



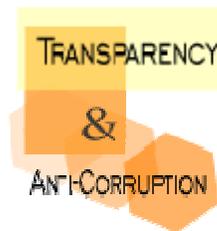
THE GLOBAL
COMPACT



Guidance Document

Implementation of the 10th principle

against Corruption



The Global Compact

December 2004

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Guidance Document on the Implementation of the 10th Principle against Corruption

On 24 June 2004, during the Global Compact Leaders Summit it was announced that after extensive consultations with all participants that yielded overwhelming expressions of support, the Global Compact henceforth will include a tenth principle, against corruption, reflecting the recently adopted United Nations Convention on that subject.

This document is aimed at giving advice to participants on “how to get started” with the implementation of the 10th principle and to refer to sources and tools that can be used for such a process.

General introduction

- It has been widely recognized that corruption is one of the world’s greatest challenges: it is a major hindrance to development, has a corrosive influence on the fabric of society and a costly business risk for companies. It can lead to environmental mismanagement, undermining of labour standards and restricts access to basic human rights. Political corruption undermines the rule of law.
- Corrupt practices also accompany and facilitate drug dealing and organized crime. Corruption is associated with money laundering and illicit international money transfers, which in turn can be used as support mechanisms for international terrorists.
- Decades of underestimating the social and economic costs of corruption have come increasingly replaced by a greater understanding of the devastating impact corruption has in our society. The World Bank stated that “bribery has become a \$1 trillion industry.” In the private sector the extra financial costs, via commissions, are estimated to add 10% or more to the costs of doing business in many parts of the world.
- Virtually all countries have criminalized bribery when committed domestically. Recognizing that corruption is not just a local or a national problem, but to a large extent a regional and an international problem, various international organizations have developed instruments to fight corruption at the global level. The legal fight against corruption has especially gained momentum through the OECD Convention to Combat Bribery of Foreign Public Officials in International Business Transactions and through the adoption of the first globally agreed instrument, the UN Convention against Corruption in December 2003.
- A number of factors have prompted the business community to take a stronger stand against corruption. Public investor confidence has been eroded by a wave of business ethics scandals. In addition, a number of high-level cases of bribery and state looting are being investigated or prosecuted. Revelations related to these cases are in part a result of improved anti-money laundering measures and

reduced bank secrecy. Another aspect which has prompted companies to focus on anti-corruption measures is the rapid development of rules of corporate governance. These increasingly require companies to protect their reputations and shareholders through internal controls relating to integrity issues. Organizations which are found to have engaged in corrupt practices face reputational risk which can have an adverse effect on market value and staff morale. An increasing number of ethical investment funds require companies, in which they invest to undertake good business practice, to include an explicit anti-corruption stance.

- The inclusion of a 10th principle against corruption at the Global Compact Leaders Summit on 24th June 2004 sent a strong worldwide signal that the challenges of eliminating corruption is also a responsibility of the private sector.

1. The 10th principle

The wording of the 10th principle as agreed upon during the consultation process is as follows and should be added to all communication by participants related to the Global Compact principles:

Principle 10: “Businesses should work against corruption in all its forms, including extortion and bribery.”

Official translations of the wording of the new principle have been so far provided by the French, Spanish, German and Brazilian networks. All networks are encouraged to provide official translations in consultation with their participants:

French: “Les entreprises sont invitées à agir contre la corruption sous toutes ses formes, y compris l’extorsion de fonds et les pots-de-vin.”

Spanish: “Las empresas deberían trabajar contra la corrupción en todas sus formas, incluyendo la extorsión y el soborno.”

German: “Unternehmen sollen gegen alle Arten der Korruption eintreten, einschließlich Erpressung und Bestechung.”

Portuguese: “Combater a corrupção em todas as suas formas, inclusive extorsão e propina.”

As of 24th of June 2004, it is automatically assumed that all participants adhere to all ten principles.

Objectives of the 10th principle

The adoption of the tenth principle commits Global Compact participants not only to avoid bribery, extortion and other forms of corruption, but also to develop policies and concrete programs to address corruption. Companies are challenged to join governments, UN agencies and civil society to realize a more transparent global economy.

Specifically, we suggest that Global Compact participants

1. as a first and basic step, introduce anti-corruption policies and programs within their organizations and their business operations;
2. report on their work against corruption in the annual Communication on Progress; and
3. share experiences and best practices through the submission of examples and case stories;
4. furthermore, collaborate with their industry peers to jointly find solutions to fight corruption through sectoral initiatives;
5. collaborate with Transparency International and the International Chamber of Commerce as main provider of tools in the fight against corruption;
6. engage in collective efforts with all stakeholder, e.g. using Transparency International's Integrity Pacts or joining the EITI initiative or Publish What you Pay as a possible approaches;
7. lobby for the ratification and implementation of the UN Convention against Corruption in as many countries as possible.

Definitions

How to define “corruption”?

Corruption can take many forms which vary in degree from the minor use of influence to institutionalized bribery. Transparency International (TI)'s definition of corruption is “the abuse of entrusted power for private gain”. This can mean not only financial gain but also non-financial advantages.

The UN Convention against Corruption has taken the approach that a comprehensive definition of corruption was neither necessary nor feasible. It approaches corruption as an evolving concept. The Convention was designed to function in a global environment and is geared towards the future. In light of those objectives, and in view of the multifaceted nature of the phenomenon and the consequent difficulty of constructing a legal definition, the Convention adopted a descriptive approach, covering various forms of corruption that exist now, but also enabling States to deal with other forms that may emerge.

What is meant by extortion?

The OECD Guidelines for Multinationals define extortion in the following way: “The solicitation of bribes is the act of asking or enticing another to commit bribery. It becomes extortion when this demand is accompanied by threats that endanger the personal integrity or the life of the private actors involved.”

... and what about “bribery”?

Transparency International’s Business Principles for Countering Bribery define “bribery” the following way:

“Bribery: An offer or receipt of any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something which is dishonest, illegal or a breach of trust, in the conduct of the enterprise’s business.”

The UN Convention against Corruption also contains even longer definitions of bribery as it pertains to public officials and the private sector.

2. Tools for companies supporting the implementation of the principle against corruption

With the UN Convention against Corruption and the OECD Anti-Bribery Convention the foundations were laid for reducing corruption.

Voluntary compliance by a large majority of companies is needed to establish an ethical framework that makes enforcement of laws effective. Widespread adoption of corporate compliance programs can have a multiplier effect on law enforcement: for every government prosecutor investigating bribery, there will be hundreds of corporate lawyers and auditors enforcing it.

The main source of guidance on the introduction of corporate compliance programs is provided by Transparency International and the International Chamber of Commerce.

Transparency International is the only global non-governmental organization solely devoted to the fight against corruption. It brings civil society, business and governments together in a powerful global coalition.

The ICC as the global business organization has started with its first efforts to fight against corruption already in the 1970s and then introduced its pioneering “Rules of Conduct on Extortion and Bribery in International Business Transactions”. Since then it has been encouraging self-regulation by business in confronting issues of extortion and bribery.

The World Economic Forum has initiated the Partnership Against Corruption Initiative (PACI) as a pragmatic step towards implementation of anti-corruption measures. The PACI principles are derived from the Transparency International Business Principles.

In the publication “**Raising the Bar**” we have already referred to most of those tools. General background information on the area of anti-corruption can be found on our website (summary of major laws, principles, and links).

Raising the Bar: orders should be sent to Greanleaf Publishing Ltd, Aizlewood Business Centre, Aizlewood’s Mill, Nursery Street, Sheffield S3 8GG, UK, fax: +44-114-282-3476, tel: +44-114-282-3475, email: sales@greenleaf-publishing.com, www.greenleaf-publishing.com

Transparency International

(www.transparency.org)

Transparency International (TI) has been at the forefront of the anti-corruption movement since it was formed in 1993. TI is a non-profit, independent, non-governmental organization dedicated to increasing government accountability and curbing both international and national corruption. Through its international secretariat and network of over 90 national chapters world wide, TI works in a non-confrontational way with governments, civil society and the private sector to develop means to combat corruption. The development of the Business Principles for Countering Bribery followed TI's coalition approach and these have become central to TI's engagement with the private sector and its efforts to help develop and raise corporate standards of probity.

- **Business Principles for Countering Bribery**

www.transparency.org/building_coalitions/private_sector/business_principles.html

The development of the Business Principles for Countering Bribery (BPCB) was undertaken by Transparency International in partnership with Social Accountability International and a Steering Committee drawn from companies, academia, trade unions and other non-governmental bodies. The BPCB are a practical and comprehensive model of good practice in the area of anti-bribery. They are specific to the area of bribery and, therefore, are not expected to replace a full code of conduct. They provide a detailed elaboration of one critical aspect of a code of conduct. Beyond the strict prohibition of bribery, the Business Principles make it a fundamental requirement to implement a program to counter bribery. Transparency International has produced a Guidance Document to provide additional background and practical information for those wishing to implement the Business Principles or to benchmark their own practices. The Business Principles are being communicated worldwide through a series of workshops and through industry sector initiatives

- **Integrity Pact**

http://www.transparency.org/integrity_pact/preventing/integ_pacts.html

Developed by Transparency International, the *Integrity Pact* (IP) is a tool aimed at preventing corruption in public procurement. It consists of a process that includes an agreement between a government (at the federal, national or local level) or government department and all bidders for a public sector contract. It contains rights

and obligations to the effect that neither side will pay, offer, demand or accept bribes, or collude with competitors to obtain the contract, or engage in such abuses while carrying it out. Furthermore, bidders will disclose all commissions and similar expenses paid by them to anybody in connection with the contract; and sanctions will apply when violations occur. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the government. The IP allows companies to refrain from bribing in the knowledge that their competitors are bound by the same rules. It allows governments to reduce the high cost of corruption in procurement, privatization and licensing. The IP has shown itself to be adaptable to many legal settings and flexible in its application.

International Chamber of Commerce

http://www.iccwbo.org/home/menu_extortion_bribery.asp

The International Chamber of Commerce has been concerned about corruption, bribery and extortion and their effect on international business for more than 25 years. The first ICC Rules of Conduct on Extortion and Bribery in International Business Transactions were published in 1977, in response to the widely publicized bribery scandals of the mid-seventies. These rules, updated in 1996 and 1999, have set markers for the business community and adopted by many companies worldwide. The International Chamber of Commerce has established a Commission on Anti-Corruption, whose objectives are to (i) publish and promote a study on countering private sector bribery, (ii) update and expand ICC publication *Fighting Bribery: A Corporate Practices Manual*, (iii) feed business views into the negotiations for a UN Convention against Corruption, (iv) monitor implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and (v) contribute to the development of an ICC work program on money laundering.

- **ICC Rules of Conduct to Combat Extortion and Bribery**

www.iccwbo.org/home/statements_rules/rules/1999/briberydoc99.asp

First published in 1977, last revised in 1999, the International Chamber of Commerce (ICC) Rules of Conduct to Combat Extortion and Bribery outline the basic measures companies should take to prevent corruption. These Rules of Conduct are intended as a method of self-regulation by international business, they are of a general nature constituting what is considered good commercial practice in the matters to which they relate but are without direct legal effect.

- **Fighting Corruption: A Corporate Practice Manual**

http://www.iccwbo.org/home/news_archives/2004/anti_corruption_day.asp

The April 2003 edition is a practical handbook for managers in large multinational companies as well as in medium-size and small enterprises who administer corporate compliance programs in line with the International Chamber of Commerce Rules of Conduct to Combat Extortion and Bribery. It provides an extensive review of the

OECD, US and EU legislative frameworks and suggests concrete steps for compliance. The book was developed by the ICC Commission an Anti-Corruption.

The World Economic Forum’s Partnership Against Corruption Initiative (PACI)

<http://www.weforum.org/site/homepublic.nsf/Content/Partnering+Against+Corruption>

The Partnership Against Corruption Initiative (PACI), initiated by leading CEOs from the World Economic Forum engineering and construction and energy and mining communities, was officially launched at the Annual Meeting in Davos in January 2004. Using the Partnering Against Corruption - Principles for Countering Bribery (“PACI Principles”), which are a pragmatic sectoral step towards implementation of the Transparency International’s Business Principles for Countering Bribery (“TI BPCB”), as a core document, the PACI encourages member companies to sign a support statement that officially acknowledges their commitment to the PACI Principles and thereby to the PACI. By signing the statement, companies commit to “zero tolerance” of corruption and bribery as well as to the development of an internal implementation program.

3. Reporting on the 10th principle

As with the other nine principles, businesses are encouraged to report on progress in implementing the 10th principle within the framework of the Global Compact’s Communication of Progress: (i) description of practical actions taken to implement the principles, and (ii) measurement of outcomes. The Global Compact recommends the use of the relevant Global Reporting Initiative (GRI) indicator for reporting on measurement of outcomes. An updated version of the entire table linking all Global Compact principle with relevant GRI indicators has been made available on the Global Compact website.

| Anti-Corruption | Relevant GRI Indicators |
|--|---|
| 10. Business should work against corruption in all its forms, including extortion and bribery. | SO2 Description of the policy, procedures/management systems, and compliance mechanisms for organisations and employees addressing bribery and corruption. |

4. Industry related collective action

Extractive Industry Transparency Initiative

<http://www2.dfid.gov.uk/news/files/extractiveindustries.asp>

The Extractive Industries Transparency Initiative (EITI) was announced by UK Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg in September 2002. Its aim is to increase transparency over payments by companies to governments and government-linked entities, as well as transparency over revenues by

those host country governments. The initiative encourages governments, publicly traded, private and state-owned extractive companies, international organizations, NGOs and others with an interest in the sector to work together voluntarily to develop a framework to promote transparency of payments and revenues. Several options were explored, eg. to take a pragmatic first step by developing a country level agreement setting out provisions for annual disclosure of company payments and government revenues by all parties in each country to a trusted third party, using standardized templates. The data disclosed could then be collated, aggregated where necessary and summarized into a country output report. This report would be published for others to use in their in-country dialogues.

In December 2003, the World Bank Group announced its formal endorsement of EITI and pledged to work with several developing nations, as well as companies, on ways to publish revenues accruing from oil, gas, and mining sectors.

Publish What You Pay

<http://www.publishwhatyoupay.org/>

The Publish What You Pay coalition of over 200 NGOs worldwide calls for the mandatory disclosure of the payments made by oil, gas and mining companies' to all governments for the extraction of natural resources. It aims to help citizens of resource-rich developing countries hold their governments accountable for the management of revenues from the oil, gas and mining industries. The campaign was launched by George Soros and founded by Global Witness, CAFOD, Open Society Institute, Oxfam, Save the Children UK, and Transparency International UK.

5. Good practices and Examples

The Global Compact will work on the collection of good practices and examples in cooperation with Transparency International and the International Chamber of Commerce, which will be made publicly available and reviewed by companies.

We encourage companies to share their experiences and policies in the area of corruption with other participants and stakeholders through the Communication on Progress, submission of examples or case studies. We are planning to issue a publication of good practices by fall 2005.

6. The United Nation Convention against Corruption

(<http://www.unodc.org/unodc/en/corruption.html>)

With the adoption of the UN Convention against Corruption in Merida, Mexico in December 2003, an important global tool to fight corruption was introduced. The Convention is the underlying legal instrument for the 10th principle against corruption.

The UN Convention against Corruption is the latest in a series of other international anti-corruption initiatives that affect multinational companies. The most significant regional

anti-corruption law is the 1997 Organization for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Signatories of this convention agreed on laws to make it possible to prosecute companies in home countries for paying bribes abroad, thereby holding the conduct of business abroad to the same set of standards as that at home.

As the UN comprises states at all levels of economic development and its convention therefore has a broader mandate than any previous anti-corruption initiative. Unlike any of its predecessors, the convention has the potential to create and disseminate a truly global anti-corruption movement that will affect governments and businesses in both developing and industrialized countries. Although the main challenge of the Convention will be its implementation, the passage itself is significant because it illustrates the fact that the anti-corruption movement is now worldwide, cross-jurisdictional and here to stay.

United Nations Office on Drugs and Crime

The UN Office on Drugs and Crime (UNODC), which is the UN agency with responsibility to oversee the UN Convention against Corruption, has joined as the sixth UN agency supporting the Global Compact and act as “guardian” of the 10th principle. Its role will be to encourage countries to ratify the UN Convention against Corruption and to provide advice on its implementation in the form of the required national legislation.

What is the main implication of the UN Convention against Corruption for business?

The convention's passage provides evidence of the international support for transparency and commitment to prosecuting corruption offenders. This international solidarity will help to build and to strengthen the capacity of individual nations to prevent and control corruption. It should also help companies that operate in signatory countries to avoid compromising situations when the law specifically outlaws bribery.

As with all anti-corruption legislation, the determining factor for success is how effectively the convention is implemented and monitored. Critics contend that if the convention was enforced unevenly in different countries, the conduct of international business might become unnecessarily complex and uncertain. The success of the convention will depend on countries maintaining high-level political commitments to fight corruption, and companies taking full responsibility for their conduct both at home and abroad. Implementation will prove most difficult in the regions affected by conflict, or in countries that lack effective governmental institutions to enforce the principles.

- **Level playing field**

When it comes to the implementation of the UN Convention against Corruption, it is in the fundamental interest of businesses to have a level playing field. To ensure that, several points need to be secured. First, it is in interest of the private sector that the countries where companies operate understand, incorporate and implement the provisions of the Convention consistently (both in general terms and comparatively speaking). That means that legislation, regulatory regimes and other measures are coherent, in compliance with the Convention and easy to understand and apply. In addition, measures and legislation must not be unnecessarily harsh or complicated. It is also important that implementation of the above is equal across the board and without loopholes. Also, it is essential especially for companies with operations in many countries that consistency and compatibility of measures translates in effective international cooperation, so that those countries can work together to eliminate safe havens. Due to the interest and importance of these issues for the private sector its commitment should go beyond passive expression and towards active engagement.

▪ **Business related measures**

The Convention contains specific measures that countries must put in place to regulate the private sector. As some of these provisions are not mandatory, it is in the interest of the private sector that the measures are put in place and implemented correctly.

Article 12: Private Sector

Article 14: Measures to prevent money-laundering

Article 21: Bribery in the private sector

Article 22: Embezzlement of property in the private sector

What is the impact on non-business participants?

The UN Convention also calls for countries to actively promote the involvement of non-governmental organizations (NGOs) and community-based groups, as well as other elements of civil society, to raise public awareness of corruption.

Which areas does the UN Convention against Corruption cover?

The main four areas of the UN Convention are (1) prevention, (2) criminalization, (3) international cooperation, and (4) asset recovery.

Prevention. The treaty recognizes that the problem of corruption goes beyond criminal conduct. Therefore, the Convention contains a broad range of measures designed for preventive action at the national level or aimed at strengthening cooperation among countries in the area of prevention with measures directed at both the public and private sectors.

These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavor to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Transparency and

accountability in matters of public finance must also be promoted, and specific requirements are established for judiciary and public procurement. Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it.

Criminalization. The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and “laundering” of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

International Cooperation. Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Asset Recovery. In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as “a fundamental principle of the Convention...” This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments.

It is the first time that provisions are included that commits signatories to returning assets stolen and lodged overseas to their country of origin. Rules on political party funding and on private sector corruption are also included but are only optional. The UN Convention includes prohibitions on transnational bribery and the tax deductibility of bribes, as well as mandatory provisions on transparency in government procurement. It addresses mutual legal assistance, money laundering and asset recovery, where worldwide cooperation is essential.

For the full text of the UN Convention against Corruption refer to the Global Compact website / Anti-corruption /

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