

Serious Economic Crime

A boardroom guide to prevention and compliance



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Transparency International and the fight against corruption

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Corruption hurts in many ways. Transparency International (TI) estimated in 2008 that the cost of attaining the UN Millennium Development Goals relating to water and sanitation was likely to increase by as much as US\$48 billion by 2015. Of course, the financial cost is only one dimension of the tragedy. In many parts of the world, corruption and poor governance undermine both democracy and development. The poor are disproportionately hurt – the mother who cannot afford to pay a huge bribe to get medical attention for her dying child; the family who will only be able to have safe drinking water if it pays a bribe; and the unemployed who remain jobless because public works projects are not implemented since corrupt officials have pocketed the funds that were allocated for them.

Unless greater progress is made in reducing corruption and improving governance, it will be that much harder to achieve the UN Millennium Development Goals. For example, research by TI in 42 countries shows that the increased practice of paying bribes is associated with a lower literacy rate among 15- to 24-year-olds.

In the UK, we believe there should be zero tolerance for corruption both at home and in Britain's business dealings with the rest of the world, especially in developing countries. It is crucial that UK companies behave ethically, particularly in high-risk overseas environments, and that they do not become complicit in making the problem of corruption worse. The British financial system should not allow the corrupt to find a safe haven for their illicit wealth in the UK and its overseas dependencies and territories. The UK government must honour its international obligations, particularly under the 1997 OECD Anti-Bribery Convention and the UN Convention against Corruption.

The government's 2011 White Paper on Trade and Investment for Growth quite rightly points out that bribery and corruption are barriers to trade and growth, because they hinder development, distort competition and perpetuate poverty.

The UK currently conducts about a quarter of its foreign trade with developing countries and most of this is with emerging economies where the risk of corruption tends to be greater, as demonstrated by their low scores on TI's Corruption Perceptions Index (see Table 1 over page). It is in the UK's strategic interests to see anti-corruption reforms implemented in these

Table1: TI Corruption Perceptions Index 2010

TOP 40			BOTTOM 40		
Rank	Country/ territory	CPI 2010 score	Rank	Country/ territory	CPI 2010 score
1	Denmark	9.3	134	Sierra Leone	2.4
1	New Zealand	9.3	134	Togo	2.4
1	Singapore	9.3	134	Ukraine	2.4
4	Finland	9.2	134	Zimbabwe	2.4
4	Sweden	9.2	143	Maldives	2.3
6	Canada	8.9	143	Mauritania	2.3
7	Netherlands	8.8	143	Pakistan	2.3
8	Australia	8.7	146	Cameroon	2.2
8	Switzerland	8.7	146	Côte d'Ivoire	2.2
10	Norway	8.6	146	Haiti	2.2
11	Iceland	8.5	146	Iran	2.2
11	Luxembourg	8.5	146	Libya	2.2
13	Hong Kong	8.4	146	Nepal	2.2
14	Ireland	8.0	146	Paraguay	2.2
15	Austria	7.9	146	Yemen	2.2
15	Germany	7.9	154	Cambodia	2.1
17	Barbados	7.8	154	Central African Republic	2.1
17	Japan	7.8	154	Comoros	2.1
19	Qatar	7.7	154	Congo-Brazzaville	2.1
20	UK	7.6	154	Guinea-Bissau	2.1
21	Chile	7.2	154	Kenya	2.1
22	Belgium	7.1	154	Laos	2.1
22	US	7.1	154	Papua New Guinea	2.1
24	Uruguay	6.9	154	Russia	2.1
25	France	6.8	154	Tajikistan	2.1
26	Estonia	6.5	164	Dem Republic of Congo	2.0
27	Slovenia	6.4	164	Guinea	2.0
28	Cyprus	6.3	164	Kyrgyzstan	2.0
28	UAE	6.3	164	Venezuela	2.0
30	Israel	6.1	168	Angola	1.9
30	Spain	6.1	168	Equatorial Guinea	1.9
32	Portugal	6.0	170	Burundi	1.8
33	Botswana	5.8	171	Chad	1.77
33	Puerto Rico	5.8	172	Sudan	1.6
33	Taiwan	5.8	172	Turkmenistan	1.6
36	Bhutan	5.7	172	Uzbekistan	1.6
37	Malta	5.6	175	Iraq	1.5
38	Brunei	5.5	176	Afghanistan	1.4
39	Korea (South)	5.4	176	Myanmar	1.4
39	Mauritius	5.4	178	Somalia	1.1

countries because this will be beneficial to economic growth and trade.

The UK needs to be at the forefront of international efforts to tackle corruption. But it will be accused of hypocrisy if it does not first put its own house in order. Research published by TI-UK in June 2011 ('Corruption in the UK – Overview and Policy Recommendations') suggests that there is a more acute problem in Britain than is currently recognised. There are serious issues in relation to specific institutions and sectors, notably political party funding, parliament, sport and prisons.

A particularly shocking finding is the increasing reach of organised crime in areas, such as prisons, where criminal activity and corruption are inextricably linked. More action is needed by the government to understand and combat these growing threats through a robust, coherent and co-ordinated response. Since there are links between corruption outside and inside the UK, it would be desirable to extend the remit of the government's current overseas 'anti-corruption champion' (the Secretary of State for Justice) to cover corruption within the UK.

The Bribery Act 2010

The effective enforcement of the Bribery Act, which came into force on July 1, 2011, should be a key element of a UK strategy to combat corruption, both overseas and domestically. After a decade of procrastination, the UK has finally become fully compliant with the OECD Anti-Bribery Convention, which requires all its parties to criminalise the bribery of foreign public officials. Prosecutors will have a legal framework for prosecuting bribery that is fit for purpose.

However, there is a danger that implementation of the new law may be weakened because of budgetary cutbacks and uncertainties about the future organisation of the machinery of law enforcement against economic crime. This would be tragic because there has been a significant improvement in the UK's efforts in recent years. TI's 2011 assessment of the OECD Convention's

enforcement by 37 countries shows that, for the second successive year, the UK is one of seven countries to be actively enforcing the Convention (see Table 2 over page). It has recorded 17 prosecutions and has 26 ongoing investigations. This is a huge improvement because, in 2007, it had not brought a single prosecution of foreign bribery.

The Bribery Act should send a strong message to British business: it will be used to punish unethical companies that pay bribes to gain an unfair advantage, and it will make it easier for honest UK companies to resist demands for bribes and facilitation payments when operating in high-risk environments. Hopefully, it will also strengthen their hand in requiring their business partners to observe high ethical standards.

The Bribery Act, through its extra-territorial application to foreign companies that have or conduct a part of their business in the UK, ought to help to create a level playing field for companies that are committed to zero tolerance of bribery. However, it is unfortunate that parts of the UK government's guidance to commercial organisations on procedures for preventing bribery, in relation to Section 7 of the Act, have unnecessarily created some uncertainty in this area.

In 2010, TI-UK published 'UK Bribery Act Adequate Procedures – guidance on good practice procedures for corporate anti-bribery programmes'. This is designed to help companies adopt and apply sensible, practical measures consistent with the Act's requirements.

Our guidance is based on the principle that a company's anti-bribery systems are more likely to be regarded as constituting 'adequate procedures' if they are based on good practice rather than an approach that solely uses compliance with laws to determine the structure of the programme.

Zero tolerance of bribery is the best policy

A company's best defence against bribery and corruption is a policy of zero tolerance – especially when operating in high-risk environments. The TI guidance to companies stresses six basic requirements:

Table 2: foreign bribery enforcement in OECD Convention countries

Country	Enforcement ^I				Share of world exports % for 2010 ^{II}	Share of foreign investment % for 2009 (outward)
	Total cases		Investigations under way			
	2010	2009	in 2010	in 2009		
Active enforcement						
Denmark	14 ^{III}	14 ^{III}	1	1	0.8	0.9
Germany	135	117	22	24	8.2	8.4
Italy	18	18	2 ^{IV}	3 ^{IV}	2.9	4.6
Norway	6	6	1	1	0.9	0.6
Switzerland	> 35	30	0 ^{IV}	0	1.6	2.6
United Kingdom	17 ^V	10	26	24	3.5	13.3
United States	227	169	106	100	9.8	15.7
Moderate enforcement						
Argentina	2	2	0 ^{IV}	0	0.4	0.1
Belgium	4 ^{VI}	4 ^{VI}	0	0	2.0	2.5
Finland	6	5	3	5	0.5	0.4
France	24	18	5	10	3.5	11.3
Japan	7	7	0 ^{IV}	0	4.5	3.7
Korea (South)	17	17 ^{VII}	0	1	2.9	0.8
Netherlands	9	7	3	0	3.3	1.6
Spain	11	11	0	1	2.0	6.0
Sweden	2 ^{IV}	2 ^{IV}	4	5	1.2	1.9
Little or no enforcement						
Australia	1	1	3	4	1.4	1.2
Austria	0	0	5 ^{IV}	4 ^{IV}	1.1	1.6
Brazil	1	1	8	4	1.3	0.4
Bulgaria	4	3	0	1	0.1	0.1
Canada	2	2	23	1	2.5	2.7
Chile	2	0	2	0	0.4	0.2
Czech Republic	0	0	0	0	0.8	0.2
Estonia	0	0	0	0	0.1	0.1
Greece	0 ^{IV}	0 ^{IV}	0 ^{IV}	0 ^{IV}	0.3	0.3
Hungary	27	27	2	0	0.6	0.2
Ireland	0	0	0 ^{IV}	0 ^{IV}	1.1	1.0
Israel	0	0	0	0	0.4	0.4
Luxembourg	2	-	Some	-	0.5	0.5
Mexico	0	0	0	0	1.7	0.4
New Zealand	1	0	1	2	0.2	0.1
Poland	0	0	0	0	1.0	0.2
Portugal	4	4 ^{VII}	6	0	0.4	0.3
Slovak Republic	0	0	1	1	0.4	0.4
Slovenia	0	0	2	2	0.2	0.1
South Africa	0	0	5	1	0.5	0.2
Turkey	0	0	5	4	0.9	0.1

I. Case numbers are cumulative, starting from Convention entry into force; investigation numbers are those ongoing in the year listed. II. Numbers from the OECD Working Group on Bribery 2010 Annual Report. III. Cases all related to UN oil-for-food programme. Some of these cases may have been brought for sanctions violations. IV. Number unknown or based on media reports. V. Includes 2011 cases. VI. Belgium has brought ten additional cases on behalf of EU institutions. VII. Number corrected from last year's report.

- first, the tone from the top – at the board level – is crucial in establishing zero tolerance of bribery and corruption as the foundation for a company's anti-bribery systems
- second, a proper, thorough assessment of risk is essential. The assessment should be seen as a continuous process because corruption challenges are not static and can change quite quickly
- third, detailed policies and procedures need to be developed and the key areas to cover include: facilitation payments; promotional expenditure and gifts; political and charitable contributions; due diligence on business partners; and operational functions such as contracting and purchasing
- fourth, sufficient resources and high-level attention are needed to ensure proper implementation of policies and procedures. There is no point in developing good policies if mechanisms for implementation are weak
- fifth, due diligence must be applied to business partners. This is particularly important in relation to agents, contractors and suppliers
- finally, companies should monitor and review their anti-bribery systems continually. It also helps to seek external assurance that a company's systems are functioning properly.

Facilitation payments

Companies operating in high-risk environments are often exposed to demands for so-called facilitation payments (FPs), which are banned under UK legislation.

Although the OECD Convention does not require parties to criminalise FPs, a majority of them have done so. Others, like the US, allow them but on the basis of strict conditions. None of the parties give companies *carte blanche* to make such payments. The OECD's 2009 Anti-Bribery Recommendation calls on governments to control the problem, recognising that the payments are generally illegal in the countries where they are made.

FPs are a form of bribery and TI therefore

urges all companies to work towards their complete elimination. There is no dividing line between a facilitation payment and a bribe. The influence of pervasive FPs can be insidious and provides a climate for wider systemic corruption. Such payments can place a heavy burden on the poorest citizens of developing countries.

We recognise the challenges companies face at a practical level. Those that have banned these payments tend to be the large multinational companies that may have a lot of clout. Smaller companies may find it more difficult to resist demands for such bribes. However, despite the practical difficulties, there are good reasons why they should be eliminated. Once a company starts making them, it becomes vulnerable to demands for larger payments. Furthermore, if a company allows FPs, this can be misunderstood by employees or abused by some of them to pay bribes in the guise of FPs.

Companies that have adopted a zero-tolerance approach to FPs have actually found that it is good for their business. They say their employees are not bothered for demands for these payments because it is widely known in the high-risk countries where they operate that their corporate policy is not to pay them.

If enough companies collectively refused to make FPs, and demands for them were publicised and reported to the host government, this would make it difficult for those demands to be sustained. But for that to happen, it will also be vital for UK embassies and high commissions to give UK companies advice and support on the ground. It is good to see that this issue is now receiving more attention from the UK government.

Creating a level playing field

TI is increasingly concerned about the lack of enforcement efforts among other parties to the OECD Convention. Our 2011 annual assessment report (see Table 2) shows that as many as 21 parties are laggards that need to face greater diplomatic pressure from the OECD's secretary-

general and its Working Group on Bribery. We have recommended that the OECD should publish a list of these countries and monitor their enforcement efforts more closely.

Questions have been raised about whether a truly level playing field for bribe-free international business can be created as long as some major players remain outside the OECD Convention. Particular concerns have been expressed about Russia, China and India. Companies from these countries are significant players in global markets.

There have been some positive developments. Russia has decided to accede to the OECD Convention later this year. China and India have introduced legislation that criminalises foreign bribery, and India has finally ratified the United Nations Convention against Corruption. Of course, it would be even better if India and China could also be persuaded to join the OECD Convention, and it remains to be seen how they will actually enforce their new laws against foreign bribery. But we should not underestimate the significance of these developments because they augur well for international diplomatic efforts to level the playing field for bribe-free international business.

United Nations Convention against Corruption (UNCAC)

Companies that are committed to conducting their international business ethically often ask what more can be done to tackle corruption on the ‘demand side’ in the difficult environments where they operate.

UNCAC, which has been ratified by 152 countries, is very relevant in this context because it is the international community’s most comprehensive, legally binding instrument to combat bribery and corruption.

It has provisions that cover prevention, enforcement and international co-operation to prosecute bribery and return financial assets looted by corrupt politicians and officials. It provides the best framework to pursue anti-

corruption reforms in countries and will create a more congenial environment for attracting foreign direct investment, enabling companies to conduct business without pressure to pay bribes.

In 2009, the parties to the UN Convention agreed the outline of a mechanism to review its implementation. Since the agreement of more than 100 countries was required, what emerged was perhaps not as robust as TI and other organisations would have wanted. However, we now have a framework to press for anti-corruption reforms in countries where governance is weak, public institutions are fragile and corruption levels are high. And over time, we hope it will be possible to strengthen the review mechanism. For this purpose, TI and several other non-governmental organisations (NGOs) have formed a coalition that is pressing for changes, especially to ensure transparency in the monitoring and review process.

While legally binding international instruments like the UN and OECD Conventions are crucial, we should not ignore the important role of non-binding international initiatives in promoting transparency and anti-corruption reforms.

Extractive Industries Transparency Initiative (EITI)

A good example of voluntary international initiatives is the EITI, which aims to improve transparency in the payment and reporting of revenues in extractive industries, notably oil, gas and mining. The basic underlying principle is that if citizens in certain countries – those that are rich in natural resources but socio-economically poor because of corruption and economic mismanagement – had access to accurate information about government revenues from extractive industries, they could demand greater accountability. This would help to promote more productive uses of those revenues for the wider public good.

Since it was launched in 2002, the EITI has grown into a unique coalition among

governments, companies, civil society and international organisations. Under the initiative, which is independently audited with oversight by country multi-stakeholder groups, companies disclose their payments of tax and royalties, and governments disclose their corresponding receipts. Currently, there are 24 so-called ‘candidate countries’, whose governments have, in the view of the EITI’s International Board, committed to implementing its principles and meeting five ‘sign up’ indicators. Ten countries are deemed by the board to be compliant with the EITI ‘standard’.

More than 50 of the world’s largest oil, gas and mining companies, and 80 institutional investors (managing over US\$16 trillion), support the EITI. And about 300 NGOs worldwide – represented by the Publish What You Pay (PWYP) coalition, of which TI was a founder member – are involved in the implementation of the initiative, internationally and nationally.

A TI project to promote revenue transparency in the oil and gas sector is helping to reinforce the EITI. TI’s 2011 report on the oil and gas industry rates 44 companies on the public availability of information on their anti-corruption programmes and how they report their financial results in all the countries where they operate. The companies evaluated represent 60 per cent of global oil and gas production.

Legislation for revenue transparency

The EITI will also be strengthened by a provision in a new US law passed in July 2010 that is expected to have a huge impact in terms of promoting transparency. Under the Cardin-Lugar provision in the US Financial Reform Act, oil, gas and mining companies that report to the Securities and Exchange Commission will be required to publish payments to foreign governments on a country-by-country and project-by-project basis.

It would be good to see measures equivalent to the Cardin-Lugar provision enacted in the UK, as well as other major financial centres where

extractive companies are listed. It is important to have a level playing field and this could be achieved through co-ordinated action at the level of the EU and the G20. The PWYP coalition is actively campaigning for this, and we have seen some encouraging indications of growing support among key EU members like the UK, Germany and France.

Tackling illicit financial flows

The UK and other major financial centres need to strengthen their defences against money laundering since the ability to launder the proceeds of corruption facilitates the commission of bribery as well as terrorism and other criminal activities.

It has been estimated by the World Bank that corrupt leaders of poor countries steal as much as US\$40 billion each year and stash these looted funds overseas. UK financial institutions have been used as repositories for stolen funds from several countries. Money launderers find it easier to mingle their dirty funds in a large financial centre like London.

Worldwide, the poorest people in the poorest countries are the main victims of bribery and corruption. When leaders in these countries are able, with impunity, to loot public financial resources and launder this illicit wealth in the financial centres of developed countries like the UK, the poor suffer even more. Instead of funding health, education, clean water and sanitation, corrupt kleptocrats lead obscene, extravagant lifestyles.

The UK’s defences against money laundering should be sufficiently robust to prevent corrupt money from finding a safe haven. If those defences are breached, the UK must co-operate promptly to enable stolen assets to be repatriated to victim countries.

An assessment by TI-UK of the UK’s anti-money laundering regime (‘Combating Money Laundering and Recovering Looted Gains – Raising the UK’s Game’, June 2009) showed that although considerable improvements have

been made in recent years, there is a particular need to:

- strengthen regulatory capacity in vulnerable UK overseas territories
- enhance due diligence on politically exposed persons
- make transparent the beneficiaries of trusts
- improve the regulation of trust and company service providers.

Conclusion

The fight against corruption has to be waged on several fronts. Civil society, governments and companies can work together to change policies, attitudes and values in ways that will help to tackle corruption effectively at the national and global levels. We need more international trade and economic growth but within an ethical framework based on transparency, accountability and integrity. Most UK companies want to conduct their business in an ethical manner and will actually benefit from a strong stance against bribery.

If the UK enforces the Bribery Act and its other laws against serious economic crime effectively, it will be in a far stronger position to encourage other countries, particularly emerging economies, to raise their standards. And as anti-corruption standards improve over time in a larger number of countries, we are bound to see positive impacts on growth, development and the reduction of poverty.

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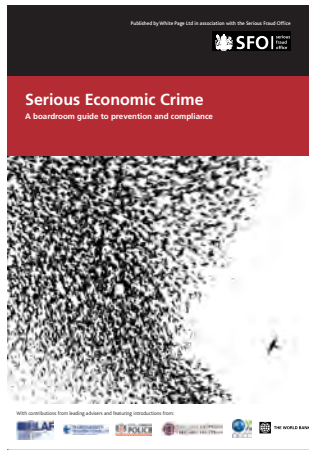
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Published by White Page Ltd in association with the Serious Fraud Office, Serious Economic Crime's primary purpose is to give board-level readers in the UK and international businesses informed commentary on the impact of UK anti-fraud and anti-corruption legislation. As the scope of this legislation continues to expand and interact more with the legislation in other jurisdictions, so the landscape for best-practice compliance and fraud prevention has become increasingly complex. The wealth of expert insights from lawyers, accountants and specialist anti-fraud consultants in this publication's 36 chapters is therefore an invaluable resource.

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