

Practices to Strengthen Business Integrity In the MENA Region

This document compiles materials developed by the MENA-OECD Investment Programme in the context of its *Strengthening Integrity in Business in Arab Countries* (SIBAC) programme which aims at enhancing business integrity. It is submitted for information and provides, in addition to an overview of the SIBAC programme, guidance documents on concrete ways to engage effectively in the fight against bribery and corruption. In particular:

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This is complemented by additional OECD documents, in particular the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the *Good practice guidance on internal controls, ethics and compliance*.

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Executive Summary

1. Why strengthening integrity in business in the Middle East and North Africa

a) The importance of fighting corruption in international business transactions

Combating bribery in international business transactions is crucial to creating a level playing field for business. Recognising this, governments and international organisations have adopted a series of legally binding and non-binding anti-corruption and integrity instruments at regional and global levels. Many private businesses have responded by introducing voluntary measures such as codes of conduct and compliance programmes.

b) The Middle East and North Africa (MENA) context

Investors and traders worldwide are expected to comply with anti-corruption and anti-bribery rules and regulations. Compliance with these integrity instruments is sometimes difficult, in particular if operating in business environments where corruption is a common practice. To prevent risks and avoid malpractices, international actors have developed voluntary instruments that should enable them to carry out commercial and investment transactions and projects, including in high risk countries.

Corruption is considered a challenge to the development of trade and investment of the MENA region's economies. To increase the involvement of the private sector in MENA economies and ensure fair competition in an increasingly global economy, it is essential to raise awareness and promote implementation of common anti-corruption provisions as well as preventive anti-bribery measures.

c) Objective of the SIBAC Programme

The MENA-OECD Investment Programme provides assistance to the MENA economies in their efforts to create favourable business climates through its regional activity "Strengthening Integrity in Business in Arab Countries" (SIBAC). The objective of the SIBAC Programme is to raise awareness of international anti-corruption and integrity standards and principles¹ ethics and compliance, and share good practice in furtherance of business integrity in the MENA region. It also aims to encourage governments and companies to develop and implement integrity measures and tools, with a view to levelling the playing field for businesses operating in the region.

2. Key activities and achievements

The SIBAC has been able to develop a network of partners to enhance awareness on the need to fight corruption in the MENA region with a view to improving the business climate. Building on

¹ Including the 1) Convention on Combating Bribery of Foreign Public Officials in international business transactions and the 2009 Recommendation of the Council for Further Combating Bribery and the related Good Practice Guidance on Internal Controls, Ethics and Compliance; 2) the OECD Guidelines for Multinational Enterprises.

the latter, the SIBAC was able to deliver an important number of meetings and several training seminars with the view to promoting business integrity measures in the MENA countries. The OECD Secretariat has also drafted a series of support materials which have been made available to participants in the events in hard copy as in electronic form.

a) *Building an effective network to foster synergies*

The SIBAC is implemented in close coordination and cooperation with the governments and business partners from the MENA region which host roundtables, training sessions and participate actively in the debates countries.

To engage and assist in the development individual or collective actions by the business community of the MENA region, the SIBAC seeks to develop a MENA-OECD Business Integrity Network (MOBIN). The MOBIN brings together businesses and their associations with the aim to share experiences and good practices. It is noteworthy that participants in the MOBIN call for the support of the OECD and the international business community to improve national and regional training capacities in the field of business integrity and to assist in engaging in a dialogue with the key government instances in order to encourage and support anti-corruption and integrity actions.

The activities are organised in collaboration with international, regional inter-governmental organisations as well as with international, regional or national business associations wishing to share experiences. The SIBAC works for instance with the OECD Working Group on Bribery, the MENA-OECD Governance Programme, the UNDP Regional Programme on Anti-Corruption and Integrity in Arab Countries, the Commercial Law Development Program of the US Department of Commerce, the Business and Industry Advisory Committee to the OECD (BIAC) and its members such as the French business association (MEDEF), the International Chamber of Commerce, the Turkish Ethics and Reputation Society (TEID), Transparency International (headquarters and local chapters) and others. The partnership developed over the last two years with the UNDP's Regional Programme on Anti-Corruption and Integrity in Arab Countries is particularly valuable as it allows coordinating and reinforcing international support for a coherent regional business integrity programme. The activities have benefitted from the support of Siemens, the United Kingdom and Sweden.

b) *Raising awareness through conferences and training seminars*

To enhance knowledge of existing integrity standards and provisions as well as to engage and develop appropriate preventive business integrity measures, SIBAC seeks to engage a large number of public officials as well as private sector representatives – from business or their associations through meetings and direct exchanges with international experts, through exchanges. The exchanges are organised around two types of events:

- ✓ Regional and national roundtables focusing on the benefit of multi-stakeholder dialogue and business compliance with international integrity standards;
- ✓ Training seminars supporting governmental and non-governmental actors in enhancing awareness about the benefits of engaging in mutual consultations and in collective as well

as company specific actions to fight bribery and to strengthen business compliance, in particular in high risk sectors and activities.

Regional and national roundtables:

Over the past two years, the SIBAC programme has delivered a number of regional and national roundtables, in particular:

1. Strengthening Integrity in the Private Sector in Arab Countries, Manama, Kingdom of Bahrain, 16-17 March 2010
2. Private Sector Integrity and Economic Development in Gulf Countries, Doha, Qatar, 10-11 May 2011
3. Consultation on the desirability of launching a Business Integrity Network, 8 June, Rabat , Morocco, 2011
4. Multi-stakeholder Dialogue “DES ENGAGEMENTS CONTRE LA CORRUPTION A L’ACTION : Transparence, participation et prééminence du droit », 9 -10 June 2011, Rabat, Maroc
5. Consultation en matière d'intégrité avec les entreprises de Tunisie, Hammamet, Tunisie, 23 Septembre 2011
6. The Private Sector’s Role in Fighting Corruption (Cairo, Egypt, 21 November 2011)
7. Multi-stakeholder Dialogue on the Integrity Frameworks in Egypt, Iraq and Jordan (Amman, Jordan, 12-13 February 2012)
8. Private Sector Integrity Initiatives in Egypt (Cairo, Egypt, 25 March 2012)
9. Multi-stakeholder Consultation on Promoting Public-Private Dialogue on Integrity in Egypt (Cairo, Egypt, 26 March 2012)
10. Regional workshop on Enhancing Transparency in the Private Sector and the Role of Different Stakeholders in Arab Countries, Tunis, Tunisia, 7-8 June 2012
11. Towards Strengthening Private Sector Integrity in Morocco: what role for the government, companies and civil society in promoting transparency in the private sector, 24 October, 2012, Casablanca, Morocco.

Discussions during the regional and national round tables allowed raising awareness among the public and private sector representatives about the international anti-corruption and integrity standards and to exchange experience about good practice developed by selected OECD countries and international organisations on the benefits of, and the ways to, engaging in public-private consultations as well as in multi-stakeholder dialogues. The roundtables produced recommendations for follow-up actions, which provide ground for further activities of the SIBAC programme as well as for the actions by public and private stakeholders in the MENA region.

Training seminars

The SIBAC has started organising training seminars targeting both the public sector in view of developing the multi-stakeholder dialogue and the private sector in the framework of its MOBIN.

1. Multi-stakeholder Dialogue on the Integrity Frameworks in Egypt, Iraq and Jordan, Amman, Jordan, 12-13 February 2012;
2. Strengthening Private Sector Integrity Initiatives in Egypt, Cairo, Egypt, 25 March 2012;
3. Strengthening Integrity in the Private Sector in Morocco, 25 September 2012, Casablanca, Morocco.

Improving understanding through production of support documentation

Building on key international binding and non-binding anti-bribery and integrity provisions, the SIBAC has produced a set of multi-lingual reference documents and training materials that can be used by the MENA countries, including public and private sector stakeholders, in further promoting business integrity and delivering training on this issue:

- Anti-corruption chapter of the Business Climate Development Strategy for Egypt;
- Anti-corruption chapter of the Business Climate Development Strategy for Morocco;
- Contribution to the Investment Policy Reviews of Tunisia and Jordan on anti-corruption issues;
- Elements of Voluntary Corporate Integrity Measures and Tools;
- Elements for Governments to Strengthen Public-Private Dialogue on Integrity;
- Training materials on Strengthening Business Integrity.

3. Way Forward

Building on the progress achieved, the future activities on the programme may focus on:

1. Continuing the programme of regional and national roundtables for public and private sector representatives, notably in coordination and cooperation with the UNDP's Regional Programme on Anti-Corruption and Integrity in Arab Countries, in order to take stock and monitor progress in implementing the recommendations in the course of the past roundtables, and to advance the policy dialogue on business integrity in MENA further.
2. Further develop activities of the MOBIN, that would bring together representatives of business associations engaged in anti-corruption and integrity activities in the MENA countries, as well as from selected OECD countries, to exchange experience and provide mutual support, develop regional recommendations and take stock of progress at the

regional level. MOBIN activities may involve regular meetings of the members of the Group, practical trainings and development of sector-specific projects in areas with high risk of corruption.

3. Improve and continue developing multi-lingual training materials in furtherance of knowledge-dissemination and to support business integrity actions by the business community across the MENA region.

ELEMENTS FOR GOVERNMENTS TO STRENGTHEN PUBLIC-PRIVATE DIALOGUE ON INTEGRITY

This section seeks to offer an overview of means to strengthen public-private dialogue on anti-corruption measures taken by governments. It may serve as a basis to identify current practice in the MENA economies as well as possible means to enhance the domestic public-private dialogue. It is mostly inspired from OECD experience and was adapted to the MENA region.

Readers are invited to comment on this document, which is a work in progress, and to share their experiences and views on means to promote public-private dialogue and to strengthen anti-corruption measures.

I. THE NEED TO ACT AGAINST CORRUPTION

Anti-corruption and business integrity have been identified world-wide as critical for a country's development and investment performance. Economic theory, supported by empirical evidence, testifies that bribery and corruption are major deterrents to investment. Indeed, integrity is a critical element in fostering a strong and equitable business climate, as corruption raises unforeseeable costs for doing business and prevents businesses from operating on a level playing field. Corruption, excessive bureaucracy and red tape may lead to fraudulence in public contracts and lack of transparency and trustworthiness. As a result of corruption, critical public projects in areas such as education, infrastructure and other public services, often lack funding.

Indeed, corruption has proved to be a significant challenge to the development of the business climate of MENA economies, both through grand and petty corruption. With globalisation and increasing competition, the importance of promoting anti-corruption measures in the private sector is growing. Demanding international standards, instruments and review mechanisms have made the fight against corruption an essential element in improving the business climate.

The recent transformations taking place across the Middle East and North Africa (MENA) region provide excellent opportunities for making the fight against corruption a key element of the new political and social paradigms. Indeed, tackling corruption is an increasingly high priority on the political agenda, with citizens demanding more accountability and transparency in the public sphere. Better governance and integrity, transparency and competition will also help establishing a business environment leading to better opportunities for economic growth, investment and job creation.

An institutionalised dialogue between governments, the business community and civil society is an important way in which different stakeholders can express their vision and vocalise their needs, with a view to furthering anti-corruption measures, enhance public and private governance and integrity. Governments may use a wide range of actions to fight corruption – clear communication of these actions with input from different stakeholders is essential for their effective implementation.

As mentioned in a complementary document on “Elements of Voluntary Corporate Compliance Measures And Tools”, the business community may engage in complementary and mutually supportive measures – such as corporate compliance tools or integrity pacts – and it is important to communicate such initiatives to a wider public to raise awareness of the available tools to fight corruption.

This document is not aimed at being exhaustive. Its primary goal is to offer suggestions to facilitate the institutionalisation of public-private dialogue. To that end, it highlights various awareness-raising tools (section II), and presents elements to institutionalise transparent public-private dialogue (section III). It does not include measures on increasing public sector awareness.

Comments and input on this document are welcome. In further elaborating it, it may inform on current integrity practices in Egypt as well as on possible means to enhancing the domestic public-private dialogue in furtherance of a more transparent, competitive and integer business environment.

II. GOVERNMENTS CAN RAISE PUBLIC AWARENESS TO PREVENT CORRUPTION

Governments have to make a variety of efforts to combat corruption. Implementation and enforcement of clear penal provisions deterring and preventing foreign bribery are their primary responsibility. In recent years, due to changing international anti-corruption and anti-bribery standards, government had to amend regulations and had to take actions ensuring that their institutional framework is adequate and live up to their commitments.

In addition to establishing a legal framework that is capable of addressing corruption, it is important for governments to publicly and expressly mark their political will to fight corruption, and make the fight against corruption visible on the political agenda.

A. CLEAR COMMITMENTS AGAINST CORRUPTION

Governments may express a long-term commitment to good public and private governance through several means.

1. Strategy and action plan

One way is to adopt a formal national strategy against corruption, which some MENA countries have started to do.

The commitment against corruption is most effective when it is complemented by an action plan that sets out clearly defined steps, assigns a corresponding budget, and delineates a precise timeframe for implementation. Indeed, a clear strategy spelling out a strong and precise message about the government's priorities on corruption can help ensure follow-up on public declarations. Continuous monitoring of the action plan serves to ensure a closer adaptation to the national context.

The strategy and the action plan could notably build on the government's commitment to implement international anti-corruption instruments (see annex 1).

2. Information about enforcement

Governments can also raise awareness and communicate their commitment to fight corruption by informing on preventive measures adopted by the public sector. Information concerning investigations of cases of bribery and court decisions is another means to raise awareness. Although this kind of awareness-raising is only indirectly triggered by public authorities, it is highly efficient. This practice depends greatly on the judicial tradition of each jurisdiction. Some law enforcement agencies issue press releases regularly, whereas others do so occasionally, and others never comment at all.

3. Communication of roles and responsibilities

It is also essential that governments communicate clearly the roles and jurisdictions of different institutions tasked with anti-corruption mandates.

Indeed, government strategies and provisions in criminal, administrative and civil law can successfully fight corruption only if they are effectively enforced. This enforcement takes place through institutions mandated in the fight against corruption. Responsible institutions thus need to be designated,

their respective roles need to be clearly defined, and within them, competent personnel need to be tasked with ensuring the effective and consistent application of anti-corruption laws. Furthermore, adequate financial means, training and technical resources need to be provided to the institutions mandated with fighting corruption.

In many MENA countries, several institutions are tasked with anti-corruption matters but it would seem that the roles and responsibilities are not always clearly defined. This may lead to overlapping powers and conflicting roles. It can be feared that the lack of clearness may result in ineffective application of the anti-corruption provisions.

Furthermore, communication should not be restricted between the different institutions. It is also essential for the wider public i.e. the business community and civil society to be aware of the prerogatives of the different institutions in order to be able to address concerns adequately.

4. Guidance to business

Governments may provide guidance to business in order to facilitate compliance with relevant laws and international standards. Indeed, informing and advising business about national legal provisions and related by-laws and then means to comply with them is a means of furthering a wider and better implementation and enforcement of measures in the fight against corruption. For instance, to inform business about applicable laws and ease compliance, the United Kingdom Ministry of Justice published a guidance to the 2010 Bribery Act² about procedures which business can put in place to prevent persons associated with them from using bribery in their operations.

B. REACHING OUT TO NON-GOVERNMENTAL ACTORS

Several means of communication allow for a better flow of information between the government and the wider public on anti-corruption measures.

The government can deliver and spread information through targeted publications, press conferences, publications on special governmental websites, through mechanisms to respond efficiently and consistently to public inquiries (e.g. telephone or electronic lines, open hours for public meetings, rules for public officials to respond to public inquiries), through public consultations (e.g. discussions of draft programmes or laws), and through temporary or permanent structures for dialogue between the government and citizens (e.g. anti-corruption working groups, councils or commissions with representatives of the government and the public).

General explanatory brochures are frequently published to raise awareness of the bribery offence. Brochures or leaflets target a large audience, often including both the public administration and the private sector, and are also generally easily accessible online. Most brochures include:

- the description of the bribery offence;
- case examples; and
- a presentation of prevention or detection measures.

² <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

Inclusion of prevention and detection measures seems to be the most advanced and efficient way to make businesses fully conscious of the unlawfulness of bribery and of the necessity to exercise due diligence. Diffusion of brochures is of key importance. Many are indeed available on the websites of the ministry/administration which produced them, and some can be found on other websites as well. In some countries and on some occasions, brochures are individually distributed to companies or public officials participating in seminars or entering in contacts with the administration (for instance, embassies may distribute brochures to companies operating locally). Continuous efforts are necessary to keep these brochures updated, visible and ensure their distribution.

Some governments directly contact companies to inform them of the consequences of legal provisions on corruption. Target companies may include those involved in public procurement (abroad), those operating in sectors which may be more susceptible to corruption (such as the energy or transport sector), or those located in geographically sensitive areas. Governments provide documentation in various ways, including specific training seminars.

Governments of some countries directly encourage companies to adopt codes of conduct and compliance programmes. Some have indeed started to develop joint programmes with the private sector aimed at identifying best practices to help companies and their employees to prevent them from engaging in malpractice and to adopt a professional conduct consistent with prevailing anti-corruption rules and regulations.

Some governments also provide support to companies operating abroad. Under certain circumstances, governments prevent and alert about misconduct in specific transactions.

Finally, some governments reach out to outside stakeholder groups to involve and consult them in the development of integrity policies or legal provisions (e.g. citizens participate as experts in the legal drafting, or act as observers in governmental discussions or actions, such as the public procurement process).

The Business Anti-Corruption Portal³ for small and medium-sized companies (SMEs) operating in emerging markets and developing countries is developed and maintained by a subcontractor for ministries and agencies of several OECD countries. It aims to help SMEs avoid and fight corruption, creating a better business environment. It proposes definitions, a model code of conduct, and due diligence tools including an agent screening process and e-learning. It contains 62 country profiles with information about risks for corruption in areas relevant to business such as customs, tax, land administration and the judiciary. The whole portal is available in English and parts of it in Arabic, Chinese and Russian.

³ <http://www.business-anti-corruption.com>

III. INSTITUTIONALISING PUBLIC-PRIVATE DIALOGUE

Public-private dialogue is key to ensuring a healthy working environment for the public and the private sectors. Indeed, it may help governments learn about the private sector's needs and adjust their policies accordingly, while simultaneously enabling private sector growth by allowing business to learn about the government's policies and orientations. The OECD has developed several instruments that highlight the importance of public-private dialogue and of private sector participation in policy-making, notably *The Charter of Good Practice in Using Public-Private Dialogue for Private Sector Development*.

Fostering dialogue between the public and the private sector is essential to promote economic growth, investment and job creation and create a level playing field for all economic actors. Public-private dialogue is especially important in more vulnerable areas, including the prevention of corruption in public procurement⁴, and risk mitigation measures in vulnerable sectors that have an impact on citizens' daily lives, such as health and water management.

Times of political or economic crisis in a country may serve as an impetus to set up strong public-private dialogue. Indeed, such a process may strengthen the credibility and legitimacy of the government, while allowing the private sector to voice its concerns and bring about the change it needs.

Though public-private dialogue varies according to different contexts, some elements are critical to ensure a smooth and institutionalised process.

A. LONG-TERM COMMITMENT BY ALL STAKEHOLDERS IN THE DIALOGUE PROCESS

For public-private dialogue to succeed, a critical factor is the involvement of all relevant stakeholders in the public and the private sector on a long-term basis. Such a commitment serves to ensure the flow of information among stakeholders and helps adapt policy-making to changing contexts.

On the government side, sustained political will and support in the long term are crucial elements for the success of public-private dialogue. Perceptions of the role of the state and its authority are among the first elements to change in order to integrate the private sector into policy reforms.

It is also important that the private sector be involved by the government in all the stages of the policy-making process, *ex ante* and *ex post*. Such an involvement allows for a more thorough follow-up on the effectiveness of policies and may facilitate their revision as necessary.

B. REPRESENTATIVE PRIVATE SECTOR INPUT

A second element for an effective public-private dialogue is a strongly organised and thorough private sector representation. An effective and coherent dialogue is best facilitated when the input of as wide and diverse a constituency as possible is adequately conveyed. This may be achieved through the active involvement of business associations on the private sector's side, as they are aware of the challenges faced by the private sector through their members' input. Particular attention may be given to SME representatives, who tend to participate less in dialogue with the government, but who represent large proportions of business in the MENA region.

⁴ The OECD's *Integrity in Public Procurement: Good Practice from A to Z* may serve as a valuable resource for governments in the MENA region in identifying measures to enhance integrity in public procurement.

The inclusion of all relevant stakeholders is essential in order to build policies on as complete information as possible. These stakeholders therefore include, in addition to business associations, representatives from civil society and academia.

C. A DIALOGUE THAT GUIDES POLICY-MAKING

The following suggestions which have been developed by the MENA-OECD Investment Programme Secretariat may serve as a basis to improve the public-private dialogue. Existing dialogue mechanisms can contribute to building trust between the government and the private sector.

To show their commitment towards the involvement of private sector representatives in the policy making process, governments may consider the following elements:

- a. **Co-ordinating within their own bodies:** all the ministries involved in the economic reforms should be informed of the policy-making process in order to avoid duplication and their representatives should seek to participate in all relevant meetings.
- b. **Strengthening institutional capacities:** civil servants need to understand that engaging in dialogue with the private sector doesn't undermine their prerogatives.
- c. **Building the capacity of private sector representatives:** through workshops, training, coaching, etc. This may involve engaging international organisations in preparation and implementation phase of these processes.
- d. **Putting in place an appropriate legislative framework for the establishment of business associations.** This framework should ensure the representativeness of all the stakeholders of the private sector, for example by putting quotas for the SMEs and that there are no obstacles to the creation of associations.
- e. **Enhancing and expanding existing good practices.**

The private sector should seek to ensure the representativeness of all its components. A balance needs to be found between the already existing business associations that represent the different sectors, cities, etc. and the absence of coordination between them.

The institutionalisation of the consultation process may give it consistency in order to facilitate participation. Thus, the dates, location and frequency of the meetings have to be determined so that all the stakeholders are aware of them and can participate.

The logistical issues (the size of the groups, the selection of the participants and their number, the level of involvement of the government's representatives, the participation of unions, NGOs and academia, the structure (co-ordination body, etc.) should be carefully handled and determined before engaging in dialogue.

The implementation of the results of the dialogue is key to ensuring their credibility. Therefore, the public-private dialogue should be results-oriented and both sides should show commitment.

The topics discussed should not be too detailed, although they can be sector-specific, and the objectives have to be clear and coherent within the general framework of the intended economic reform.

A communication strategy should be put in place at two levels:

- To inform about the dialogue itself to allow all the relevant stakeholders to participate;
- To inform about the outcomes and the outputs of the dialogue. They should be open to comments at all the phases of the process within a reasonable period of time and through known channels. For instance, a webpage on the involved ministries' and business associations' website, etc.

These elements, while not exhaustive, may serve to establish an institutionalised exchange that assures and serves the active involvement of relevant stakeholders in the public and the private sector on a long-term basis.

ELEMENTS OF VOLUNTARY CORPORATE INTEGRITY MEASURES AND TOOLS: GUIDANCE FOR BUSINESS IN THE FIGHT AGAINST CORRUPTION

This section introduces international anti-corruption standards and instruments, and a checklist which may guide business in determining key elements of a corporate compliance culture. A short description of key compliance tools and mechanisms and an overview of means to foster public-private dialogue concludes the section. It is mostly inspired from OECD experience and was adapted to the MENA region.

Readers are invited to comment on this document and to share their experiences and views on means for business to engage in voluntary corporate integrity measures at a national, regional and international level.

I. WHY BUSINESS SHOULD FIGHT CORRUPTION

Low levels of corruption and high levels of business integrity are critical to economic development. Ample empirical evidence shows that bribery and corruption are major deterrents to foreign investment. Indeed, such malpractice creates unforeseeable costs for businesses and prevents them from operating on a level playing field. If the regulatory environment is unclear – whether over- or under-regulated – officials may abuse their discretionary powers for personal gain. This has widespread detrimental effects, increasing the cost of doing business, distorting the allocation of wealth and resources, and undermining growth.

Real or perceived corruption risks heighten companies' concerns over engaging in business relations. Beyond the direct economic cost for companies, corruption also carries increasing legal and reputational risks.

Today, companies are bound by international integrity provisions which increasingly hold them liable for corrupt practices among staff, agents, or subcontractors. Recent highly publicised bribery scandals illustrate how unethical conduct severely affects companies' finances through damage to their reputations and increased government enforcement. Penalties for violating foreign bribery rules can amount to millions of dollars and apply to multinational companies. Corruption risks have become an inescapable reality for executives who are increasingly concerned about ensuring business integrity in their operations and in the markets where they intervene.

There are many ways for businesses to become involved in the fight against corruption at an individual and a collective level. Indeed, businesses, their associations and industry federations as well as non-government organisations may make valuable contributions in preventing and fighting corruption.

Corruption is a significant challenge to the development of the trade and investment climates in the Middle East and North Africa (MENA) region. Globalisation and the resulting increase in competition make it essential to promote anti-corruption measures in the private sector.

Awareness of these measures is still insufficient. While several larger companies have adopted them, small and medium-sized enterprises (SMEs), which stand for the lion's share of private sector economic activity in the MENA region, often lack the necessary human and financial resources to develop sophisticated policies.

Assessing the risk incurred by companies is a key element in adapting preventive measures as appropriate. Companies should therefore be aware of the specific risks for corruption they may encounter in their operations, use the available resources flexibly and formulate an action plan that is tailored to their needs.

This paper introduces international anti-corruption standards and instruments (section II), as well as some tools and measures for increasing transparency and integrity in business (section IV). Section III contains a checklist to help companies develop a corporate compliance culture, noting that an adaptation to the particular circumstances in which a company operates is necessary. An overview of some ways to foster public-private dialogue (section V) concludes the document.

This document is not exhaustive. Its goal is to encourage the development and implementation in the MENA region of business integrity tools, including corporate compliance programmes, codes of

conduct, due diligence and integrity pacts, and this notably by facilitating access to available anti-corruption resources.

II. INTERNATIONAL ANTI-CORRUPTION INSTRUMENTS RELEVANT TO BUSINESS

In the last decade, several international anti-corruption instruments have been adopted⁵. These instruments, increasingly enforced by criminal sanctions, have tangible consequences for the business community, as companies found in violation have seen their market shares drop.

The 2003 **United Nations Convention Against Corruption (UNCAC)**⁶ to which 154 states are party is the first legally-binding international anti-corruption instrument which most MENA countries have signed and ratified and constitutes a key starting points for anti-corruption efforts in the region. Calling for preventive and punitive anti-corruption measures for both the public and the private sectors, it favours strengthened co-operation between national authorities and business. With a focus on the prevention and criminalisation of corrupt practices, asset recovery and international co-operation on corruption, it is a key starting point for anti-corruption efforts in the Arab region. Articles 12 “Private Sector,” 13 “Participation of society,” 21 “Bribery in the private sector,” and 39 “Cooperation between national authorities and the private sector” are particularly relevant for the private sector.

Through the 1997 **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**⁷ and related recommendations, 38 countries committed to criminalising bribery of foreign public officials in international business transactions. The Convention applies to businesses established in, or having a link to, these 38 countries. It affects business operations beyond national boundaries as natural persons and companies operating abroad may be held liable for corrupt behaviour by employees, agents or subcontractors. Furthermore, some legislative provisions also apply to operators having a territorial link. Hence, the Convention also applies to companies from third countries operating in or having commercial or financial relations with signatory countries.

To help companies abide by this Convention, the OECD has developed instruments that facilitate compliance. The non-legally binding 2009 **Good Practice Guidance on Internal Controls, Ethics, and Compliance** helps companies establish effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery. The Guidance is also addressed to business organisations and professional associations wanting to engage companies in a broader integrity effort.

The OECD **Guidelines for Multinational Enterprises**⁸ include recommendations to multinational enterprises on voluntary principles and standards for responsible business conduct in areas such as

⁵ In addition to the UNCAC and the OECD Convention several regional efforts aim at preventing and fighting corruption including through the African Union Convention On Preventing and Combating Corruption, the Inter-American Convention against Corruption or the Council of Europe Civil and Criminal Law Conventions against Corruption.

⁶ <http://www.unodc.org/unodc/en/treaties/CAC/>

⁷ http://www.oecd.org/document/21/0,3746,en_2649_34859_2017813_1_1_1_1,00.html

⁸ http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html

combating bribery, employment and industrial relations, human rights, environment, information disclosure, consumer interests, science and technology, competition, and taxation.

Reviews of the implementation of these OECD instruments show that business involvement in anti-corruption efforts is essential. Governments have recognised the importance of business initiatives and co-operation between the public and the private sector to ensure compliance. While some governments have directly encouraged companies to adopt codes of conduct and compliance programmes, others yet have developed joint programmes with the private sector aimed at identifying best practices to help companies and their employees avoid malpractice and comply with prevailing anti-corruption rules and regulations.

Several non-governmental organisations have developed tools to assist companies in that regard, of which key ones are highlighted in section VII (Anti-Corruption Resources for Business). For instance, the Resisting Extortion and Solicitation in International Transactions (RESIST) toolkit was jointly developed by the International Chamber of Commerce, Transparency International, the United Nations Global Compact and the World Economic Forum, and aims at providing guidance on means to prevent and respond to solicitations through a series of concrete scenarios and explanations. The Business Anti-Corruption Portal for small and medium-sized companies (SMEs) operating in emerging markets and developing countries is developed and maintained by a subcontractor for ministries and agencies of several OECD countries. It aims to help SMEs avoid and fight corruption, creating a better business environment. It proposes definitions, a model code of conduct, and due diligence tools including an agent screening process and e-learning. It contains 62 country profiles with information about risks for corruption in areas relevant to business such as customs, tax, land administration and the judiciary. The whole portal is available in English and parts of it in Arabic, Chinese and Russian. Companies may seek to examine these resources and use them as a basis for their own measures.

Box 1: International instruments may have far-reaching consequences: Example of the US Foreign Corrupt Practices Act

Governments party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction have sharpened control over business activities in foreign countries. Investigations and prosecutions under Parties' respective national foreign bribery laws increased over the last years. Regulators pursue cases more insistently, in particularly in the United States (US), where increasingly large penalties are applied to both domestic and non-US companies for violations of the Foreign Corrupt Practices Act (FCPA).

The FCPA applies to any US limited company, foreign subsidiary of a US company, or foreign company operating within the United States and traded on US public exchanges, and the officers, directors, employees or agents working for these companies. Foreign persons who have used the US banking or mail/wire system as a conduit for illegal payments also fall under the FCPA. The FCPA's accounting provisions require public companies to control corporate assets and keep books and records in a fair and accurate manner.

The FCPA carries criminal penalties and fines for both companies and individuals. It also stipulates that civil actions may be brought by the US Attorney General or the Securities and Exchange Commission (SEC). Conduct that violates the anti-bribery provisions of the FCPA may also give rise to a private cause of action for treble damages under civil RICO (Racketeer Influenced Corrupt Organization), or to actions under other federal or state laws. Finally, guidelines issued by the Office of Management and Budget state that a person or firm found in violation of the FCPA may be:

- barred from doing business with the federal government;
- ruled ineligible to receive export licenses;
- barred from securities business; and
- suspended from support programmes through the Commodity Futures Trading Commission and the Overseas Private Investment Corporation.

Company managers' responsibility and liability have significantly increased, notably with the adoption of the Sarbanes-Oxley Act of 2002, which requires CEOs and CFOs to personally sign off on the accuracy of their company's financial statements and the effectiveness of their internal controls. This places pressure on executives to ensure compliance with federal securities laws.

Spurred on by the U.S. Federal Sentencing Guidelines, regulators are focusing their attention on companies' compliance measures and programmes. The guidelines require companies to implement, update, communicate and monitor clear and concise compliance standards – and to assign responsibility for the compliance programme to a credible person with sufficient resources and direct and regular access to the board of directors. A disciplinary mechanism and response plan for violations must also be put in place.

When misconduct has been proven, companies that have created, communicated, enforced, and promoted effective compliance programmes (as defined by the U.S. Federal Sentencing Guidelines for Organizations) have been treated more favourably by the Department of Justice (DOJ). On the contrary, enhanced penalties are imposed on companies that are repeat offenders. In this context, an ever-increasing number of companies see that they have to change their business practices.

III. SAMPLE CORPORATE INTEGRITY MEASURES CHECKLIST

This sample checklist is intended for indicative purposes only and highlights issues that companies may keep in mind in formulating or updating their corporate integrity measures. Integrity measures may be adopted in a flexible way. Companies are encouraged to adapt their corporate integrity measures to their specific needs and operating requirements.

COMMITMENT TO BUSINESS INTEGRITY

This company declares its commitment to a corruption-free business environment.

- Does the head and senior management of the company commit to business integrity?*
- Some means to make explicit this commitment may include such corporate integrity measures as a written statement by senior management, or the establishment a code of conduct, corporate compliance programme, due diligence principles and procedures, or another means that best suits the needs of the company. Have some of these measures been considered?*
- Has the company's leadership communicated its commitment to its staff?*

OBJECTIVES

The purpose of corporate integrity measures is generally to:

- Establish a system to identify, address and prevent corruption in business;
 - Ensure that all staff are aware of and adhere to the principles of integrity in business; and
 - Assist in fostering a clean and transparent business environment.
- Is information on the corporate integrity measures promptly and continuously made available to staff?*
 - Do the corporate integrity measures seek to apply to all company staff, in particular to management?*
 - Are all staff aware of the company's commitment and corporate integrity measures in place and have they agreed to abide by their principles?*

INTEGRITY MEASURES (see descriptions in section IV of this document)

A company may adopt a number of measures ensuring business integrity by its staff members. senior management may for instance issue written statement, or the company may establishment a code of conduct, a corporate compliance programme, due diligence principles and procedures, or another means that best suits the needs of the company.

- Have some of these measures been considered, and if so which?*
 - *Management issued a statement*
 - *A corporate code exists*
 - *A corporate compliance programme*
 - *Due diligence principle and procedures have been developed and are implemented*

TRAINING

In order to facilitate staff compliance with the requirements of the corporate integrity measures, regular training sessions can be made available to address potential concerns and misunderstandings.

- Have companies' developed training sessions provided to all staff and business partners to help businesses ensure adequate compliance?*
- Is staff able to attend training sessions as necessary?*
- If in-house training sessions are limited due to capacity, are other options available to staff to learn about the requirements of the corporate integrity measures, including access to relevant material and information on the appropriate resources?*

RESPONSIBLE STAFF MEMBER (COMPLIANCE OFFICER)

A staff member, which may be referred to as a compliance officer, is assigned to ensure that all staff are aware of, and adhere to, the corporate integrity measures in place. The compliance officer need not constitute an additional hire for the company, especially for smaller companies. Indeed, any staff member with the necessary will, knowledge and capacity may fulfil this role, including senior management, and interested junior staff members.

The compliance officer is responsible for:

- Ensuring that all staff receive, review and understand the corporate integrity measures and comply with their requirements;
 - Developing and facilitating regular and periodic training programs designed to help staff understand the requirements of the integrity measures;
 - Investigating reports of suspected corrupt actions;
 - Conducting periodical and regular audits of all divisions and staff (including management) to ensure transparency and integrity;
 - Reporting on all arising issues that relate to corruption;
 - Promoting partnerships with suppliers, sub-contractors, consultants and intermediaries that are corruption-free.
- Has a compliance officer been designated that is willing and able to fulfil the responsibilities position?*
 - Has the company taken the necessary steps to define an adequate governance structure to ensure implementation and monitor enforcement of its corporate integrity policy?*

RELATIONS WITH BUSINESS PARTNERS

Companies may jointly promote integrity with suppliers, sub-contractors, consultants and intermediaries that are similarly committed to its business integrity principles.

- Has the company communicated its integrity commitment to contractors, suppliers, and consultants and intermediaries?*
- Does the company seek to ensure to the extent possible that its partners are committed to a corruption-free business environment and do not engage in corrupt practices?*

MONITORING

Corporate integrity measures will evolve with the environment and circumstances in which the company operates and therefore is a dynamic undertaking. Accordingly, they may regularly be revisited, revised and updated in order to take into account the changing context and operating methods, and to improve their effectiveness in light of compliance results.

- Are the results of the corporate integrity measures monitored?*

- Is there a mechanism in place that allows for a regular review of the corporate integrity measures and revisions as necessary?*

REPORTING

The compliance officer will report to management on a regular basis for all issues related to the corporate integrity policy. A clear and systematic mechanism of investigation and response will ensue based on the compliance officer's report.

- Is there a continuous follow-up on the compliance-related findings?*
- Can staff report on suspected corrupt actions without fear of retribution or punishment, in particular when management is involved?*
- Are reports on compliance followed by the appropriate actions, including an investigation and sanctions when needed?*

Companies may also choose to engage in external reporting, whereby they make available information on their corporate integrity measures.

- Has the company's leadership considered communicated its commitment to the public?*

COLLECTIVE ACTION

Companies may choose to engage with business associations, and to become involved in sectoral or multi-industry initiatives to promote business integrity.

- Has the company considered collective action through engagement with business associations or involvement in sectoral or multi-industry initiatives?*

IV. SOME INTEGRITY MEASURES CORPORATIONS CAN PUT IN PLACE

As they enter new markets and the reputational, legal, operational and financial risks of corruption increase, companies with tens of thousands of employees can be held responsible for the acts of a single collaborator, following the adoption of several anti-bribery provisions by many governments, in particular the Parties to the OECD Convention against Corruption. In this context, the business community is increasingly looking to mitigate risks and increase corporate sustainability.

To avoid liability, companies act to increase and solidify corporate integrity. Such measures usually build on commitments by the company's leadership and employees, which may be reflected in codes of conduct. Corporate integrity also requires internal risk management and quality review processes to limit reputational risks and reduce possible exposure. Companies must communicate all corporate integrity measures widely, train their staff, monitor progress, and conduct regular re-assessments.

Integrity measures are not an end in themselves, but are rather tools that facilitate preventing corruption in business operations. It is therefore essential that companies are aware of the specific risks they are exposed to, whether in current operations or in potential new ones. These may include specific risks encountered in different markets, sectors or countries. Measures adapted to these particular circumstances may then be implemented in order to ensure a more appropriate corporate integrity framework.

This section presents key elements in developing corporate integrity measures. In addition, it touches on collective initiatives through business associations, integrity pacts, and sector-specific or multi-industry integrity initiatives. These local, regional, or global initiatives help to share experiences, to learn from peers and, in partnership with other stakeholders, to contribute to levelling the playing field for business.

A. INDIVIDUAL ACTIONS

1. Codes of Conduct

A code of conduct is generally the key component of a successful corporate integrity programme, as it articulates a company's commitment to ethical standards and practices. These standards generally relate to legally binding provisions and societal considerations in the framework of corporate social responsibility.

Since such codes are voluntary, there is wide variance in how they are drafted. Companies use different formats and address a range of workplace-related issues, including rights and obligations. Codes can evolve to take new developments and considerations into account. They can be based on companies' own values and sector-wide norms, within the national legal framework. As such, codes may integrate standards and rules developed between enterprises – in addition to detailing the company's fundamental principles, values, and frameworks for action. They help define the organisational culture, and all relevant operating policies are derived from the code.

Codes of conduct are increasingly widespread in large corporations. Some codes specify that the company can only work with reputable and qualified individuals or firms. Certain companies have also prepared additional guidelines that supplement the codes of conduct and provide more detailed, situation-

specific guidance. Finally, some companies require subcontractors and intermediaries to observe their codes of conduct.

2. Compliance Programmes

Although it is important to include rules of conduct and principles for countering bribery in the company's code of conduct, corporations may also implement compliance programmes. While the code of conduct reflects the company's "ethical philosophy", the policies and procedures represent its response to the day-to-day risks it confronts while doing business. These compliance policies and procedures should thus help to reduce fraudulent activity by identifying and developing adequate responses to potential risk areas.

Each company must determine the measures that are most conducive to a culture of compliance. However, some key standards may be common to all programmes.

One crucial element for effective implementation is that all concerned persons know about the code and its provisions. Codes are of real benefit only when they are meaningfully communicated and accepted throughout the company. Company codes should be distributed to all employees, including overseas divisions, and externally to contractors and other stakeholders. Organisation-wide training on compliance standards and procedures – including specific training on identified risk areas – is also critical.

Furthermore, implementation of the code and its related principles may involve the formulation and designation of a corporate governance arrangement charged with ensuring compliance. Reports on alleged violations or non-compliance with the law or the company's policy will frequently have to be made to the compliance structure, which must have clear instructions on how to act upon such allegations (reporting is outside the scope of this typology and will thus not be further developed in this framework).

A clear sanctions policy must be defined in case of non-compliance with the code.

Finally, to ensure adequate ongoing implementation, compliance programmes should rely on tools such as self-assessments and regular review mechanisms. As situations change, compliance programmes may need to be adjusted.

3. Due Diligence

To mitigate this risk, companies have developed due diligence procedures. Due diligence can be applied in various circumstances to help companies identify a potentially corrupt situation. For instance, due diligence can be undertaken on 1) a country and its laws in which a project is located, 2) a specific project, 3) the project owner, 4) a business partners and 5) key employees or intermediaries and agents.

Due diligence may enable the company to take appropriate preventive measures – or to avoid involvement with a potentially corrupt party or project. Risk-based due diligence is advisable, with the intensity of analysis scaled to the nature, complexity, and perceived risk level.

The aim of the due diligence procedure should be to establish the qualifications, experience, resources, reputation and expertise of any project or partner. It should thus include integrity and reputation testing, scrutiny for hidden business relationships, funds sourcing and other issues pertinent to the transaction. An external review may form part of the due diligence procedure. All due diligence procedures need to be documented and the corresponding records should be retained for a reasonable amount of time, even after termination of a contract.

Each company must set up its own due diligence principles and procedures. Internal procedures at appropriate hierarchical levels in the company should fix responsibilities during different stages of the selection, appointment and supervision processes. Some core elements can guide companies' provisions relating.

The purpose here is not to provide a description of all due diligence aspects for different company activities. The following sections provide an overview for one core aspect: the involvement of agents or intermediaries operating on its behalf⁹.

a) Selection

The first step of the due diligence process is the collection of information about a prospective agent or intermediary. Companies may require a wide range of information covering a candidate's qualifications, reputation, business relationships and resources, including:

- Corporate information, *e.g.* corporate constituent documents such as the memorandum of association, and the names of owners, partners, principal officers, shareholders; names under which the intermediary conducts business; and affiliated companies;
- Financial references and data;
- Qualifications, and experience of the intermediary, its officers and personnel: intermediaries in third countries might have difficulties justifying their value-added compared to the principal's own employees;
- Relationship between the intermediary's owner or employees and any government official;
- Description of organisations and people who will work on behalf of the company;
- Reputation checks from references and other sources, including litigation history; and
- The intermediary's own anti-corruption policy (especially for sub-contractors and suppliers) and its implementation, as well as the intermediary's commitment to the company's anti-corruption policy and the necessity of complying with it.

When "red flags" are identified, more thorough investigations are necessary before the appointment of an intermediary. Any "red flags" that arise following appointment of the agent or intermediary should also be investigated, reviewed and appropriately resolved. If this cannot be done, the intermediary's contract may have to be terminated.

Box 2

"Red flags" which may call for more thorough investigations

To evaluate prospective agents and avoid recruiting intermediaries which may be involved in illegal activities, a company may develop a set of "red flags", *i.e.* warning signs which alert to possible violations of the company's policies. Factors which may indicate heightened legal and business risk include intermediaries who:

- Submit inadequate or incomplete information;

⁹ In this context, intermediaries include all parties who act as a conduit in international business transactions, *e.g.* agents, sales representatives, consultants or consulting firms, suppliers, distributors, resellers, subcontractors, franchisees, joint venture partners, subsidiaries and other business partners including lawyers and accountants. Both natural and legal persons, such as consulting firms and joint ventures are included.

- Can “guarantee” sales, for instance because he/she knows the right persons;
- Have family or business ties with the host country political officials, government or public officials either in regulatory institutions or client institutions;
- Are recommended by an official of the potential government customer;
- Have insufficient experience in the principal’s industry, or are under-resourced or ill-equipped to perform the services offered;
- Hide the ownership of their company through trusts or shell companies, or use shell companies;
- Lack transparency in expenses and accounting records;
- Request unusually high commissions or particularly high fees prior to giving the customer a business contract (up-front commission), or unusual payment patterns, including payments in cash, into offshore accounts or accounts in different names or countries;
- Operate in a country where corruption is widespread (or has a history of corruption);
- Refuse to certify anti-bribery compliance;
- Have violated local bribery laws or are indifferent to them; or
- Face allegations of lack of integrity.

The impetus for employing an intermediary generally comes from the company’s commercial department, which will have identified a commercial need. Although the commercial department can be involved in the due diligence process, others in the company are generally charged with reviewing the information collected prior to an appointment. Three different models prevail: some companies use a strictly centralised system, i.e. the chief compliance officer assesses the candidates and makes the final hiring decision, though a business unit may make a recommendation. Other companies use a decentralised system in which business units have the final say. Lastly, some companies use a hybrid model. Intermediaries that *prima facie* have higher risk may be subject to closer scrutiny and approval by the company’s compliance department or even the chief compliance officer.

b) Appointment and Contract

To ensure accountability and transparency, many companies require that agents or intermediaries be engaged through a written contract for a fixed term with the following elements:

- A detailed description of the work/services to be provided.
- A stipulation that remuneration will be for legitimate services performed and invoiced, and paid to an account in the intermediary’s name in the country of residence of the intermediary. It may state that no cash payments will be made to an intermediary.
- A clear statement that the hiring company requires the intermediary to be familiar with and to abide by its anti-corruption policies.
- An explicit prohibition of illegal payments.
- A provision for immediate termination for breach of any clause.
- A requirement that the intermediary maintain accurate, complete and transparent accounting records.

- A clause that the intermediary's performance will be audited and reviewed periodically.

Some companies use *standard international intermediary agreement* and require the approval of appropriate senior management or the legal department for any modifications to the standard form. Any proposed variation to the terms of the contract should require additional due diligence.

c) Tasks and remuneration

Determining the appropriate level of remuneration for the works or services rendered by intermediaries can be a challenge. Case examples illustrate that excessive compensation is one of the principal mechanisms used to fund bribery. Excessive compensation, or compensation beyond what a "reasonable observer" would regard as fair, may lead to the presumption that an incitement to bribe is built into the intermediary's contract. In a number of alleged foreign bribery cases, the money used to pay bribes came out of intermediaries' consultancy fees.

The private sector has developed some general principles on remuneration. Fee levels are justified as far as possible by referencing objective criteria, such as the prevailing market rate; past performance; the agent's reputation and expertise; complexity of the work; the agent's resources and expenses necessary to perform the contract; the risks borne by the intermediary; proportionality between the agent's contract and the value of the overall project or contract.

Some companies have also established specific compensation guidelines that set out commission rates as well as procedures relating to the method, currency and place of payment. The guidelines may specify that payments follow a sliding scale, with the commission percentage declining as the contract value increases. Payments may also be made as a series of sums staggered over time, with reference to commonly agreed milestones that are reflected in the contract and can be verified by the company.

As for the mode of payment, some companies require that all payments be made to a bank account in the intermediary's name in his/her country of residence. Some companies avoid cash payments, transfers to offshore accounts or accounts not in the intermediary's name, and payments in third countries. Some companies also avoid large payments to intermediaries before or immediately after a contract is obtained. Others adopt an internal approval system in relation to any payments made to intermediaries.

d) Monitoring Appointments

Many companies continue to apply the compliance process even after the recruitment of an intermediary. A company may monitor his activities during the contract, including regular performance reviews and audits of the intermediary's books and records. Some companies further require regular activity reports detailing the work and financial outlays which can be helpful monitoring tools and may serve as a basis for later controls. These reports may also prevent "sleeping" intermediaries who are only activated in case of need.

Some companies also subject intermediaries to due diligence on a regular basis, *e.g.* every two years. Any red flags that arise or suspected breach of the company's anti-corruption policies are investigated. The intermediary may be suspended during the investigation to prevent interference. If the intermediary has committed foreign bribery, some companies have a policy of terminating the contract and invoking its contractual right to recoup fees paid.

e) Review the Corporate Due Diligence process

Companies undertake regular and comprehensive reviews of their ethics-related policies and performance, since risk areas evolve with the changing enforcement climate. Policies and procedures are submitted to periodic reviews and, where appropriate, revisions are implemented.

4. Implementation is Key

Codes of conduct, compliance programmes and due diligence are useful tools for reducing the risks of bribery. In the end however, the best designed corporate integrity measures would do little to prevent bribery unless they are implemented and integrated in a company's daily operating methods.

Successful and effectively implemented compliance programmes share a number of common features. There is generally strong commitment from senior management (the "tone from the top") to implement the programme. The programme covers all relevant persons (including external agents and contractors), all of whom receive guidance and training on how to implement the programme. Additional training and focus may be given to employees working in corruption-prone areas and activities. Some large companies have also established means to report alleged violations of the law or company policy to a specific body. The body is in turn subject to clear instructions on how to handle such allegations. In addition there may be clear sanctions policies in case of non-compliance. To ensure ongoing implementation, compliance programmes may be subject to regular self-assessments, reviews and adjustments.

Often in the MENA region, corporate codes of conduct and compliance programmes do not include anti-bribery and anti-corruption provisions. When these tools exist, implementation is generally weak. Raising awareness on integrity measures is therefore a key element in enabling business to fight corruption more effectively.

B. COLLECTIVE ACTIONS

1. Business Associations

Business associations can serve as key actors in supporting business integrity among their members through raising awareness, facilitating peer-learning and knowledge-sharing, and assisting in the establishment and implementation of corporate integrity measures.

Business associations are also especially well placed to raise awareness and provide information on corruption-related issues, in addition to providing members with a platform for knowledge-sharing and peer-learning concerning views and experiences on business integrity.

Often possessing more resources than individual companies, business associations may pool the resources of their members and leverage their capacities in order to support initiatives and serve as a platform for training on integrity policies. They may also serve as intermediaries in consultations with the public sector in view of promoting a wholesome approach to business integrity.

2. Sectoral and Multi-Industry Initiatives

Companies in a particular sector or industry often face similar challenges and operate in similar working environments. Joint initiatives within a sector or between industries to promote integrity in business operations may serve to facilitate the establishment of integrity standards for a sector or industry and to co-ordinate integrity efforts among members. This allows for a broader reach of these efforts and promotes peer-learning among participating companies.

Joint initiatives may make use of tools specific to a sector or industry. Some examples of existing initiatives and their related tools that may serve as guidance for companies seeking to engage in their own sectoral and multi-industry initiatives include:

- The Basel Committee Guidelines on Customer Due Diligence for Banks, which provide guidance on key elements of due diligence and its implementation in the context of financial institutions and the banking sector.
- The Project Anti-Corruption System (PACS), an initiative by Global Infrastructure Anti Corruption Centre and Transparency International designed to assist in the prevention of corruption surrounding construction projects.
- The Construction Sector Transparency Initiative (CoST), which aims at promoting the concepts of transparency and accountability in the construction sector, with a specific focus on public disclosure of information.
- The Water Integrity Network, which supports integrity initiatives in the water sector and promotes collective action on a sectoral level, but also with civil society, the media and the public sector.
- The OGP Guidelines on Reputational Due Diligence, by the International Association for Oil and Gas Producers, which provides guidelines on designing and conducting due diligence procedures and establishing a framework for corporate compliance programmes.

3. Integrity Pacts

Integrity pacts are a means for companies, business associations and industry federations to mutually agree on a set of principles that regulate their interactions and refraining from engaging in any acts of bribery or corruption in any form.

These pacts may be especially relevant in context of the public-private interface, notably as a means to of enhancing transparency and level the playing field among competitors for government contracts. Companies engaging in bids may choose to abide by an integrity pact whereby they pledge to refrain from bribery in obtaining and maintaining the government contract.

This mechanism allows for enhanced transparency across the board as companies receive assurance that all actors are bound by the same rules and thus that competitors will abide by the same integrity principles.

Certain elements may serve to increase the effectiveness of an integrity pact and facilitate its implementation, including:

- A written pact detailing the terms and conditions of participation
- Clear statements by the participants explicitly stating their commitment to refrain from bribery and other corrupt practices;
- Clear sanctions to be applied in case of violation, including loss of contract; and
- An independent monitoring system to ensure transparency in dealings and transactions.

V. STRENGTHENING PUBLIC-PRIVATE DIALOGUE

Public-private dialogue is key to ensuring a transparent business climate for the public and the private sectors. Indeed, it may help governments understand the needs of the private sector and adjust their policies accordingly, while simultaneously helping the private sector understand, comply with, and benefit from public sector policies and initiatives. The OECD has developed several instruments to support public-private dialogue and private sector participation in policy-making, notably *The Charter of Good Practice in Using Public-Private Dialogue for Private Sector Development*.

Political or economic crises may serve as an impetus to set up a strong public-private dialogue. Indeed, such a process may strengthen the credibility and legitimacy of the government, while allowing the private sector to voice its concerns and bring about the change it needs.

Though public-private dialogue varies according to different contexts, some elements are critical to ensure a smooth and institutionalised process.

Long-term commitment by all stakeholders in the dialogue process

For public-private dialogue to succeed, a critical factor is the long-term involvement of all relevant stakeholders in the public and the private sector. Such a commitment serves to facilitate the flow of information among stakeholders and helps adapt policy-making to changing circumstances.

On the government side, sustained political support in the long term is crucial to the success of public-private dialogue. Perceptions of the role of the state and its authority are among the first elements that may need to change to allow the integration of the private sector into the policy process.

The private sector should also be involved in all stages of the policy-making process, *ex ante* and *ex post*. Such an involvement allows for a more thorough follow-up on the effectiveness of policies and may facilitate their revision as necessary.

Representative private sector input

A second element for an effective public-private dialogue is a comprehensive private sector representation. As a small number of representatives helps make the dialogue efficient and coherent, representatives must adequately convey the input of as wide a constituency as possible. Business associations, for example, may represent the private sector, based on their members' input. Particular attention may be given to SME representatives, who tend to participate less in dialogue with the government, but who represent large proportions of business in the MENA region.

The inclusion of all relevant stakeholders is essential to build policies on as complete an informational basis as possible. These stakeholders therefore include, in addition to business associations, representatives from civil society and academia.

Active engagement throughout the policy-making process

The participation of the private sector should be ensured at all stages of the policy-making process to ensure effective implementation of ongoing reforms. Indeed, a lack of inclusion of the private sector will often translate into mistrust, notably at the implementation stage.

The following recommendations can serve as a basis to substantively help improve the public-private dialogue. Existing dialogue mechanisms may serve as a basis for rebuilding trust between the government and the private sector.

1. The private sector should ensure it is adequately represented. A balance needs to be found between the already existing business associations that represent different sectors, regions, etc. and the absence of co-ordination between them.
2. The institutionalisation of the consultation process can give it consistency. Some criteria are essential: the dates, location and frequency of the meetings have to be determined so that all the stakeholders are aware of them and can participate.
3. The logistical issues (the size of the groups, the selection of the participants and their number, the level of involvement of the government's representatives, the participation of unions, NGOs and academia, the structure (co-ordination body, etc.)) have to be carefully handled and determined before engaging in dialogue.
4. The implementation of the results of the dialogue ensures their credibility. Therefore, the public-private dialogue should be results-oriented and both sides should show commitment. International organisations can facilitate the process.
5. A communication strategy should be put in place on two levels:
 - a. To inform about the dialogue itself to allow all relevant stakeholders to participate;
 - b. To inform about the outcomes and the outputs of the dialogue. They should be open to comments at all stages of the process within a reasonable period of time and through known channels.
6. The experience of international organisations may be very useful as they may bring their knowledge from other countries that successfully implemented public-private dialogue for economic reforms.

These elements, while not exhaustive, may serve to establish an institutionalised exchange that assures and serves the active involvement of relevant stakeholders in the public and the private sector on a long-term basis.

VI. ANTI-CORRUPTION RESOURCES FOR BUSINESS

This indicative and non-exhaustive list of additional anti-corruption resources is meant to provide information on some tools and initiatives of which business may make use in relation to the main international conventions and standards.

- **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments**
http://www.oecd.org/document/21/0,3746,en_2649_34859_2017813_1_1_1_1,00.html
- **OECD Guidelines for Multinational Enterprises**
http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html
- **United Nations Convention Against Corruption**
<http://www.unodc.org/unodc/en/treaties/CAC/>
- **United Nations Global Compact, Guidance Document: Implementation of the 10th Principle against Corruption**
http://www.unglobalcompact.org/docs/issues_doc/7.7/guid_a-corr_081204.pdf
- **Center for International Private Enterprise**
<http://www.cipe.org>
- **REFORM Toolkit - Combating Corruption: A Private Sector Approach**
<http://www.cipe.org/publications/papers/pdf/Anti-CorruptionToolkit0308.pdf>
- **International Chamber of Commerce, Anti-Corruption Commission**
www.iccwbo.org/policy/anticorruption
- **International Chamber of Commerce, Resisting Extortion and Solicitation in International Transactions (RESIST) Toolkit**
http://www.iccwbo.org/uploadedFiles/RESIST2_Oct2010.pdf
- **International Chamber of Commerce Rules of Conduct and Recommendations for Combating Extortion and Bribery**
http://www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC_Rules_of_Conduct_and_Recommendations%20_2005%20Revision.pdf
- **Transparency International Business Principles for Countering Bribery**
http://www.transparency.org/global_priorities/private_sector/business_principles
- **Business Anti-Corruption Portal**
<http://www.business-anti-corruption.com/>

A more exhaustive list may be accessed on the MENA-OECD Investment Programme's website, at www.oecd.org/mena/investment/

Training Materials on Strengthening Business Integrity

Compliance in the OECD Region – a source of inspiration for the MENA economies

This draft paper addresses only one aspect of the whole integrity problem. The approach proposed hereunder will be to address only one significant, but not comprehensive or exclusive, element of the integrity reforms, which should be introduced.

We will propose the development of training and education modules for building up compliance approaches in the companies. Ideally, these corporate policies should be installed in parallel with significant improvements on the legislative/regulatory front and with sensible moves towards a better and larger anti-corruption awareness in the general public.

This draft paper was prepared for the MENA-OECD Investment Programme by François Vincke, Member of the Brussels Bar and Vice-Chair of the ICC Commission on Corporate Responsibility and Anti-Corruption.

A. - Need for training materials on business anti-corruption compliance

1. - Implanting the idea of the need for corporate compliance

Business has its role to play in the putting into place and implementing of an integrity reform plan. Indeed, to have a credible and genuine role in such process, business should show that it is ready to take the forefront and that it is willing, and even determined, to organize and implement genuine compliance programmes in its own organisations.

2. - A homework for the business community

Business has to do its homework within the business federations and in the individual companies.

Indeed, business cannot (anymore) pretend that it should or could wait until the so-called “demand side” has disappeared or even only diminished in the MENA region, the problem of solicitation appears to be so largely disseminated that it may be called endemic.

It will therefore require courage and determination from the entrepreneurs to spend time, money and human resources on (often expensive) compliance programmes, even when they continue to feel the pinch of the “demand side”.

3. - The contribution of business in the public-private dialogue

The business community should not come to the table with empty hands. To prove its engagement and to show its willingness to fully endorse a new corporate approach to conducting business, it should bring new corporate models and standards. It should, in other words, be able to prove that it wants to fully adhere to an integrity approach. Probably, one of the best of evidence of this attitude will be to show that it ready to start with training programmes in the corporate organisations.

4. - Bringing specifically designed training materials

The (mostly small) entrepreneurs of the MENA region need specifically designed training and education materials, which they can use plainly in their environment.

Such materials cannot be copied blindly from the known formulas used in North America and Europe and more generally in the OECD zone. Exporting the well polished “western” methods would be counter-productive. In this paper, we try to make a contribution in this direction.

5. - The use of existing experience

While it will not be advisable to use “ready-made” materials coming out of the “western” handbooks and to apply them as “boiler plate” documents, it will nevertheless be interesting to build on the positive (and sometimes negative) experiences of the western democracies, which have a long and vast (and not always constant) experience in integrity building in the conduct of business.

6. - Business “condemned” to rely on its own resources

Business has been obliged, by the very nature of corporate compliance, to rely on its own resources to determine the content, forms and processes of the compliance systems it wants to put into place.

Corporate compliance actually has organically grown out of bear necessity in front of legislative initiatives and enforcement by the authorities.

The authorities have issued new standards but have not imposed any specific form of corporate behaviour on the companies in reaction to them.

7. - The role of the companies and the advice given by the authorities

It is left to the individual companies to design for themselves the form, methods and approaches of the corporate compliance mechanisms, which they deem the most appropriate to their needs and their specific circumstances.

The authorities, however, have in a number of circumstances related to the fight against corruption, recommended the installation of a number of specific approaches.

We can mention here certain of them, which are the most significant:

- (a) The United States Justice Department Federal Sentencing Guidelines, Chapter 8, Section 14 on Business Organizations. This text provides an outline for a corporate ethics and compliance program, that, if instituted, could offer companies investigated for or charged with crimes, a means to decrease their exposure to criminal sanctions. The provisions of this section are often referred to as the “Seven Steps”.
- (b) The Italian Decree-Law 231/2001 of June 8, 2001, creating a “organisational and management model”, which can be adopted by companies, and which contains valuable indications about the setting up of a corporate ethics and compliance program.
- (c) The United Kingdom Ministry of Justice Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010). This document contains a significant number of elements for the establishment of a corporate ethics and compliance program.
- (d) The OECD Good Practice Guidance on Internal Controls, Ethics and Compliance, adopted by the OECD Council as an integral part of the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions of November 26, 2009. This document provides a comprehensive list of elements, which can feature in a corporate ethics and compliance program.

The business community has also summarized in article 10 of the International Chamber of Commerce (ICC) Rules on Combating Corruption of 2011 the elements, which should be

implemented by each enterprise in an “Efficient Corporate Compliance Programme”. It is interesting to note that ICC considers that these elements should (i) reflect the ICC Rules on Combating Corruption of 2011, that a corporate compliance program should (ii) be based on the results of a periodically conducted assessment of the risks faced in the business environment of the enterprise concerned, and be (iii) adapted to the particular circumstances of the enterprise and finally (iv) that the elements of the compliance programme should aim at preventing and detecting corruption and at promoting a culture of integrity in the enterprise.

B. - Key provisions, which a company needs to consider in developing integrity mechanisms and tools

1. Key international anti-corruption instruments

While it is not possible to list all international and national instruments relevant in the area of anti-corruption prevention and compliance, one may usefully list hereunder the key instruments, which are considered to be the main stepping stones in this domain.

Global Instruments

United Nations Convention against Corruption (UNCAC)

http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

United Nations Convention against Transnational Organized Crime (UNTOC)

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

OECD Convention on the Bribery of Foreign Public Officials in International Business Transactions (OECD Convention)

<http://www.oecd.org/dataoecd/4/18/38028044.pdf>

OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, including Annex II Good Practice Guidance on Internal Controls, Ethics and Compliance

<http://www.oecd.org/dataoecd/11/40/44176910.pdf>

Africa

African Union Convention on Preventing and Combating Corruption (AU Convention)

http://www.africaunion.org/official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf

Southern African Development Community Protocol against Corruption (SADC Protocol)

<http://www.sadc.int/index/browse/page/122>

Economic Community of West African States Protocol on the Fight against Corruption (ECOWAS Protocol)

http://www.afrimap.org/english/images/treaty/ECOWAS_Protocol_on_Corruption.pdf

Americas

Inter-American Convention against Corruption (OAS Convention)

<http://www.oas.org/juridico/english/treaties/b-58.html>

Asia and Pacific region

ADB-OECD Action Plan for Asia-Pacific (Action Plan)

<http://www.oecd.org/dataoecd/38/24/35021642.pdf>

Europe

Council of Europe Criminal Law Convention

<http://conventions.coe.int/treaty/en/Treaties/Html/173.htm>

Council of Europe Civil Law Convention

<http://conventions.coe.int/treaty/en/treaties/html/174.htm>

Resolution of the Committee of Ministers of the Council of Europe: Agreement Establishing the Group of States against Corruption (GRECO)

<http://conventions.coe.int/Treaty/EN/PartialAgr/Html/Greco9905.htm>

Resolution of the Committee of Ministers of the Council of Europe: Twenty Guiding Principles for the Fight against Corruption

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=593789&>

European Union Convention on the Protection of the Communities' Financial Interests and the Fight against Corruption and two related Protocols

http://europa.eu/legislation_summaries/fight_against_fraud/protecting_european_communitys_financial_interests/l33019_en.htm

European Union Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States

http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33027_en.htm

2. - Key prohibitions

The key prohibitions, observed in key anti-corruption instruments are:

- (a) the prohibition of the direct or indirect (through intermediaries) offering, promising, giving, authorising or accepting of any undue pecuniary or other advantage to, by or for a public official at international, national or local level, a political party, party official or candidate to a political office, in order to obtain or retain a business or other improper advantage, *e.g* in connection with public procurement contract awards, regulatory permits, taxation, customs, judicial and legislative proceedings;

- (b) the prohibition of the same practices in favour of persons in the private sector;
- (c) the prohibition of the same practices through trading in influence; and
- (d) the prohibition of the laundering of the proceeds of the hereinabove mentioned practices.

In addition, one should mention the provisions related to:

- (a) the offering, promising, giving, authorising or accepting, under certain conditions, of gifts, hospitality and expense;
- (b) the offering, promising, giving, authorising or accepting, under certain conditions, of facilitation payments;
- (c) the offering, promising, giving, authorising or accepting, under certain conditions, of political contributions.

3. - Key definitions

The key anti-corruption instruments list the following definitions:

- (i) Definition of corruption
- (ii) Differentiation between “public” and “private”, “direct” and “indirect” corruption
- (iii) Definition of “public official”
- (iv) Definition of “trading in influence”
- (v) Definition of “political contribution” and differentiation with “corruption”
- (vi) Definition and limits to the permissibility of gifts, hospitality and expenses, which can be given and taken.

C. Rationale for defining and respecting key provisions, leading to the development of integrity mechanisms

1. Criminal law risk

Although not a very enthralling motivation to comply with the anti-corruption provisions and to implement integrity mechanisms, the inducement of avoiding the “criminal” risk (jail sentences for corporate individuals, criminal fines imposed on directors or executives or corporate entities, administrative fines imposed on companies, expensive settlements, company closures or liquidations, [definitive or temporary] debarment, blacklisting...) is probably the most convincing motivation for directors and managers in the private sector. Statistical data, available for countries in different parts of the world, show that thorough legal enforcement is the most efficient argument for bringing about respect for the anti-corruption provisions and for installing compliance mechanisms.

2. - Civil law and other economic risks

More and more indictments and sentences (and settlements) based on bribery are followed by civil litigation, launched by the victims of the sanctioned practices (competitors, who have lost market opportunities, disgruntled [private or institutional] shareholders). Civil litigation for damages may be launched for instance in the case of a fall of the share price on the Stock Exchange.

The public authorities will have the possibility to claim disgorgement of illegally obtained profits and the tax authorities will have the possibility to assess additional revenue (for previous tax periods) for compensating tax avoided through illegally deducted expenses.

3. - Financial risk

A projected merger or acquisition can be ruined, based on a due diligence examination, conducted before or after the (planned) transaction, which reveals the existence of corruptive practices in the

target company. The failure of such transaction can cause huge losses for the shareholders mainly of the target company.

In some circumstances, customers may turn their back to companies, known as corrupt, in which case there may be a fall of the market share, resulting in a reduction of revenue.

4. Other motivations

There are also other mainly internal or organisational reasons for companies to be encouraged to “go by the book” and to install an efficient compliance system:

- (a) Paying a bribe, tolerating the payment of a bribe or not taking the initiative in a company to establish an anti-corruption prevention policy may be inefficient from an economic point of view.

One, for instance, never knows what is the real capability of a (candidate) bribee to deliver the advantage, which he is supposed to (illegally) obtain.

There will indeed not be, for the bribe payer, any certainty that the bribe, which he is supposed to pay, will effectively succeed in reaching the result the bribee pretends he can obtain.

The question therefore has to be raised: is the shareholders’ money well spent?

The payer of the bribe has a risk assessment/risk management problem.

- (b) Another economic issue, which may be related to bribery, is that of the opaque character of the “bribe market”.

As nothing is transparent in this (parallel) market, in which there are (for obvious reasons) no listed prices or quotations, nobody, who may be tempted to pay a bribe, will know if he pays too much or too little to reach the (illegal) goal he aims to reach.

The one who is tempted to pay a bribe has, therefore, a costing/purchasing/pricing problem.

- (c) The payment of a bribe (or more seriously, the organising of a bribery system in a corporate organisation) creates a significant and lasting administrative and accounting/financial reporting problem.

Once a bribe is paid, the question arises of the registration thereof in the company’s accounts.

Either there is no entry in the accounts or there is a false entry (entry under a false accounting number).

Correcting such entry or the absence of an entry will pose inextricable accounting and/or tax problems.

As a result, bribery will often be a nightmare for the company’s accountant.

- (d) The “bribery agreement” (in French, *Pacte de corruption*) will be either (for obvious reasons) unwritten or, if it is written, it will be, because it is contrary to national and international public order, null and void.

As a result, it will, whenever an issue arises in the relationship with the bribee, impossible to produce the *pact* either in court or before an arbitration panel.

The “bribery agreement” can therefore not be upheld.

Bribery has the potential to become the corporate lawyer’s headache.

- (e) Bribes often are paid out of slush funds, which not infrequently will have to be located in far away (or offshore) countries.

Those slush funds, in some circumstances unknown or scarcely known to the Board of directors or to the corporate executives, will be difficult to manage from a distance.

Specially dedicated personnel will have to be (almost blindly) trusted to oversee these slush funds.

Such funds present a risk of corporate control and of corporate governance.

- (f) Bribees like to make kickbacks to those involved in the bribery transactions, to make sure they create “solidarities” with other persons.

Such payments can reach for instance personnel of the company of the bribe payer, creating in this way divided loyalties.

This brings about a corporate governance and/or HR problem.

- (g) Bribery undermines the very concept of free competition, which is based on fair pricing, the quality of goods and services offered on the market, the motivation of the staff, the expertise and talent of the personnel, the continuous research and development of the companies and should not be founded on shady deals and hidden payments, which distort open and free competition in a level playing field.

- (h) Bribery, either discovered through (criminal) investigations or presumed by the general public, ruins more and more the reputation of the companies concerned. The general public does not accept anymore bribery as “business as usual”.

Bribery works as a repellent for young talented people, who prefer working in a healthy environment, which they can be proud of.

Potential joint venture partners will also hesitate to join forces with companies, which have been sanctioned for bribery or which are suspected of indulging in corruptive practices.

5. - Corporate social responsibility

The fight against corruptive practices, the avoidance of the reputational risk, which goes together with those practices and the putting into place of preventive measures have become essential elements of the companies' social responsibility.

By acting responsibly, companies show that they fully integrate the notion of corporate citizenship.

6. - National image

The pervasiveness of corruptive practices in a country may affect the image of such country as a whole and have a detrimental effect on the readiness of *bona fide* potential investors to do business with the companies active in the country concerned. It may be a concern for the entrepreneurs of such country to try to preserve the national interests by endeavouring through their compliance efforts to contribute to the restoration of the country's image.

D. - Training modules

Training and education may be considered as one of the key elements for building up a better integrity awareness in the companies active in the MENA region.

The following training modules focus on the various, iterative initiatives, which should taken to build an ethics and compliance approach.

It is important to note that all and each of the following steps have to be envisaged, if one wants to reach the goal of having a credible and sustainable integrity system, which can be upheld in the long term.

We will deal with the following items:

(1) The framework of a well functioning corporate ethics and compliance approach?

(2) A prerequisite: a thorough risk assessment/risk evaluation process

(3) The major ethics and compliance policies

(4) Tone from the top

(5) Drafting of a corporate code of conduct

(6) Setting up an ethics and compliance function

(7) Should a company go for a zero tolerance policy?

(8) Organizing a due diligence process

(9) A sensitive subject: Whistleblowing

(10) Where are the limits? Practical cases

MODULE I: The framework of a well functioning corporate ethics and compliance approach?

1. There is no universal or compulsory compliance model

The choice of the companies for a certain model of compliance programmes is made according to the company's culture, size and resources.

What is needed though is that the compliance approach of a company be sufficiently efficient to prevent and detect corruption.

Ultimately a corporate prevention programme will have to promote the advent of a culture of integrity in the enterprise.

It is noteworthy that all compliance programmes are very different among them. None of the programmes has the same presentation and none has the same content.

Also the style of the different programmes is different and this should be no reason for surprise. Each corporate compliance programme will (have to) reflect the individual company's culture and sensitivities.

One will see, for instance, that some companies will prefer to go for a very directive style, while others will endeavour to build an image of consensus.

There is a widely spread misunderstanding about the flexibility there would be in favour of smaller companies in the implementation of the anti-corruption provisions.

SME's would benefit from a certain tolerance because they have lesser resources to organize their compliance system.

This is deep misunderstanding: criminal law provisions are the same for large, medium and small enterprises. All of them are obliged to strictly follow the rules.

What is different though is the kind of preventive measures each company will have to deploy.

Very logically, such measures will be proportionate to the risks assessed in the company concerned but also to the resources each company can invest.

One will easily understand that a smaller company will not have the same arsenal of preventive measures as a large multinational. But it is expected from both the smaller company and the large multinational that they put into place proportionate measures capable of protecting them from the occurrence of malfeasance.

The aim of all compliance programmes should thus be the same (avoidance of forbidden practices) but the format used and the means put into place to reach this aim can be quite different.

2. Scope of a compliance programme

Usually, the compliance programme will encompass not only the whole group, *i.e.* the mother company, its direct and indirect subsidiaries, but also its affiliates, in which the group holds a majority interest or a dominating influence.

It will be a question of negotiation and, in fact, of power struggle to decide if a company is able to “impose” its compliance programme also in the joint ventures in which it participates (only) as a 50/50 participant or as a minority interest.

It will also have to be evaluated case by case if a company can oblige some or all of its agents, intermediaries and other third parties to follow the precise provisions of its compliance programme or if it will only be able to require those persons to have comparable measures.

3. Extension of the compliance programme to matters other than anti-corruption

Certain companies will want to treat anti-corruption totally separately. Others will prefer to deal in the same document also with anti-trust matters and export control legislation.

Yet other companies will want to treat all ethical matters arising in professional life (like conflicts of interests, insider dealing, double employment or revolving doors) in the same document.

And finally, some companies will want to deal with all matters related to corporate social responsibility (such as forced and child labour, environmental issues, respect for private life, transparency, secrecy and confidentiality, respect for local populations) in on and the same approach.

MODULE II: A prerequisite: a thorough risk assessment/risk evaluation process

A well organised and thorough risk assessment/risk evaluation is key for the laying of a strong basis of a credible compliance approach. The company, and its top management in the first place, should be perfectly apprised of the risks it faces in the business environment, before it embarks on establishing its compliance program.

(a) The three classical steps for an efficient risk assessment are:

(i) The identification of the risks present in the company.

The analysis of the risks, run by the company, has to happen in a professional and systematic way.

All findings should be put down on paper and properly archived. In this way, when a risk assessment is up for renewal, all data can be refreshed, updated and, if needed, corrected pretty easily.

A decision has to be taken either to use in the risk assessment only internal company resources or, alternatively, to have those internal forces supported by external resources (consultants).

It is advisable, in any case, to call upon all persons active in the organisation, who can make, because of their expertise, a significant input in the exercise.

This means that the following persons should participate:

the company employees dealing with insurance matters (*i.e.* persons who have as a task to introduce claims on behalf of

the company for damages and those who place the company risks on the insurance market);

the persons in charge of HSEQ (health, security, environment and quality); and

the members of the legal department (the lawyers can in any case use their yearly “litigation reports” as a useful tool for defining the highest risk zones; this document will for instance be helpful to understand in which countries there is the highest concentration of litigation risk).

The real aim of the risk assessment exercise consists in the defining the weak(est) spots in the company’s structure.

The usual questions to be asked, will be:

In which country, where the company active, is the risk for fraudulent activity the highest?

Which are the products, services, technologies, processes, which present the highest exposure to risk?

In which supply/marketing channels is the company confronted with the highest risk?

Which type of intermediaries, agents or other third parties, is the company using, who present the highest exposure to risk?

(ii) The measurement of the risks identified

Empirical and comparative data, compiled through benchmarking with companies, active in the same industrial segment or trade, and based on macro-

economic studies will allow giving a quantitative appreciation of the risks incurred.

Recurrence of accidents and incidents will be compiled.

Number and importance of litigation will be evaluated.

Countries, marketing channels, products and processes will be measured, to appreciate how risk-prone they are and classified accordingly.

(iii) The definition of the means to manage the risks identified and measured.

In front of the risks identified and measured, the various solutions (of avoidance, mitigation or other) will be listed.

(b) Defining the (desired) risk profile.-

It will be the ultimate responsibility of the Board of Directors, or according to the governance model used, of the highest body in the corporate executive structure, to define, once the conclusions of the risk assessment have been reached, which risks the company is ready to take and which ones it wants to mitigate or to reject.

(c) Necessary updating/renewal/improvement of the risk assessment exercise

Due to the rapid evolution of the business environment, there is a need for regular renewal of the risk assessment exercise. In the absence of such regular renewal, the results of the risk assessment can become stale and, therefore, misleading or useless.

MODULE III: The major ethics and compliance policies

Based on the risk assessment which has been made, the Board of Directors of the company will have to define the major policies, which will be the ground laying elements for the ethics and compliance approach.

It will namely be up to the Board of Directors (or the highest body in the organisation) to take considerate and motivated decisions on the following items:

- the drafting of a corporate code of conduct,
- the drawing of a corporate ethics and compliance program,
- the setting up of an ethics and compliance function, either centrally or decentralized or the appointment of another (already existing) department to take charge of the tasks, which would otherwise would be devolved to the ethics and compliance function,
- the launching or not of a zero tolerance policy,
- the using by the company of agents, intermediaries or other third parties and under which conditions,
- the decision to go (or not to go) to certain high risk countries or countries with poor governance,
- the giving of a mission statement to the ethics and compliance function (or its *alter ego*).

In addition, the Board of Directors will, in due course, have to decide to:

- go for projects of collective action; and
- to opt for outside and independent certification, verification or assurance of the ethics and compliance programme and its implementation.

MODULE IV: Tone from the top

The top operational executive of the company, and usually the Chief Executive Officer (CEO), will be called upon to give a clear message, in which he affirms in no uncertain terms the values and standards of the code of conduct, declares them applicable (without distinction) to all persons working in and for the company, commits to comply personally with these values and standards and declares that any person, proven to be responsible for infringing a provision of the code, will be sanctioned.

It may seem surprising to see that the Board of Directors of the company should have the final say on the integrity policies and that the CEO has to take a personal position on the values and the standards of the company.

Admittedly, this was not the case some years ago. Matters related to ethics and compliance were either not treated at all or were left to the discretion of a few persons in the organisation at a lower echelon.

The evolution of the corporate governance reflection and the eruption of a number of scandals in the ethical field have changed quite fundamentally the approach.

The strong involvement of the top echelon of the company in integrity matters may, however, not hide the fact that every level of the management structure has to have an input in these concerns, notably, the middle management of the company, which can exercise a effective, plain, realistic and concrete influence in the practical day to day dealings of the company.

MODULE V: Drafting of a corporate Code of Conduct

Writing a Code of Conduct is far from easy.

The best recommendations one can make for the establishing of a corporate Code of Conduct is (i) not to use a readymade document, which, per definition, would not be adapted to the individual company's needs and circumstances and (ii) not to rely completely on an external consultant, foreign to the life of the company.

One may, however, seek inspiration and maybe even direction from a (sectoral) professional association or from a large enterprise, with which the company has a long-standing cooperation.

But just copying somebody else's document won't achieve the result a corporate code of conduct should achieve, namely creating the company's charter of values and practices.

A Code of Conduct should be realistic, sincere and easily readable.

One would recommend to draft, after having benchmarked the company's practice with the one or more of the relevant colleagues of the industry, a genuine, sincere and realistic document, based on the company's values.

It will be worthwhile seeking the involvement, through consultation of the "users" of the corporate code of conduct, of all the persons primarily in the company but maybe also outside the company.

In certain countries, it will be wise to have consultations rounds with the trade union representatives. This will contribute to the genuineness and authenticity of the corporate code of conduct.

Through a careful and inclusive drafting process, one will be able to create a sense of ownership in the enterprise. Rather than having the impression of having another document imposed on them, the co-workers will have the impression that the code is a welcome guidance in the daily work. Once the code has been launched, it will be important to create awareness and pride about the code.

MODULE VI: Setting up an ethics and compliance function

The person in charge of the ethics and compliance function should have an open reporting line to the highest echelons of the company, giving him/her the possibility to report what is really afoot in the company on the ethical front.

The idea here is that there should be a possibility for the compliance function to by-pass, whenever necessary, all the intermediary echelons, for the (not so frequent) case that those echelons participate too in or condone the malpractice, which the ethics and compliance function would have discovered and wants to report on.

Often one will recommend (as an optimal solution) that this reporting line allows the ethics and compliance function to reach the Chairman of the Audit Committee of the Board of Directors, who will normally be an independent director.

One of the objectives of such set-up will be that the messages of the ethics and compliance function never could be silenced.

Often one will object that the setting up of a full fledged ethics and compliance function will be too heavy, as it would duplicate with the legal function or that it is too expensive for a smaller company. These objections are quite natural but they are actually based on a misunderstanding. Creating an ethics and compliance function does not mean that necessarily new personnel must be hired to man such function.

The ethics and compliance function may very well be assumed by a person belonging to already existing departments, like Finance, Legal, HR or HSEQ.

What is important is that the ethics and compliance function be fully organized and operational, not only on paper but also in reality.

Only then will such function be fully credible.

MODULE VII: Should a company go for a zero tolerance policy?

The real question here is: is your company strong enough and sufficiently well equipped to choose (immediately) for a zero tolerance policy?

A zero policy will mean for instance and in practical terms for the company, which adheres to this standard, that it will not allow any kind of facilitation payment and that it will put a very low ceiling on gifts, received or given, or hospitality, received or extended.

Adopting a zero policy will also mean that the management of the company, which goes for it, must be ready to draw all conclusions from that decision.

In clear, that means that one won't accept any deviation from the line indicated by the company and that there will be a (proportionate) sanction for every breach of the code provisions.

MODULE VIII: A sensitive subject: Whistleblowing.-

Whistleblowing is probably the most debated among the anti-corruption prevention measures.

In new democracies, whistleblowing is often seen as another form of denunciation.

However, one must see that it meets the need for the employer to obtain a concrete and complete view of what really happens in the company.

It is actually the recognition of the evident fact that the co-workers have a better and more intimate knowledge of what happens within the enterprise than any manager, because they have often a higher degree of the confidence of their colleagues on the working level.

Whistleblowing should be handled with great care.

If wisely used, it can produce valuable information, which otherwise would never be available, but if used against all reasonable recommendations, it can be counterproductive.

Installing a whistleblowing system will oblige an entrepreneur to make difficult choices.

Some of these choices will be dictated by the national legislation of the country, where the system should become operational.

As an example, one may mention that in some jurisdictions, it will not be possible to organize a whistleblowing system, based on calls, during which the caller insists on not revealing his/her identity.

Some other choices will be dictated on the basis of the company's own preferences.

So, for instance, a company will have to decide if it accepts all calls introduced in the whistleblowing system or if it will only accept those calls, which clearly appear to be *bona fide*, which means not inspired by feelings of personal hostility.

Another choice, which is left to the company setting up the whistleblowing system, is to know whether the whistleblower will be rewarded or not.

Some consider that rewarding a person for doing its duty is nonsense, others will find rewarding the courageous whistleblower as something natural.

One of the top priorities in whistleblowing is the protection of the whistleblower.

Indeed, if the employer is incapable of offering sufficient protection to the whistleblower, it is better not to start with a whistleblower system altogether.

Giving protection to the whistleblower in fact means protecting him/her from any form of retaliation, exercised either by the whistleblower's immediate superiors or by the persons, about whom the whistleblower has revealed some wrongdoing.

Giving protection will also mean, guaranteeing, to the largest extent possible, secrecy around the

name of the whistleblower, which is not necessarily easy to achieve.

Protection should also be given to the person against whom allegations have been voiced.

This means that a serious, unprejudiced internal investigation should be conducted, in order to test the validity and seriousness of these allegations.

And finally, there is the organisational decision to be taken by the entrepreneur: will the whistleblowing system be organised in-house or will it be outsourced to a specialised organisation?

MODULE IX: Organizing a due diligence process

A company, which wants to protect itself against economic fraud and corruptive practices, has to make sure that persons under its direct control (directors, executives, managers, staff and other personnel) always act with integrity but it also has to commit not to use any person, who is not on its pay-roll, as a conduit for passing on bribes to others.

In addition, a company, which wants to expand through agents or intermediaries its business in areas where none of its personnel is working, will have to see to it that such persons, who are not on its pay-roll but work on its behalf, are complying with its high ethical standards.

Indeed, time has passed that one could say, when allegations of corruption through an intermediary were voiced: “Listen, this is not something our company can be held responsible for, as the misbehavior you are complaining about was done by a (malicious or negligent) third party (an intermediary or joint venture partner), who admittedly was working for us, but never was on our pay-roll”.

Recent anti-corruption provisions do not accept (anymore) such defence or denial, as companies are now considered responsible not only for the acts committed by their own personnel but also for acts committed by third parties, working on its behalf, even if the company is or was not aware of what they were being doing.

Therefore, a company has to organize itself adequately in order to select only reputable third parties, with whom it can establish contractual ties, without fear of any malfeasance.

As a result, there will have to be in the companies an appropriate due diligence process for selecting agents, intermediaries, joint venture partners or anyone who will have the possibility, although not being on the company’s pay-roll, to act on its behalf.

How does that translate in practical terms?

This means that a company, which wants to have recourse to a third party in its dealings, for instance in order to conquer a new market, to launch a new product, to secure or to extend a contract or to obtain a permit or a license, will have:

to conduct a systematic and thorough examination of the reputation of the candidate agent/intermediary;

to ensure that such candidate is not known or reasonably suspected to be paying bribes;

to reasonably ensure that the candidate agent will comply with the anti-corruption provisions of the law and of the company’s code of conduct;

to conclude an agreement with the candidate in question, pursuant to which it instructs him neither to engage nor to tolerate any act of corruption; and

to establish an adequate and sustainable monitoring system, allowing the company to control regularly the way the agent is doing its job.

MODULE X: Where are the limits? Practical cases.

1. - A container lying on the quay

A container has arrived in the harbour of a far away country, where the company is going to start operations. The container contains important equipment and is on the quay. All administrative, tax and customs documents are ready.

The company has an urgent need for the equipment to start operations.

A harbour official tells you the consignment can be collected if you pay a “retribution” in cash.

This “retribution” is unknown to you and no receipt will be delivered against payment.

What do you do?

2. - The new manager urgently needs a telephone connection

The company has appointed a new dynamic manager in a sensitive country.

The manager is bracing himself with the many challenges of his/her installation in a new country and aims at being as soon as possible operational and to start with an ambitious development plan.

An official of the state telephone company (a monopoly) tells you the connection will be done very fast as soon as you pay him 50 USD

What do you do?

Alternative: the telephone company has no monopoly but has a strong, almost unavoidable, position in the country’s telephone market.

3. - A special tender bid

In a foreign country, a tender bid is launched for the providing of services/goods to a state agency.

The name of your company does not appear on the bidders’ list, although all technical data have been provided and all requirements of the state agency have been fulfilled.

An official of the agency informs you that an amount has to be transferred to a Swiss bank account, the particulars of which he gives you.

What kind of answer should be given to the official in question?

4. - A zealous agent

Your group has an agent in a far away country.

He has been serving well the company's interests for a long time.

One is on the verge of reaching a deal with the National Electricity Company; the agent tells you however that "a small last ditch effort" should be done in favour of the official who has to sign off.

In fact, this effort is equal to 5% of the deal.

Should the company say yes and pay "this effort" and what should happen within the future with this zealous agent?

5. - Secretaries like perfume

You are on marketing tour and you visit routinely a number of your existing and potential customers.

This trip will bring you to the offices of a number of managers with whom you are in regular contact.

Before departing from the Charles de Gaulle airport, you buy French perfume for the secretaries of these managers.

Will you continue to do so?

Is this (still) allowed?

6. - The birthday party of the director

You work for the company in China, a country with huge potential for your company's expansion.

You hear that the director of the Province Department in charge of granting significant contracts is having his birthday party.

You understand that the custom in the country (the province) is that a person like a director of a Province Department receives on such (for him important) occasion gifts from acquaintances.

Will you send or bring him a gift?

Would it be a gift in cash, or in kind?

7. - Making a political contribution

The Company has a flourishing operation in a country where open and democratic general elections are forthcoming.

Party representatives come to your office, asking for a political contribution in order to be able to cover the cost of the elections.

They request for that purpose 100.000 €.

What do you do?

8. - A gift to the President's hospital

The President of a host country has an ailing son, who has been operated in a specialized hospital

The caring father has taken the chair of that medical institution.

You understand that a contribution to that hospital would be particularly welcome

Do you make such donation?

9. - Giving a warm welcome

Governmental customers from a far away country are on a prospection tour in the home country of the company you work for.

They intend to visit your industrial/commercial premises in the country.

It seems quite evident that they have no large budget for paying the cost of such visit.

Will you pay their hotel rooms, their diet or even give them a *per diem* for each day spent in the country?

10. - Funding a scholarship.

You have recently taken up the position of Chief Purchasing Officer in a group's company in an emerging economy. You discover that your predecessor has initiated plans to set up a scholarship fund to enable promising local undergraduates of science or engineering to spend a year studying in the country, where your head office is located.

You are dubious about such funds as a form of social investment. The beneficiaries are generally offspring of the local elite, who often seek jobs abroad after their graduation.

You become even more concerned when you learn that one of the applicants is the son of the main coal supplier to your power plants.

In the framework of an important group led purchasing programme, you are currently negotiating a long term extension of the coal supply contract at reduced rates.

What action should you take?

Alternative question I:

Imagine that you decide, after discussing with your regional CEO, an expatriate with several years of experience working in that country, to nominate an independent selection panel to award the scholarship on the basis of merit.

Does that make a difference?

Alternative question II:

Imagine that the coal supplier's son turns out to be the best candidate.

Does that make a difference?

Alternative question III:

Another potential candidate is the son of a major potential energy customer. Signing up with this customer is key for the final go ahead of a green field project on which the team has been working for over a year. The customer made it clear, during an informal dinner, that the future education of his son is key to him.

Does that make a difference?

11. - Choosing joint venture partners

Your company is considering a joint venture with a company, located in another country. A 30 % shareholding from a local company is a legal prerequisite to set up a company active in the energy business in that country.

The local company, a family-run business like many in this country, is a large conglomerate with many diverse business interests. It has a reputation (but there is no evidence of any wrong doings available) for cosy links to many influential government figures. But partnership with this company would bring strong commercial advantages and "political risk" protection, not least that your company would gain access to assets, mainly, industrial estates on which to develop green field projects. Competition for access to such estates is fierce and few foreign companies are successful in this country.

Should your company consider partnership with this local company?

Imagine that the team is advised to ensure that the local company agrees to sign up to your company's code of conduct, while in partnership with you or at least to draw up their own equivalent business principles.

Does this change the situation?

Alternative question:

Imagine the joint venture goes ahead. A few months later, one of the senior managers in the local company is discovered to have paid a large sum to an intermediary to influence a senior government official to facilitate the permitting process of a project of the joint venture.

Should your company withdraw from the deal?

This would, however, be difficult and expensive under the terms of the contract.

The CEO of the local company sacks the employee and assures you this will not happen again.

Does this change the situation?

12. - Late bids.

You are the CEO of a company that is in a joint venture in which the local government has a majority stake.

As such, the company is subject to local public procurement rules - though everybody knows such rules are never applied strictly in the country.

One of your management team, the head of the Contracting and Procurement Department, a native of that country, comes to you for advice. He tells you that a 'late bid' for a contract has suddenly appeared and that it is clearly priced at just below the existing, already opened quotations. Moreover, he has just received a call from the prime minister who has strongly suggested that the joint venture should accept this late bid. You are aware that 'information leaking' in contract bidding is a major problem in the country concerned. You realise that you could quietly accept this new bid, reject it or draw a line under the present bid process and go to the market again, including the late bidder. However, if you do the latter you know that 'information leakage' will again be a problem.

What should you do?

Alternative question I:

Imagine the head of the Contracting and Procurement Department is well connected in that country and you know that, if the advice from the prime minister is not taken, this could be embarrassing to your manager and may well cause problems for your company, particularly as the terms of the joint venture are due for negotiation and your company's strategy is to try to increase its share by buying out some of the current government holding.

Furthermore, you want to promote local talent in a country where high profile people are hard to come by and the head of the Contracting and Procurement Department is one of the more able and, in your opinion, reliable members of your team.

Do any of these considerations make a difference?

Alternative question II:

Imagine that the head of the Contracting and procurement is an expatriate rather than a local.

Does that make a difference?

The MENA-OECD Business Integrity Network

A UNIQUE CHANNEL FOR PRIVILEGED DIALOGUE BETWEEN MENA AND OECD BUSINESSES ON
INTEGRITY IN THE PRIVATE SECTOR IN THE MENA REGION

This section introduces the MENA-OECD Business Integrity Network (MOBIN) as a forum for business to engage in peer-learning and knowledge-sharing from the region and beyond, in view of promoting stronger, cleaner and fairer business environments. The MOBIN invites businesses to participate in a network promoting a wide exchange of ideas on the solutions available to combat bribery and corruption in the private sector.

To join the regional MENA-OECD Business Integrity Network, or its national chapters in Egypt, Morocco, Tunisia and Jordan, please contact us at mena.investment@oecd.org

THE OECD AND THE MENA REGION

The MENA-OECD Investment Programme was launched in 2005 at the request of MENA countries¹⁰ to mobilise private investment – foreign, regional and domestic – as a driving force for economic growth and employment throughout the region.

Its ability to achieve concrete outputs is closely related to its unique structure, combining a regional and country-specific approach to economic policy reform. Exchanging good practices on how to create an attractive environment for private sector development is at the core of the Programme's mandate.

The MENA-OECD Business Integrity Network (MOBIN) is a core component of this engagement. It provides the Middle East and North Africa (MENA) business community with a unique channel for peer-learning and knowledge-sharing from the region and beyond, in view of promoting stronger, cleaner and fairer business environments. It invites businesses to participate in a network promoting a wide exchange of ideas on the solutions available to combat bribery and corruption in the private sector.

FIGHTING BRIBERY AND CORRUPTION IN THE MENA REGION

Integrity in business has been identified as critical for a country's development and investment performance. Indeed, corruption places a significant economic burden on businesses, constitutes a major deterrent to foreign investment and keeps countries from achieving their economic growth and employment potential. It prevents businesses from operating on a level playing field, carries legal risks and can threaten their reputation.

To improve the overall transparency of the business climate, and recognizing the importance of the involvement of all stakeholders in the fight against corruption, the MENA-OECD Investment Programme has been actively engaged in strengthening the role of the private sector in the fight against corruption in Egypt through the MOBIN. It builds on the OECD's longstanding experience in fighting corruption, with the involvement of the private sector in consultations and with specific instruments feeding into the process.

INTERNATIONAL INTEGRITY STANDARDS

Governments and international organisations have adopted a series of legally binding and non-binding anti-corruption and integrity instruments at regional and global levels.

A majority of MENA countries have ratified, and are consequently bound to implement, the United Nations Convention Against Corruption (UNCAC), which calls for both preventive and punitive anti-corruption measures. International integrity measures which are not directly applicable to MENA countries, in particular the OECD Anti-Bribery Convention, nevertheless

¹⁰ Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, Yemen

impact foreign businesses in the region, who are bound to abide by the obligations set out by these instruments.

ACTIONS BY ALL STAKEHOLDERS IN THE MENA REGION

As reflected in consistently poor rankings on international corruption indices, corruption remains a prevalent issue in the MENA region and proves to be a challenge to the development of the trade and investment climate of the region's economies.

Government action is indispensable in fighting corruption. In particular, governments have to clearly signal a strong political will and leadership role in setting clear anti-corruption milestones, and adopt a rigorous legal anti-corruption framework which is effectively implemented. However, government actions alone are not sufficient to prevent and combat corruption; complementary and mutually supportive actions by the private sector – for instance through corporate compliance tools or integrity pacts – are instrumental in order to create a comprehensive and effective framework to fight corruption.

Business agrees that there is a need to promote the implementation of solid anti-corruption measures in business in the MENA region, in order to level the playing field and to promote a more competitive business environment and growth.

OBJECTIVES

The MOBIN seeks to:

1/ Raise awareness of relevant international anti-corruption standards

- Inform businesses about the various international anti-corruption instruments regulating their national business environments and, to the extent of available information, about relating mutual evaluation processes, including on respective outcomes;
- Facilitate international exchange of information and best practices on national, regional and international anti-corruption initiatives;
- Encourage improved national and regional linkages between various anti-corruption bodies, including public-private or private-private collective actions.

2/ Support compliance of MENA businesses with international integrity standards

- Improve transparency and integrity in business operations through facilitating the development of:
 - Integrity codes for business associations and their member companies;
 - In-house company compliance programmes including compliance organisation and risk assessments for sensitive companies and/or sectors;

- Reporting mechanisms that businesses can put in place to improve the management as well as external communication.
- Work with businesses and government representatives on improving the integrity performance of the public-private interface, namely by:
 - Improving the public-private dialogue and encouraging collective actions of businesses;
 - Raising awareness about ways to strengthen integrity standards in relation to business operations (e.g. licensing, business inspections, etc.) at a regional and international level.
 - Considering mechanisms for businesses to react to bribe solicitation, for example integrity pacts or other collective actions.
 - Highlighting the benefits of establishing clear accounts and auditing rules and provisions.

PARTICIPATION AND ORGANISATION

Participation in the MOBIN is informal, and is open to companies with operations or interests in either a MENA or OECD country. If deemed appropriate, the network will also welcome the participation of select researchers and academics.

A company's participation is ensured through the engagement of (a) designated company representative(s), who are actively involved, or interested in being so, in the company's management and integrity efforts.

Business organisations are very welcomed partners, as they can mobilize their networks and ensure the wider circulation of information

Participants in the MOBIN are invited to attend all activities. They may also volunteer to raise awareness among partners and business interlocutors (e.g. suppliers, subcontractors, etc.), and to invite them to participate in the MOBIN

Leadership will be comprised of two co-chairs from business yet to be named – one from the MENA region and one from an OECD member country.

No fees are required to partake in the activities of the MOBIN Participants are, however, expected to finance their own attendance in terms of accommodation and travel expenses.

WORKING METHODS

ACTIVITIES

The MOBIN is organised around:

- Regional roundtables:
The roundtables focus on business compliance with international integrity standards. They familiarise participants with the core anti-corruption and integrity concepts, provide a forum for peer-learning opportunities, and address best practices for the private sector to foster integrity in

view of achieving higher business standards. Participants are able to regularly report on their progress through these roundtables. All roundtables are held under the Chatham House Rule which stipulates that participants are free to divulge information about the content of the meetings, but not about the identity or affiliation of other participants and speakers.

- **Training sessions:**
Training sessions seek to strengthen the capacity of businesses to develop and implement effective anti-corruption measures, in compliance with international standards, supporting businesses, their affiliates, subcontractors and consultants in strengthening awareness and compliance with integrity instruments.
- **Supporting material:**
The MENA-OECD Investment Programme produces a set of materials to stimulate the implementation of business-related integrity measures and tools. Learning materials in preparation of the roundtables and training sessions provide concrete examples and practical exercises in view of facilitating the adaptation of good practices to a company's profile.

OUTPUTS

In conjunction with, and to complement, its activities, the MOBIN is:

- **Collecting information about good practices.** In order for businesses to learn from the shared experiences and good practices of other participants, the Network will strive to collect information from businesses on their specific integrity instruments, as well as their experiences in terms of the successes and challenges they faced. To the extent possible, information is placed in a publicly accessible library.
- **Analysing common key factors.** Examining factors that are specific to a country, sector, or to the region in general, can provide valuable insights into the challenges and solutions that best suit particular businesses.
- **Developing a handbook providing an overview of good practices.** Many businesses and specific sectors have developed codes of conduct and compliance programmes. The MOBIN is collecting relevant materials into a handbook that raises awareness of these tools and of the means to adapt them to specific needs, in order to empower companies in their path towards clean business.

REPORTING

The activities of the MOBIN are carried out by the MENA-OECD Investment Programme.

The findings and outcomes of the MOBIN are reported to other OECD bodies, including the OECD Working Group on Bribery. They are also brought to the attention of the MENA Responsible Business Conduct Forum.

In addition, consultations and cooperation take place with external bodies, including the United Nations Development Programme's Programme on Governance in the Arab Region (UNDP/POGAR) and the Arab Anti-Corruption and Integrity Network (ACINET).

This reporting process is instrumental in sharing information and coordinating efforts to effectively combat corruption and bribery in the MENA region. The overall aim is to facilitate the engagement of the aforementioned complementary anti-corruption bodies in the region in order to draw on their expertise and experiences, take full advantage of peer-learning possibilities, and maximize impact on the ground.

For information about the MENA-OECD Business Integrity Network¹¹
Please contact: Ms. Nicola Ehlermann-Cache, Senior Policy Analyst, at nicola.ehlermann@oecd.org or
mena.investment@oecd.org

Please indicate whether you are interested in joining the regional network or the national networks of Egypt, Jordan, Morocco or Tunisia

¹¹ The MENA-OECD Business Integrity Network is a donor-driven initiative that relies on external sources of funding to sustain its operations. Its activities are currently made possible through a grant by the Siemens Integrity Initiative.

THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

The OECD is a unique forum where 34 member governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and help governments address emerging policy issues such as finding new sources of growth, building skills, and restoring public trust in government and business. The OECD provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies. It increasingly engages with a number of non-members who have become important actors in today's global economy.

THE MENA-OECD INVESTMENT PROGRAMME

The MENA-OECD Investment Programme was established in 2005 at the request of participating MENA governments to assist them in implementing business climate reform for investment, growth and employment in the region. It is one of two pillars of the MENA-OECD Initiative on Governance and Investment for Development, which helps MENA governments design and implement reforms to modernise public governance structures, strengthen the business climate and foster transparency – issues which have taken on increasing importance in light of recent events in the region.



For more information

Please visit: www.oecd.org/mena/investment/

Or contact mena.investment@oecd.org