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Anti-Corruption Compliance:
A Guide for Mid-Sized Companies in Emerging Markets

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“Improved compliance reduces risk, and reducing risk reduces costs. This guidebook is a valuable resource for companies everywhere but especially in emerging markets.”

– Michael Hershman, President and CEO, Fairfax Group, Co-Founder of Transparency International

“Public institutions cannot fight corruption and enhance integrity alone. We need the active involvement of the private sector if we want to ensure a level playing field for all companies from all markets around the globe. Therefore, this handbook should be welcomed. It is an important initiative to assist companies from emerging markets to develop corporate integrity through compliance systems.”

– Drago Kos, Chair, Organisation for Economic Cooperation and Development Working Group on Bribery
In many countries fighting corruption seems to be an impossible battle, especially for mid-sized companies with limited resources. While there is a broad global consensus that corruption suppresses competition and innovation, thus hampering entrepreneurship and economic growth opportunities, countering it presents a challenging task due to resistance to reform in corruption-tainted business environments. In many cases anti-corruption rules and regulations may be weak or unevenly enforced, government-led steps to fight corruption remain insufficient or ineffective, and bribes are a widely accepted part of doing business.

Yet, businesses committed to anti-corruption are not helpless. They can lead by example by improving their own safeguards against corruption and act together to create a movement for integrity that makes clean business conduct the norm, not the exception. For three decades, the Center for International Private Enterprise (CIPE), an affiliate of the U.S. Chamber of Commerce, has worked with such businesses through its partner chambers of commerce and business associations around the world.

In Thailand for example, partnering with the Thai Institute of Directors (IOD), CIPE has helped to train hundreds of businesses on best practices in anti-corruption compliance and to establish a coalition of companies committed to integrity. Members of the coalition – which now represents roughly 20 percent of the country’s economy – sign a declaration that lays out tangible and specific steps a company must take to proactively reduce corruption-related risks in its operations. These commitments are subsequently verified.
by an annual outside audit, which, when passed, leads to certification. As a result of taking the initiative to comply with anti-corruption standards, coalition members have begun to see direct benefits to their business operations by becoming more trustworthy and attractive business partners, especially to multi-national corporations.

The Thai example is just one of many where CIPE has worked to design a locally driven solution that is effective even in highly corrupt markets. Through its extensive worldwide network of partner organizations representing the needs of diverse companies, CIPE can effectively reach these companies with anti-corruption solutions tailored to their size and the local context.

In today’s globalized world, where international value chains stretch across borders and continents, anti-corruption compliance provides a vital competitive advantage. Ethical companies tend to have higher valuations, are more attractive to potential investors and employees, and are more likely to be engaged in long-term arrangements with their business partners. Increasingly, companies are expected to ensure not just the integrity of their own operations but also the conduct of their suppliers, distributors, and agents wherever they may be. Evidence of this comes from high-profile prosecutions of multi-national firms that are not only subject to significant fines but also risk loss of share value and reputation.

For instance, in 2010 Alcatel-Lucent and three of its subsidiaries agreed to pay a combined $137 million settlement to resolve a Foreign Corrupt Practices Act (FCPA) investigation into worldwide sales practices that relied extensively on consultants and agents who bribed local officials in pursuit of business opportunities. As part of the settlement, Alcatel-Lucent and its subsidiaries agreed to implement rigorous compliance enhancements, which also covered third-party conduct. An example of lost share value is Wal-Mart’s stock falling nearly 5 percent in 2012 following the launch of an investigation by the U.S. Department of Justice into a bribery allegation against the company’s Mexican subsidiary. Wal-Mart lost $10 billion in
its market value in a single day. Stock of Wal-Mart de Mexico, traded separately, plummeted more than 12 percent.

To date, the most vigorous enforcement of anti-corruption laws governing firms’ behavior abroad has been in the United States and Germany, with China also stepping up investigations of bribery-related misconduct within its borders. This trend is likely to broaden globally as major economies like Canada, Brazil, and even Russia are showing signs of readiness to take similar enforcement action. Meeting such high standards can be a challenge for companies, especially for mid-sized firms in emerging and frontier markets where corruption remains widespread. But it is also a significant opportunity. A clear commitment to integrity and demonstrable steps taken toward anti-corruption compliance are key selling points. By adopting internal anti-corruption controls, companies gain a powerful tool for burnishing a brand or attracting new business partners.

This CIPE guidebook is aimed specifically at mid-sized firms, an audience underserved by existing resources on anti-corruption compliance that tend to serve the needs of large firms. The guidebook seeks to supplement the knowledge needed by directors, executives, legal counsels and managers of mid-sized companies in order to develop and implement an effective compliance program and capitalize on the opportunities that access to global value chains offer.
What does compliance mean?

“The state or fact of according with or meeting rules or standards”
– Oxford English Dictionary

Compliance is a broad concept that in the context of business refers to fulfilling various national and international laws, regulations, rules, and standards in a number of key areas, including anti-corruption:

However, following the relevant laws is just a start. Compliance goes beyond what is required by law because it is an expression of a company’s ethical culture – a set of shared attitudes, values, goals, and practices that encourage ethical behavior in pursuit of a company’s goals. The most effective culture is not one rooted exclusively in prohibition and punishment, rather it is one where leaders and employees at all levels respect the limits of authority and behavior even when no one is watching.
Ensuring that values are clear, positive, and understandable allows everybody in the company to take ownership and act upon those values in their daily business conduct.

**What is anti-corruption compliance?**

Corruption, broadly defined as the misuse of entrusted power for private gain, in the context of this guidebook refers to both corruption involving public officials and commercial corruption occurring through improper dealings between companies. In the last decade or so, a global anti-corruption framework has emerged through a number of important legislative and enforcement actions. In particular, they stigmatize – and criminalize – bribery of public officials, including bribery committed in other countries. Listed below are some key conventions, principles and laws:

**Intergovernmental instruments**
- 1996 – Inter-American Convention Against Corruption
- 1997-1999 – Council of Europe Conventions on Corruption
• 2003 – United Nations Convention Against Corruption (UNCAC) – 140 signatories

International principles
• 1996 – International Chamber of Commerce (ICC) Rules of conduct to Combat Extortion and Bribery in International Business Transactions
• 2000 – United Nations Global Compact 10th Principle on Anti-Corruption
• 2003 – Transparency International’s Business Principles for Countering Bribery
• 2004 – World Economic Forum Partnering against Corruption Initiative (PACI) Principles

Select national laws with extraterritorial applicability
• 1977 – U.S. Foreign Corrupt Practices Act (FCPA), more vigorously enforced in recent years
• 1999 – Canada’s Corruption of Foreign Public Officials Act (CFPOA), amended in 2013 to make investigation and prosecution of offenses easier
• 2010 – United Kingdom Bribery Act
• 2014 – Brazil Clean Company Act

In addition to international laws and principles, virtually every country in the world has domestic legislation that criminalizes corrupt practices. The degree to which they are enforced varies. Yet authorities can become more diligent about enforcement at any moment (as they have in countries such as Brazil or China) with violating businesses left legally exposed – along with their international partners. Therefore, anti-corruption compliance means translating global anti-corruption standards and principles as well as national laws into local practice.

Prohibited practices

While national laws vary as to the exact scope and phrasing of practices that may be considered corrupt, the foremost prohibition in the context of business transactions is that against
bribery. As defined by Transparency International, bribery is “the offering, promising, giving, accepting, or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.”

“Whether you believe that an anti-corruption law in your country will be enforced or not, the multinational companies are going to be looking for compliance with it. If you want to make money partnering with multinationals, you must have compliance.”

– Jeremy B. Zucker, Partner, Dechert LLP

Bribery of public officials, which is most relevant in global anti-corruption compliance, is further defined by the FCPA as “the offer, promise, or gift of undue pecuniary or other advantage, whether made directly or through intermediaries, to a person holding public office for that person to commit an act or refrain from acting in relation to the performance of official duties.” This includes political contributions to foreign government officials (individuals currently in power, candidates for office, or political parties) since they may give rise to the appearance of quid pro quo expected for the contribution.

As these definitions illustrate, the essence of bribery comes down to a company providing some form of benefit to a public official or another company in order to gain an advantage that it otherwise would not obtain.

Crucially, bribery is not limited to money changing hands; it can be an exchange of other benefits and favors.

These prohibitions extend not only to a company’s employees but, importantly, also to the activity of its agents, including

Some anti-corruption regulations, such as the UK Bribery Act, apply beyond bribery of public officials and prohibit both public and private sector bribery (i.e., one company bribing another to obtain business favors).
Non-monetary forms of bribery

It is important to know that prohibitions of bribery do not concern only monetary bribes. Instead, they involve anything of value or any benefit that can exert undue influence on a public official who has discretion over providing a business advantage:

- **Travel and lodging** not directly related to business activities (such as providing for a detour to a tourist destination on a business trip or paying expenses for a government official's family members)

- Providing excessive (value and frequency) **gifts and entertainment**

- **Hiring** a government official’s relative

- **Making a charitable contribution**, even to a bona fide charity, if that contribution benefits a foreign official or is part of a quid pro quo


Consultants, joint venture partners, distributors, “finders,” and vendors, if their actions ultimately benefit the company that hired them. For instance, in 2013 global drug maker GlaxoSmithKline (GSK) came under investigation by the local authorities in China for allegedly paying up to $490 million to doctors through 700 travel agencies in exchange for sales of its products. The investigation is still ongoing but GSK’s 3rd quarter sales in China fell 61 percent after the anti-corruption probe began in July 2013.

Useful resources on how to resist bribery are available, including (see appendix for links):

**Resisting Extortion and Solicitation in International Transactions (RESIST)** toolkit jointly published by the International Chamber of Commerce, Transparency International, United Nations Global Compact, and World Economic Forum Partnering Against Corruption Initiative. The toolkit consists of 22 scenarios that explain how a company can proactively prevent the solicitation of a bribe and how to react if the demand is made.
Business Principles for Countering Bribery developed by Transparency International and other stakeholders, including the small and medium enterprise edition. The principles state that the enterprise shall prohibit bribery in any form whether direct or indirect, and shall commit to implementing a program to counter bribery. They also explain how to structure such a program consisting of a statement of values, codes of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring, and assurance.

Fighting Corruption through Collective Action - A Guide for Business developed by the World Bank Institute, CIPE, and other stakeholders including businesses, NGOs and multilateral organizations such as Grant Thornton, Siemens, United Nations Global Compact, and Transparency International, in order to help companies work together to say no to corruption. This toolkit provides multiple approaches to combating corporate corruption based on proven “how-to” examples and case studies from countries around the world.

Facilitation payments deserve special consideration. They may be known by different euphemistic names in different countries – “grease” or “speed” payments for instance – and are small payments made to public servants that expedite or secure the performance of a routine or required action to which the payer is legally or otherwise entitled. Such actions may include timely granting of a business permit, processing imported goods through customs, or connecting a newly opened office to the state-run electric grid. Unofficial payments to facilitate these government services may be commonplace in many countries but they are illegal under most international laws and, importantly, these payments are often also illegal under the local laws of countries where the payments seem to be common practice. As such they should be avoided, and if impossible to avoid – always documented.

For instance, a permit office may have a clearly published schedule of fees for an expedited service available to applicants, in which case it may be permissible for a company to make such a payment as long as the paying employee obtains a receipt and a copy of the pricing chart, and the payment is correctly accounted for in its books.
Another issue to address in order to reduce the risk of bribery is **conflict of interest**, applied broadly to directors, officers, employees, and third party intermediaries. A conflict of interest, as defined by the New York Stock Exchange Corporate Governance Rules, “occurs when an individual’s private interest interferes in any way – or even appears to interfere – with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer, or director takes action or has interests that may make it difficult to perform his or her company work objectively and effectively.”

Examples of conflict of interest – actual, potential or perceived – include among others: an employee who has outside employment or receives compensation from a supplier, customer or competitor; using proprietary company information and assets for private gain; serving on a competitor’s board of directors; conducting business with a company owned by close relatives of an officer or owner of your company; or an employee who is closely related to a public official. Every company should have a clear policy prohibiting actual conflicts of interest and requiring full disclosure of any potential or perceived ones so that their corruption risk can be managed. That may involve, for instance, board members recusing themselves from decision-making on a matter that involves potentially conflicting interests;

Sometimes small payments may be a matter of extortion and impossible to avoid without immediate harm to the company or its employees. Under these circumstances the incident should not only be properly recorded but also reported to the authorities.

The U.S. Foreign Corrupt Practices Act may create some confusion because it provides an exception to prohibited practices for “facilitating or expediting payment” to a foreign official. This exception is often erroneously conflated with small bribes. The key distinction: a facilitation payment allowable under FCPA must be legal in the country where it is paid. To avoid confusion, the OECD urges companies to prohibit or discourage the use of all facilitation payments, recognizing that such payments are generally illegal in the countries where they are made.
managers selling their stock shares in competing companies; all staff promptly returning inappropriate gifts; members of procurement committees declaring potential conflicts before taking part in discussion; or employees seeking explicit approval of outside activities and terminating them if asked to do so.

**Why is anti-corruption compliance important for mid-sized businesses?**

Aside from ethical considerations, there is a strong **business case for anti-corruption** for all companies, but especially for companies in emerging and frontier markets of a size that makes them attractive business partners not just for other companies within their own country but also for larger firms looking to expand their business globally. Such companies have a lot to gain from anti-corruption compliance and by the same token have a lot to lose by failing to prevent corruption.

The chart on the next page focuses primarily on businesses that may be publicly listed and already operate internationally but most of the outlined benefits and risks of not engaging apply equally to smaller companies, especially when it comes to reducing costs related to corruption, improving product and service quality, better retention of valuable employees, and maintaining an honest reputation that attracts responsible business partners and investors.

Making the business case against corruption can be more difficult in countries where bribery and other forms of corruption are rampant, but companies that think strategically appreciate the need to strive for integrity as a matter of risk management and sustainable business practice. Mid-sized firms in emerging markets report that the implementation of anti-corruption compliance programs brings benefits not

According to the World Bank, corruption adds up to 10 percent of the total cost of doing business globally, and up to 25 percent to the cost of procurement contracts in developing countries.
The Business Rationale for Fighting Corruption

<table>
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<tr>
<th>Benefits of Engaging</th>
<th>Risks of Not Engaging</th>
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<tr>
<td>• Reduce the costs of doing business</td>
<td>• Criminal prosecution, in some jurisdictions both at company and senior management levels, which can lead to imprisonment</td>
</tr>
<tr>
<td>• Attract investments from ethically-oriented investors</td>
<td>• Exclusion from bidding processes, e.g. for international finance institutions and export credit agencies</td>
</tr>
<tr>
<td>• Attract and retain highly principled employees, improving employee morale</td>
<td>• “Casino risk” - no legal remedies if a counterpart does not deliver as agreed and/or keeps increasing the price for doing so</td>
</tr>
<tr>
<td>• Obtain a competitive advantage by becoming the preferred choice of ethically concerned customers and consumers</td>
<td>• Damage to the reputation, brand, and share price</td>
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<tr>
<td>• Qualify for reduced legal sanction in jurisdictions like the U.S. and Italy</td>
<td>• Tougher fight for talent when hiring new employees</td>
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<td></td>
<td>• Regulatory censure</td>
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<td>• Cost of corrective action and possible fines</td>
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Source: The Business Case against Corruption – a joint publication by the International Chamber of Commerce, Transparency International, UN Global Compact, and PACI.

always directly related to reducing the risk of prosecution. One dividend is reputational.

In other words, firms with anti-corruption policies in place enjoy easier access to credit and a better image in the eyes of potential partners. Another dividend is that anti-corruption measures result in better overall management because firms do not tolerate double standards, opaque business decisions, and risky behavior by employees. Finally, in a competitive emerging market where multinationals have a wide choice of potential business partners, those mid-sized firms with anti-corruption commitments immediately stand out from the competition.

By fighting corruption, companies of all sizes can be good corporate citizens and make a difference in their countries’ democratic and economic development prospects, so as to:

• Improve the environment for conducting business
• Promote free and open competition
• Encourage innovation
• Strengthen the fabric of society based on integrity
• Create a more sustainable platform for future growth
Globalization continues to stretch value chains of companies across international borders. As mentioned above, weighty legal constraints and the prospect of significant fines explain why companies are particularly concerned about corruption committed by their local business partners. These same factors explain why local partners able to prove they take anti-corruption compliance seriously have a much better chance of engaging in a trusted long-term business relationship.

Under the FCPA, for instance, a company may be held liable for making a payment to a third party – such as a local agent, supplier, distributor, or other business partner – while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. The law specifies that “conscious disregard,” “deliberate ignorance,” and “willful blindness” are no excuse: if a company uses a third party to bribe local officials, that company is liable. Similarly, in the Adequate Procedures Guidance to the UK Bribery Act, the UK Ministry of Justice says that a company will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business.”

Laws that criminalize foreign bribery tend to have broad applicability. The FCPA, for instance, applies not just to U.S. companies and nationals, but to any company – even foreign – that has securities traded on a U.S. stock exchange. The reach of the FCPA may be even further expanded to foreign transactions as a result of a recent court ruling in the U.S. The FCPA makes it a crime for “any officer, director, employee, or agent” of an issuer of U.S. securities “to make use of the mails or any means or instrumentality of interstate commerce” to further any corrupt offer, promise, or payment to a foreign official. In 2013, in the Securities and Exchange Commission (SEC) v. Straub case, a judge ruled that an alleged bribery scheme devised by three executives of a Hungarian telecommunications company was within the U.S. jurisdiction because several emails relating to the scheme sent by only one of the defendants passed through a server located in the U.S. The implications of this case are not limited to email and may also bring attention to suspect global banking transactions that pass through U.S. financial institutions as a potential basis for FCPA proceedings.
If a local company is currently conducting business or aspiring to conduct business with a foreign company that is subject to one of these laws, demonstrating commitment to anti-corruption compliance is a **key selling point**. To avoid liability for corrupt third-party payments, the U.S. Department of Justice encourages companies “to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives.” Similarly, the UK Bribery Act allows for company defense against a charge of being responsible for bribery committed by its third-party agents if that company can “prove that [it] had in place adequate procedures designed to prevent persons associated with [it] from undertaking such conduct.”

Several multinationals have successfully used this line of legal defense. Morgan Stanley, for instance, received credit from the U.S. Department of Justice for its compliance system of internal controls and cooperation with government investigators when misconduct by an employee in China was discovered. The employee was prosecuted over the allegations of bribing a Chinese government official to steer business to Morgan Stanley but due to its robust anti-corruption compliance program the company itself was able to avoid any enforcement action. Similarly, Ralph Lauren obtained a non-prosecution agreement from the U.S. authorities for allegations of bribes paid by its subsidiary to government and customs officials in Argentina because the company reported the violations on its own initiative and was able to demonstrate that it had implemented an effective compliance program.

These examples show the immense value of strong compliance programs for multinational corporations subject to U.S. laws, not only implemented internally but also applied by their local business partners in countries around the world. Moreover, the value placed on strong compliance programs is expected to grow as other countries introduce similar judiciary tools. In early 2014, the United Kingdom introduced a legal tool similar to non-prosecution agreements, a deferred prosecution agreement. It allows prosecutors to suspend criminal proceedings provided
the company meets certain conditions which, in addition to paying a fine and co-operating with the prosecutors, involve having in place a robust compliance program.

No compliance program can realistically prevent all violations. But if and when an allegation of bribery occurs, having such programs in place allows companies to demonstrate that the responsibility for misconduct lies primarily with a rogue employee or agent. Mid-sized local firms that want to be trusted business partners for multinationals can therefore greatly strengthen their value proposition by putting in place basic anti-corruption compliance tenets. CIPE can help your firm gain that competitive edge by bringing in outside expertise, advice, and training.
Defining third parties

Joint venture partner – An individual or organization which has entered into a business agreement with another individual or organization (and possibly other parties) to establish a new business entity and to manage its assets.

Consortium partner – An individual or organization which is pooling its resources with another organization (and possibly other parties) for achieving a common goal. In a consortium, each participant retains its separate legal status.

Agent – An individual or organization authorized to act for or on behalf of, or to otherwise represent, another organization in furtherance of its business interests. Agents may be categorized into the following two types: sales agents (i.e. those needed to win a contract), and process agents (e.g. visa permits agents).

Adviser and other intermediary (e.g. legal, tax, financial adviser or consultant, lobbyist) – An individual or organization providing service and advice by representing an organization towards another person, business and/or government official.

Contractor and sub-contractor – A contractor is a non-controlled individual or organization that provides goods or services to an organization under a contract. A subcontractor is an individual or organization that is hired by a contractor to perform a specific task as part of the overall project.

Supplier/vendor – An individual or organization that supplies parts or services to another organization.

Service provider – An individual or organization that provides another organization with functional support (e.g. communications, logistics, storage, processing services).

Distributor – An individual or organization that buys products from another organization, warehouses them and resells them to retailers or directly to end-users.

Customer – The recipient of a product, service or idea purchased from an organization. Customers are generally categorized into two types: an intermediate customer is a dealer that purchases goods for resale, and an ultimate customer is one who does not in turn resell the goods purchased but is the end user.

Source: Good Practice Guidelines on Conducting Third-Party Due Diligence, PACI
Anti-corruption compliance in mid-sized companies

What are multinational corporations expecting from their business partners?

Each major corporation has its own rules and procedures for the criteria used in selecting business partners abroad but they all share some basic features that you can proactively address. At the minimum, responsible foreign partners will perform due diligence on your business, which typically includes gathering information on the nature of your company’s ownership and affiliations (especially to public officials), any history of misconduct, the company’s financial situation and audits, and its internal organization including verification as to whether elements such as a code of conduct and anti-corruption policies are in place. They will ask you to agree to their code of conduct, and may spell out specific anti-corruption (and anti-money laundering) provisions in a contract.

Not all third parties are subject to the same level of anti-corruption due diligence. It would be unnecessarily burdensome and costly given that corporations can have thousands of third-party business relationships and many of them pose little or no corruption risk due to the nature of the supplied product or service. However, as the perceived risk of the contract increases (i.e., because it involves more potential interaction with public officials) the due diligence performed by multinational corporations will be deeper and be repeated more frequently.
Similarly, multinational corporations can be expected to apply the most comprehensive levels of due diligence on potential joint venture partners, takeover targets, and partners in long-term or high-value contracts. In such cases, they can also reasonably be expected to include contractual protections in clauses covering anti-corruption provisions, representations, and warranties.

A meaningful compliance program is about more than box checking. Your compliance program should help a corporation you work with – or aspire to work with – reach the following conclusion: “I am confident that this agent/reseller/supplier/partner does not make corrupt payments and our business relationship is a legitimate one. I can demonstrate to others why my confidence is justified.”

The due diligence is likely to include requests for information about your compliance program. Contractually, multinational corporations are likely to demand rights to audit your program. Regardless of their risk profile, companies that are transparent and proactive in instituting a robust compliance program, and educating their own suppliers and business partners on anti-corruption compliance, have a much better chance of forming lasting, trusted business partnerships with multinational corporations.

Multinationals are paying attention to potential red flags that may arise when they are considering establishing a relationship with a third party business that seems overly risky. A company may exhibit such warning signs – and potentially lose a valuable business relationship – if it (among others):

- Is not transparent about ownership
- Has public officials in its ownership or management
- Was aggressively recommended by a government official
- Does not publish accounts according to generally recognized accounting standards
- Does not keep its public filings up to date
- Is registered in an offshore jurisdiction with weak regulation (i.e. tax havens)
Anti-Corruption Compliance

- Has previously engaged in illegal or suspicious activities
- Has little relevant experience, or is not known to people within the industry
- Seeks unusual payment arrangements, such as abnormally high commissions or success fees
- Runs a charity (even bona fide) affiliated with a foreign government official

Where to start? Risk assessment and management

In order to develop a strong compliance program, a company must first understand the risks associated with its operations and surrounding environment. A corruption risk can be defined as any process or scenario where the opportunity for corruption may arise. Many companies already perform some type of risk assessment through existing Enterprise Risk Management (ERM) processes. This includes formal management systems like ISO 9000 (quality management) or ISO 14001 (environmental management). An ethics and compliance assessment can be integrated with ERM processes in other areas of risk. Whether an ethics and compliance risk assessment is conducted as a stand-alone procedure or as a part of a larger ERM system, it has the same objective: to understand your company’s corruption risk profile.

“In doing our anti-corruption compliance work, we need to understand how a company is going to do what it is promising to do. You also need to look at labor, environmental and health and safety factors.”

– David Bunker, Associate General Counsel, Huntsman International LLC

First, know your industry and its risks. The following industries globally are particularly prone to corruption: public works and construction, arms and defense, oil and gas, real estate, telecommunications, power generation and transmission,
mining, transportation and storage, pharmaceuticals and medical care, and heavy manufacturing.

Next, based on what you know about your industry, operating environment, and your internal structures and operations, assess corruption risks and perform risk management. Be sure to involve the company’s legal counsel, its functional groups (such as IT, human resources, or internal audit), and business unit leaders. The objective here is to obtain staff buy-in at all levels and make the risk assessment process engaging and transparent.

**Corruption risk assessment** is a diagnostic tool that seeks to identify weaknesses within a system which may present opportunities for corruption to occur. It focuses on the potential for – rather than the perception, existence or extent of – corruption. At its core, a risk assessment tends to involve some degree of evaluation of the likelihood of corruption occurring and/or the impact it would have should it occur. **Risk management** then looks at what could or should be done about these corruption risks.

Source: TI – Gateway Corruption Risk Assessment Toolbox

If your business is sizable, it may be easier to start with a pilot assessment for just one business unit or geographic region and then replicate it for other parts of the company or in other regions using the same process. This will help you focus limited resources on the most significant risks.

**Guidelines for corruption risk assessment and risk management**

1. Identify the major functional areas of the organization (e.g., procurement, distribution, sales)
2. Identify the risks for each functional area and assess the extent of these risks
3. Identify the significant risks and assess the probability of those risks occurring
4. Identify responses to risk areas
5. Select the best response
6. Develop risk management measures
7. Formalize and document a risk management plan
8. Implement the risk management plan
9. Review and evaluate the risk management plan and its implementation

You should perform risk assessments periodically. While there is no hard rule for what “periodically” means, international best practice suggests doing risk assessments annually or every two years. Based on the results, you should update your risk matrix and risk management plan, also known as a mitigation action plan. Make your risk management plan as specific as possible by making improvement objectives time bound (going as far into the future as 3-5 years) and assigning specific tasks to particular functions in the company, in consultation with the people in charge. Compare these two statements to see why vagueness is not the way to go:

“The company shall implement better accounting practices to mitigate the risk of bribery.”

“By March 31 of this year, John Smith, Head of Accounting, will prepare a written summary of the company’s policies on payments involving public officials, including the rules for documentation of payments that are allowed under the law. Mary King, Chief Ethics and Compliance Officer, will subsequently incorporate this summary in her annual ethics and compliance training.”
A combination of likelihood and impact of corruption risk depicts inherent risk. These risks are mitigated by controls put in place to prevent, detect, and address corruption, leaving the residual risk. Make sure to coordinate and validate your draft findings on the inherent and residual risks with senior management and leaders of business units before they become final and are communicated to the board and staff.

**Good corporate governance**

Corruption can have a devastating legal, financial, and reputational effect on a company. In 2008, Siemens, Europe’s largest engineering company, in one of the biggest corruption cases in history paid a penalty of $814 million in Germany, and an additional $800 million in criminal and civil penalties in the U.S., for falsely accounting for $1.36 billion in bribes paid abroad. It took the company years of diligent compliance efforts and extensive global support for anti-corruption initiatives to regain its reputation. That is why understanding these risks is not a theoretical exercise but rather a core responsibility of any company’s board of directors or equivalent governing body.

In Siemens’s case, as in many others, acquiescence to bribery ultimately came from the top, indicating serious flaws in corporate governance. When the bribery scandal erupted in 2007, the company replaced half of its top executives and streamlined decision-making and membership in the board, empowering the Audit Committee to more effectively address compliance.

Therefore, it is up to the board, or the owners in the case of a closed company, to ensure the company’s ethical behavior. The ultimate accountability is theirs and so, increasingly, are the risks of personal liability if they do nothing. The highest governing authority should request that company management, led by the Chief Executive Officer (CEO) and including heads of function and business units, regularly perform, and report on, anti-corruption compliance risk assessments. The board then weighs
the risks to mitigate them where possible and make informed decisions about the company’s future. You may consider creating a Risk Committee within your board or governing body to lead the risk assessment and management effort.

The OECD Principles of Corporate Governance state that reviewing and guiding the company’s risk policy is one of the key functions of the board of directors.

Your board (or equivalent) and the CEO are crucial in setting the “tone from the top” by highlighting the value of ethics and integrity to your company and allocating appropriate attention and resources to anti-corruption compliance. They must be the engine and the guardian of your company’s ethical culture and they must lead by example. The moment they violate the company’s code of ethics is the moment they give permission to everyone else to do the same.

In order to perform this compliance function – and all other key governance functions – the board of directors or the governing body and the CEO need to follow the principles of good corporate governance.

**The OECD Principles of Corporate Governance**

1. Ensuring the Basis for an Effective Corporate Governance Framework
2. The Rights of Shareholders and Key Ownership Functions
3. The Equitable Treatment of Shareholders
4. The Role of Stakeholders in Corporate Governance
5. Disclosure and Transparency
6. The Responsibilities of the Board

Source: http://www.oecd.org/corporate/oecdprinciplesofcorporategovernance.htm
It is important to know that these principles do not apply exclusively to large, publicly traded companies. The values and best practices of corporate governance apply to different types of companies, including mid-sized enterprises. They may need to be adapted to account for different forms of company ownership and associated risks.

Yet regardless of a company’s size or its particular governance structure, the highest governing body and the CEO must not only convey a clear message that corrupt practices within the company are not allowed and demonstrate it through their own professional behavior, but also introduce and support measures to help prevent bribery and other forms of corruption in the first place. The next chapter provides practical guidance on how that can be achieved through the development and implementation of a robust compliance program.
Designing and implementing a compliance program

An anti-corruption compliance program should be an integral part of a company’s broader compliance infrastructure. The U.S. Federal Sentencing Guidelines for Organizations, which apply to criminal violations of federal statutes such as the Foreign Corrupt Practices Act and were originally promulgated in 1991, provided the first practical guide on the key elements of an effective compliance program. Similar principles are now reflected in other international sources of reference on compliance, such as the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance and the UK Bribery Act Guidance.

There is no one-size-fits-all solution for designing a compliance program since it needs to be based on each company’s unique business risks, size, etc. For smaller companies, copying directly elaborate – and often expensive – compliance systems of major corporations is not feasible or necessary. However, every robust compliance program must incorporate the following elements in some way in order to prevent, detect, and remediate violations:

**Key elements of a robust compliance program**

- Risk assessment
- Standards of conduct/policies and procedures
- Compliance oversight, commitment and resources
- Education and training
- Monitoring and auditing
- Reporting and investigating
- Enforcement, discipline, and incentives
- Response, prevention, and improvement
Standards of conduct/policies and procedures

Policies and procedures help a company bring clarity and consistency to the expectations of its officers and employees. Policies and procedures are meant to help everyone understand how they are supposed to act and accomplish this by spelling out the rules for evaluation, accountability, and discipline.

Code of conduct

The grounding document for all policies and procedures is a company’s code of conduct. It should be developed based on a thorough risk assessment and with broad input from within the company, be written in plain language, and approved by the board (or the highest governing body). It is the ultimate expression of the company’s values and its “tone from the top.” While codes of conduct should reflect the unique culture of each company and therefore do not all look alike, they all must share the same basic principles of following the law and conducting business with integrity. Anti-corruption provisions can be a part of the code of conduct or a stand-alone document.

How general or specific should a code of conduct be? A good code of conduct should comprehensively state the company’s general rules and values to allow for flexibility in how the details are spelled out in subsequent policies and procedures. Each code is a mixture of principles and bright line rules that corresponds to a particular company’s culture. Principles lend themselves to case-by-case application in areas that may be hard to define in specific terms for every instance, such as conflict of interest. Bright line rules are well suited for more clear-cut areas of conduct, such as zero tolerance for bribery.

Make sure that your code of conduct is properly communicated throughout the company, for instance by being easily available on the company’s intranet and distributed to all employees in hard copy. Employees should periodically attest in writing that they have read and understood the code. It is also crucial to
convey that the code of conduct applies equally to everybody in the firm from chairman of the board and CEO to the lowest-ranking employee or agency staff member. Only then will it be a true resource with a shared sense of ownership and not an empty document. It should also extend to all third parties working on behalf of the company.

A useful tip: the CEO and managers should have well-worn copies of the code of conduct on their desks – dog-eared pages and highlighted segments are evidence that the code is not just a piece of paper but a living document that guides day-to-day business operations.

As a part of your commitment to integrity in business conduct, you should develop standard contractual language for commercial and labor contracts (for instance using the ICC Anti-corruption Clause) that makes it clear your company does not bribe and communicates other core values expressed in your code of conduct.

Policies and procedures

What is the difference between the two? As defined by BusinessDictionary.com, policies are principles, rules, and guidelines formulated or adopted by an organization to reach its long-term goals. Procedures, on the other hand, are the specific methods used to express policies in action in the day-to-day operations of the organization. Together, policies and procedures help ensure that views and values held by the governing body of an organization are translated into steps resulting in outcomes compatible with that view.

Policies are formulated to address guiding principles for various areas of a company’s operations, such as anti-corruption, bribery, or privacy. While principles and policies remain the same for everybody in the company, anti-corruption procedures can be tailored to a particular business unit (e.g., sales and marketing) or company function (e.g., board of directors) to ensure maximum relevance, guidance, and clarity. Procedures translate the principles into actionable steps needed to implement a
particular policy, including who is responsible for taking each particular action. For instance, procedures regarding travel policy should outline the detailed steps involved in obtaining travel authorizations and reporting.

The Chief Ethics and Compliance Officer (CECO) should create a database of all company policies and procedures – starting with the riskiest areas – in order to categorize, review, and update them as needed. A simple spreadsheet with consistent categories will do. While the CECO is not responsible for maintaining all policies (internal audit, HR, or IT may be responsible for specific areas), the ethics and compliance function should have a good grasp of the company policies in place, their purpose, applicability, and review prerogatives and schedule. This is more than a paper exercise. Having a comprehensive view of policies and procedures allows ethics and compliance staff to communicate and provide training on them, monitor and audit implementation, and recommend changes to policies and procedures that may be outdated or misaligned.

**Compliance oversight, commitment and resources**

The board of directors or equivalent highest governing body is responsible for approving the top-level management structure and assigning accountabilities within that structure, including the proper compliance infrastructure within the company. Management – with the board’s approval – needs to select and appoint a Chief Ethics and Compliance Officer (CECO), or a suitably senior individual in the company with a different title but a similar function. Approving the right person typically would be the job of an Audit Committee or, if established, an Ethics Committee of the board of directors. This person should have deep knowledge of the company as well as an impeccable reputation for trust and integrity. To make the compliance function meaningful, the board must also dedicate appropriate financial and human resources to it as a part of the company’s larger business plan, and devote sufficient time and attention to oversight of the compliance program.
Many compliance officers have a background in law, human resources, or finance and frequently are drafted internally from these departments to lead the company’s compliance function. However, having a law degree or another advanced professional degree is not a prerequisite for a successful CECO. In fact, best practice recommends splitting compliance away from other functions within the company in order to provide a degree of internal independence. What matters most is how knowledgeable this person is about the company’s operations and the risks it faces (corruption and otherwise), a degree of confidence and assertiveness, and the ability to build a trusted rapport with management and employees to detect and effectively address risks and violations.

In general, control over accounting and financial recording in a company is entrusted to financial managers and auditors while ensuring compliance with ethical and other behavior standards is the domain of management and company lawyers. Ethics and compliance officers play an important liaison function between different departments.

Depending on the company size, the CECO may work as an individual or be head of a whole department with staff dedicated to various functions such as managing a whistleblowing system, providing compliance advice, training, conducting investigations, and reporting.

In terms of a reporting structure, it is best practice for a CECO to report directly to the board to maintain a degree of independence from company management. In cases where a CECO reports to a CEO, it is crucial that at least a “dotted line” reporting access to the board exists and the CECO has a designated person on the board as his or her primary contact. Regular reporting – conducted preferably no fewer than four times a year – should include a presentation and discussion of the objectives of the company’s compliance program, highlight key developments related to implementation of different compliance policies, and address any cases of misconduct. Aside from regular reporting, a CECO should also feel empowered to escalate serious problems to the board at any time.
Compliance function in mid-sized companies

National and international anti-corruption laws apply equally to businesses of all sizes; there are no special exceptions for smaller businesses. However, it is generally recognized by regulators that the corruption risk mitigation measures put in place by a company should be proportionate to its size and risk exposure.

Regardless of the company size, the ethics and compliance function exists to support and promote the effective implementation of the ethics and compliance program. An effective compliance program, irrespective of how its implementation is structured, involves appropriate policies and procedures, training for management and staff, and ensuring that systems are in place to answer questions, investigate abuses, and provide for continued review and improvements of the program.

It is important to understand the proper division of responsibilities between the ethics and compliance function and management. The CECO must also work closely with internal audit, which is responsible for providing the board of directors and management with an independent assurance on the design and operation of a company’s internal controls, especially in the area of finances. The findings from internal audit can provide the CECO with valuable information on vulnerabilities in the company’s operations and potential red flags. The external audit, usually performed on an annual basis, provides further validation of the company’s internal controls and as such is a vital source of information for the ethics and compliance function.

Compliance is not the sole responsibility of the CECO! Ultimately, the management and the board are responsible for ensuring that the company is in full compliance with applicable laws and its internal rules. It is up to management to ensure that policies and procedures are followed and compliance controls are properly implemented. Effective compliance must be a partnership between the CECO and management.
How large the compliance program should be greatly depends on the size of the enterprise and its business risks. Multinational corporations have compliance departments that often employ hundreds of people around the world. Smaller companies are unlikely to be able to create a whole department devoted to ethics and compliance. They may have just one person in charge of compliance, or not even have the resources to hire a dedicated CECO – this is not unusual and there are ways in which mid-sized companies can structure their compliance programs to make them tailored and effective.

One useful model creates a Compliance Department headed by a CECO who is responsible only for preventive measures, with responsibility for detecting and responding to violations resting with already existing departments such as legal, audit, finance, and human resources. The CECO and the heads of these departments form a Compliance Committee responsible for coordination, reporting, and review of the program. Members of the Committee should be committed and respected individuals who come from diverse departments to help capture various compliance risks. There should be established rules of rotation (e.g., two or three year tenure) as well as rules for member selection and removal.

Sample compliance organization chart of a mid-sized company
In smaller companies there may not be a need for a compliance department at all, with the ethics and compliance function executed on a part-time basis by a staff member already serving in another role (e.g., legal, financial, human resources, communications, security, or project management) who draws on in-house and outside expertise as necessary.

**Education and training**

Regular education and training are crucial elements of any compliance program and are an important means of communicating applicable laws as well as company ethics and compliance policies, procedures, and resources to management, staff, and the board. The challenge is to avoid legal jargon or dry lecturing and instead make the information accessible to the audience and practical for their day-to-day duties. If the employees see ethics and compliance training as directly relevant to their work, they are more likely to
engage and feel ownership of the company’s policies and its broader ethical culture. In contrast, if they perceive the training as a boring chore, it will be a waste of time and effort. Therefore, beyond a general training session applicable to all employees, there should be tailored modules that focus on individual job responsibilities. For instance: proper preparation and processing of financial statements and retention of documents for accounting staff, allowable and unallowable business expenses for sales staff, or dedicated training for support staff on processing expense reports of managers.

Here are some ideas for making compliance training workshops engaging. You may also consider obtaining help from outside experts to make sure training sessions are as effective as possible:

• Use simple language
• Diversify content
• Diversify format
• Use scenarios and role play
• Include staff from different departments and different seniority levels
• Ensure participation

All employees should receive core training on key compliance issues (e.g., prevention of harassment, workplace safety), including anti-corruption training in areas such as conflict of interest, gift policy, and code of ethics. For the board, senior and mid-level management, and employees interfacing most directly with government officials, you should consider additional targeted anti-corruption training.

Best practice recommends at least annual training workshops on ethics and compliance but staff education should not stop there. CECOs should constantly look for opportunities to guide employees toward relevant compliance resources. Some ideas on how to do that are as follows:
Open door policy. Make sure everybody in the company understands that the CECO is always available to answer specific questions and provide advice.

Outreach to supervisors. Put extra effort into reaching out to supervisors and making sure they understand how to handle employee complaints. Practice shows that most employees who see a violation turn to their immediate supervisor first; only when the supervisor is unresponsive do they seek other channels in the company or outside it as whistleblowers.

Team meetings and company memos. When managers hold team meetings or send out memos about boosting sales or cutting costs, suggest that they reference the company’s code of conduct and remind employees that the pursuit of business objectives must always be in line with company values. Reinforcing this message shows that the company is serious about compliance.

Internal newsletters with case studies. We all learn best from real-life examples. A successful technique that many CECOs use to promote a culture of learning from mistakes involves publishing a periodic newsletter for staff with stories of what went wrong and how the problem was addressed. It is important to preserve the privacy of employees so do not use names and change identifying details such as a business unit or its location.

It is also important to note that education and training play a key role in the company’s risk assessment process. The issues and common problems that emerge from staff questions and discussions during these sessions provide valuable information on where the most likely vulnerabilities lie.

In 2012, the International Chamber of Commerce and the Institute for Economic Research asked 1,156 experts in 124 countries whether they agreed stronger emphasis on ethics and compliance training for business would help productivity and attract more foreign investment in their countries. The agreement was overwhelming. In Africa, 90 percent of respondents concurred, as did 88 percent in both South America and Asia, 87 percent in Eastern Europe, and 85 percent in the Commonwealth of Independent States.
Make sure to keep records of attendance for all compliance training sessions. And to see if your training is truly effective, make sure to evaluate it:

**Test to demonstrate understanding.** Conduct pre- and post-training surveys to assess understanding but avoid simple box checking – make the questions challenging and change them every year.

**Show retention of knowledge.** You can only do this by undertaking testing before the annual training. Rising scores in such testing show long-term retention. You can also include relevant questions in periodic employee surveys.

**Track the number of incidents.** Have disciplinary actions for corruption incidents gone down from the previous year? If so, you’re making progress. Note: Be careful with interpreting the number of hotline calls. This number usually increases after training sessions but that may simply demonstrate employees are being more thoughtful about their actions – especially if most calls concern questions, not complaints.

**Monitoring and auditing**

Monitoring and auditing are key parts of the governance process and in the context of the ethics and compliance program they aim to ensure that the program is indeed followed. The organization’s governing authority should be knowledgeable about the content and operation of the compliance and ethics program and exercise reasonable oversight on the implementation and effectiveness of that program. Monitoring and auditing to detect violations ensures that the company’s ethics and compliance program is indeed followed.

**Monitoring** is an ongoing, constant assessment of the quality of the internal control system’s performance over time with the aim of continual improvement. It usually consists of regular processes used to identify red flags that may require more detailed evaluation. Monitoring often starts with interviews of
employees, typically in an informal setting such as during lunch or over coffee, to encourage frank conversation about the risks they face in their daily activities and if they believe the policies and processes in place are working. Periodic questionnaires or staff focus groups are other good methods.

The CECO should also establish systems for periodic, random spot-checking of records, including financial records such as invoices or travel reports, to make sure that the data is accurate and properly supported by required documentation.

**Auditing** is a subset of monitoring focused on areas identified as high risk through risk assessment and monitoring. It provides an independent assurance of compliance aimed at detection, analysis, correction, and remediation of specific compliance problems. Audits can be performed by independent parties in two ways: internally or externally. An internal audit, conducted by a dedicated unit within a company, is considered independent not of the organization but of the process it is reviewing. An external audit is performed by independent professionals from outside the company. Auditing is most commonly associated with finances but any process, including compliance, can be audited to identify strengths and weaknesses.

Monitoring should be linked to the compliance risk assessment as well as the enterprise risk management (ERM) system, if one exists. Just like with the risk mitigation plan, you should have a monitoring plan that spells out the type of control applied to different business processes (preventive, detective, corrective) and who is responsible for doing what. Make sure that your controls are auditable (i.e. verifiable via documentation).

Monitoring and auditing are complex tasks and nobody can do it alone. Leverage other department resources by engaging employee liaisons or groups to identify red flags or compliance needs. You should also partner externally with consultants and professional organizations. Make sure you prioritize risks, and focus on the top ones first.
Finally, keep in mind that the nature of an effective compliance program is constant improvement. As the business environment keeps changing, compliance risks and challenges evolve as well and necessitate adjustments. Consequently, you should
regularly evaluate the design, implementation, and impact of the compliance program. In practical terms, improvement is accomplished through periodic assessment of the ethics and compliance program and a plan for addressing any identified shortcomings.

**Reporting and investigating**

One of the most important functions of a CECO is setting up a company-wide system that allows employees to ask compliance-specific questions, share concerns, and report violations in a confidential manner. It is crucial that this system is consistent with national legislation, especially data privacy laws.

**Reporting system**

Reporting of wrongdoing within an organization by one of its employees is known as “whistleblowing” – a term that does not always translate well in other languages. As defined by the Institute of Internal Auditors, whistleblowing is the act of disclosing adverse information to someone who is outside the individual’s normal chain of command, or to a government agency or other authority that is wholly outside of the organization. Internal whistleblowing is an important source of detection of actual or potential unethical behavior. If handled correctly, internal whistleblowers’ reports give employees confidence that their concerns or complaints are treated seriously. This, in turn, makes external whistleblowing to the authorities or to the press, which can be very damaging to the company’s reputation and its bottom line, less likely and truly the path of last resort.

In many countries, reporting misconduct can have a rather negative connotation of “ratting.” It is important that your company’s culture emphasizes that reporting violations of the company’s policies – including anti-corruption – is in fact an act of loyalty to the company and upholding its values. Employees must feel safe to speak out and that can only be achieved if
they are not afraid of reprisals. This is absolutely crucial. You ultimately want to make it compulsory that managers and employees stop violations of control procedures and report them as they occur and failing that, because it might be dangerous, to report the violation after the fact.

An effective **reporting system** should include the following elements:

**Different channels for reporting.** These channels may involve a supervisor, legal counsel, higher management, or a company ombudsman. Often reporting to somebody in the employee’s own business unit is the most convenient and effective option. However, if the violation happened in this unit, or involved the employee’s supervisor, it is important that other ways of reporting exist.

**Anonymous hotline.** Like the entire ethics and compliance program, a company’s hotline system must be commensurate with its size and resources. Large companies frequently utilize third-party services where the management of the hotline is outsourced to specialized firms. However, that can be expensive. Smaller companies can set up other ways of anonymous reporting such as a box placed in an easily accessible yet private spot on company premises. The CECO should periodically review the submissions, document them, and take action where required.

**Process for dealing with reports.** Concerns raised should be classified depending on what is to be done next – assigned to appropriate staff from the ethics and compliance department or

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**Should reporting be anonymous or not?** You need provisions such as a hotline to allow for anonymous reports or else serious incidents may remain unreported. However, everyone in the company should understand that evaluating the validity of anonymous claims can be difficult and can hinder the company’s ability to address the reported issue. While all reports deserve due diligence, there is a possibility of abuse of the process through malicious or false reports.
committee, legal department, human resources, finance, etc. A process for internal investigations should be well established.

**Effective guarantee of confidentiality.** Employees coming forward with reports of violations must be granted confidentiality so that they do not have to fear reprisals for speaking out.

**Quickly and effectively addressing reprisals, discrimination, and harassment.** Even with the best efforts made to preserve the anonymity of an employee reporting violations, the suspicion from the person(s) whose misconduct was exposed may still fall on that employee. If the suspicion turns into any form of belligerent behavior, your company must swiftly make it stop.

**Proper follow-up on complaints.** There is nothing more demotivating for employees than reporting a violation and never hearing back on how it was resolved. Make sure to always acknowledge the report, record the outcome, and follow up about the resolution with the person who reported the issue.

**Investigations**

Following the report of a violation, an investigation aims to ascertain the facts of the case. The CECO must first decide whether the report warrants full investigation (i.e., whether there is a probable cause for investigation) or whether the matter is minor and can be addressed in other ways. If an investigation is necessary, the CECO must decide who will conduct it – the legal counsel, compliance staff, HR, management, etc. Some complex matters may warrant bringing in an external investigator.

If an investigation is conducted internally and led by the CECO, the first order of business should be consultation with the legal counsel or human resource specialist to ensure the investigation will be conducted in a way that does not violate national laws, company policies or indeed contaminate evidence that may be needed for a successful criminal investigation. You should determine the documents you will be looking for; company property such as computers or employee desks you need access
to; and who in the company to interview, including the person who brought up the complaint (unless it was anonymous), all relevant witnesses, and the person or persons being investigated. It is best practice to interview the accused with another person present to act as an objective observer and take detailed notes. The implicated person should always be given the chance to explain their side of the story as mitigating circumstances may exist.

The basic objective of an investigation is to determine the "who, what, when, where, why, and how" of the case in order to establish accountability for the violation and determine appropriate mitigation measures and disciplinary action. There may be a need for interim action such as placing the investigated individual on a paid leave pending the outcome of the investigation and restricting his or her access to company computers and papers. At the same time, be sure to examine the reporter’s motives – if there is a back story or an attempt to manipulate the process, you need to find that out.

To ensure timeliness, most companies establish a timeframe for investigations, e.g. 30 days from the receipt of the report. Once an investigation is completed, the CECO should always document the findings in writing in a clear and factual manner. The report should state the facts only, not include opinions, and be limited to the scope of the investigated case. This report may be drafted by a company attorney to give the document legal privilege of confidentiality. The results should be communicated back to the legal counsel and management, and others as needed (HR department, board members). While they generally don’t receive the report, be sure to follow up with the person who filed the initial report as well as the person accused of wrongdoing.

When the investigation is complete, formulate recommendations on the next steps. In addition to mitigating any damage, next steps should include actions to correct any problem areas you identified. Finally, make sure to retain the investigation files even if wrongdoing was not substantiated.
If misconduct is discovered, it is the CECO’s duty to report it internally and it is up to the board and the legal counsel to decide whether to inform the relevant law enforcement agency, depending on the details of the situation and your country’s laws. But what if the misconduct concerns these very people in the company’s leadership? The Society of Corporate Compliance and Ethics (SCCE) Code of Ethics provides guidance on this – hopefully rare – situation in Rule 1.4:

• Explore and exhaust internal options
• Escalate to senior management and highest governing body (e.g., a non-executive director)
• If no result, consider resignation as the last resort

**Enforcement, discipline, and incentives**

A spectrum of disciplinary actions and consequences should be clearly spelled out in a company’s policies and procedures. Punishments may range from oral or written reprimands from a supervisor, through suspension and financial penalties, up to termination. It is difficult to generalize what the appropriate punishment may be for a particular offense but clear policies for determining the severity of the offence will help to identify the proper response along the spectrum. In cases of larger transgressions, CECOs should coordinate with the in-house or external legal counsel and the HR department to ensure a proper course of action. Conversely, you should also allow for remediation as an adequate response in cases of minor infractions that may only require additional training.

There are two key points to emphasize regarding non-compliance discipline:

• Make sure the punishment fits the deed. Small transgressions should first be handled verbally by the employee’s supervisor, with the discipline gradually becoming more severe if the behavior persists. On the other hand, serious offenses such as fraud or a massive bribery scheme may warrant immediate termination.
• Apply enforcement and discipline fairly and consistently. The same standard should apply to everyone throughout the organization – with no special treatment regardless of rank or position.

The policies guiding enforcement and discipline should also emphasize that enabling violations by not speaking out (i.e. turning a blind eye to misconduct) is not a defense. In fact, failure to report non-compliance is as serious as committing the act, and should be punished.

**Use of incentives**

An important part of making sure that disciplinary actions are truly the last resort is using incentives that encourage everyone in the company to behave in ethical ways and follow policies and procedures.

Incentives guide behavior in all spheres of life. There are many ways in which simple incentives can make a big difference in compliance. Consider these examples:

**Praise ethical leadership.** The CECO should recognize employees who go above and beyond when it comes to ethical conduct – or better yet have their supervisor write a letter of appreciation. The use of praise and recognition is particularly important at the level of managers as it helps to set the “tone in the middle” of the organization.

**Reward improvements to compliance program.** The CECO can encourage staff-driven, creative solutions to better compliance by encouraging employees to suggest improvements.
to the program where they perceive weaknesses or shortcomings. A suggestion box can be set up easily and reviewed during staff meetings with the best ideas rewarded through recognition or through tangible rewards such as gift cards or a bonus.

**Add goals around ethics and compliance to the annual performance review process.** This signals that integrity is a crucial part of overall employee performance. Goals should be specific so that they are easily measurable. They should also emphasize rewarding long-term performance over short-term success (e.g. bonuses for stable profits and market share over time as opposed to single large sales). Nobody who fails a compliance evaluation should be promoted.

**Celebrate a day or a week of compliance.** This is your opportunity to make compliance fun. Use your imagination – order t-shirts, mugs, or pens for staff with an integrity-oriented slogan; organize team competitions or quizzes that test staff knowledge of compliance policies and procedures – the possibilities are numerous, as long as you are bringing compliance to everyone’s attention in an engaging way.

**Weigh the pros and cons of financial incentives.** Some companies incentivize reporting with financial rewards. Typically that reward is a percentage of the identified savings for the company. However, introducing monetary rewards can create perverse incentives where employees may want to stretch the facts or even level groundless accusations in hope of a payoff. The pros and cons of this approach must therefore be carefully considered.

**Don’t forget about appropriate recognition for ethics and compliance staff, not just general employees. In order to be effective, they need to feel appreciated and valued, with adequate pay, perks, and promotion prospects.**
Response, prevention, and improvement

Once a violation has been discovered and investigated, and the parties at fault properly disciplined, the key question is: how do you prevent this situation from re-occurring? Your response to violations, and the implementation of preventive steps to avoid repetition of the same violations in the future, are crucial to compliance. The goal is constant improvement: it is important to not only fix the immediate problem, but also its underlying causes.

The type of response and corresponding preventive measures will vary depending on the types of violations you encounter. It may include new controls, added audit criteria, or modified and expanded ethics and compliance training. CECOs must be flexible and adjust the program in order to make it stronger. As long as you consistently keep the seven elements of a robust compliance program in mind, you are on the path to success!
Committing to and implementing an ethics and compliance program often means the need for big changes in how the company operates, and changing the status quo is never easy. Challenging entrenched practices both within your company and in its relationships with customers, government officials, and other stakeholders can be a considerable challenge that the CECO, the board, and senior management must face. Don’t try to do it all at once: focus your resources on low-hanging fruit such as reviewing and improving policies and procedures to show the value of compliance for the company while building a track record of success. In these efforts be sure to focus on the uniqueness of your company: how does your compliance program make sense for you?

An easy place to start is with a register for gifts and entertainment. Ensure that the policy defines when approval is required and that all given and received items must be recorded (honestly!) in a register. Create a process to do random checks periodically and make sure support staff know the process. One policy might be “no entertainment during periods of negotiation of a business deal.” Another place to start could be conflicts of interest. It is relatively easy to set up a process of clearances through the company’s email system and for the compliance department to be custodians of the register of all such clearances.

Remember, you are not alone – resources and networks of support are out there! Follow studies of best practices and subscribe to publications that deal with corporate compliance and ethics. Join professional networks of compliance and ethics officers, both in your country and internationally. If you are a vendor
to a large multinational company, ask for help with setting up or strengthening your compliance program since the emerging international norms imply that big companies should help their smaller business partners in that regard. Seek guidance from outside experts and consultants as needed. Engage with professional and business associations in your country to exchange ideas and approaches with your peers on the development of effective internal control, ethics, and compliance measures as well as procedures for resisting bribe solicitation. And stay in touch with CIPE for information about global best practices and training opportunities.

A few ideas for resources and international networks to consider:

SCCE Compliance & Ethics Social Network: http://community.corporatecompliance.org/home

Ethics and Compliance Officer Association: www.theecoa.org

Ethics Resource Center: www.ethics.org

Ethisphere Institute: www.ethisphere.com

Institute of Business Ethics: www.ibe.org.uk

UK Anti-Corruption Forum: http://anticorruptionforum.org.uk

Making the transition to a clean company can be helped by external and internal factors, and it is important to recognize when the time is ripe for change. External developments, such as passage of a new anti-corruption law in your country or ratification of a major international anti-bribery convention, can be the triggers for a new or renewed strategic focus on ethics and compliance within your company. Similarly, internal drivers can play a role. For instance, a new CEO or Chairman of the Board who is reform-minded and committed to doing business with integrity can steer the company in a new direction, as can a recent corruption scandal.

Whatever the drivers in your company’s particular situation may be, it is never too late to start on the path toward greater business
compliance and integrity. Emerging and frontier markets are the future of the world’s economy. You can best assure your company’s competitiveness in the global marketplace by making compliance a core part of your business model.


Transparency International Bribe Payers Index, www.transparency.org/research/bpi/overview


