introduction.

2. See OECD, “Public Consultation: Review of the 2009 OECD Anti-Bribery Recommendation,” <http://www.oecd.org/corruption/2019-review-oecd-anti-bribery-recommendation.htm> (last visited 9 Mar. 2019).

### **Anti-Corruption Ethics and Compliance Handbook for Business**

In 2012, the OECD, together with the World Bank and UN Office on Drugs and Crime (UNODC) undertook to prepare a handbook for businesses that found commonalities between the major international anti-corruption instruments governing businesses in their international business dealings.<sup>120</sup> This handbook, published in 2013, sets forth general best practices that are meant to correspond to all major international instruments. Sixty-seven of the 124 respondents with anti-corruption compliance programmes (54%) indicated that they had relied on this resource when developing their programmes.

For example, one company representative explained,

*The handbook was really useful when we were starting to develop a risk assessment model for business partners. We used it to inspire ourselves to see a little bit what are the guidelines and which aspects should be covered. It is a reference to ensure that we are going in the right direction.<sup>121</sup>*

### **UN Global Compact**

Seventy-six survey respondents (58.46 %) indicated that participation in international organisation initiatives where knowledge about anti-corruption compliance programmes is shared was “significant” or “very significant” in helping companies overcome a lack of resources for effectively implementing an anti-corruption compliance programme. The UN Global Compact – UNGC – is one such initiative. The UNGC was launched in 2000 as a voluntary initiative that supports companies in their efforts to conduct business responsibility and in accordance with ten principles (including Principle 10, that “Businesses should work against corruption in all its forms, including extortion and bribery”), as well as with the Sustainable Development Goals.<sup>122</sup> Thus, the initiative is not aimed solely at anti-corruption, but this topic forms an integral part of its work.

Currently, over 9500 companies, based in over 160 countries, take part in the initiative. Membership in the UNGC gives a company access to a number of resources, including access to local UNGC chapters where learning can be exchanged, online tools (including in the area of anti-corruption), a library of guidance for developing sustainable corporate systems, and a help desk. Fees for membership depend on the gross revenues of the company and the level of membership; “participating” members have access to more resources than “signatory” members.

Thirty-five of the 124 survey respondents with an anti-corruption compliance programme indicated that they used UNGC materials to develop their programmes. Yet only 28 of these same respondents were in fact members of the UN Global Compact, suggesting that those UNGC materials that are publicly available (e.g., on the initiative’s website) are useful even for those who do not ultimately sign onto the initiative.



The opportunity for information sharing is perceived as the primary value of participation in the UNGC. As one company representative explained, participating in local and international UNGC activities allows members to create networks through which they can share good practices with each other. She described the “networks and the opportunities to share the knowledge” as the greatest benefit of this initiative.<sup>123</sup>

### **ISO Standard 37001**

In October 2016, the International Organization for Standardization (ISO) issued ISO Standard 37001: Anti-Bribery Management Systems.<sup>124</sup> The standard sets forth guidance for “establishing, implementing, maintaining, reviewing and improving an anti-bribery management system.”<sup>125</sup> A company can also become certified by an external auditor for compliance with this standard. A few survey respondents mentioned the importance of this standard in helping to develop effective anti-corruption compliance programmes.

### **Extractive Industries Transparency Initiative**

As noted in the OECD’s 2014 *Foreign Bribery Report*, the extractive industries sector is particularly susceptible to corruption risks.<sup>126</sup> This is due to the logistical need to work with state agencies and companies to engage in extractive work, as well as the legal, political, and developmental contexts resource-rich countries find themselves in.<sup>127</sup> The Extractive Industries Transparency Initiative (EITI), launched in 2002, “has established a global standard to promote the open and accountable management of oil, gas and mineral resources.”<sup>128</sup>

Countries agree to implement the standard, which creates a requirement that they disclose information on contracts, licenses, production, revenue collection and allocation, and other spending in relation to the extractive industries in their country. Countries are held to account through a quality assurance mechanism that occurs every three years. Countries that participate in the initiative also set up a multi-stakeholder group that includes representatives from extractive companies and civil society, along with government. In other words, while companies are not themselves directly involved in the EITI reporting requirements, they are able to participate in and share knowledge through the initiative in other ways.

Ten (out of 30) energy companies with anti-corruption compliance programmes that responded to the survey indicated that they used EITI materials in developing their programmes.

## **Civil society and business associations**

Forty-nine of the 124 respondents with anti-corruption compliance programmes (39.5%) shared that their companies relied on materials from advocacy organisations in developing their compliance programmes. A similar number of respondents (42, or 33.9%) indicated that they obtained resources through business and trade associations.

### **Civil society organisations**

The international civil society organisation Transparency International (TI) was repeatedly named as a valuable resource for companies attempting to develop or strengthen anti-corruption compliance programmes.<sup>129</sup> TI’s website contains a wealth of information about corruption risks and steps companies can take to guard against corruption. In addition, TI’s Corruption Perceptions Index (CPI) is viewed as a valuable tool for assessing corruption risks in certain markets. For example, the representative of a worldwide healthcare company noted that she refers to the CPI to assist her in risk rating the markets in which her company does business.<sup>130</sup>

However, while the international index is viewed as an invaluable tool, opinions about more local measurement tools are mixed.<sup>131</sup> For example, the representative of a Latin American company explained that the local TI chapter ranks companies based on the rigor of their compliance programmes. However, the ranking is viewed as biased because several companies that had rigorous programmes were ranked much lower than companies that were known to have been involved in the Odebrecht scandal.<sup>132</sup> These perceived problems with the ranking lead to concerns about its usefulness. The representative suggested that companies should be more engaged in any ranking process, and that any such process needs complete transparency.<sup>133</sup> He went on to suggest that TI's help would be especially useful in helping companies understand how to create robust compliance programmes. This company representative further noted that some companies may not want to disclose their internal policies, but that this does not necessarily mean that they do not exist.

Civil society groups that operate at the local level can have an equally meaningful impact on companies developing compliance programmes. For example, one interviewee shared that the Swedish Anti-corruption Institute (IMM), a non-profit organisation founded in 1923 to “promote ethical decision processes within businesses” and to “prevent the use of bribes and other types of corruption as a means for affecting business decisions” has developed its own code of business conduct that is effectively spread throughout its local business association network for use by its members.<sup>134</sup>

### **Industry and professional associations**

Seventy-one respondents (54.6%) indicated that “participation in international business associations where knowledge of anti-corruption compliance programmes is shared” was “significant” or “very significant” for helping a company overcome a lack of resources. An even greater number (95 respondents, or 73.1%) indicated that participation in local or national business associations served this purpose.

Industry associations figured prevalently in responses by representatives of the highly regulated healthcare sector. Interviewees from that sector expressly mentioned the importance of pharmaceutical codes, such as those issued by the European Federation of Pharmaceutical Industries and Associations (EFPIA), the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA), and MedTech Europe. For example, one interviewee shared that she has found MedTech Europe's compliance committee to be a good forum for sharing best practices. In addition, the committee has taken joint decisions on the industry's position on high-risk activities, such as providing sponsorships to medical professionals.<sup>135</sup>

#### **Box 16. How can business and professional associations assist companies in adhering to anti-corruption laws?**

The OECD's Good Practice Guidance provides the following:

*Business organisations and professional associations may play an essential role in assisting companies, in particular SMEs, in the development of effective internal control, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. Such support may include, inter alia:*

1. *dissemination of information on foreign bribery issues, including regarding relevant developments in international and regional forums, and access to relevant databases;*
2. *making training, prevention, due diligence, and other compliance tools available;*
3. *general advice on carrying out due diligence; and*
4. *general advice and support on resisting extortion and solicitation.<sup>1</sup>*

1. OECD Good Practice Guidance, part B.

One survey respondent noted the importance of German Audit Standard IDW PS 980 in developing an anti-corruption compliance programme. This standard, adopted by the German Institute of Public Auditors in November 2011, sets forth principles for auditing compliance management systems.<sup>136</sup>

General business associations can also help promote compliance. For example, Confindustria, an Italian business association, has organised a committee for multinational enterprises located in the Umbria region of Italy. The committee began working on compliance issues, using a building block approach that could be adapted by SMEs and larger enterprises to fit their needs. The committee drafted guidance on this approach and then distributed it for free to all of the companies in the region. It is now working on distributing this at the national level.<sup>137</sup>

## Other companies

When companies share information with each other about their compliance programmes, they can assist other companies with developing their own programmes. This can occur horizontally (that is, when partners or affiliates share information amongst themselves) or vertically (for example, when a contractor requires a subcontractor to adopt a compliance programme or a subcontractor “borrows” language from its client’s policies or programme). Ninety-nine respondents (76.2%) indicated that “sharing of information between business partners” or “sharing of information from a contractor to a subcontractor in a supply chain” was a “significant” or “very significant” way that companies could overcome a lack of resources for effectively implementing an anti-corruption compliance programme.

Nearly half of the respondents with anti-corruption compliance programmes (58 of 124, or 46.8%) indicated that their company had actually relied on resources from other companies in developing their programmes. The type of company might include a law or consulting firm hired specifically to assist with development of the programme or involved communications between companies in the same corporate family. Or it might include the personal knowledge an individual brought from a former place of employment or developed over time through personal networks. In any case, knowledge about anti-corruption best practices tends to spread between companies. For example, a company representative explained,

*Every year we appoint an advisor to perform an assessment of our anti-corruption compliance programme. The aim of what we call “monitoring” is to periodically verify the adequacy of our standards, in comparison with national laws and international best practices. . . . Also by means of a survey to employees, the advisor is requested to understand how much the message has reached them. . . . Implementing our new guidelines, we also analyse how other companies did, like a benchmark, to understand what works. And we always try to stay updated on the latest recommendations, guidelines and documentation that have been published at international level.<sup>138</sup>*

Another company representative explained that the company appointed a new Chief Compliance Officer after a scandal broke. They recruited an individual to this position who already had experience assisting another large company following a compliance scandal. He brought with him his institutional knowledge, as well as the tools and processes of the other company’s compliance programme (under licence from the other company). This company began its compliance programme as a “copy and paste” exercise, but then worked to make the programme its own by adapting it to the company’s distinctly different business model and risk profile.<sup>139</sup> The company representative explained that his company is “quite open with sharing [its] policies and procedures.” He continued, “There is nothing proprietary in how we approach our integrity programme. We actively share and post online all our policies and procedures. . . . Sometimes we see how someone else is doing [something], and we will adopt that as well if it makes sense.”

Information-sharing very often occurs between companies within the same corporate family. For example, another company representative explained that its corporate family developed a joint compliance programme and has continued to work together in rolling out the programme. She explained, for example, that a compliance officer from one company might provide training to a team in another company, if that

compliance officer is more geographically accessible. In addition, they share best practices within the group.<sup>140</sup> Nonetheless, as she acknowledged, learning from other companies is “not always a cookie cutter approach.” Each individual company needs to conduct its own risk assessment and then adapt its compliance programme to its individual risks and company structure.

In the 20 years since the Anti-Bribery Convention was adopted, and particularly in light of changing legal requirements in many countries, many businesses have developed a specific anti-corruption or compliance expertise to assist companies in developing anti-corruption compliance programmes. Over the past decade or so, the fight against corruption has become an effective “industry” in its own right.<sup>141</sup> As in any other industry, key commercial enterprises have come forth offering services to companies seeking to improve their corporate efforts to fight corruption. The Society of Corporate Compliance and Ethics (SCCE),<sup>142</sup> International Academy of Business and Financial Management, Ethisphere, TRACE International, and Compliance Week were cited by survey respondents and/or interviewees as providing resources helpful in developing an anti-corruption compliance programme.<sup>143</sup> In addition, reports from news organisations such as Law360 and newsletters from law firms were cited as helpful to compliance personnel in staying abreast of issues.<sup>144</sup> These businesses have developed an expertise on anti-corruption measures that they are happy to share with their members or others—although this most often comes at a (sometimes steep) price.

## Personal networks

As a final note, the value of an individual’s personal networks is undoubtedly significant. Whether an individual relies on colleagues from a former company, individuals contacted through conferences and trainings, or personal acquaintances, such contacts can be invaluable sources of feedback for developing and implementing a compliance programme. This can even occur on an informal basis. As one company representative noted, “Sometimes it’s just talking, not just documents flying around, talking about how to do things the smart way, how to actually implement the system.”<sup>145</sup>

# 6 What are the challenges for implementing anti-corruption programmes?

The prior chapters have discussed the reasons study participants adopted anti-corruption programmes, the elements of specific programmes, and the resources companies rely on in creating their programmes. However, putting a programme in place, especially across an international company, is no easy task. For a programme to be effective, the compliance function needs buy-in from all levels of the company. In the business sector where the pressure to make a profit is always at the forefront, “selling” the importance of compliance to company personnel can be difficult. Companies also need to give the compliance programme the appropriate resources, both in terms of finances and personnel equipped with the know-how to build an effective programme.

Once the programme is built, it needs to be embedded in all units of the company and across cultural and language barriers. Even then, however, the work is not complete. As the pressure to make profits continues and new business concerns arise, the compliance function must find a way to continuously promote compliance, so that the programme is not forgotten. SMEs face particular challenges when developing compliance programmes, as they often lack the resources of larger companies and cannot spread the costs of building a programme across such a large business.

This chapter discusses these challenges to compliance, based on the perspectives of study participants.

## Perception of need

Seventy-six of the 130 survey respondents (58.5%) indicated that the “perception that a compliance programme is not needed” was either a significant or very significant hurdle when developing and implementing an anti-corruption compliance programme. As one survey respondent noted, “[I]t is hard for the organisation to understand how important it is to have this kind of regulation inside a company.” Another indicated that the perception of need was the biggest hurdle to implementing a programme, “due to the fact that our company has never been sanctioned.” Another stated, “Perception that a compliance programme is not needed is the most significant hurdle since it has to do with the culture of the company and to change this culture requires time, education and money.”

Ultimately, this hurdle often seemed to come down to the fact that corruption risks are often intangible until an incident occurs. As a company representative explained,

*From my professional experience I believe that organisations that are going to start implementing compliance programmes or risk management programmes consider that operational risks, fraud or corruption, will never happen to them, but instead happen to other organisations. In my opinion, it is a similar situation to what happens to people in health promotion and disease prevention campaigns when they are recommended to change habits to prevent disease and people believe that other people, not them, are the ones who will get sick. This is, in my opinion, due to a false perception of control. Only when risks materialise do they see that they are vulnerable, and more easily accept the implementation of such programmes that they perceive as unnecessary spending and not as a long-term investment.<sup>146</sup>*

The perception of need may vary by industry. For example, another company representative explained that she experienced differences when she moved from the financial industry to the energy industry: “One of the difficulties when I started doing this job, I came from the financial system where you don’t have to explain what is compliance. You don’t have to convince anyone of anything. Here we are in a different part of the learning curve.”<sup>147</sup> She noted that she needed to convince her colleagues that corporate compliance is more than engaging in audits. She explained, “We still have employees who don’t understand the difference between compliance and internal audit. But we make sure that they know we are here, so that they start to come around and help them with things like internal conflicts of interest.”<sup>148</sup>

In particular, enforcement actions in the same industry seem to strongly influence a company’s perception of its need. For example, another company representative explained that when a competitor company came under investigation, this created a strong motivation for her company to establish a compliance programme. Company leadership was able to see the tangible risks of not taking steps to guard against corruption and thought, “Look at what happened to them. We don’t want this to happen to us.”<sup>149</sup>

A challenge in some countries is that anti-corruption compliance tends to be viewed as a US issue, rather than “something that a local office needs to worry about.”<sup>150</sup> In part, this is due to the strong enforcement of the US Foreign Corrupt Practices Act by US law enforcement authorities.<sup>151</sup> Another company representative explained that changing this perception is an important component of training for company personnel. For example, he clarifies this point with case examples involving a variety of countries.

How can this perception be changed? Unfortunately, the perception often starts with the organisation’s leadership (see the next section for more on this topic). Thus, the compliance function may need to begin by educating board members and executive management on the risks to the company’s well-being of not having a compliance programme. As discussed in chapter 2, enforcement actions in similar industries can be one important wake-up call for company leadership. Once the executive tier is on board with the need for a compliance programme, it and the compliance function can work together to educate the rest of the company community. Training plays a key role here, as does regular communication from management that compliance matters.

## Executive commitment and trust of management

The OECD’s *Good Practice Guidance* suggests that an anti-corruption compliance programme include a “strong, explicit and visible support and commitment from senior management to the company’s internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery.”<sup>152</sup> Yet a majority of respondents (80, or 61.5%) indicated that a lack of executive commitment was either a “significant” or “very significant” challenge to companies seeking to effectively implement an anti-corruption compliance programme. As a survey respondent noted, “[L]eaders must include the compliance as a business driver in their decisions and lead by the as . . . good corporate citizen[s].” This is particularly important, given that the OECD has reported that senior management is involved in over half of foreign bribery cases.<sup>153</sup>

On the one hand, executive commitment means an administration that understands and supports the compliance function, but a voice at the head table is just part of the equation. The executive team must help facilitate cross-functional buy-in for a compliance programme at all levels of the organisation.<sup>154</sup> One company representative explained that even if she as a compliance officer sees room for improvement in a procedure that is in place, she needs other people to assist her in implementing the change, for example, IT and finance. She explained, “If it’s only my idea and only me driving, I need help from other parts of the organisation that might not have allocated resources to this.”<sup>155</sup> Compliance personnel who do not have strong executive level support may feel like they are fighting a battle for compliance alone. As one company representative explained, “I’m the one who makes a lot of mess and stirs up a lot of dust.”<sup>156</sup>

In short, the executive team must demonstrate its commitment to compliance not only by its “tone from the top” messaging, but also by creating cross-functional synergies (and providing appropriate resources) to enable the compliance function to gain traction throughout the organisation. When board membership changes, new members must be educated on the importance of compliance (if they do not come with such a commitment).<sup>157</sup>

### Box 17. Guidance regarding executive commitment to a corporate compliance programme

The OECD’s *Good Practice Guidance* provides that companies should consider “strong, explicit and visible support and commitment from senior management to the company’s internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery.”<sup>1</sup> The World Bank has explained, “Company leaders should be actively involved in values formulation. Board members and managers must participate visibly in code drafting and programme design.”<sup>2</sup>

Similar principles have been outlined by other organisations:

- *UNODC*: “An effective anti-corruption programme must be based on the strong, explicit and visible support and commitment from the senior management of the company. Even a well-defined programme will fail to reduce the risk of corruption if employees and business partners perceive that senior management is not committed to preventing corruption.”<sup>3</sup>
- *International Chamber of Commerce*: “Each Enterprise should consider . . . expressing a strong, explicit and visible support and commitment to the Corporate Compliance Programme by the board of Directors or other body with ultimate responsibility for the Enterprise and by the Enterprise’s senior management (“tone from the top”).<sup>4</sup>
- *Transparency International*: “The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise’s programme.”<sup>5</sup>
- *Asia-Pacific Economic Cooperation*: “The Board (or equivalent) and the CEO should play a role in the launching of the Programme and demonstrate ownership and commitment to the Code and Programme.”<sup>6</sup>

1. OECD Good Practice Guidance, part A.1.

2. WB PREM Note; see also WB Guidelines, art. 2.1.

3. UNODC Guide, at 19.

4. ICC Rules, art. 10(a).

5. TI Business Principles, principle 6.1.1.

6. APEC Code of Conduct, principle 4.C.

The flip side of having an executive team truly committed to anti-corruption compliance is having staff who trust management decisions about the compliance programme. Forty-four respondents (33.9%) indicated that a “lack of trust towards management’s decisions” was a “significant” or “very significant” hurdle for companies trying to implement an effective anti-corruption compliance programme.

Staff are more likely to follow their managers’ advice when those managers act in accordance with their words. As one company representative explained,

*I think that it is very important that senior managers lead by example. . . . People are more engaged and committed if they trust their leaders. If I know that my boss says something, but doesn’t apply what he’s saying, I have a lack of trust. So it’s very important that the people who show the top level commitment are really committed and act as they say.*<sup>158</sup>

## Lack of financial or personnel resources

Sixty-three respondents (48.5%) cited inadequate financial resources as a “significant” or “very significant” challenge for companies. Seventy-one respondents (54.6%) cited inadequate personnel resources as a “significant” or “very significant” challenge for companies. Both types of resources are critical to establishing a compliance programme. As a survey respondent indicated, financial resources enable the compliance function to “purchase software or other technologies that help to implement the anti-corruption programme efficiently.” Capable personnel are critical, especially given that often very “few personnel are in charge of the development and implementation of an effective anti-corruption compliance programme.”<sup>159</sup> Nonetheless, since “compliance is viewed as a ‘cost center,’ [it may be] difficult to get [these] resources.”<sup>160</sup>

One company representative explained,

*As a pharma company, we have the quality of products and safety as a huge component [of compliance]. If there is a battle of resources, the quality of product will always win because anti-corruption is a potential threat, not an actual threat. It is hard to measure it.*<sup>161</sup>

This interviewee noted that if there were more soft law guidance on expectations for companies (e.g., that companies should have a certain set of mechanisms in place), it would make it easier to justify the expenses for these measures.<sup>162</sup>

As corporate compliance becomes more complex, the resources can become more expensive and, consequently, more difficult to justify. For example, one company’s representative explained that he has asked his company’s management for software that would allow better tracking of money laundering risks, but has not been able to obtain it.<sup>163</sup> When he followed up on the issue, he was told that other issues, such as salaries and regular operations, take greater priority.

The challenge of resources can be particularly keen for SMEs, which cannot spread the costs of developing and implementing an anti-corruption compliance programme across as large a business. As discussed in Chapter 2, larger companies can sometimes positively influence SMEs to adopt anti-corruption measures. As well, larger companies can often help SMEs in overcoming a lack of resources for anti-corruption compliance. For example, a 2017 study found that SMEs sometimes adapt the language of their anti-corruption policy or anti-corruption contractual provisions from the language they see in the documents they are required to sign when they do businesses with larger companies.<sup>164</sup> One company from that study indicated that it “culled bits and pieces from models provided by the large firms it worked with. For example, if a large firm always required the SME to sign off on its (the large firm’s) code of conduct, the SME would have access to that document. It might simply take that as a model for developing its own code of conduct, making a few revisions to fit its business.”<sup>165</sup>

## Pressure to make profits

Several interviewees explained that the pressure to increase corporate profits is often fundamentally at odds with the importance of a compliance programme. Even when ethics and compliance are “fully embedded in the business culture,” there continues to be pressure for higher profitability.<sup>166</sup> This concern is particularly acute as companies seek to expand into new markets. For example, one company representative shared the pressure for European companies to move into Sub-Saharan Africa, in spite of the high risk for corruption in many of the countries in that area.<sup>167</sup>

Individuals interviewed suggested that this pressure may be felt on a very personal level, in spite of a company having a robust anti-corruption compliance programme. For example, one company representative noted, “[I]t’s perfectly well known that when you put pressure on people, they will adopt the



ways to get the result that you expect from them.”<sup>168</sup> Another noted, “[I]t is impossible to integrate performance and compliance.”<sup>169</sup> Yet another said, “If I had it my way, I’d kill the bonuses because they inherently conflict with ethics.”<sup>170</sup> As one survey respondent explained,

*Resources and willingness to do the extra due diligence when things need to go fast is a challenge for the business. [It is hard for a compliance function to change with a business organisation already stretched on resources and pressure to meet KPIs [key performance indicators]. I would suggest KPIs to include anti-bribery compliance programmes together with CSR initiatives. It would be so great if this was a legal requirement. Only very big companies are able to drive such change without policy makers’ involvement.*

Nonetheless, merely connecting ethics to performance evaluations is also not seen as a perfect solution; rather, ethical values need to become an inherent part of managers’ decision-making processes.<sup>171</sup>

Companies may benefit from tools that allow them to measure the investments in corporate compliance versus the potential monetary losses of corruption (whether or not an incident is ever investigated by law enforcement). One company representative explained that he undertook an analysis of how much money the company was losing to corruption and found that investing money in an anti-corruption compliance programme led to greater long-term profits. He explained that the company’s goal is not just “maximization of the profits,” but optimisation and sustainability of profits.<sup>172</sup>

## Rooting the programme throughout the organisation

### **Spreading the programme worldwide**

Sometimes individuals in the compliance function may feel that it is difficult to have their message spread throughout the organisation. Forty-four respondents to the survey (33.9%) indicated that the challenge of a company being too large/spread out was either a “significant” or “very significant” hurdle to adequately implementing a compliance programme. The fact that “[m]ultinational companies are subject to multiple legal systems and jurisdictions” only exacerbates this challenge.<sup>173</sup>

This is a particular challenge when a company is starting with a “low knowledge base,” as this can also have implications on the ability to obtain resources to roll out the programme effectively.<sup>174</sup> The “education people [have] had in the past and their sense of responsibility and of belonging” can also affect the ability of a company to instil its compliance values throughout the organisation.<sup>175</sup> One respondent pointed out that the “belief that everything is fine and nothing has happened till now is [the] biggest stumbling block at local management level to be tackled.”<sup>176</sup> The compliance function may very well be perceived as “a cop in the organisation,” making it difficult to gain local trust and have local impact.<sup>177</sup>

Even when the company provides its personnel with all necessary documentation and training, people need easy ways to access this information on a day-to-day basis; otherwise, it gets lost.<sup>178</sup> Accordingly, not only should compliance information be stored in a readily accessible manner, but the importance of this information must be regularly reiterated throughout the organisation.

### **Adapting the programme to local needs**

A particular challenge is creating a programme that has global “principles” but “adaptive policies.”<sup>179</sup> One company representative explained, “I am only one person and have only about 27 local compliance officers.” Yet somehow she needs to make sure managers and subcontractors hear the compliance messages “all the way out [in] the organisation” or 30 000 employees.<sup>180</sup> The global programme needs to be “tailored for local subsidiaries/businesses,” and this can be a difficult task.<sup>181</sup>

Another company representative explained that her company is able to overcome the challenges of a siloed corporate structure by establishing global baseline requirements that everyone must use, but

allowing for local flexibility, so long as the local rules are no less strict than the global policy. She noted “the challenge of getting to 100 percent uniformity is difficult in a decentralised company.” To help local units appropriately apply the global principles, the company has spread its legal and compliance functions throughout the globe. Each company division has a local compliance officer, usually with local language capabilities. A global compliance investigations team at the head office, including a team of lawyers, is available to assist in the most serious matters.

Even local personnel outside of the compliance function can help embed the company’s compliance values throughout the company. For example, another company representative explained,

*On all of our project sites, we have our own staff that have to be trained, but we also have subcontractor staff on site. Site managers have to run practical ethics discussions, e.g., ethics discussions for 30 minutes.<sup>182</sup>*

During these on-site discussions site managers can bring up examples of things that may have occurred at other worksites, in order to help personnel understand how to deal with similar situations at their worksite.

### **Conveying the programme effectively to third parties**

The overwhelming majority of foreign bribery cases involve third party intermediaries.<sup>183</sup> For large companies doing business through intermediaries in many countries, the challenge of keeping up on due diligence can be overwhelming. Embedding the anti-corruption compliance programme throughout the organisation almost always includes the need to put in place special requirements for third parties, including due diligence/screening requirements, anti-corruption contractual language, certification requirements, and audit rights. Some third parties may balk at such requirements. Educating them about company expectations and following up on their ability to comply with those expectations can prove challenging.

One company indicated that it provides in-person anti-corruption training to all high-risk suppliers and intermediaries, to ensure that they understand their obligations towards the company. Even after they are trained, they are not allowed to engage in any business meeting without having a company employee present.<sup>184</sup> As another company’s representative explained,

*If I have very educated suppliers . . . with customers and stakeholders [who] start to talk my same language and condemn profits generated outside of ethical boundaries, . . . This means that I have to connect with other companies in my network in order to build a healthy environment where I can make business. This will for sure bring a return to the performance.<sup>185</sup>*

Nonetheless, these steps require company personnel committed to holding third parties to account, along with the resources for engaging in the appropriate due diligence and oversight of third parties.

## **Local environments in foreign as well as in home countries**

### **Cultural hurdles**

In some countries, working with local partners is especially difficult because of cultural differences and language barriers.<sup>186</sup> As one survey respondent noted, “[I]f you do not reside in a country known for corruption, it’s difficult to comprehend that your day-to-day activity might be viewed as bribery.” Another survey respondent asserted that the OECD Anti-Bribery Convention “is at its heart an issue of culture.” Even moving beyond local views about the necessity or acceptability of paying bribes, cultural issues can create challenges when implementing an anti-corruption programme. For example, perceived differences in the roles of men and women in some areas may make it difficult for the different genders to work together or to engage in a thorough risk analysis.<sup>187</sup>

The idea that anti-corruption compliance is not embedded as a norm in some areas is further compounded by the fact that compliance personnel may be viewed as “law enforcers,” thus putting them in the position of potential threat instead of ally in implementing a programme. One company representative explained that using local personnel to help embed the programme is essential to overcoming this challenge:

*If you arrive, first you are a lawyer by qualification. . . . It is difficult to become the best friend of the business partner because you are from the legal instead of from the business side. . . . I will respectfully listen if I provide a training or ask some questions, but then the level of honest and transparent communication will be limited. That's why I need to rely on some intermediaries, who are associates trained in our company who can ensure and check on that aspect of the partner business and will raise a red flag in case there is something strange or wrong or we have some doubts about something.*<sup>188</sup>

She continued,

*We cannot be everywhere. We become aware of certain practices only if we have enough time to create a strong relationship with the people. It's not just by delivering training to the people. It's much more about building human relations with the people to make sure they are comfortable and start speaking.*

Cultural hurdles to establishing an effective anti-corruption compliance programme may arise out of a company's home country as well. For example, another company representative also shared that his home country's culture “lives with, and deals with, and accepts corruption as a normal way of doing business.”<sup>189</sup> Another company representative explained that she is only aware of two other companies in her home country that have anti-corruption compliance programmes. One is in her company's industry, and the other is a company listed on the US stock exchange. This creates a challenge, as other companies in her home market have “fewer issues to care about.”<sup>190</sup> Even in her home country, including anti-corruption language in contracts makes suppliers and vendors “feel nervous.”<sup>191</sup> In such environments, a company may face an even higher burden when convincing its own corporate management and personnel of the importance of anti-corruption compliance, even before it moves into foreign markets.

### **Effectiveness of rule of law**

The attitudes in a locality towards corruption often turn on the perceived legitimacy and effectiveness of local law enforcement when enforcing anti-corruption laws. For example, in some countries, prosecutions for corruption offences are perceived as a way for country leaders to abuse their power and punish competitors.<sup>192</sup>

The importance of international co-operation in the investigation and prosecution of corruption cases has been repeatedly emphasised by the OECD and other international organisations.<sup>193</sup> Often the thought is that countries with more resources and experience to investigate and prosecute such cases can effectively contribute in countries that may not have law enforcement capable of or willing to adequately address an offence. Nonetheless, one company representative warned that unless such co-operation also leads to more empowered law enforcement in his country, such outside help may enable his country's law enforcement to remain in a “comfort zone.”<sup>194</sup> In other words, there is a need to vest local law enforcement, in both WGB and other countries, with the motivation and tools they need to effectively address corruption concerns on their own, in line with Article 5 of the OECD Anti-Bribery Convention, which ensures that law enforcement authorities operate with sufficient autonomy and independence. Only in this way will law enforcement entities in these countries successfully establish the legitimacy of their own rule of law.

On the local level, this also means that citizens need to better understand what corruption is and that it is not acceptable in business transactions (or in any other transactions, for that matter).<sup>195</sup> Then, citizens can better hold their governments to account. Even in countries where trust in legal institutions and law enforcement authorities is high, citizens may not fully understand the risks of corruption.<sup>196</sup> While scandals may change this perception, governments can get ahead of the curve by helping to educate citizens in advance.

## Maintaining momentum

Several compliance professionals who were interviewed as part of this study expressed their concerns with making sure that anti-corruption compliance does not lose momentum over time. For example, one company representative shared the attitudes of some company personnel after the company obtained ISO 37001 certification:

*[N]ow we got the certification, and everyone seems relaxed because the certification body said that you are ten years forward regarding the other companies. If I am ten years ahead, this means that I can relax, but this is not acceptable to me. . . . I have some anti-corruption solutions [and] I am putting a lot of effort to spread this culture inside the company.<sup>197</sup>*

Ultimately, this challenge comes down to the allocation of resources. The risk that someone affiliated with the company might pay a bribe is often intangible compared with other company risks, particularly after the company has spent time and resources establishing a programme. As another company representative shared,

*We have tone at the top and executive support, but allocating resources, it would be possible to do more and do it better. It's always a challenge to do things in a smarter way and more efficiently and to raise awareness. We have the right policies, but to keep that alive and to engage the organisation is a challenge and it's a battle between the different compliance areas as what's most important. And it can from time to time be difficult to assess whether our risk is high enough to actually allocate more resources. In theory, if we actually end up in a corruption scandal, if some third party did something that we should have known about, it's hard to know. It's difficult to know how much to prioritise if it is not a real threat.<sup>198</sup>*

A representative of another company shared, "I don't want to hear a manager saying, 'We are done.'" She continued, "The programme is continuously growing, and . . . the programme is never 'done.' We keep improving and finding new and better solutions."<sup>199</sup>

## Special challenges for SMEs

SMEs may be more susceptible to corruption than larger companies.<sup>200</sup> "They are usually the first to suffer in a marketplace where corruption exists and they have less power to avoid corruption."<sup>201</sup> This may be due to their less formal structure (and fewer accountability mechanisms) and "inability to wield influence over officials and institutions, lacking bargaining power to oppose requests for illegal payments from public officials."<sup>202</sup> Consequently, "their profit margins and survival are at stake when corruption takes hold."<sup>203</sup>

SMEs sometimes feel they are in the worst position to put in place the mechanisms to protect against corruption. They may operate in a narrow business area, where their control over their business partners is limited.<sup>204</sup> They may have few personnel or financial resources, making it difficult to keep tabs on business partners.<sup>205</sup> They may even lack motivation, thinking that they are immune from reputational harm because law enforcement officials are more likely to go after the "big fish" when investigating and prosecuting corruption cases. This is not necessarily the case, however, as OECD Working Group on Bribery countries have indeed sanctioned SMEs for foreign bribery offences.<sup>206</sup>

In any case, SMEs often want to do business with larger firms. Those larger firms can certainly motivate SMEs to adopt anti-corruption measures by requiring them to engage in anti-corruption measures in order to obtain contracts.<sup>207</sup> However, large firms can also sometimes help SMEs overcome a lack of knowledge and resources for engaging in such actions. For example, when a larger company shares its compliance expectations with SMEs, SMEs are able to become more familiar with best practices in the area.<sup>208</sup> SMEs may even use the anti-corruption policies, procedures, and certification language as models in their own businesses, thus using the work already done by others to help overcome their own lack of resources.<sup>209</sup> As discussed in part 5.3 above, civil society organisation, business organisations, and professional

associations can also “play an essential role in assisting . . . SMEs[] in the development of effective internal control, ethics, and compliance programmes or measures” by helping to disseminate information about corruption issues, providing training and other compliance tools, and providing general advice.<sup>210</sup>

Finally, SMEs should recognise that in some cases they may have more power than they might think to withstand corrupt solicitations. Sometimes, “small firms produce unique goods, meaning that they do not face the same type of competition as larger firms that produce fungible goods.”<sup>211</sup> SMEs are well-advised to take advantage of this unique market position when it exists.

# 7 The view ahead: What do businesses want?

The prior chapters highlighted many of the strategies and concerns businesses have when establishing anti-corruption compliance programmes. This research highlighted that many businesses want to have effective compliance mechanisms in place; however, they also want support for their efforts. This chapter discusses some of the most mentioned requests company representatives had for their governments and for the international community in general. Following this chapter, the next chapter lists suggested measures for both companies and international community stakeholders.

## Increased government commitment to fight corruption: enforcement

As one company representative explained, “If countries aren’t really that well positioned or serious about enforcement, companies won’t invest a lot in [anti-corruption compliance] programmes.”<sup>212</sup> A large number of company representatives expressed in some way their desire to see more effective and consistent enforcement of anti-corruption laws in their own countries.

### *Holding all parties to account*

Several study participants shared their desire to see enforcement against a broader group of persons involved in corrupt conduct. There seems to be a feeling that enforcement agencies go after the companies that provide corrupt benefits but do not hold individual bribe-givers or bribe-takers to account. Companies would like to see individuals investigated and prosecuted for corrupt conduct. One company representative explained that when only a few individuals at a company actually engage in corrupt conduct, putting all of the enforcement resources into pursuing the company only hurts the innocent individuals who remain, since the individuals involved in the corrupt conduct should always be fired following discovery of an incident.<sup>213</sup> When a company is putting in place effective controls to guard against such situations in the future, this should be taken into account in sanctions against the company. In fact, as discussed above in chapter 2, measures to put in place a compliance programme are taken into account in a number of WGB countries.<sup>214</sup>

Companies also want to see enforcement authorities take steps to hold the public officials who solicit or receive bribes accountable.<sup>215</sup> As one survey respondent explained, “Most laws apply to only one party when corruption takes several parties to be effectuated. The laws have to affect ALL parties involved. Redrafting the laws to allow for such should be the first step.” The Working Group on Bribery has recognised this concern. A 2018 OECD study investigated whether WGB member countries investigate, prosecute, and/or sanction their public officials who are on the receiving (bribe-taking) end of corrupt conduct. Questionnaires were provided to 20 WGB members with regard to 55 different cases where sanctions were imposed on the supplier of a bribe.<sup>216</sup> The study was able to confirm that sanctions were applied to public officials on the receiving end of the corrupt conduct in only 11 of the 55 cases (although at the time of the study another 11 actions were still pending).<sup>217</sup>

### **More efficient procedural rules**

Companies want to see corruption investigations and prosecutions come to a timely resolution. As one company representative noted, “Our judiciary system doesn’t work. Our trials are too long, and people often don’t feel that there is a sanction at the end of the trial. During the last few years, our law has changed a lot with regard to corruption, and currently we have a broad regulation that prosecutes both private and public corruption practices. Unfortunately, this is still not enough.”<sup>218</sup> Another company representative noted that it was still in the process of an enforcement action from years before; although his company had long since completely revamped its anti-corruption compliance programme immediately following the incident, the eventual settlement of the occurrence continued to hang over the company.<sup>219</sup>

While bringing cases to conclusion expeditiously is a key element in the administration of justice, this needs to be balanced with the increasing complexity of the crime of foreign bribery, which can require lengthy investigations. This may explain why, to a certain extent, the average time it takes to conclude a foreign bribery case has increased since the inception of the OECD Anti-Bribery Convention.<sup>220</sup>

Currently, about one in four cases of foreign bribery in a WGB country is resolved through a non-trial resolution (NTR).<sup>221</sup> The OECD has concluded that “[n]on-trial resolution systems could indirectly contribute to an overall increased enforcement of the foreign bribery offence.”<sup>222</sup> Cases resolved through NTR may still take years to resolve. However, NTRs allow several authorities from multiple countries to resolve a case at once, “giving both prosecution authorities and companies some certainty in the outcome and in particular the amount of the combined financial penalty.”<sup>223</sup>

### **Effective rule of law**

In many countries, more effective enforcement is closely related to strengthened trust in the rule of law. One interviewee said about his country,

*I consider corruption [in my country] to be a structural problem that has deep cultural roots and is embedded in both the public and private sectors. It is no secret that some political campaigns have been permeated by corruption. . . . In this context, [my government] has not done enough to help companies develop and implement anti-corruption programmes. Large private sector companies have implemented these programmes and incorporated them into their organisational culture, but it is not possible to claim that it is a generally accepted conduct by the public and private sector. Anti-corruption programmes could be a valuable alternative . . . to mitigate the risks of corruption in public and private organisations; however, they need to incorporate the culture of risk management and that is, in itself, a serious challenge.*<sup>224</sup>

A representative of one company explained that anti-corruption measures need to be incorporated with a holistic and systemic approach aimed at changing the culture of corruption in a community. This includes promoting the rule of law within the community.<sup>225</sup>

### **Leadership by example**

Perhaps most importantly, just as corporate management must lead through “tone at the top,” companies expect their government leaders to also lead by example. One survey respondent explained, “[G]overnment bodies and institutions need to ‘practice what they preach.’ We sometimes get asked for things that could constitute bribery by government departments/agencies and they don’t even know that it’s wrong or could be perceived otherwise.”<sup>226</sup>

This mandate also applies to state-owned enterprises (SOEs):

*Public ownership carries enhanced responsibilities for SOEs. . . . In countries that are struggling to improve their anti-corruption performance, SOEs can provide an example, at the highest level, of anti-corruption practices for all sections of society – and specifically for private sector players. In this way, governments can use the activities of SOEs to drive ethical business practices.*<sup>227</sup>

One survey respondent said, “Government companies have implemented anti-corruption programmes. However, they continue with corruption and bribery scandals. Therefore it is necessary that they set an example to their citizens.”<sup>228</sup>

### Clear standards, within limits

As noted previously, the “lack of laws and regulation about [the] need to implement a defined anti-corruption programme” can be a challenge to implementing a programme.<sup>229</sup> Companies want “practical guidelines” and “tools” for compliance.<sup>230</sup> Compliance personnel are often dealing with business counterparts who may not fully understand the legal basis for compliance and want clearly-defined rules; they want to know that if they take X action, that they will be protected from prosecution.<sup>231</sup> Unfortunately, when dealing with corruption risk, it may be difficult to set such rules, since liability often turns on whether a bribe was paid, not whether a company had a compliance programme in place.

To the extent that governments are able to provide clearer guidance about what actions businesses should take to protect themselves against liability for corrupt conduct, survey respondents and interviewees indicated that this would be highly welcome. Not only would this help compliance personnel directly as they develop their programmes, but it would also provide them with evidence to show their boards and management teams why the steps are important.<sup>232</sup> As one survey respondent noted, “Check-lists of “need-to-have” is very important when requesting resources in the budget.”<sup>233</sup>

### Legal requirements

Clear standards start with clear legislative requirements for companies. As one survey respondent explained,

*I am afraid the most effective tool is to implement the correct legislation. My experience is that companies are willing to move into the right direction if the hard law requires them to do so. . . . It is not a matter of disinformation. There are enough tools and publications to be properly advised on the matter.*<sup>234</sup>

Other survey respondents requested more specific regulatory guidance, such as a requirement that companies obtain ISO 37001 certification, a prerequisite that companies have an effective compliance management system in order to bid on public tenders, or a requirement for external auditors to examine internal compliance controls.

Several company representatives indicated a desire for compliance programmes to be mandatory or for governments to take regulatory action against companies that do not meet certain criteria.<sup>235</sup> However, study participants also strongly warned against creating so many rules that companies are not able to adapt their programme to their needs. For example, a survey respondent expressed a desire for fewer laws that are “easier to be read and remembered, and effective.” As a survey respondent clarified,

*[Do n]ot make overly burdensome measures that are not feasible to implement in a commercial organisation. If the company cannot operate due to bureaucratic obligations, then you won't help a company to have a compliance programme. There needs to be a need for flexibility and focus on the true, substantive goal of preventing corruption, not on documenting every single thought or step or penalising for non-substantive mistakes. There is too much focus on having [a] “perfect” process in place and checklists, not on what the purpose of that process ultimately is.*<sup>236</sup>

The need to avoid overly burdensome regulatory requirements is particularly important to SMEs, which must typically divert a greater proportion of their resources to administrative functions.<sup>237</sup>



### **Industry level standards**

One survey respondent indicated that guidelines on what type of conduct is “reasonable” would be particularly helpful if related to specific industries.<sup>238</sup> As an example, a company representative noted that pharmaceutical and medical device companies are subject to similar risks when it comes to foreign bribery, but there are differences in industry codes regarding how to protect against these risks, which can create conflicts as the two sectors are beginning to converge in many ways. Although harmonisation of anti-corruption practices between these two sectors would create more clarity for both industries, they are unlikely to embrace such joint standards, unless “they are forced to by governments.”

### **Consistent adoption of anti-corruption standards by SOEs**

In particular, private companies would like to see SOEs effectively implement anti-corruption standards consistent with those required of other international companies. As the representative of an energy company explained,

*In most countries where we are working, we are not alone; we are working with SOEs and actors from the private sector. International companies have strict compliance programmes to follow, but it is not certain that the local companies are always subject to the same constraints as international companies are. Some host countries have local rules that require international companies to contract with local companies. When the states are seeking loans granted by international banking institutions, it should be mandatory that the countries oblige themselves to have their national companies with robust compliance companies in line with the international standards.<sup>239</sup>*

#### **Box 18. The OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises**

In 2019, the OECD adopted Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (ACI Guidelines).<sup>1</sup> The Guidelines set forth four broad recommendations:

1. That states adhering to the Guidelines (“Adherents”) “establish and adhere fully to good practices and high standards of behaviour,” including with regard to SOEs;
2. That Adherents “act as active and engaged owners” of SOEs and hold them “to high standards of performance and integrity”;
3. That Adherents “ensure that their ownership policy fully reflects that a cornerstone of promoting integrity and preventing corruption in and concerning SOEs is effective company internal controls, ethics and compliance measures that prevent, detect and mitigate corruption-related risks, and enforce rules” and as well “that SOEs are overseen by effective and competent boards of directors that are empowered to oversee company management and to act autonomously from the state as a whole”; and
4. That Adherents “ensure proper detection of corruption, as well as investigation and enforcement, and that key processes are entrusted to institutions that are insulated from influence or suppression of said processes or dissemination of public information regarding their conduct.”

Article IX of the Guidelines mandates the development of an implementation guide for these recommendations, which is currently in development.

1. OECD, Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (2019), <https://www.oecd.org/daf/ca/Guidelines-Anti-Corruption-Integrity-State-Owned-Enterprises.pdf>.

SOEs are often a source of bribe demands, rather than an example of integrity. The 2014 *OECD Foreign Bribery Report* found that about 80 percent of recipients of bribes from foreign companies were SOE officials.<sup>240</sup> The ties of a company to the state can put private companies in a very difficult position when dealing with SOEs. A private company that learns of an incident of corruption can certainly investigate its own organisation, but it has no control over the SOE.<sup>241</sup> Perhaps it is for this reason that one survey respondent noted the importance of having an “international assessment of SOEs compliance programmes.”

## Assistance with anti-corruption measures

Nearly all study participants expressed in some way their desire for assistance in building their compliance programmes. The types of assistance desired ranged from incentives for compliance to analytical tools to practical advice. This section reviews a number of the ways company representatives believe the international community could assist them in their compliance efforts.

### *Incentives for compliance*

A number of study participants noted that it is difficult to justify the outlay of resources needed to establish an anti-corruption compliance programme, since the benefits may not become clear until an incident occurs. Several survey responses and interviewees suggested that governments develop an incentive programme for companies that “do the right thing” before an incident occurs.

At a minimum, companies would like to see the establishment of an effective compliance programme as a defence, should a bribe be improperly provided. However, several study participants also asserted that governments should also provide positive incentives to “virtuous companies,” as is done in other areas (such as for companies that adopt green technologies).<sup>242</sup> This could be in the form of tax incentives, rebates, or public accolades for their anti-corruption efforts (e.g., a list of companies considered to have top compliance programmes). As one survey respondent explained, “[T]he government should provide symbolic incentives such as public recognition to companies that stand out in the implementation of the compliance programme as well as tax or fiscal incentives.”<sup>243</sup> Another respondent suggested that the government “could publicly highlight the work of companies that have implemented compliance programmes to external audiences (users, customers, competitors).” Communicating these “best in class” ratings would also assist investors in making decisions about which companies to support.<sup>244</sup> One survey respondent suggested that governments could even more directly support companies by providing them with low-cost loans for developing compliance systems.

### *Analytical tools*

Individuals who participated in this study repeatedly mentioned their need for better tools for analysing corruption risk, as well as for evaluating the benefit of an anti-corruption programme. As one company representative explained, “People want us to show them the statistics.”<sup>245</sup> To the extent the international community can help companies develop or utilise tools that show the importance of compliance programmes and the risks inherent in specific geographies or business activities, such tools would be welcomed by compliance personnel, who often must convince their managers of the importance of these programmes. In particular, study participants mentioned a desire for analytical tools that could:

- justify the development and implementation of a compliance programme (or specific anti-corruption measures), for example, a cost-benefit analysis that includes indirect costs and benefits in a measurable way;
- quantify the risks of engaging in business activities in a particular geography or sector, that is, more than just an assessment of overall corruption risk in a country; and

- evaluate the effectiveness of an anti-corruption programme (or specific parts thereof), such as KPIs for assessing the effectiveness of a complaints response mechanism.<sup>246</sup>

### ***Facilitating third party due diligence***

Governments expect companies to know their business partners, but undertaking this due diligence can require significant financial resources. One idea raised by a couple of interviewees was to explore ways to share information about third parties amongst contractors, whether through a secure, industry-based system, through an international alliance, or via some sort of government approval process for third party contractors.<sup>247</sup> One company's representative noted that his company has been able to engage in such information sharing related to human rights topics and suggested that the programme could be built out to include anti-corruption risks.<sup>248</sup>

### ***Easily accessible options for learning about corporate compliance***

Several companies noted that they would like to learn more about tools for preventing, detecting, and investigating corrupt conduct in their companies. However, they lack both the time and the financial resources to attend far away seminars and training sessions. Company representatives would like to see more targeted, practical, and local opportunities to learn.<sup>249</sup>

The respondents that participated in this study indicated that they would like to see governments, international organisations, and civil society provide more practical training at the local level. For example, one company representative explained that he wanted to attend a civil society training session in a town several hours away from where he was based. However, to do so, his company would have needed to provide plane tickets and a hotel. He opined that many companies refrain from participating in larger forums because of the cost.<sup>250</sup> He explained, "If more forums were made at the local level, the impact would be bigger." Another interviewee explained that she would appreciate more webinars, newsletters with practical tips, and other informational materials that she could access without leaving her office.<sup>251</sup>

Where possible, coordinated assistance to companies establishing anti-corruption compliance programmes would be welcome.<sup>252</sup> A survey respondent suggested, "The government . . . should . . . provide advice to companies, preferably free of charge, in the form of easy-to-understand teaching materials, with the assignment of a consultant to guide the company in a personalised manner."<sup>253</sup> Another survey respondent suggested that governments or international organisations "[s]ponsor an industry 4.0 for digital compliance and continuous monitoring systems." Yet other respondents suggested that government agencies could advise on compliance, and that regulators could provide training to the business community.

One survey respondent noted that they would like to see more countries offer advice on proposed actions, similar to the US DOJ opinion release procedure.

### Box 19. Recommendation for awareness-raising amongst Working Group on Bribery countries

The 2009 *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Activities*<sup>1</sup> specifically recommends that Working Group countries “take concrete and meaningful steps” to engage in “awareness-raising initiatives in the public and private sector for the purpose of preventing and detecting foreign bribery” (para. III.i).

Annex I to this recommendation, *Good Practice Guidance on Implementing Specific Articles of the Convention*, suggests the following (discussing Art. 1 of the Convention):

“Member countries should undertake public awareness-raising actions and provide specific written guidance to the public on their laws implementing the OECD Anti-Bribery Convention and the Commentaries to the Convention.”

The 2009 Recommendation also recommends that Member countries encourage the following:

- i. companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance, set forth in Annex II hereto, which is an integral part of this Recommendation;
- ii. business organisations and professional associations, where appropriate, in their efforts to encourage and assist companies, in particular small and medium size enterprises, in developing internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance, set forth in Annex II hereto;
- iii. company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those which contribute to preventing and detecting bribery;
- iv. the creation of monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards;
- v. companies to provide channels for communication by, and protection of, persons not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for persons willing to report breaches of the law or professional standards or ethics occurring within the company in good faith and on reasonable grounds, and should encourage companies to take appropriate action based on such reporting;
- vi. their government agencies to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics, and compliance programmes or measures in their decisions to grant public advantages, including public subsidies, licences, public procurement contracts, contracts funded by official development assistance, and officially supported export credits.

1. OECD, *OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions* (2009), [www.oecd.org/daft/antibribery/oecdantibriberyrecommendation2009.htm](http://www.oecd.org/daft/antibribery/oecdantibriberyrecommendation2009.htm).

### **More specialised forums for exchanges of information**

Companies would like to have more opportunities to come together to share best practices, whether in the form of conferences, seminars, or partnership with international organisations and NGOs.<sup>254</sup> In particular, they would like to see more opportunities to exchange such information on a confidential basis, that is, in

a way where a question about compliance could not be traced back to a company, subjecting it to potential reputational risk when it is only exploring its options.

## Continued awareness raising

Respondents also requested continued awareness-raising on corruption risks, particularly by governments. There seems to be a fear that anti-corruption issues may lose momentum as other compliance areas (such as those related to data privacy and environmental protection) begin to take centre stage.<sup>255</sup> Awareness-raising is important, not just for companies, but also for government employees and members of local communities, who may view corruption as an accepted mode of conduct instead of something to be avoided.<sup>256</sup> In particular, companies would like increased attention towards the “minor but day to day transgressions e.g. facilitation payments or gifts and hospitality transgressions to show they are serious.”<sup>257</sup>

One survey respondent suggested that educational programmes should be developed at the school level, to help spread awareness about the dangers of bribery and corruption even before students enter the university. They explained, “If no one [has] taught them how to be loyal, respectful of the law, or what ethics or the right thing to do [is], there is no education at university that could change their essence and beliefs.”<sup>258</sup>

## Conclusion

In summary, many companies would like to fight corruption, but they do not want to fight it alone. Companies want to see governments “walking the talk” as well by supporting company anti-corruption efforts with appropriate incentives, enforcing laws effectively, and themselves operating with the highest standards of integrity. Companies also want more easily accessible learning opportunities and analytical tools. This includes possibilities to exchange information and best practices at the local level (e.g. local conferences), or through online tools (e.g. webinars). They stress the need for secure forums where they can share best practices with other companies in their industry. Importantly, companies do not see the task of awareness-raising about corruption issues as over. International stakeholders should continue to educate communities at all levels about the harms of corruption and steps to guard against it.

# 8 The way forward

The prior chapters have provided an overview of companies' approaches to and challenges regarding creating an effective anti-corruption compliance programme. This chapter distils these findings into suggestions that may help companies and the international community to more effectively fight corruption. The suggestions below are intended to provide insight for overcoming challenges to creating and maintaining a compliance programme.

## For companies

The following suggestions are directed towards companies that wish to improve their anti-corruption compliance programmes. This list does not include suggestions about the recommended components of such programmes, as such guidance is readily available elsewhere.<sup>259</sup> Rather, the suggested below are meant to help companies think about how they can implement such framework recommendations at a practical level.

### 1 Give compliance a seat at the management table

The compliance function needs the appropriate executive support and autonomy to function effectively. Involve the compliance function in management decisions, such as the development of annual business plans.

### 2 Embrace the development of a compliance culture at all levels of the company

For example, organised events, outreach, and regular communications can demonstrate to all members of the corporate community that you are serious about your commitment to integrity. Clear company standards (including responses to potential infractions) should be developed and applied consistently across all company units.

### 3 Think beyond procedures

Guidelines for the exact procedures and control mechanisms a corporate anti-corruption compliance programme should include are readily available from international organisations such as the OECD, civil society organisations, individual country governments, and business organisations. However, to focus solely on the procedures that need to be in place to have an effective compliance programme is to lose sight of the overall goal of creating a culture of compliance in a company.

A company is most likely to develop a culture of compliance when policies and procedures are not just communicated effectively to personnel, but are also internalised by individuals. As a first step, company leadership, at all levels of the company, needs to act in a way that is wholly consistent with the compliance message. In addition, company leadership, employees, and shareholders should have frank discussions about how to change the culture. Each company has its own personality and history, and changing a company's compliance view requires a tailored approach.

Furthermore, in today's complex world, legal skills are not enough to create a compliance culture. As one company governance director explained, "I am in charge of people with different backgrounds of skills, in business, psychology, economics, analytics, big data, communication, and active listening. [T]he function to fight corruption and ensure compliance cannot be just legal."<sup>260</sup>

## 4 Build a team on the ground whenever possible

A central team can only do so much to enforce a compliance programme across a multinational company. Local personnel are often well-positioned to recognise and deal with local risks, and they have already invested the time needed to build relationships of trust with their colleagues on the ground. Use these local personnel as teammates in building and maintaining your compliance programme.

## 5 Work together

Whenever possible, companies should seek to leverage anti-corruption compliance resources. They can engage in forums, conferences, and other events that allow for the exchange of best practices with other companies in their industry or geographical area—whether sponsored by governments, civil society, or international organisations.

In addition, companies should consider opportunities for collective action. For example, companies in a particular industry could lobby together for regulatory changes that make procurement practices more transparent or hold public officials to account. They could work through business associations and coalitions to create standards of expectation for compliant conduct. Business associations can be particularly helpful in bringing together SMEs for discussions of anti-corruption compliance issues. In addition, larger companies should consider ways to share information about anti-corruption measures with their supply chain partners, including SMEs, perhaps through convening regular round tables or launching joint initiatives.<sup>261</sup>

### Box 20. The benefits of collective action

The term “collective action” refers to individuals or organisations working together to achieve a common goal, in this case, the elimination of corruption and bribery in relation to business activities. The World Bank’s *Integrity Compliance Guidelines* direct companies (particularly SMEs), trade associations, and other entities to work together to develop anti-corruption measures:

*Where appropriate – especially for SMEs and other entities without well-established [anti-corruption compliance] Programmes, and for those larger corporate entities with established Programmes, trade associations and similar organizations acting on a voluntary basis – endeavour to engage with business organizations, industry groups, professional associations and civil society organizations to encourage and assist other entities to develop programmes aimed at preventing Misconduct.<sup>1</sup>*

Collective action can take many forms. It can be formalised through an integrity pact, anti-corruption declaration, or other initiative,<sup>2</sup> or it can be a less formal combined effort by international stakeholders. The UN Global Compact has explained that collective action enables companies to do the following:

- Create deeper understanding of corruption issues
- Consolidate knowledge and financial and technical resources to achieve greater impact
- Create solutions that are perceived as more credible, acceptable and are more sustainable
- Help ensure fair competition and a level playing field for all stakeholders
- Create a more stable and enabling business environment
- Complement existing anti-corruption efforts in vulnerable regions and sectors, where industry or government-led regulations are not robust<sup>3</sup>

<sup>1</sup> WB Guidelines, art. 11.

<sup>2</sup> See UNGC, “Anti-Corruption Collective Action,” <https://www.unglobalcompact.org/take-action/action/anti-corruption-collective-action> (last visited 24 Jan. 2020).

<sup>3</sup> Ibid.

## For the international community

The suggestions below reflect feedback from the companies that participated in this study to governments, international organisations, civil society groups, business organisations and professional associations on how to better assist companies in fighting corruption in their international business transactions. Many of these suggestions could be undertaken jointly or individually by all of these groups. For example, governments could work with international organisations to provide advice to companies. Governments and civil society groups could work together to help develop better assessment tools for companies. And business organisations could work with international organisations to develop international standards for particular sectors.

### 1 Develop better analytical tools

These could include, for example, tools to do the following:

- a) Justify a compliance programme (or specific anti-corruption measures) to company management (e.g., cost-benefit analyses);
- b) Assess inherent risks of engaging in business activities in a particular geography or sector; and
- c) Evaluate the effectiveness of an anti-corruption programme (or specific parts thereof, e.g. KPIs for programme elements).<sup>262</sup>

### 2 Develop more learning about preventing corruption

The international community – particularly international organisations and state parties to international anti-corruption instruments – often has access to unique information about enforcement of corruption cases. There is certainly more to learn from these cases, particularly in terms of the mechanisms of the corrupt conduct itself and how such conduct could be prevented. Engaging in more systematic review and reporting on this data could serve an important role in helping to develop best practices for both companies and law enforcement authorities.

### 3 Assist companies to learn about compliance

Educational opportunities that are easily accessible without considerable expenditure of money or travel time, such as webinars, newsletters, and local trainings, are particularly desirable. Several company compliance personnel noted that they would like to learn more about concrete tools for preventing, detecting, and investigating corrupt conduct in their companies. However, they find far-away and expensive seminars and training sessions to be difficult to justify from both a substantive and time management perspective, as they can often be too high-level and general, when what is really needed would be an exchange of information and best practices on a practical level. Company representatives would like to see more targeted, practice-oriented, and local opportunities to learn.<sup>263</sup>

### 4 Consider addressing compliance as a general matter, rather than by specific subject area

The process of conducting international business is becoming ever more complex. Compliance personnel are not just dealing with anti-corruption compliance issues, but are also dealing with antitrust requirements, money laundering/counter terrorist financing obligations, environmental concerns, human rights issues, just to name a few. Many compliance personnel who participated in interviews noted that anti-corruption is just one part of their portfolio and they are constantly looking for ways to create synergies between different compliance areas.

Given that companies are trying to find ways to connect different compliance areas, government agencies might consider finding ways to do the same. For example, when multiple government enforcement agencies are enforcing regulatory frameworks that get at related underlying conduct (such as bribe-paying and tax evasion), they may very



well already be working together to share information about the conduct. They could also consider working together to share best practices for companies who seek to develop mechanisms that guard against both parts of the conduct in a synergistic fashion. This would help overcome a fear some respondents noted of having separate lists of compliance requirements for different regulatory schemes. This would be particularly helpful for regulatory areas that may appear to create conflicts (such as the need to investigate potential misconduct and the requirement of data privacy).

## 5 Engage in more outreach to SMEs

A 2017 study found that SMEs are often not aware of the many (free, or relatively free) resources available to them to develop anti-corruption compliance programmes.<sup>264</sup> Those agencies that provide benefits to SMEs, such as export financing institutions, could play an important role in helping to share knowledge about anti-corruption tools, as could business associations specifically geared towards SMEs.<sup>265</sup>

## 6 Support collective action efforts

The international community can take further steps to support and even participate in collective action efforts to fight corruption.<sup>266</sup> The fight against corruption can only be achieved through a multi-layered approach. Members of local communities need to make their voices against corruption heard, while businesses need to demonstrate best practices through their operations, and other governments and international organisations need to place political (and even economic) pressure on corrupt governments to change their practices.

## 7 Begin building an anti-corruption culture early

The international community needs to take additional steps to make sure that individuals at all levels of society understand the detrimental effects of corruption on economic growth, individual empowerment, and sustainable peace. Governments, civil society groups, and international organisations should consider ways that they can begin to embed ethical principles earlier in their areas of operation—whether that be through formalised educational efforts, community outreach efforts, or training and certification opportunities.

The most important part of building an anti-corruption culture is that governments themselves need to exemplify the highest standards of integrity. This means consistently and fairly enforcing anti-corruption laws against all persons involved (both bribe receivers and bribe givers). It also means building a legal and regulatory framework that functions in practical terms by ensuring the timely enforcement of offences against both natural and legal persons, as well as allowing for effective enforcement measures against wrongdoers. These measures should be regularly and transparently communicated to the public, so that trust in the legal institutions can be enhanced.

# Notes

<sup>1</sup> See OECD (2000), *No Longer Business as Usual: Fighting Bribery and Corruption*.

<sup>2</sup> “OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status as of May 2018,” [www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf](http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf).

<sup>3</sup> The other 14 respondents were eventually unable to participate in the interview for varying reasons.

<sup>4</sup> OECD (2019), *Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention*, [hereinafter *OECD NTR Study*], [www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm](http://www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm).

<sup>5</sup> OECD (2017), *The Detection of Foreign Bribery*, [hereinafter *OECD Detection Study*], <http://www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ENG.pdf>.

<sup>6</sup> OECD (2016), *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives*, <http://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>.

<sup>7</sup> OECD (2014), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, <http://dx.doi.org/10.1787/9789264226616-en>.

<sup>8</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, *International Co-operation in Corruption Cases* (2017), <https://www.oecd.org/corruption/acn/OECD-International-Cooperation-in-Corruption-Cases-2017.pdf>; OECD, *Overcoming International Co-operation Challenges in Corruption Cases* (2016), <https://www.oecd.org/daf/anti-bribery/International-Cooperation-Corruption-Beijing-2016.pdf>.

<sup>9</sup> See, e.g., OECD, “OECD Events in Bogota, Colombia on 24-25 October 2019” (22 Oct. 2019), <https://www.oecd.org/countries/colombia/oecd-events-in-bogota-colombia-on-24-25-october-2019.htm>.

<sup>10</sup> See Eurostat Structural Business Statistics for Small and Medium-sized Enterprises (SMEs), <https://ec.europa.eu/eurostat/web/structural-business-statistics/structural-business-statistics/sme> (last visited 4 Jan. 2020).

<sup>11</sup> OECD, “Improving the Business Environment for SMEs through Effective Regulation,” Policy Note, SME Ministerial Conference, Mexico City, 22–23 Feb. 2018, page 7, <https://www.oecd.org/cfe/smes/ministerial/documents/2018-SME-Ministerial-Conference-Parallel-Session-1.pdf>.

<sup>12</sup> The majority of those who indicated “other” as their company role had an audit role in their company, a function that can straddle both finance and accounting and legal and compliance.

<sup>13</sup> This means that the results of this survey, and the conclusions in this study, may reflect the attitudes of companies that have established programmes, but they do not necessarily reflect the attitudes of companies without such programmes.

<sup>14</sup> See Melanie D. Reed, “The International Business Community and Evolving Norms regarding Foreign Bribery,” Ph.D. diss., Tufts University (Apr. 2017) [hereinafter Reed, “International Business Community”], at 112–114.

<sup>15</sup> World Bank, “Implementing Anticorruption Programs in the Private Sector,” *PREM Note* 66 (22. Apr. 2002) [hereinafter *WB PREM Note*].

<sup>16</sup> Decisions were also taken because a senior executive personally pushed for the programme (5 respondents), an employee pushed for the programme (1 respondent), a customer required the programme (2 respondents), or for other reasons (4 respondents). Eight respondents did not know why the decision was taken, and 6 indicated that they did not have an anti-corruption compliance programme (and thus the question did not apply to them).

<sup>17</sup> Interview with Company 3 representative.

<sup>18</sup> Interview with Company 11 representative; see also *OECD Detection Study*, at 145-146; Linda Pressly, “The Largest Foreign Bribery Case in History,” BBC News (22 Apr. 2018), <https://www.bbc.com/news/business-43825294>.

<sup>19</sup> See Reed, “International Business Community,” at 165, 241.

<sup>20</sup> *OECD NTR Study*, at 13. A non-trial resolution is

. . . any agreement between a legal or natural person and an enforcement authority to resolve foreign bribery cases without a full trial on the merits of the allegations either before or after indictment with sanctions and/or confiscation, irrespective of whether it is a conviction (e.g., plea deals) or a non-conviction mechanism (e.g., non-prosecution or deferred prosecution agreements).

*Ibid.*, at 11.

<sup>21</sup> *Ibid.*, at 101. The *OECD NTR Study* identified 52 systems in 27 countries for resolving foreign bribery cases outside of the trial setting. *Ibid.*, at 12.

<sup>22</sup> See, e.g., *FCPA Enforcement Policy*.

<sup>23</sup> Interview with Company 8 representative.

<sup>24</sup> Interview with Company 5 representative.

<sup>25</sup> *OECD NTR Study*, at 124.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, at 124–125.

<sup>28</sup> Interview with Company 13 representative.

<sup>29</sup> See Svetlana Agayeva, *Examining Anti-Bribery and Corruption Measures in a Single Framework to Combat Money Laundering and Terrorist Financing* (Miami: ACAMS, 2015), <http://www.acams.org/wp-content/uploads/2015/08/Examining-Anti-Bribery-and-Corruption-Measures-in-a-Single-Framework-to-Combat-ML-TF.pdf>.

<sup>30</sup> Reed, “International Business Community,” at 205, 311–312.

<sup>31</sup> *Ibid.*, at 205, 311–312.

<sup>32</sup> *Ibid.*, at 206.

<sup>33</sup> *Ibid.*, at 272.

<sup>34</sup> *Ibid.*, at 271; see also *ibid.*, at 190.

<sup>35</sup> *Ibid.*, at 271.

<sup>36</sup> At [https://www.cjoint.com/doc/16\\_12/FLknuHuFltM\\_loisapin2.pdf](https://www.cjoint.com/doc/16_12/FLknuHuFltM_loisapin2.pdf).

<sup>37</sup> OECD, Phase 2 Follow-up Report on Implementing the OECD Anti-Bribery Convention in Columbia (Feb. 2018), at 10, <http://www.oecd.org/daf/anti-bribery/Colombia-Phase-2-Report-ENG-follow-up.pdf>.

<sup>38</sup> *Ibid.*

<sup>39</sup> Infolaft, “SAGRLAFT de Supersociedades: todo lo que debe saber” (6 Nov. 2018), <https://www.infolaft.com/sagrlaft-todo-lo-que-debe-saber/>.

<sup>40</sup> Interview with Company 11 representative.

<sup>41</sup> See FTI Consulting, “The Realities of the UK Bribery Act” (2012), <https://www.fticonsulting.com/~media/Files/us-files/insights/featured-perspectives/the-realities-of-the-uk-bribery-act.pdf>.

<sup>42</sup> UK Bribery Act §7; OECD, *United Kingdom: Phase 1ter Report* (2010), part 2.3.

<sup>43</sup> European Commission, “Non-financial Reporting,” [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en) (last visited 19 Jan. 2020); see also Directive 2014/95/EU of the European Parliament and of the Council of 22 Oct. 2014, <https://eur-lex.europa.eu/eli/dir/2014/95/oj>.

<sup>44</sup> Communication from the Commission, Guidelines on Non-financial Reporting (Methodology for Reporting Non-financial Information), 2017/C 215/01, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)).

<sup>45</sup> Interview with Company 6 representative.

<sup>46</sup> Interview with Company 1 representative.

<sup>47</sup> Interview with Company 1 representative.

<sup>48</sup> Interview with Company 11 representative.

<sup>49</sup> *OECD Good Practice Guidance*, part A.

<sup>50</sup> OECD, UNODC, and World Bank, *Anti-Corruption Ethics and Compliance Handbook for Business* (2013) [hereinafter *Ethics and Compliance Handbook*], at 10, 14, <https://www.oecd.org/corruption/anti-corruption-ethics-and-compliance-handbook-for-business.htm>; see also United Nations Global Compact (UNGC), *A Guide for Anti-Corruption Risk Assessment* (2013) [hereinafter *UNGC Risk Assessment Guide*], at 10, [https://www.unglobalcompact.org/docs/issues\\_doc/Anti-Corruption/RiskAssessmentGuide.pdf](https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf).

<sup>51</sup> *Ethics and Compliance Handbook*, at 10.

<sup>52</sup> *UNGC Risk Assessment Guide*, *supra*, at 16–17.

<sup>53</sup> See, e.g., Agence Française Anticorruption, *Guidelines to Help Private and Public Sector Entities Prevent and Detect Corruption, Influence Peddling, Extortion by Public Officials, Unlawful Taking of Interest, Misappropriation of Public Funds and Favouritism* (2017) [hereinafter *AFA Guidelines*], at 15–19, [https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/French\\_Anticorruption\\_Agency\\_Guidelines.pdf](https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/French_Anticorruption_Agency_Guidelines.pdf); US Department of Justice and Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012) [hereinafter *FCPA Resource Guide*], at 58–59, <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>; UK Ministry of Justice, *The Bribery Act 2010: Guidance* (2011) [hereinafter *Bribery Act Guidance*], principle 3, <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>.

<sup>54</sup> Matt Kelly, “What is a Risk Assessment and Why Is It Important?” GAN Integrity (13 Sept. 2019), <https://www.ganintegrity.com/blog/what-is-a-risk-assessment/>.

<sup>55</sup> One respondent’s data for this question was omitted for validity reasons. Thirty-five respondents (28.5%) indicated that they did not undertake a risk assessment and another 9 (7.3%) indicated that they did not know.

<sup>56</sup> *OECD Good Practice Guidance*, part A.

<sup>57</sup> See, e.g. *AFA Guidelines*, at 19; *Bribery Act Guidance*, principle 4; *FCPA Resource Guide*, at 60.

<sup>58</sup> Survey response.

<sup>59</sup> Mark Pieth, *Harmonising Anti-Corruption Compliance: The OECD Good Practice Guidance 2010* (Dike Zurich 2011) [hereinafter Pieth, *Harmonising Compliance*], at 62–67.

<sup>60</sup> See *Ethics and Compliance Handbook*, at 44.

<sup>61</sup> Pieth, *Harmonising Compliance*, at 63.

<sup>62</sup> *Ibid.*, at 66.

<sup>63</sup> *Ibid.*

<sup>64</sup> *OECD Foreign Bribery Report*, at 8.

<sup>65</sup> The other respondents were either not aware (8) or did not provide data (1).

<sup>66</sup> *SFO Evaluation Standard*, at 1.

<sup>67</sup> Eduard Ivanov, *Overview of Anti-Corruption Compliance Standards and Guidelines* (International Anti-Corruption Academy, 2019), 23 (citing *FCPA Resource Guide*, at 57–58).

<sup>68</sup> *Ibid.*, at 23 (citing *AFA Guidelines*, at 6).

<sup>69</sup> *OECD Good Practice Guidance*, part A.2.

<sup>70</sup> *OECD Good Practice Guidance*, part A.2.

<sup>71</sup> *SFO Evaluation Standard*, at 1.

<sup>72</sup> Interview with Company 9 representative.

<sup>73</sup> *OECD Good Practice Guidance*, part A.3; see also, e.g., *ICC Rules*, art. 10(d); *World Bank Group Integrity Compliance Guidelines* (2010) [hereinafter *WB Guidelines*], art. 2.2, [http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines\\_2\\_1\\_11web.pdf](http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines_2_1_11web.pdf).

<sup>74</sup> *OECD Good Practice Guidance*, part A.8.

<sup>75</sup> *UNGC Risk Assessment Guide*, at 14.

<sup>76</sup> *APEC Code of Conduct*, principle 4.H.

<sup>77</sup> See, e.g., *AFA Guidelines*, at 31–32; *FCPA Resource Guide*, at 59; *Bribery Act Guidance*, principle 5; *SFO Evaluation Standard*, at 7.

<sup>78</sup> Interview with Company 10 representative.

<sup>79</sup> *OECD Good Practice Guidance*, part A.11.

<sup>80</sup> *OECD Good Practice Guidance*, part A.11.

<sup>81</sup> *OECD Foreign Bribery Report*, at 8.

<sup>82</sup> *OECD Good Practice Guidance*, part A.6.

<sup>83</sup> See, e.g., *AFA Guidelines*, at 19; *Bribery Act Guidance*, principle 4; *SFO Evaluation Standard*, at 6; *FCPA Resource Guide*, at 60.

<sup>84</sup> Interview with Company 9 representative.

<sup>85</sup> Interview with Company 3 representative.

<sup>86</sup> Interview with Company 9 representative.

<sup>87</sup> *Ibid.* The possibility of adopting a model 231 compliance system is provided for under Italian law, which gives companies a defence if they have adopted such a model.

<sup>88</sup> This data only includes 123 respondents, since one respondent's answer to this question was invalid.

<sup>89</sup> For example, hiring a company to clean company offices in the home country could very well carry a low corruption risk.

<sup>90</sup> Interview with Company 11 representative.

<sup>91</sup> *Ibid.*

<sup>92</sup> *OECD Good Practice Guidance*, part A.5.

<sup>93</sup> Interview with Company 15 representative.

<sup>94</sup> *OECD Good Practice Guidance*, part A.7; see also *United Nations Convention against Corruption* (2003), art. 12.2 (directing state parties to take measures to ensure that “private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures”).

<sup>95</sup> *OECD Good Practice Guidance*, part A.10.

<sup>96</sup> *OECD Good Practice Guidance*, part A.4; see also *ICC Rules*, art. 10.

<sup>97</sup> S.C. Bleker-van Eyk, “Compliance Management,” in *Handbook of Compliance and Integrity Management: Theory and Practice*, edited by S.C. Bleker-van Eyk and R.A.M. Houben (Wolters Kluwer 2017), at 3.3.3.1; see also OECD, *Principles of Corporate Governance* (2004), art. IV.D.2 (setting forth the board duty to “[m]onitor[] the effectiveness of the company’s governance practices”); *SFO Evaluation Standard*, at 5 (explaining that the board of directors should have top-level responsibility for a compliance programme).

<sup>98</sup> UNODC, *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide* (2013) [hereinafter *UNODC Guide*], at 19, [https://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf); see also *ibid.* at 29–31.

<sup>99</sup> See Bleker-van Eyk, *supra*.

<sup>100</sup> OECD (2015), *G20/OECD Principles of Corporate Governance*, <http://www.oecd.org/corporate/principles-corporate-governance/> comment to art. IV.D.

<sup>101</sup> See, e.g., Michael Volkov, “Empower Compliance Officers: The Key to an Effective Compliance Program” (17 May 2012) [hereinafter Volkov, “Empowering Compliance”], <https://blog.volkovlaw.com/2012/05/empowering-compliance-officers-the-key-to-an-effective-compliance-program/>.

<sup>102</sup> Interview with Company 8 representative.

<sup>103</sup> *Ibid.*

<sup>104</sup> *UNODC Guide*, at 19; Volkov, “Empowering Compliance”; Pieth, *Harmonising Compliance*, at 58–59.

- <sup>105</sup> *WB Guidelines*, art. 2.3; see also Volkov, “Empowering Compliance.”
- <sup>106</sup> *UNODC Guide*, at 30.
- <sup>107</sup> *Ibid.*
- <sup>108</sup> *Ibid.*
- <sup>109</sup> Interviews with Company 1, Company 2, and Company 3 representatives.
- <sup>110</sup> UK Bribery Act §7; *Bribery Act Guidance*.
- <sup>111</sup> See *SFO Evaluation Standard*, *supra*.
- <sup>112</sup> US DOJ & SEC, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2015), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>.
- <sup>113</sup> US Sentencing Commission, *Guidelines Manual* §8B2.1 (2018), <https://guidelines.uscourts.gov/gf/§8B2.1>.
- <sup>114</sup> US DOJ, “Evaluation of Corporate Compliance Programs,” *Guidance Document* (Apr. 2019), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.
- <sup>115</sup> Interview with Company 3 representative.
- <sup>116</sup> Interview with Company 1 representative.
- <sup>117</sup> Colombia, Phase 3 report, ¶142.
- <sup>118</sup> Interview with Company 15 representative.
- <sup>119</sup> *OECD Good Practice Guidance*, *supra*.
- <sup>120</sup> *Ethics and Compliance Handbook*, *supra*.
- <sup>121</sup> Interview with Company 3 representative.
- <sup>122</sup> Find detailed information about the initiative at <https://www.unglobalcompact.org/>.
- <sup>123</sup> Interview with Company 13 representative.
- <sup>124</sup> See ISO, “ISO 37001 Anti-Bribery Management Systems,” <https://www.iso.org/iso-37001-anti-bribery-management.html> (last visited 16 Jan. 2020).
- <sup>125</sup> ISO 37001:2016 Art. 1, <https://www.iso.org/obp/ui#iso:std:iso:37001:ed-1:v1:en>.
- <sup>126</sup> *OECD Foreign Bribery Report*, at 21–22. The report indicates that 19 percent of all cases where an individual or company was sanctioned for foreign bribery involved the extractive sector.
- <sup>127</sup> *OECD Extractive Industries Report*; U4 Anti-Corruption Resource Centre, “Basic Guide to Corruption and Ant-Corruption in Oil, Gas, and Mining Sectors,” <https://www.u4.no/topics/oil-gas-and-mining/basics> (last visited 19 Jan. 2020).
- <sup>128</sup> EITI, “Who We Are,” <https://www.eiti.org/who-we-are> (last visited 19 Jan. 2020).
- <sup>129</sup> Interview with Company 2 and Company 13 representatives.
- <sup>130</sup> Interview with Company 2 representative; see also TI, *Corruption Perceptions Index 2018*, <https://www.transparency.org/cpi2018> (last visited 19 Jan. 2020).
- <sup>131</sup> Interview with Company 1 representative.
- <sup>132</sup> Interview with Company 1 representative.
- <sup>133</sup> *Ibid.*

<sup>134</sup> Interview with Company 13 representative; see also IMM, “About Us,” <https://www.institutetmotmutor.se/en/about-us/> (last visited 19 Jan. 2020).

<sup>135</sup> Interview with Company 3 representative.

<sup>136</sup> Stefan Heissner, *Managing Business Integrity: Prevent, Detect, and Investigate White-collar Crime and Corruption* (Springer Gabler 2013), 168–169.

<sup>137</sup> Interview with Company 4 representative.

<sup>138</sup> Interview with Company 9 representative.

<sup>139</sup> Interview with Company 8 representative.

<sup>140</sup> Interview with Company 3 representative. Company 5 and Company 6’s representatives shared that information sharing occurs in their company groups, as well.

<sup>141</sup> See Steven Sampson, “The Anti-corruption Industry: From Movement to Institution,” *Global Crime* 11(2): 261–278 (2010).

<sup>142</sup> Interview with Company 12 representative.

<sup>143</sup> E.g., interviews with Company 5 and Company 12 representatives.

<sup>144</sup> Interview with Company 2 representative.

<sup>145</sup> Interview with Company 6 representative.

<sup>146</sup> Interview with Company 7 representative.

<sup>147</sup> Interview with Company 11 representative.

<sup>148</sup> *Ibid.*

<sup>149</sup> Interview with Company 3 representative.

<sup>150</sup> Survey response.

<sup>151</sup> Interview with Company 12 representative.

<sup>152</sup> *OECD Good Practice Guidance*, part A.1.

<sup>153</sup> *OECD Foreign Bribery Report*, at 23.

<sup>154</sup> See *OECD Good Practice Guidance*, part 3.

<sup>155</sup> Interview with Company 6 representative.

<sup>156</sup> Interview with Company 13 representative.

<sup>157</sup> Survey response.

<sup>158</sup> Interview with Company 9 representative.

<sup>159</sup> Survey response.

<sup>160</sup> *Ibid.*

<sup>161</sup> Interview with Company 6 representative.

<sup>162</sup> Interview with Company 6 representative.

<sup>163</sup> Interview with Company 14 representative.

<sup>164</sup> Reed, “International Business Community,” at 217–218.



<sup>165</sup> *Ibid.*, at 218.

<sup>166</sup> Interview with Company 3 representative.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*

<sup>169</sup> Survey response.

<sup>170</sup> Interview with Company 13 representative.

<sup>171</sup> Interview with Company 13 representative.

<sup>172</sup> Interview with Company 4 representative.

<sup>173</sup> Survey response.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.*

<sup>178</sup> Interview with Company 9 representative.

<sup>179</sup> Survey response.

<sup>180</sup> Interview with Company 13 representative.

<sup>181</sup> Survey response.

<sup>182</sup> Interview with Company 13 representative.

<sup>183</sup> *OECD Foreign Bribery Study*, at 8.

<sup>184</sup> Interview with Company 13 representative.

<sup>185</sup> Interview with Company 4 representative.

<sup>186</sup> Interview with Company 3 representative.

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

<sup>189</sup> Interview with Company 11 representative.

<sup>190</sup> Interview with Company 5 representative.

<sup>191</sup> *Ibid.*

<sup>192</sup> Interview with Company 1 representative.

<sup>193</sup> See, e.g. *ACN Cooperation Study; International Cooperation Challenges Study*; OECD, *The Typology on Mutual Legal Assistance in Foreign Bribery Cases* (2012), <https://anticorruption-integrity.oecd.org/reports/the-importance-of-mutual-legal-assistance-in-foreign-bribery-cases-aci.html>.

<sup>194</sup> Interview with Company 1 representative.

<sup>195</sup> Interview with Company 11 representative.

<sup>196</sup> See interview with Company 13 representative.

<sup>197</sup> Interview with Company 4 representative.

<sup>198</sup> Interview with Company 6 representative.

<sup>199</sup> Interview with Company 13 representative.

<sup>200</sup> UN Information Service, “Corruption and Small Medium Enterprises (SMEs),” Factsheet 6, UNIS/CP/733 (28 Nov. 2013), <http://www.unis.unvienna.org/unis/en/pressrels/2013/uniscp733.html>; Maira Martini, “Reducing Bureaucracy and Corruption Affecting Small and Medium Enterprises,” U4 Expert Answer 380 (8 Apr. 2013), at 2, [https://www.transparency.org/files/content/corruptiongas/380\\_Reducing\\_bureaucracy\\_and\\_corruption\\_affecting\\_small\\_and\\_medium\\_enterprises.pdf](https://www.transparency.org/files/content/corruptiongas/380_Reducing_bureaucracy_and_corruption_affecting_small_and_medium_enterprises.pdf).

<sup>201</sup> UN Industrial Development Organization and UNODC, *Corruption Prevention to Foster Small and Medium-sized Enterprise Development*, vol. 2 (2012) [hereinafter *SME Corruption Prevention*], at v, [https://www.unodc.org/documents/corruption/Publications/2012/Corruption\\_prevention\\_to\\_foster\\_small\\_and\\_medium\\_size\\_enterprise\\_development\\_Vol\\_2.pdf](https://www.unodc.org/documents/corruption/Publications/2012/Corruption_prevention_to_foster_small_and_medium_size_enterprise_development_Vol_2.pdf).

<sup>202</sup> Maira Martini, “Reducing Bureaucracy and Corruption Affecting Small and Medium Enterprises,” U4 Expert Answer 380 (8 Apr. 2013), at 2, [https://www.transparency.org/files/content/corruptiongas/380\\_Reducing\\_bureaucracy\\_and\\_corruption\\_affecting\\_small\\_and\\_medium\\_enterprises.pdf](https://www.transparency.org/files/content/corruptiongas/380_Reducing_bureaucracy_and_corruption_affecting_small_and_medium_enterprises.pdf).

<sup>203</sup> *SME Corruption Prevention*, at v.

<sup>204</sup> Reed, “International Business Community,” at 214.

<sup>205</sup> *Ibid.*, at 214–215.

<sup>206</sup> *OECD Foreign Bribery Report*, at 21.

<sup>207</sup> *SME Corruption Prevention*, at 54.

<sup>208</sup> Interview with Company 5 representative.

<sup>209</sup> Reed, “International Business Community,” at 292.

<sup>210</sup> *Good Practice Guidance*, part B.

<sup>211</sup> *Ibid.*, at 203–204.

<sup>212</sup> Interview with Company 8 representative.

<sup>213</sup> *Ibid.*

<sup>214</sup> See also *OECD NTR Study*, at 101–103.

<sup>215</sup> Survey response.

<sup>216</sup> OECD, *Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?* (2018), at 3, <https://www.oecd.org/corruption/Foreign-Bribery-Enforcement-What-Happens-to-the-Public-Officials-on-the-Receiving-End.pdf>.

<sup>217</sup> OECD, *Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?* (2018), at 7, 14, <https://www.oecd.org/corruption/Foreign-Bribery-Enforcement-What-Happens-to-the-Public-Officials-on-the-Receiving-End.pdf>.

<sup>218</sup> Interview with Company 9 representative.

<sup>219</sup> Interview with Company 8 representative.

<sup>220</sup> *OECD Foreign Bribery Report*, at 15.

<sup>221</sup> *OECD NTR Study*, at 13.

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*, at 14.

<sup>224</sup> Interview with Company 7 representative.

<sup>225</sup> *Ibid.*

<sup>226</sup> Survey response.

<sup>227</sup> Peter Wilkinson, “10 Anti-Corruption Principles for State-Owned Enterprises” (TI 2017), [https://www.transparency.org/whatwedo/tools/10\\_anti\\_corruption\\_principles/0](https://www.transparency.org/whatwedo/tools/10_anti_corruption_principles/0).

<sup>228</sup> Survey response.

<sup>229</sup> *Ibid.*

<sup>230</sup> *Ibid.*

<sup>231</sup> Interview with Company 13 representative.

<sup>232</sup> *Ibid.*

<sup>233</sup> Survey response.

<sup>234</sup> Survey response.

<sup>235</sup> Interviews with Company 5 and Company 7 representatives; survey response.

<sup>236</sup> Survey response.

<sup>237</sup> OECD, “Improving the Business Environment for SMEs through Effective Regulation,” Policy Note, SME Ministerial Conference, Mexico City, 22–23 Feb. 2018, at 3, <https://www.oecd.org/cfe/smes/ministerial/documents/2018-SME-Ministerial-Conference-Parallel-Session-1.pdf>.

<sup>238</sup> Survey response.

<sup>239</sup> Interview with Company 10 representative.

<sup>240</sup> *OECD Foreign Bribery Report*, at 25.

<sup>241</sup> Interview with Company 10 representative.

<sup>242</sup> Interviews with Company 4 and Company 14 representatives.

<sup>243</sup> Survey response.

<sup>244</sup> *Ibid.*

<sup>245</sup> Interview with Company 13 representative.

<sup>246</sup> See *ibid.*

<sup>247</sup> Interview with Company 10 and Company 15 representatives.

<sup>248</sup> Interview with Company 10 representative.

<sup>249</sup> Interview with Company 2 and Company 14 representatives.

<sup>250</sup> Interview with Company 14 representative.

<sup>251</sup> Interview with Company 2 representative.

<sup>252</sup> Survey response.

<sup>253</sup> *Ibid.*

<sup>254</sup> *Ibid.*

<sup>255</sup> Interviews with Company 6 and Company 14 representatives.

<sup>256</sup> Interview with Company 11 representative.

<sup>257</sup> Survey response.

<sup>258</sup> *Ibid.*

<sup>259</sup> See, e.g., Eduard Ivanov, *Overview of Anti-Corruption Compliance Standards and Guidelines* (International Anti-Corruption Academy 2019), [https://www.iaca.int/images/Research/Overview\\_of\\_Compliance\\_Standards\\_and\\_Guidelines.pdf](https://www.iaca.int/images/Research/Overview_of_Compliance_Standards_and_Guidelines.pdf); *Ethics and Compliance Handbook*, *supra*.

<sup>260</sup> Interview with Company 4 representative.

<sup>261</sup> Reed, “International Business Community,” at 311; UN Industrial Development Organization and UNODC, *Corruption Prevention to Foster Small and Medium-sized Enterprise Development*, vol. 2 (2012), at 56, [https://www.unodc.org/documents/corruption/Publications/2012/Corruption\\_prevention\\_to\\_foster\\_small\\_and\\_medium\\_size\\_enterprise\\_development\\_Vol\\_2.pdf](https://www.unodc.org/documents/corruption/Publications/2012/Corruption_prevention_to_foster_small_and_medium_size_enterprise_development_Vol_2.pdf).

<sup>262</sup> See interview with Company 13 representative.

<sup>263</sup> Interview with Company 2 and Company 14 representatives.

<sup>264</sup> Reed, “International Business Community,” at 314–315.

<sup>265</sup> *Ibid.*, at 109.

<sup>266</sup> Interview with Company 9 representative.



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