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DRAFT FOR
CONSULTATION

A Resource Guide on State Measures for Strengthening Business Integrity



United Nations



Public Consultation: A Resource Guide on State Measures for Strengthening Business Integrity

This new-edition draft **Resource Guide on State Measures for Strengthening Business Integrity** is designed to provide States with a framework for encouraging business integrity by identifying and implementing an appropriate mix of sanctions for misconduct, as well as incentives for good practice.

This draft Resource Guide describes the various sanctions and incentives options available to States, including how States can design and implement incentives to reward businesses for adopting ethical practices, complying with anti-corruption requirements, and/or for cooperating during law enforcement processes. It also provides examples from different regions and sectors, as well as practical resources to help governments and the private sector in developing effective collective action initiatives and public-private partnerships against corruption.

This draft publication was produced by the **United Nations Office on Drugs and Crime (UNODC)**, the **United Nations Global Compact (UNGC)** and the **Organisation for Economic Co-operation and Development (OECD)**. This draft publication is a fully updated and expanded version of the 2013 UNODC publication: *The United Nations Convention against Corruption: A Resource Guide on State Measures for Strengthening Corporate Integrity*.

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EXECUTIVE SUMMARY

This Resource Guide is designed to provide States with a framework for identifying and implementing an appropriate mix of sanctions¹ and incentives for encouraging business integrity. It reflects the latest developments in the global experience countering corruption, including significant recent advances in business prevention practices. Over the years, it has been shown that sanctions alone do not result in best outcomes to reduce corruption in the private sector. Rather, a thoughtful mix of sanctions for misconduct, as well as incentives for good practice are needed to further promote business integrity.

Guided by the United Nations Convention against Corruption (UNCAC) as well as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) and its Recommendations, in particular the 2021 OECD Anti-Bribery Recommendation, it has become clear that the private sector is a key driver in countering corruption. The Principle Ten of the United Nations Global Compact, which commits participants to proactively develop policies and concrete programmes to address corruption internally and within their supply chains, is an indication of the importance of working with the private sector when countering corruption.

Corruption is a complex and multifaceted problem that cannot be solved by either governments or companies acting alone. Both public and private sectors, together with civil society and academia, have important roles to play in strengthening business integrity.

For governments, outlawing corruption via a legislative framework is an important first step. But having the capacity to enforce legislation and allocate appropriate resources to enforcement ensures the practical functionality of the legislative framework. Legislation must also be accompanied by appropriate guidance for the private sector regarding its compliance responsibilities under the law. While many aspects of a State's anti-corruption framework may be apparent based upon the plain language of a statute, others will be less easily discernible or difficult to apply in practice.

For the private sector, it has the responsibility for not only ensuring compliance with the law, but of promoting good practice and educating its employees, agents, partners, and suppliers about the importance of business integrity. The private sector can also play an important role by helping to raise public awareness about the harm of corruption, supporting governmental and other anti-corruption initiatives, and advancing good practice standards within the industry and throughout its supply chain.

Finding the right mix of sanctions and incentives requires a detailed calculus. Rather than being reactive, States and the private sector should focus on prevention and detection mechanisms. States should find

¹ Sanctions in this text refers to both criminal and non-criminal measures that consider the gravity of an offence and the behaviour they seek to punish. Sanctions may serve remedial, compensatory or punitive purposes and are meant to be effective, proportionate and dissuasive. Sanctions may include, inter alia, monetary fines, imprisonment, confiscation of proceeds, contract remedies, suspension and debarment from public procurement, reputational harm, and others.

ways to encourage and reward prevention practices, but also be able to levy penalties when prevention is not taken seriously. States should consider the potential multijurisdictional aspect of the cases when conducting investigations, as well as when determining the relevant mechanisms for sanctions or incentives. Where relevant, international cooperation with other jurisdictions should be considered at the prevention, investigation, and prosecution levels.

Sanctions that are “effective, proportionate and dissuasive” are a baseline UNCAC and OECD Anti-Bribery Convention requirement, for both natural and legal persons that commit a corruption offence. In a business context, sanctions can be considered effective and dissuasive if they adequately punish misconduct, eliminate illegal gains, and encourage measures to strengthen prevention practices within a company to prevent future misconduct. Proportionality considerations are related to the company itself (e.g. size, turnover, and assets), as well as to the gravity of the offence and the harm caused. Within these parameters, States have wide discretion to determine the proper balance of sanctions and incentives, as well as ancillary measures for enhancing business integrity.

Sanctions come in many forms and include, among others:

- Imprisonment
- Mandated corporate reform
- Monetary penalties
- Confiscation of the proceeds of corruption
- Victim compensation
- Contract remedies
- Suspension and debarment from public contracts
- Denial of government benefits
- Liability for damages
- Reputational harm

Incentives that reward a company for good practice are an important complement to sanctions. They recognize that meaningful commitment to and investment in anti-corruption programmes and other measures that strengthen business integrity are often voluntary, extending beyond certain minimum legal requirements.

Incentives can include, among others:

- Exemption from prosecution or other penalty mitigation measures
- Recognition of strong integrity practices
- Procurement incentives
- Preferential access to government benefits
- Reputational benefits

This guide outlines the roles and responsibilities of each stakeholder in promoting business integrity, provides practical resources for collective approaches to tackle corruption, describes the various sanctions and incentives options available to States and the private sector, and provides illustrative case studies from around the world² to assist in finding the right balance to implementing policies and procedures to counter corruption.

This guide also attempts to steer States and the private sector towards good practices and away from common pitfalls. States should ensure they take a holistic approach to countering corruption, avoiding policy incoherence in their efforts to incentivize business integrity and fight corruption at both national and international levels. States should also ensure they are not relying on a single tool as the answer to corruption. A suite of tools available for different purposes will be most effective in tailoring approaches to counter corruption.

Perhaps most importantly, this guide stresses the importance of a multi-stakeholder approach to countering corruption. While governments and the private sector have traditionally had their area of focus, it has been shown that open communication, providing and developing guidance together, and learning from each other yields the best results.

² The case studies were collected through the respective channels of UNODC, OECD and UNGC, as described below:

- On 7 September 2022, the UNODC, as secretariat to the Conference of the States Parties (COSP) to the [United Nations Convention against Corruption \(UNCAC\)](#), developed and circulated a questionnaire inviting the States parties to share information on good practices, practical examples and lessons learned on the engagement of the private sector and the use of sanctions and incentives to strengthen business integrity in the last decade. The questionnaire was developed to support the implementation of a number of resolutions adopted by the COSP, including, inter alia, resolutions [5/6](#), [6/5](#), [9/6](#) and [9/8](#), as well as the commitments made by States parties in the [political declaration](#) entitled “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”, adopted by the General Assembly at its special session against corruption in 2021. The answers provided by States Parties were used for this guide.
- The OECD participated in the development of case studies based on monitoring conducted by the OECD Working Group on Bribery, expert meetings held at the OECD in May 2023, and desk-research.
- The UN Global Compact held a “Consultation on the Update of the Resource Guide on State Measures for Strengthening Business Integrity” in July 2023.

I. INTRODUCTION

State efforts to prevent and counter corruption must consider and reflect the central role of the private sector in ensuring business integrity. Over the last 25 years, international standards against corruption have been developed, providing a useful reference to guide States in addressing corruption in the private sector. These include notably the United Nations Convention against Corruption (UNCAC) as well as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) and its associated 2021 OECD Anti-Bribery Recommendation.³ While some businesses may engage in corruption, either voluntarily to gain an advantage or because they feel they have no choice, the private sector has also been a driver for change, advancing business integrity reforms that are reshaping the global anti-corruption landscape. Where anti-corruption efforts were previously the domain of States and governments, the private sector has increasingly become an essential actor, representing a significant paradigm shift from the early days of anti-corruption policy development. The Principle Ten of the United Nations Global Compact⁴, which commits participants to proactively develop policies and concrete programmes to address corruption internally and within their supply chains, is an indication of the importance of working with the private sector when countering corruption.

Purpose of the Resource Guide

This Resource Guide explores measures that States can take to encourage business integrity.⁵ It is divided into several parts. An initial section describes the international standards, including the UNCAC and the OECD Anti-Bribery Convention as well as the Principle Ten of the United Nations Global Compact that frame State interaction with the private sector. These include provisions mandating criminalization of domestic and foreign bribery and other corruption offences, as well as specific measures for engaging with the private sector. The following section takes a closer look at the roles and responsibilities of various actors including government, the private sector and civil society for implementing international standards. Following is a section dedicated to the private sector, with particular attention on reforms, initiatives and other factors that can drive business integrity. This section also outlines the “business case” for preventing and countering corruption and core elements of an effective anti-corruption programme.⁶ The fifth section of the Guide speaks to the multisectoral aspect of countering corruption and outlines various ways in which the public and private sectors can work together. The sixth section describes the range of sanctions and incentives that have been developed by States to implement

³ For ease of reference, this Guide uses the terms “OECD anti-bribery standards” when referring to both OECD Anti-Bribery Convention and the OECD Anti-Bribery Recommendation.

⁴ United Nations Global Compact, The Ten Principles of the UN Global Compact – Principle Ten: Anti-Corruption.

<https://unglobalcompact.org/what-is-gc/mission/principles/principle-10>

⁵ This Guide uses the terms “corporation,” “company”, and “private enterprise” interchangeably. The “private sector” for purposes of UNCAC implementation encompasses diverse entities, ranging from small local family businesses and partnerships to national companies and multinational corporations.

⁶ United Nations Office on Drugs and Crime, Business Integrity Portal, Business Hub: <https://businessintegrity.unodc.org/bip/en/business-hub.html>

international standards, such as UNCAC and the OECD anti-bribery standards, with a view to preventing and addressing corruption within the private sector. The Guide concludes with an overview of good practices and common pitfalls that is meant to assist States and other stakeholders in moving forward with implementable and actionable anti-corruption initiatives.

Private Sector Context

While there are several different corrupt acts set out in the UNCAC and OECD Anti-Bribery Convention, corruption is often seen to involve “the abuse of entrusted power for private gain.”⁷ In a business context, this can include false or misleading financial reporting, procurement fraud, embezzlement, and especially bribery. Bribery in business is a universal problem, affecting companies of all sizes in all countries, with companies serving both as victims and perpetrators.

Corruption is a complex and multifaceted problem that cannot be solved by either governments or companies acting alone. Business incentives that lead officers and employees of companies to maximize profits at any cost may create a culture of corrupt behaviour. Companies can also be victims of extortion by public officials. Small local businesses are especially vulnerable to extortionate demands by corrupt public officials, but also as part of a larger supply chain. Larger domestic and global corporations, even if successful in controlling bribery within their own ranks, must still worry about unfair competition from less ethical peers. Moreover, States can benefit from the expertise and resources that ethical businesses bring to the fight against corruption.

Focus on Prevention

It is often said that an ounce of prevention is worth a pound of cure. For businesses, prevention comes in many forms, from leading with integrity and anti-corruption messaging, to effective internal programmes for preventing and detecting violations of law and ethical standards. These anti-corruption programmes are the subject of prior UNODC, UNGC, and OECD guidance.⁸ Generally, they involve a leadership commitment to ethical business practices, awareness training, anti-corruption

⁷ See, for example, International Chamber of Commerce, Transparency International, the United Nations Global Compact and the World Economic Forum Partnering Against Corruption Initiative (PACI) (2008), *Clean Business is Good Business: The Business Case against Corruption*. Available at <https://unglobalcompact.org/library/158>

UNCAC does not contain a specific definition, but instead defines corruption by reference to specific offences listed in Chapter III of the Convention. For further discussion of definitional considerations, see: UNODC (2013), *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*. https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf

See also United Nations Office for Drug Control and Crime Prevention (2002), “*Global Dynamics of Corruption, The Role of the United Nations Helping Member States Build Integrity to Curb Corruption*,” at pages 2-4 (2002). <https://www.unodc.org/pdf/crime/gpacpublications/cicp3.pdf>

⁸ See the UNODC Business Hub: <https://businessintegrity.unodc.org/bip/en/business-hub.html>

See also The Ten Principles of the United Nations Global Compact: <https://unglobalcompact.org/what-is-gc/mission/principles> and the publication [An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide](https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf). See the 2021 OECD Anti-Bribery Recommendation, Annex II: Good Practice Guidance on Internal Controls, Ethics and Compliance, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378#mainText>.

policies and procedures, channels for seeking guidance and reporting concerns, and internal systems and controls to ensure that policies are being followed.

The implementation of a meaningful and effective anti-corruption programme for business is primarily a private sector function and responsibility. However, more and more public authorities are involved in providing guidelines and assessing the adequacy of these programmes. Anti-corruption measures are an investment, and like other business investments, they must compete with other demands for scarce resources based on perceived risks and benefits. Evidence has shown, however, that prevention measures implemented by the private sector must be matched by enforcement efforts of States.⁹ States should help to shape these corporate investment decisions through a combination of enforcement sanctions and good practice incentives.¹⁰ Guidance on what is considered an adequate and exemplary anti-corruption programme should also be communicated by public authorities, especially when they engage in conducting assessments of these programmes.

General Principles

This Resource Guide is designed to provide States with a framework for identifying and implementing an appropriate mix of sanctions and incentives for encouraging business integrity. It reflects the latest developments in the global fight against corruption, including significant recent advances in business prevention practices.

States are expected to meet certain minimum standards when implementing their commitments under UNCAC, as well as the OECD Anti-Bribery Convention, together with its 2021 Recommendation in relation to corruption offences, including sanctions for violations by individuals, also known as “natural persons”, and companies or other entities, known as “legal persons” that are “effective, proportionate and dissuasive.” Within these parameters, States have wide discretion to determine the proper balance of sanctions and incentives, as well as ancillary measures for enhancing business integrity.

Recommendations in this Resource Guide reflect six core implementation principles:

1. *Strengthening business integrity is an important key to successful implementation of UNCAC and the OECD Anti-Bribery Convention.*

⁹ Jenkins, Matthew, *The effectiveness of integrity led anti-corruption interventions*, U4 helpdesk answer, 4 November 2022. Online: <https://www.u4.no/publications/the-effectiveness-of-integrity-led-anti-corruption-interventions>

¹⁰ “Good practice incentives” refer to the credit or reward an organization may receive for investing in an effective anti-corruption programme or for other forms of cooperation with States in combating corruption. Incentives may be in the form of a credit against sanctions when violations occur, commonly referred to as “penalty mitigation,” or a reward that is independent of a violation or enforcement action such as a procurement preference for having invested in an effective anti-corruption programme. Both are incentives designed to encourage voluntary good practice, as are enforcement sanctions in a negative sense.

2. *Business anti-corruption programmes are a primary tool for strengthening integrity and should be encouraged.*
3. *States should encourage better private-sector practices through a combination of well-balanced and thought-out sanctions and incentives. Sanctions and incentives should be guided by raising the costs of corruption while increasing the benefits of behaving ethically.*
4. *Business integrity is best achieved through a collaborative multi-stakeholder approach, and States are encouraged to involve the private sector when designing and promoting incentives or sanctions in order to build ownership and strengthen compliance.*
5. *States shall ensure that legal persons held liable can be subject to effective criminal or non-criminal sanctions, including monetary ones.*
6. *Sanctions are most effective when combined with incentives that reward good practice.*

The Guide recognizes that a one-size-fits-all approach is not applicable and that the proper balance of enforcement sanctions and good practice incentives will vary based on various considerations, including each State's established legal structure, economic profile, as well as institutional and resource capabilities. Flexibility will also be necessary in adapting to the particular needs and circumstances of businesses by size and experience. Other measures such as integrity pacts and business code initiatives that seek to strengthen integrity on a project or sectoral basis can also be a valuable complement to, or even replace traditional enforcement in practice, especially where risks of discovery and prosecution are low or where there is limited or no regulation by the State.

Common Practices

Sanctions that are “effective, proportionate and dissuasive” are a baseline UNCAC and OECD Anti-Bribery Convention requirement, for both natural and legal persons committing a corruption offence.¹¹ In a business context, sanctions can be considered effective and dissuasive if they adequately punish misconduct, eliminate illegal gains, and encourage measures to strengthen prevention practices within a company to prevent future misconduct. Proportionality considerations are related to the company itself (e.g. size, turnover, and assets), as well as the gravity of the offence and the harm caused.

¹¹ Article 30 of UNCAC requires that each State Party “make the commission of an offence established in accordance with [the] Convention liable to sanctions that take into account the gravity of that offence.” This is a general requirement for individuals who engage in corrupt acts, extended to “legal persons” by article 26 of UNCAC. Article 3 of the OECD Anti-Bribery Convention provides that foreign bribery “shall be punishable by effective, proportionate and dissuasive criminal penalties”, or if such penalties are not applicable to legal persons, “effective, proportionate and dissuasive non-criminal sanctions” must be available.

States Parties have at their disposal a wide range of measures for sanctioning private sector corruption, falling into one of eight broad categories. For UNCAC purposes, a “sanction” may include restitution, asset forfeiture and other criminal sanctions. Certain sanctions are mandatory under the UNCAC, while others are only recommended. For the purposes of the OECD Anti-Bribery Convention, the Parties must, at a minimum, have sufficient sanctions to enable effective mutual legal assistance and extradition, but the OECD Working Group on Bribery will examine closely whether each of its members' overall mix of sanctions is effective, proportionate and dissuasive. In addition, confiscation of the bribe and the proceeds of bribery of a foreign public official is a complementary measure that must be available in addition to the criminal, administrative, or civil sanctions. Some examples of sanctions include:

- **Monetary sanctions.** Monetary sanctions are a common sanction for private sector anti-corruption offences, applicable to both individuals (natural persons) and organizations (legal persons). They are designed to punish misconduct and serve as a deterrent to future offences by a defendant and others.
- **Imprisonment.** A prison sentence is a further sanction for individuals convicted of a corruption offence, and is considered an especially effective deterrent.
- **Confiscation of proceeds of corruption.** The confiscation of ill-gotten gains from corruption is intended to prevent unjust enrichment. Depriving wrongdoers of the economic benefit from corruption serves both the State's interest in eliminating the business incentives for corruption and the private sector's interest in having a more level economic playing field.
- **Contract remedies.** Contract rescission and restitution can be used to enforce a company's integrity commitments. A company that engages in corruption in connection with a public contract, whether to obtain or retain business or in its execution, cannot be trusted to perform within the public interest.
- **Suspension and debarment.** Suspension and debarment are more drastic forms of sanctions or measures used to prevent an individual or company from bidding on or participating in public contracts for a specified period. The threat of debarment can be instrumental in securing an advantageous plea or settlement terms.
- **Denial of benefits.** A corrupt individual or company may also be denied access to government benefits or services, such as a licence to do business or export credit support.
- **Liability for damages.** Civil liability for damages is a further UNCAC requirement, made available through a State's general contract or tort law or a corruption-specific private right of action. This sanction is remedial in nature, designed to compensate victims of corruption – including competitors and States themselves – for harm caused by an offence.

- **Reputational damage.** For many companies, large and small, the single greatest threat from a corruption scandal may be reputational.¹² Although not technically a “sanction,” States can encourage business integrity through measures that foster public transparency when offences occur, including by ensuring access to court judgments.

Experience has shown that a mix of sanctions will often be most effective. No single approach can fully address corruption in the private sector. Many States make various types of sanctions available to law enforcement agencies or courts on a discretionary basis. The choice among sanctions options should reflect a State’s legal principles and established regulatory practices and standards, as well as practical considerations that may limit the utility of certain measures. Regardless of the sanction chosen, States must provide adequate resources to enforce them. Implementation and enforcement must take stock of the practical realities in any given jurisdiction.

Incentives that reward a company for good practice are an important complement to enforcement sanctions.¹³ They recognize that meaningful commitment and investment in anti-corruption programmes and other measures that strengthen business integrity are often voluntary going beyond certain minimum legal requirements. State practices in this area have developed more slowly than for enforcement sanctions, but have produced at least five categories of incentives that may be considered, including:

- **Penalty mitigation.** Penalty mitigation is the most common form of incentive, used primarily to encourage self-reporting of offences and to reward business prevention efforts. This mitigation may be applied through a declination to prosecute, reduced penalty or charge, or, in some States, through a defence against liability to the company for offences that were committed by an employee or agent.¹⁴
- **Procurement preference.** A second type of incentive offers companies that demonstrate a commitment to good practice a preference in government procurement, in the form of either a bidder eligibility condition (most common) or an affirmative competitive preference. Procurement preferences based on integrity and trustworthiness have a long history in the private sector and are being increasingly adopted by States.

¹² OECD (2020), [Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change](#).

¹³ These are in addition to whistle-blower and witness protections that encourage individuals to report UNCAC and OECD Anti-Bribery Convention offences to responsible authorities, that are set out in articles 32 and 33 of UNCAC and sections XXI and XXII of the OECD Anti-Bribery recommendation.

¹⁴ A formal statutory defence based on corporate prevention efforts must be narrowly drawn to avoid undermining other important objectives under international anti-corruption standards. The implementation of effective compliance programmes, possibly together with other requirements such as timely voluntary disclosures of misconduct to law enforcement authorities, full cooperation, and remediation may exempt legal persons from punitive sanctions in some countries. However, it should not preclude the confiscation of gains obtained through the offence or actions by victims to recover compensatory damages.

- **Access to benefits.** Access to government support or services can also be made conditional on minimum integrity practices. In addition, governments can provide support or services on a preferential basis to companies that invest in an effective anti-corruption programme. In certain countries, the benefits are available only to companies whose compliance programmes are certified. Furthermore, access to benefits may be made a contractual benefit whereby engagement in a prohibited practice would eliminate access such benefit.¹⁵ This is the counterpart to the sanction of denial of government benefits to companies that commit infractions and is used to encourage and reward proactive efforts to combat corruption.
- **Reputational incentives.** Reputational benefits are another factor for encouraging business integrity through public acknowledgement of a company's commitment to good practice and combating corruption. Like reputational sanctions, this good practice incentive is largely non-governmental, but can be encouraged by States.
- **Whistle-blower incentives.** States may offer financial incentives to whistle-blowers as a tool to foster business integrity. The threat of an employee reporting violations can be among the most powerful weapons in the law enforcement arsenal to combat corruption. The existence of whistle-blower protection laws and rewards serves to encourage proactive efforts to combat corruption. States may reward companies that have strong whistle-blower protections in place.

Incentives that reward good practice are not a substitute for sanctions when offences occur but can be an effective tool for encouraging self-reporting and proactive investments by companies in prevention programmes. This complementary role can be especially valuable for State efforts to raise business integrity in circumstances where the risk of detection and punishment is too low. In this case, government authorities are encouraged to strengthen their detection and enforcement capacities while incentivising companies to adopt strong anti-corruption programmes. At the same time, it is important that incentives be conditioned on robust prevention efforts and not awarded too freely. Incentives that are overly generous or misapplied undermine UNCAC and OECD anti-bribery standards, as well as public confidence in the administration of justice.

¹⁵ Public authorities such as stock exchanges may make it mandatory to meet minimum integrity standards in order to qualify for listing. Development financing agencies may make prohibited practices part of their contracts so that any breach would be enforceable against the entity without the need for criminal prosecution.

II. INTERNATIONAL STANDARDS FROM THE UNITED NATIONS AND THE OECD

This part of the Guide contains an overview of the United Nations Convention against Corruption (UNCAC) and its private sector provisions relating to criminalization, sanctions, and measures to encourage cooperation and reporting by the private sector. It also discusses Principle Ten of the United Nations Global Compact that is focused on anti-corruption in the private sector, as well as the standards emanating from the OECD Anti-Bribery Convention and its related Recommendations.

While the above-mentioned international standards are discussed throughout this guide, other regional standards exist around the world. In particular, the African Union [Convention on Preventing and Combatting Corruption](#)¹⁶ strives to promote, regulate, strengthen, and facilitate cooperation among Member States to counter corruption and to coordinate and harmonize anti-corruption policies and legislation.

The [Inter-American Convention Against Corruption](#)¹⁷, housed under the Organization of American States, contains similar objectives. The Council of Europe has also established the [Group of States Against Corruption](#) (GRECO)¹⁸ with the stated objective to "improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure."¹⁹

A. OVERVIEW OF UNCAC

Corruption is one of the most complex, difficult and corrosive problems facing the world today. Bribery of public officials and other forms of corruption in business undermine fair competition, distort economic investments, and deprive governments of the resources needed to promote growth and development. These effects are felt in all regions and countries. Furthermore, corruption undermines progress towards meeting the Sustainable Development Goals of States.²⁰

Designed to provide a legislative framework for addressing corruption, UNCAC is the only legally binding universal anti-corruption instrument. Its far-reaching approach and the mandatory character of many of its provisions have made it a unique tool for developing a comprehensive response to the problem of corruption. UNCAC comprises 190 Parties²¹ that have committed to wide-ranging measures that seek to prevent corruption, criminalise bribery and other forms of corruption, strengthen law enforcement

¹⁶ African Union Convention on Preventing and Combatting Corruption: <https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption>

¹⁷ Inter-American Convention Against Corruption: https://www.oas.org/juridico/english/corr_bg.htm

¹⁸ Group of States Against Corruption: <https://www.coe.int/en/web/greco>

¹⁹ GRECO explained: <https://www.coe.int/en/web/greco/about-greco/what-is-greco>

²⁰ United Nations Department of Economic and Social Affairs, Sustainable Development - <https://sdgs.un.org/goals>

²¹ UNODC, UNCAC Signature and Ratification Status - <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

and international cooperation, establish legal mechanisms for asset recovery, and provide for technical assistance and information exchange.

The responsibility of meeting the obligations of UNCAC ultimately lies with States Parties; however, there are several provisions relating to private sector corruption which are of particular relevance to the business community. UNCAC requires its States Parties to criminalize various forms of corruption, including bribery and embezzlement in the private sector. It also contains a detailed article specifically addressing corruption prevention in the private sector. Several other articles address the concepts of reporting (whistle-blower protection), sanctions and remedies, and cooperation between authorities and the private sector.

Criminalization provisions in Chapter III of UNCAC provide a baseline for business integrity, detailing corruption offences that States are called upon to proscribe by legislation.

Criminalization provisions

- Bribery of national public officials (article 15)
- Bribery of foreign public officials and officials of public international organizations (article 16)
- Bribery in the private sector (article 21)
- Trading in influence (article 18)
- Embezzlement of property in the private sector (article 22)
- Laundering of proceeds of crime (article 23)
- Concealment (article 24)
- Obstruction of justice (article 25)

UNCAC contains a further set of provisions that call on States Parties to enact or consider measures that promote business integrity and the reporting of corruption.

Private Sector Provisions

- Private sector (article 12)
- Liability of legal persons (article 26)
- Protection of reporting persons (article 33)
- Consequences of acts of corruption (article 34)
- Compensation for damage (article 35)
- Cooperation with law enforcement authorities (article 37)
- Cooperation between national authorities and the private sector (article 39)

[BOX: CONFERENCE OF STATES PARTIES (COSP) RESOLUTIONS AND THE 2021 UNGASS POLITICAL DECLARATION]

In 2021, the United Nations General Assembly Special Session (UNGASS) on corruption adopted a political declaration that reaffirmed the commitment of the UN and the importance of UNCAC to combating corruption around the world, specifically by engaging with the private sector to ensure effective measures can be taken to encourage ethical behaviour.²²

Resolution 9/6 - Follow-up to the Marrakech declaration on the prevention of corruption²³ aims to effectively implement preventive measures to combat corruption (including Chapter II and other provisions of the UNCAC) and promote the active participation of groups outside the public sector in these efforts.

Resolution 9/8 - Promoting anti-corruption education, awareness-raising and training²⁴ aims to strengthen efforts to support anti-corruption education and raise public awareness of corruption and its negative impact through education programmes involving all stakeholders.

Together, the UNGASS political declaration and the various resolutions demonstrate the commitment of the States and reinforce the focus on the need for private-public engagement to strengthen business integrity through incentives, sanctions, enforcement and education.

B. UNITED NATIONS GLOBAL COMPACT – PRINCIPLE TEN

With more than 22,300²⁵ participant companies and the support of 193 Member States of the United Nations General Assembly, the UN Global Compact remains the single, global normative authority and reference point for action and leadership within a growing global corporate sustainability movement. The UN Global Compact provides a principle-based framework that guides companies to do business responsibly and keep commitments to society.

²² [UNGASS A/S-32/L.1](#), “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”, 28 May 2021. Specifically, at Article 13, the declaration states: “We will take measures to prevent corruption involving the private sector and set and communicate high standards regarding anti-corruption policies. We will encourage ethical behaviour, anti-corruption and anti-bribery compliance efforts, integrity, accountability and transparency measures in all enterprises. We will support and promote initiatives to ensure that private sector entities are well equipped to conduct business with integrity and transparency, particularly in their relations with the public sector, and in fair competition, and will encourage the private sector to take collective action in this regard, including through the establishment of public-private partnerships in the prevention of and fight against corruption. We commit to enforcing proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures, as appropriate”.

²³ [Resolution 9/6 — Follow-up to the Marrakech declaration on the prevention of corruption](#)

²⁴ [Resolution 9/8 — Promoting anti-corruption education, awareness-raising and training](#)

²⁵ On 9 June 2023.

Corporate sustainability starts with a company's value system and a principles-based approach to doing business. The Ten Principles of the UNGC guides business to operate in ways that, at a minimum, meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption. Responsible businesses enact the same values and principles wherever they operate and know that good practices in one area do not offset harm in another. By incorporating the Ten Principles of the UN Global Compact into strategies, policies and procedures, and establishing a culture of integrity, companies are not only upholding their basic responsibilities to people and planet, but also setting the stage for long-term value.

The Principle Ten of the UNGC, first adopted in 2004, commits participants not only to avoid bribery, extortion and other forms of corruption, but also to proactively develop policies and concrete programmes to address corruption internally and within their supply chains. Companies are also challenged to work collectively and join civil society, the United Nations and governments to realize a more transparent global economy.

There are many reasons why countering corruption has become a priority within the business community. Confidence and trust in business among investors, customers, employees and the public are key to a healthy business environment, but they have been eroded by waves of business ethics scandals around the globe.

Businesses face high ethical and business risks and potential costs when they fail to effectively combat corruption in all its forms. All companies, large and small, are vulnerable to corruption, and the potential for damage is considerable. Companies are learning that they can be held responsible for not paying enough attention to the actions of their employees, associated companies, business partners and agents.

The rapid development of principles and rules of corporate governance around the world is also prompting companies to focus on anti-corruption measures as part of their mechanisms to achieve corporate sustainability and to protect their reputations and the interests of their stakeholders. Their anti-corruption systems are increasingly being extended to a range of ethics and integrity issues, and a growing number of investment managers are looking to these systems as evidence that the companies are engaged in good and well-managed business practices.

C. OECD ANTI-BRIBERY CONVENTION AND THE PRIVATE SECTOR

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) is the first and only instrument that focuses on the 'supply side' of corruption. It was signed in 1997 and entered into force in 1999. As of November 2023, there are 45

Parties to the OECD Anti-Bribery Convention.²⁶ All the Parties to the Convention are members of the OECD Working Group on Bribery in International Business Transactions (OECD WGB).

It contains legally binding standards to criminalize bribery of foreign public officials in international business transactions. In addition to the prohibition of foreign bribery, the OECD Anti-Bribery Convention contains provisions on:

- corporate liability,
- sanctions and confiscation,
- jurisdiction,
- statute of limitations,
- money laundering and false accounting,
- international cooperation, and
- independence of investigations and prosecutions.

To foster the implementation of its substantive obligations, the OECD Anti-Bribery Convention established a peer-review monitoring mechanism which is carried out by the OECD Working Group on Bribery. This peer-review monitoring system is conducted in successive phases. The Working Group's country monitoring reports contain recommendations developed on the basis of rigorous examinations of each country.

[BOX: OECD ANTI-BRIBERY CONVENTION]

The OECD Anti-Bribery Convention and the OECD Working Group on Bribery peer monitoring have achieved notable policy successes.

From the OECD Anti-Bribery Convention's entry into force on 15 February 1999, through 31 December 2021:

- **All the Parties** to the OECD Anti-Bribery Convention have **adopted legislation prohibiting foreign bribery**.
- The OECD WGB monitoring has also contributed to **significant legislative reforms** that have transformed the fight against corruption in specific Parties, including the adoption of the United Kingdom's Bribery Act and France's Sapin II Law, in addition to helping to strengthen standards for ensuring corporate liability and for promoting whistle-blower protection.
- Those Parties have collectively imposed sanctions for foreign bribery through at least **775** criminal, administrative or civil proceedings for natural persons and **385** proceedings for legal persons.²⁷

26. The 45 Parties include all 38 OECD countries and 7 non-OECD countries - Argentina, Brazil, Bulgaria, Peru, Romania, the Russian Federation, and South Africa.

27 OECD Working Group on Bribery (2021), 2021 Enforcement of the Anti-Bribery Convention. Investigations, Proceedings and Sanctions. <https://www.oecd.org/corruption/data-on-enforcement-of-the-anti-bribery-convention.htm>

Both the OECD Anti-Bribery Convention and UNCAC have helped signatory countries to enact laws or otherwise strengthen their institutional framework and enforcement capacity to combat various corrupt practices. In particular, signatory countries must ensure that both natural and legal persons may be held liable for the covered corrupt practices and subject to effective, proportionate and dissuasive sanctions. Collectively, the OECD Anti-Bribery Convention and UNCAC shape businesses' behaviour in international markets by deterring, detecting, and sanctioning the offer of bribes. While both Conventions stress the importance of criminalization and enforcement, the Conventions themselves, or other related instruments, also recognize the role of businesses in prevention as an indispensable component of any effective anti-corruption policy.

D. 2021 OECD ANTI-BRIBERY RECOMMENDATION

The OECD Anti-Bribery Convention is complemented by a set of related instruments containing measures that its Parties must implement to reinforce their efforts to prevent, detect and investigate foreign bribery. The 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2021 OECD Anti-Bribery Recommendation)²⁸ is the result of an extensive revision of the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

The 2021 OECD Anti-Bribery Recommendation reflects the OECD Working Group on Bribery's recommendations made through its country monitoring and ensures that it continues to respond to the new threats and challenges to counter foreign bribery.

The 2021 OECD Anti-Bribery Recommendation introduces provisions on issues such as:

- sanctions and confiscation,
- measures to address bribery solicitation,
- non-trial resolutions,
- whistle-blower protection,
- international cooperation, and
- data protection.

²⁸ Other related subject-specific recommendations include, the Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009), the Recommendation of the Council on Bribery and Officially Supported Export Credits (2019) and the Recommendation of the Council for Development Cooperation Actors on Managing the Risk of Corruption (2016).

[BOX: PRIVATE SECTOR TOPICS IN THE OECD 2021 ANTI-BRIBERY RECOMMENDATION]

Reflecting the emerging topics and policy evolutions in the anti-corruption sphere, the 2021 OECD Anti-Bribery Recommendation places more emphasis on the role of businesses in anti-bribery efforts and introduces new requirements in relation to business integrity.

The 2021 OECD Anti-Bribery Recommendation covers the following topics related to business integrity:

- Promoting incentives for corporate anti-corruption compliance.*
- Encouraging anti-bribery collective actions.*
- Addressing demand-side solicitation, including support for companies facing solicitation risks.*
- Promoting comprehensive and effective protection of reporting persons in the public and private sectors.*
- Accounting requirements, external audit, an internal controls, ethics, and compliance.*

The Good Practice Guidance on Internal Controls, Ethics, and Compliance (Annex II to the 2021 OECD Anti-Bribery Recommendation) has been strengthened, including by emphasizing that businesses' compliance efforts should be tailored to risk, and be accessible to employees. It also clarifies that anti-corruption compliance provisions are applicable to state-owned enterprises (SOEs) as well as private companies.

In addition, the 2021 OECD Anti-Bribery Recommendation recognizes in its preamble the potential role of innovative technologies in advancing public and private sectors efforts to combat foreign bribery.

III. IMPLEMENTATION ROLES AND RESPONSIBILITIES

Both public and private sectors, together with civil society and academia have important roles to play in strengthening business integrity.

A. THE ROLE OF GOVERNMENTS

The implementation of international anti-corruption conventions is primarily a governmental responsibility for States Parties. In relation to business integrity, primary State functions are to establish the legal framework for preventing and countering corruption, to provide further guidance on the application and assessment of adherence to legislative tools, and to enforce the law. A further

responsibility is to ensure that State agencies have policies and procedures in place for preventing private sector corruption and that agency personnel receive the necessary training.

a) Establishing a legal framework

Government authorities are responsible for establishing a national legal framework for preventing corruption, consistent with relevant international standards such as UNCAC and the OECD Anti-Bribery Convention. Although not mandated by these Conventions, a comprehensive approach that illuminates the relationship between prohibited conduct, consequences and protections is most helpful to the private sector. It is also important that legal measures contain sufficient detail to inform the private sector of the law's applicability and requirements.

[CASE STUDY - ALGERIA'S LAW 06-01]

Algeria's national legal framework for preventing and combating corruption comprises provisions under several pieces of legislation, including Act No. 06-01 of 20 February 2006 on the prevention and combating of corruption, as amended (the Anti-Corruption Act); Ordinance No. 06-03 of 15 July 2006 on the General Civil Service Regulations; Presidential Decree No. 15-247 of 16 September 2015 on public procurement and public service concessions; the Criminal Code; the Code of Criminal Procedure; and Act No. 05-01 of 6 February 2005 on the prevention and combating of money-laundering and financing of terrorism, as amended (the Anti-Money-Laundering Act).

The Anti-Corruption Act stipulates monetary sanctions for various crimes of corruption including:

- *Confiscation of proceeds of corruption for both companies and individuals who acted on their behalf.*
- *Suspension and/or debarment for contractual partners from government process. Partners (individual or companies) involved in corruption offences are tested in the national register of fraudsters in order to prevent their access to the government process.*

Furthermore, the Algerian law encourages self-reporting of offences by crediting companies in their prevention efforts through penalty mitigation. Article 49 of the Anti-Corruption Act stipulates the exemption or the reduction of penalties for any person reporting corruption offence to the authorities before the beginning of any judicial proceedings. The law also protects reporting entities according to article 45.

Source:

<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V2003416e.pdf>

[CASE STUDY - LITHUANIA'S LAW ON THE PREVENTION OF CORRUPTION]

Corruption offences punishable by criminal law are divided into five main corruption-related offences under the Criminal Code: Bribery (Art. 225), Trading in Influence (Art. 226), Graft (Art. 227), Abuse of Office (Art. 228) and Failure to Perform Official Duties (Article 229). Corruption can also take the form of other activities that do not give rise to criminal liability, but which do not comply with the powers conferred on a private sector entity, or the standards of conduct derived therefrom, for the purpose of benefiting oneself or others, knowing that doing so is likely to cause harm to the interests of others or the public interest. In such a case, sanctions are imposed according to the legal acts regulating the various offences. The Law on Public Procurement (Art. 46) sets out the grounds for excluding a supplier from public procurement (bidder eligibility condition), among which are convictions for bribery, trading in influence, and fraud.

Source: [Criminal Code of the Republic of Lithuania](#) (ENG translation)

Source: [Republic of Lithuania Law on Public Procurement](#) (ENG translation)

[CASE STUDY - THE UNITED KINGDOM BRIBERY ACT]

In April 2010, the United Kingdom enacted the Bribery Act 2010 which revamped its legislative scheme of bribery offences. The Bribery Act establishes a specific offence of bribery of foreign public officials (Section 6) and general bribery offences that cover both the demand-side and supply-side of bribery (Sections 1 and 2). Notably, these provisions apply to both bribery of government officials and commercial bribery. Additionally, the Act establishes a new offence of failure to prevent bribery, whereby commercial companies can be held liable for bribery that their associates commit unless the companies had adequate procedures in place to prevent bribery (Section 7). Finally, Section 14 establishes an offence for certain senior officers of a body corporate or partnership, when the body corporate or partnership commits a bribery offence with the consent or connivance of the relevant senior officer. The UK Bribery Act entered into force in July 2011.

Source: [OECD Working Group on Bribery Phase 1ter report of the United Kingdom](#)

Source: <https://www.legislation.gov.uk/ukpga/2010/23>

[CASE STUDY – FRANCE: THE SAPIN 2 LAW]

In 2016, France adopted the Law on transparency, combating corruption and the modernisation of economic life, known as the Sapin 2 Law. The Sapin 2 Act first strengthened the preventive aspect of France's anti-corruption system, in particular through the introduction

of an obligation for large companies to set up anti-corruption programmes, with sanctions imposed for non-compliance, and of a general regime for whistle-blowers. The Sapin 2 Act also created the French Anti-Corruption Agency (AFA), which is mandated to assist public and private stakeholders in preventing and detecting “bribery, influence peddling, extortion by public officials, illegal taking of interests, misappropriation of public funds and favouritism”. In addition, the Sapin 2 Act introduced new enforcement measures, including an additional penalty requiring companies convicted of bribery to implement a compliance programme (Criminal Code, Art. 131-39-2), the Public Interest Judicial Agreement (CJIP), a non-trial resolution intended to allow for more efficient and timely processing of enforcement actions initiated against legal persons for certain economic offences including domestic and foreign bribery offences (Code of Criminal Procedure, Art. 41-1-2), and an offence of influence peddling in relation to foreign public officials (Criminal Code, Art. 435-2).

*Sources: Working Group on Bribery, [France’s Phase 4 Monitoring Report](#) and its [press release](#);
Source: [French Act No. 2016-1691 of 9 December 2016 on transparency, combating corruption and the modernisation of economic life](#) (Sapin 2 Act);*

Source: French Anti-Corruption Agency (May 2023) [Presentation of various regulatory frameworks for promoting business integrity across the world](#).

Ensuring consistency with relevant international standards such as UNCAC and the OECD Anti-Bribery Convention also strengthens the ability of the private sector to navigate sound and coherent legal frameworks. Governments can also be proactive in coordinating, where possible, with other jurisdictions to avoid that companies operating in different markets face incoherent requirements in relation to their compliance programmes. A 2023 study published by the French Anti-Corruption Agency compares anti-corruption legal frameworks and practices across France, the United States, and the United Kingdom and outlines the requirements that apply to companies in these jurisdictions.²⁹ The study aims at ensuring that “the French framework allows companies that comply with it, to deploy an effective and useful anti-corruption compliance programme in their growth and development strategy abroad and thus limit the risks of exposure to corruption by meeting the highest levels of international standards”.

b) Providing Guidance

Governments should consider providing the private sector with guidance on its anti-corruption responsibilities under the law. While many aspects of a State’s anti-corruption framework may be apparent based upon the plain language of a statute, others will be less easily discernible or difficult to apply in practice. For example, a company may understand that bribery to obtain new business is prohibited, but not necessarily recognize that payments to secure a licence or other regulatory

²⁹ Agence Française Anticorruption (2023), [Presentation of various regulatory frameworks for promoting business integrity across the world](#), p.8.

advantages are as well, especially when they may seem like simple administrative fees for service. Similarly, it may not always be clear when a company will be held accountable for violations by an affiliate, third-party or business partner. Guidance is also useful in helping companies come forward to report violations when they understand the incentives for cooperation.

Guidance on these types of common anti-corruption issues helps to raise private sector awareness and thereby strengthen business integrity. This is also important for effective enforcement when offences occur. Guidance can also be used to alert companies of a State's minimum expectations for the design and implementation of an effective anti-corruption programme, or of recommended practices.

[CASE STUDY – JAPAN MINISTRY OF ECONOMY, TRADE AND INDUSTRY - GUIDELINES FOR THE PREVENTION OF BRIBERY OF FOREIGN PUBLIC OFFICIALS]

Japan's Ministry of Economy, Trade and Industry originally published the *Guidelines for the Prevention of Bribery of Foreign Public Officials in 2004 and has made several revisions since to keep it updated. The Guidelines, recognizing the transnational character that corruption offences often take, aim to support companies involved in international commercial transactions to voluntarily take a preventative approach to the prevention of bribery of foreign public officials. Companies are expected to review existing measures and apply new measures as necessary with reference to these Guidelines, and to take specific actions such as dissemination of information and internal training on issues targeting its departments pertaining to international commercial transactions.*

Source:

https://www.meti.go.jp/policy/external_economy/zouwai/pdf/GuidelinesforthePreventionofBriberyofForeignPublicOfficials.pdf

[CASE STUDY – ARGENTINA: GUIDE FOR THE IMPLEMENTATION OF INTEGRITY POLICIES]

Integrity and Transparency Register for Companies and Entities (RITE)

[Argentina's Law on Liability of Legal Persons No. 27.401](#) requires the implementation of an integrity programme to participate in certain procurement processes and to enter into a cooperation agreement in court. To further business integrity, the Anti-Corruption Office (OA) promotes the Integrity and Transparency Register of Companies and Entities (RITE) which allows raising integrity standards through the implementation of integrity programmes. RITE contributes to the development and improvement of integrity programmes, the exchange of good practices and the promotion of transparent environments in business and markets.

Its approach is through two main sections: the Register itself, which allows companies and entities to make their commitment to ethical business visible, and the Toolbox, to accompany the development of integrity and allow public bodies across the country to have a better understanding of the integrity of companies for their procurement.

RITE allows companies to show the progress in the maturity and development of their Integrity Programmes taking into account respect for human rights, labour standards, care for the environment and the prevention of corruption. The RITE programme evaluates the maturity of the integrity programme through a series of self-assessment questions. Maturity levels range from initial, medium, and advanced.

Source: <https://www.rite.gob.ar/>;

Source: *The Guide for the Development of Integrity Policies in Companies with State Participation*, https://www.argentina.gob.ar/sites/default/files/if-2022-50600421-apn-dpptoa_quia_para_el_desarrollo_de_politicas_de_integridad.pdf;

Source: *The guides and guidelines for the implementation of integrity policies in companies*, https://www.argentina.gob.ar/sites/default/files/lineamientos_para_la_implementacion.pdf and its similar guide for SMEs, <https://www.argentina.gob.ar/sites/default/files/quiapymes.pdf>

[CASE STUDY – INDONESIA’S GUIDELINES FOR PREVENTION]

*In 2018, Indonesia’s Corruption Eradication Commission (KPK) and the Indonesian Chamber of Commerce and Industry (KADIN), along with governance experts and practitioners, created the book *Corruption Prevention Guidelines for the Business Sector*. It is a manual that serves as minimum guidelines for corporations to set up internal mechanisms to prevent corruption and build compliance. Promoting and explaining national and international concepts and good practices, the manual conveys simple and practical corruption prevention steps intended to be adapted according to business size and capacity. KPK has urged every company to follow the manual to establish internal control systems to prevent corruption. KPK has conducted seminars, public discussion, focus groups, and webinars to raise awareness on anti-corruption commitment in the private sector.*

Source: <https://jaqa.id/kuisprofit?vnk=00dc737a>

Source: <https://aclc.kpk.go.id/program/sertifikasi/sertifikasi-ahli-pembangun-integritas/tentang>

c) Enforcing the Law

Governments have a further responsibility to enforce these laws and apply “effective, proportionate and dissuasive” sanctions, as required by international instruments such as UNCAC and the OECD Anti-Bribery Convention. Enforcement should also be proactive, effective and independent. As in other areas of law, anti-corruption laws and regulatory measures are most effective when supported by meaningful enforcement. Conversely, the absence of meaningful enforcement can undermine public confidence in the law, encourage companies without scruples from committing offences, and make it harder for ethical companies to act with integrity due to the economic threats of less ethical competitors.

Companies that do not face enforcement for their corrupt acts may be indirectly encouraged to forego ethics in favour of unscrupulous practices.

Considering the international dimension of the business world, the effective enforcement of anti-corruption laws requires international cooperation. As required by section XIX of the OECD 2021 Anti-Bribery Recommendation, States should consult and otherwise co-operate with competent authorities in other countries, and, as appropriate, international and regional law enforcement networks, in investigations and other legal proceedings. In addition to the benefits for effective law enforcement, international cooperation helps to ensure a degree of consistency across national jurisdictions and provides greater legal certainty for the private sector.

Encouraging ethical business conduct through an appropriate mix of enforcement sanctions and good practice incentives is integral to law enforcement, as addressed in Part VI of this Guide.

d) Strengthening Anti-Corruption Practices

Governments should also take measures to strengthen the anti-corruption commitment and practices of their agencies. Chapter II of the UNCAC contains detailed recommendations on improving transparency and accountability in the civil service, public procurement and the management of public finances and ensuring judicial and prosecutorial integrity.

Additional measures should also be considered to raise awareness within State agencies about the importance of preventing and countering corruption involving the private sector. The 2021 OECD Anti-Bribery Recommendation requires countries to raise awareness and provide training on the prevention and detection of foreign bribery and corruption among public officials, in particular for the ones interacting with, or exposed to information regarding companies operating abroad.

B. PRIVATE SECTOR

Companies play a key role in promoting business integrity and ensuring compliance with legislative frameworks in the countries in which they operate. One of the primary responsibilities companies have is to ensure that their employees, agents and business partners understand and comply with applicable anti-corruption laws.³⁰ This may be accomplished through an effective anti-corruption programme, including ways to encourage reporting through such means as an anonymous hotline, and prompt disclosure and cooperation with law enforcement agencies when offences occur. Empirical studies suggest that ethical leadership can foster integrity as ethical leadership can promote a sense of ethical propriety among employees.³¹

The business community, especially larger domestic and global companies, can also play an important role by helping to raise public awareness about the harm of corruption, by supporting governmental and other anti-corruption initiatives, and by advancing good practice standards for industry and in the supply chain. These activities typically occur in coalition or other associational contexts, but they can also be advanced by individual companies.

[CASE STUDY: AUSTRALIA'S BRIBERY PREVENTION NETWORK]

Launched in 2020, the Bribery Prevention Network is a public-private partnership that brings together business, civil society, academia and government with the shared goal of supporting Australian business to prevent, detect and address bribery and corruption and promote a culture of compliance. The BPN focuses on strengthening business awareness of bribery and corruption risk, particularly amongst small to medium enterprises (SMEs) that have business operations outside Australia and may operate in higher risk sectors or jurisdictions.

The BPN is led by a Steering Committee of representatives from the Australia-Africa Minerals and Energy Group, Australian Federal Police, Allens Linklaters, ANZ, Commonwealth Attorney-General's Department, BHP, KPMG, Minerals Council of Australia, NAB, Transparency International Australia and Westpac. Secretariat support is provided by the UN Global Compact Network Australia. The Steering Committee provides continuous assessment of BPN initiatives and guidance on future activities.

The BPN offers a free, online portal of accessible, relevant and reliable resources, curated by Australia's leading anti-bribery experts, to support Australian business to manage bribery and corruption risks in domestic and international markets. The initiative also provides regular anti-corruption news and blog posts, publishes case-studies to assist SMEs,

³⁰ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en>.

³¹ Jenkins, Matthew, *The effectiveness of integrity led anti-corruption interventions*, u4 helpdesk answer, 4 November 2022. Online: <https://www.u4.no/publications/the-effectiveness-of-integrity-led-anti-corruption-interventions>

organizes networking events and public webinars, and has commissioned research on SME needs in relation to preventing bribery and corruption.

Source: <https://briberyprevention.com/>

[CASE STUDY – THAILAND: COLLECTIVE ACTION AGAINST CORRUPTION]

The Thai Collective Action Against Corruption (CAC) was established in 2010 by the business sector for companies in Thailand that realize the importance of transparent business operations. The CAC supports companies in setting policies, assessing risks, and establishing guidelines to prevent corruption. The CAC has developed a unique certification system for large, medium and small companies that helps companies to implement operational standards that can control corruption risks. In addition, the CAC acts as a voice for the private sector in matters related to anti-corruption. The CAC has three key objectives: 1) establishing a transparent business association free from bribery payments, 2) raising operational standards that can control corruption risks in the private sector, and 3) cooperating. More than 1,400 companies have partnered with the CAC, and more than 500 companies have been certified as having clear policies and guidelines to control corruption risks.

Source: <https://www.thai-cac.com/who-we-are/about-cac/>

Multinational companies can contribute to the implementation of UNCAC and OECD anti-bribery standards by working to strengthen business integrity in their supply chains. Through supply chain training, technical assistance and preferential selection processes, large national and multinational companies have an opportunity to “push down” integrity standards in ways that can surpass State action in impact. Preferences that reward supplier integrity give a practical market value to these good practices. For smaller and medium-sized businesses, they can also influence integrity through their integration in the supply chain. As suppliers of larger companies, they can gain a business advantage by implementing good practices and provide assurances to multinationals about their integrity protocols. This also forces competitor SMEs to instil good practices to remain competitive.

[CASE STUDY – GERMAN SUPPLY CHAIN DUE DILIGENCE ACT]

On 1 January 2023, the German Supply Chain Due Diligence Act entered into force imposing certain human rights-related and environment-related due diligence obligations on German companies, as well as foreign companies with German branches, in their supply chains. The Act applies to companies with at least 3,000 employees in Germany, including foreign companies with a branch office in Germany. Starting in 2024, the Act will apply to companies with at least 1,000 employees expanding the scope of the law. Companies must establish appropriate risk management procedures, including conducting an annual risk analysis in their own business area and towards direct suppliers. The Act’s due diligence obligations are

based on the [UN Guiding Principles](#) and provide for a strong regulatory oversight and enforcement.

The German Federal Office for Economic Affairs and Export Control (BAFA) has released guidance on the implementation of the Supply Chain Due Diligence Act as well as answered questions in several FAQs.

Source: https://www.bafa.de/DE/Lieferketten/Ueberblick/ueberblick_node.html

C. CIVIL SOCIETY

Civil society has an important role in advancing international standards against corruption. As outlined in article 13 of UNCAC, States Parties are required, within their means and in accordance with their domestic law, “to promote the active participation of individuals and groups outside the public sector” in the fight against corruption through enhanced transparency, outreach, and opportunities to participate in decision-making processes, and to report acts of corruption. For UNCAC purposes, civil society ordinarily will include, in addition to individual citizens, non-governmental and community-based organizations, business associations, labour unions, religious institutions, academia and the media.

Civil society organizations and other non-governmental participants with anti-corruption expertise are systematically invited to participate in the OECD’s Working Group on Bribery country monitoring system under Article 12 of the OECD Anti-Bribery Convention. Civil society organizations are invited to provide written submissions on the evaluated country’s successes and challenges in implementing its obligations under that Convention and participate in the discussions about the level of implementation in practice during the on-site visits.

In relation to the private sector, civil society engagement occurs primarily through public education, advocacy and compliance monitoring. These roles vary in application with the many different interests that constitute civil society. Individual citizens, for example, have a responsibility to become informed about the issues and to hold leaders in government and business accountable. Advocacy organizations, including from the business sector, can support and help to shape anti-corruption initiatives, government policies, and legislation.³²

Both media and advocacy organizations also perform an important watchdog function by disseminating information about policy advances and continuing challenges. Business organizations and professional associations may play an essential role in assisting companies, in particular SMEs, in the development of anti-corruption compliance programmes.³³

³² For example, France’s main employer’s federation, MEDEF, supported the introduction of the [SAPIN II](#) law in 2016 and were key supporters of amendments to introduce Public Interest Judicial Conventions. See [2021 Interview](#).

³³ See Annex II of the 2021 OECD Anti-Bribery Recommendation for further information.

[CASE STUDY – MOLDAVA’S “reLAWed” APPLICATION]

Moldova’s National Anti-Corruption Centre (NAC) developed a new corruption prevention mechanism - the "reLAWed" application.

The "reLAWed" application aims to enable people to get involved in the process of improving the legal framework. People can take action by identifying, notifying and communicating deficient, incomplete or interpretable legislation and regulations that have generated or may generate corruption, abuse or other illegalities.

In this respect, through the "reLAWed" application, natural and legal persons, regardless of the field of activity, have the possibility to report, including anonymously, the regulatory act, unclear, interpretable and/or conflicting provisions, regulatory deficiencies and legal vulnerabilities.

The "reLAWed" application is a new corruption prevention tool adjusted to the modern trends of digitization of citizens' contact and communication with public authorities. Thus, the aim is also to increase the interest of citizens to contribute, in an easy and convenient way, by signalling and reporting legal norms that can generate risks of corruption.

Source: www.cna.md

Source: www.relawed.cna.md

[CASE STUDY - SOUTH AFRICA: THE ETHICS INSTITUTE]

The Ethics Institute (TEI) is a non-profit, public benefit organization with a dedicated focus on organizational ethics within the private sector, public sector, and professional associations. As a public benefit institute, TEI actively participates in a range of initiatives, which encompass producing original research on organizational ethics that is made accessible for public use, contributing to public discourse while also raising awareness of ethics issues. Additionally, TEI produces the Ethics Handbook Series, a valuable resource designed for use by ethics practitioners, and contributes to policy debates and the formulation of policies pertaining to the governance and management of ethics.

In its capacity as a non-profit service provider, TEI offers expert advice on the governance and management of ethics, conducting empirical assessments to evaluate ethics culture and identify ethics risks, as well as training and certifying Ethics Officers. TEI provides training for staff at all organizational levels, including governing bodies, management teams, and employees. Furthermore, TEI audits safe reporting hotlines and offers a range of digital ethics management products.

Source: <https://www.tei.org.za/who-we-are/>

IV. THE ROLE OF THE PRIVATE SECTOR

It has become increasingly important to recognize the vital role the private sector plays in countering corruption. Top-down approaches imposing regulation on the private sector may not provide the desired outcomes unless the bottom-up approach of collectively working with the private sector in the development of laws, strategies, policies, incentives, and sanctions is taken into account.

Before examining the role of sanctions and incentives in strengthening business integrity, it is important to consider the factors that shape business practices.

A. FOCUS ON ETHICAL LEADERSHIP

As enforcement is challenging due to resource constraints, corporate compliance often depends on the willingness of companies to implement robust anti-corruption programmes. No State has the resources or ability to police all corporate activity for potential violations, nor would this be prudent or effective. Rather, the goal of regulation will ordinarily be to encourage responsible conduct through incentives and sanctions designed to drive good practice. “Signalling” on corruption – that is, sending the private sector a clear message that a State is serious about enforcing its anti-corruption laws – is central to strengthening business integrity.

The primary audience for anti-corruption signalling is a company’s leadership – in particular, its board of directors and senior management. These leaders typically have a fiduciary responsibility to oversee management of the enterprise for the benefit of the enterprise and its owners, including its efforts to prevent and detect corruption.³⁴ They are also in a position to lead with integrity and ensure that necessary resources are made available to support an effective anti-corruption programme. States help to shape these corporate investment decisions through their corporate governance provisions, mandatory compliance requirements, and enforcement policies, particularly through certification programmes, preferential access to benefits, procurement incentives, sentence mitigation or defences based on adequate corruption prevention programmes.

³⁴ Annex II, para. 1, of the OECD Anti-Bribery Recommendation emphasizes as a good practice “strong, explicit and visible support and commitment from the board of directors or equivalent governing body and senior management to the company’s internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery with a view to implementing a culture of ethics and compliance”. See also: Corporate governance standards are established by national law. For a useful compilation of good practices, see “*OECD Principles of Good Governance*,” available at <http://www.oecd.org/corporate/oecdprinciplesofcorporategovernance.htm>.

B. THE BUSINESS CASE FOR INTEGRITY

Business integrity, in the broadest sense, encompasses the full range of good business practices commonly associated with good corporate behaviour. More narrowly, it reflects a commitment to abide by legal requirements and norms of ethical business conduct. Organizations that act with integrity follow the law and ethical norms, treat their employees, customers and business partners fairly and respectfully, abide by their commitments, and generally conduct their affairs with integrity.

In an anti-corruption context, business integrity means conducting business in a manner that avoids bribery and other corrupt acts that undermine the operation of, and public confidence in, the marketplace. Businesses have a legal responsibility to follow the law in the countries in which they operate, which under the UNCAC framework extends to all forms of bribery – active and passive, public and private, domestic and international. Companies that engage in bribery run the risk of public exposure, prosecution and sanctions that can significantly damage their reputation and interests, as well as have severe consequences for the personnel involved. Businesses also have a responsibility to act as good corporate citizens, which includes following the laws that apply to their operations.

Unethical behaviour and corrupt acts can create business risks and lead to significant costs at the organizational level, including legal sanctions, fines, termination of business relationships, debarment, damage to a company's brand and reputation, and lower levels of employee satisfaction and retention. For multinational enterprises, corruption undermines the ability to do business in a predictable environment where the rule of law prevails, distorts international competitive conditions and discourages investments.³⁵

On the other hand, ethical business practices can bring about tangible advantages. Better systems and controls to prevent corruption provide for more certainty and control over operations. They also help to protect an enterprise's reputation – often its most valuable asset – among employees, customers, business partners and the public at large. Companies that have made a demonstrable commitment to business integrity find it easier to attract and retain good employees and to maintain high morale, and they also benefit in dealings with like-minded investors, customers and business partners. The comparative advantage from a good reputation for SMEs that work with global corporations can be especially valuable, as global corporations work to strengthen practices within their supply chains. Ethical suppliers are more reliable and less likely to create legal or supply chain problems for a multinational customer. Clean business and fair competition provide an environment conducive to innovation, which is good for both the business and its customers and, therefore, benefits society as a whole.³⁶

³⁵ OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en>.

³⁶ See UNODC Business Integrity Portal, Business Hub: <https://businessintegrity.unodc.org/bip/en/business-hub.html>

At the most basic level, corrupt payments are an additional cost for business, cutting into profits and return on investment. While difficult to calculate because of the hidden nature of corruption, estimates put this additional cost of doing business as high as 10 per cent in some markets.³⁷

Investment Promotion

Enhancing integrity promotes the confidence of investors. To paraphrase an OECD report, while governments have often focused on providing a business-friendly regulatory environment to attract business, there has been a shift to pursuing policies that require businesses to demonstrate they adhere to integrity standards in order to qualify for protections.³⁸ In fact, under international investment treaty law, corruption could disqualify the investor and/or the investment from protection under the treaty (see section on *denial of government benefits* later in the guide). States are therefore turning to investment promotion as a business incentive to promote integrity, thus further strengthening the business case.

Corruption also has a negative impact on foreign direct investment.³⁹ In order to attract quality investment, countries must actively work towards providing a transparent and ethical business culture.⁴⁰ For businesses, those that act with integrity will have more opportunities to invest in markets that promote ethical business practices.

[CASE STUDY – EGYPT: COMMITTEE FOR INVESTMENT PROMOTION]

Egypt explicitly references corruption issues in its Investment Law, stipulating that any investment project set up through corrupt means is exempt from all guarantees and incentives stipulated in the law as well as explicitly indicating corruption as a threat to the country's attractiveness to international investors.

In a demonstration of inter-institutional co-operation between authorities responsible for investment and integrity, the Egyptian Administrative Control Authority (ACA), the main national anti-corruption body, supported Egypt's Investment Promotion Agency, the General Authority for Investment (GAFI), in the introduction of investor services centres (ISCs) for foreign investors. These aim to curb corruption by simplifying registration procedures and decreasing person-to-person contact.

³⁷ OECD (2013), *CleanGovBiz: Integrity in Practice*. These costs are in addition to potential legal and reputational costs from an enforcement action. See also: <https://press.un.org/en/2018/sc13493.doc.htm>, <https://www.weforum.org/agenda/2018/12/the-global-economy-loses-3-6-trillion-to-corruption-each-year-says-u-n>

³⁸ OECD (2021), *Middle East and North Africa Investment Policy Perspectives*, OECD Publishing, Paris, <https://doi.org/10.1787/6d84ee94-en>, at chapter 11.

³⁹ Karadima, Sofia (2021), *Is corruption a barrier to FDI? It's complicated*, Investment Monitor, 29 July 2021. Available at <https://www.investmentmonitor.ai/features/fdi-corruption-investment-transparency/>

⁴⁰ OECD (2021), *Middle East and North Africa Investment Policy Perspectives*, OECD Publishing, Paris, <https://doi.org/10.1787/6d84ee94-en>, chapter 11.

Egypt set up an inter-ministerial committee for investment dispute resolution and GAFI, the investment promotion agency, put in place a mediation and grievance mechanism to address investors' complaints as well as disputes arising between investors.

Source: <https://www.oecd-ilibrary.org/sites/ee8f48ec-en/index.html?itemId=/content/component/ee8f48ec-en>

Public Procurement

Many States have made it a requirement to demonstrate strong ethical practices in order to be eligible to contract with the government. Some States have imposed “self-cleaning” requirements – a process in which companies that have previously been involved in misconduct must take specific measures to demonstrate their commitment to compliance and ethical behaviour before they can participate in future public procurement processes. Access to public markets is an immense economic opportunity for many companies. By engaging the private sector in ensuring ethical practices, States can assert influence over the required business practices they expect in order to receive government contracts.

[CASE STUDY: CZECHIA AND EUROPEAN UNION]

Article 57 of EU Directive 2014/24/EU states that contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, or are otherwise aware that that economic operator has been the subject of a conviction by final judgment of corruption, fraud, money laundering, child labour and select other offences. The directive was required to be transposed by Member States into their domestic law in 2014.

One example is Czechia's Public Procurement Act, in accordance with the transposition of Directive 2014/24/EU, which allows contracting authorities to exclude a participant from a procurement procedure if the participant has committed corruption, pursuant to section 74(1)(a) and as listed in Annex No.3.

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0024#d1e2838-65-1>
https://sovz.cz/wp-content/uploads/2017/08/act-no.-134_2016-coll.-on-public-procurement.pdf

Protecting the Company's Reputation

Corruption can also impact a company's reputation. Studies indicate that protecting reputation is the top compliance concern of the private sector and drives it to develop strong integrity programmes.⁴¹ It can take many years to build a positive reputation but a very short time to destroy it through corruption. This can affect the ability of a company to win future contracts, a reduced pool of reliable business partners, and result in exclusion or being passed over for public contracts. In extreme situations, this can lead to the demise of a company.

Large companies with varied and complex supply chains have a key role to play in fostering integrity. Beyond embedding ethical practices in their immediate business, they should (and in some cases are now legislated to do so) ensure that suppliers and partners adhere to the same standards. Due diligence, especially knowing with whom companies are working, is extremely important to protecting corporate reputations. Corruption or other abuses on the part of a partner can negatively impact an organization's reputation.

For SMEs, a reputation as an ethical business partner can be a strong differentiator and advantage when trying to win new business. In select interviews, some SMEs have stated that being able to describe their integrity controls benefitted their sales efforts, especially when trying to create new partnerships with large corporations.⁴²

[CASE STUDY: MOROCCO'S CORPORATE SOCIAL RESPONSIBILITY LABEL]

The "Label RSE" (Corporate Social Responsibility Label) of the General Confederation of Moroccan Enterprises (CGEM) is an initiative aimed at encouraging Moroccan companies to adopt responsible practices in the economic, social, and environmental realms. The CGEM's RSE label seeks to promote business sustainability and encourage companies to consider social and environmental concerns in their activities.

To be eligible for the RSE Label, companies are assessed on nine areas of commitment: respect for human rights, improvement of working conditions and industrial relations, preservation of the environment, prevention of corruption, respect for the rules of healthy competition, strengthening of governance, respect for the interests of customers and consumers, promotion of corporate social responsibility among suppliers and subcontractors, and social commitment. Companies certified by the CGEM's RSE Label are prominently displayed on the CGEM website and can experience benefits such as an enhanced reputation, increased stakeholder trust, greater appeal to investors and customers, as well as a positive contribution to the sustainable development of Morocco.

⁴¹ OECD (2020), *Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change*, at p.16. <https://www.oecd.org/corruption/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf>

⁴² Asia-Pacific Economic Cooperation (APEC) (2021), [The Value of Business Ethics for APEC SMEs: Economic Gains and Ethics Program Maturity in Health-Related Sectors During the Pandemic](#), November 2021.

Source: <https://cgem.ma/services/#labellisation>

C. ANTI-CORRUPTION PROGRAMMES

Anti-corruption programmes are a primary means that companies use to advance ethical business practices and are thus a focal point for incentives and sanctions analysis. They provide a framework for articulating the values, policies and procedures used by an enterprise to educate its employees, deliver management's message of integrity, and prevent and detect corruption within the company's business operations.

The essential elements of an effective anti-corruption programme are well-established and have been detailed in the UNODC publication [An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide](#) (2013) and the OECD Good Practices Guidance on Internal Controls, Ethics and Compliance (2009, updated and expanded in 2021).⁴³ These documents outline good practices that have become global standards or are gaining traction.

While there are many different models of anti-corruption programmes, they share certain characteristics, including:⁴⁴

- **Ethical leadership.** Meaningful ethics starts with a company's leaders, who must commit to developing an effective anti-corruption programme and a zero-tolerance policy towards corruption.
- **Assessment of corruption risks.** Companies should periodically assess and prioritize corruption risks with a clearly established process that outlines the purpose of the risk assessment as well as the scope and the roles and responsibilities of everyone in the company.⁴⁵ A corruption risk assessment should address the individual circumstances of a company, including its geographical and industrial sector of operation, its regulatory environment, its potential clients and business partners, any contracts or other dealings with

⁴³ 2021 OECD Anti-Bribery Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, [Annex II: Good Practice Guidance on Internal Controls, Ethics and Compliance](#). OECD/LEGAL/0378

⁴⁴ See UNODC Business Integrity Portal, Business Hub; Annex II of the OECD Anti-Bribery Recommendation (Good Practice Guidance on Internal Controls, Ethics and Compliance).

See also for more detailed guidance on programme practices, the [An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide](#). See also US Department of Justice (2020), *A Resource Guide to the US Foreign Corrupt Practices Act, Second Edition 2020*. Available at <https://www.justice.gov/criminal-fraud/file/1292051/download>; UK Ministry of Justice, *Bribery Act 2010 Guidance* (2012), available at <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

⁴⁵ Companies can make use of different resources as a reference point for the risk assessment process such as the [Guide for Anti-Corruption Risk Assessment](#) developed by the UN Global Compact, or the online-based [Risk Assessment Tool for Small and Medium Enterprises](#) developed by UNODC.

governments, and the use of third parties.⁴⁶ These circumstances and risks should be assessed but also regularly monitored and re-assessed.

- **Define and implement policies and procedures.** A good practice is to develop an action plan based on the risk assessment, including timelines, roles and responsibilities, and measurable targets that allow for periodic follow-up. The most urgent risks should be addressed first. Policies and procedures should also include clear prohibition of corruption and bribery, measures to prevent and detect corruption, as well as sanctions for violations and wrongdoing. Policies and procedures should apply to all directors, officers, employees, as well as to all entities over which the company have effective control, including subsidiaries. The company should consider subjecting relevant third parties, in particular business partners, to certain policies and procedures where appropriate. Once policies are in place, they need to be implemented. Responsibilities within the company should be defined and regular communication and training for all employees on the policies conducted. An internal control system should be established with reporting channels (whistle-blowing) to prevent and detect wrongdoing.
- **A strong and effective reporting protection framework.** Any director, officer, employee and, where appropriate, any business partner should be able to report any suspicion of misconduct through internal, accessible, visible, confidential and, where appropriate, anonymous reporting channels. Any reporting person shall be protected against any form of retaliation.
- **Measure progress and review policies.** An anti-corruption programme is a process of learning and requires continuous assessment and improvement. As part of the monitoring, corruption risks should be re-evaluated, and policies adjusted as needed. A company should also develop testing approaches aimed at assessing the effectiveness of its policies and procedures, both on a regular basis and upon specific business developments (for instance a change of activity or a change of structure).
- **Communicate efforts to strengthen business integrity.** It is recommended that companies publicly report on efforts and engage in collective action by joining working groups and engaging with others. Establishing an effective anti-corruption programme is not a linear process, but rather requires continuous improvement.

⁴⁶ 2021 OECD Anti-Bribery Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, [Annex II: Good Practice Guidance on Internal Controls, Ethics and Compliance](#). OECD/LEGAL/0378

Internal Investigations

A key component of an effective anti-corruption programme is responding to problems and breaches that arise. Companies should detail the process for conducting an internal investigation, specify who is responsible for leading the investigation, outline when external counsel is required to be involved, and define employees' rights and expectations during the course of an investigation. Finally, the results of the investigation should be communicated to the appropriate decision-makers in the company so that remedial measures can be taken to address any issues that may be uncovered. In certain jurisdictions, there may also be enforcement-related incentives – for example, a reduced sentence or even a decision to not prosecute the company at all – if the company self-reports the misconduct to the authorities, cooperates with the investigation, and remediates to prevent future misconduct. It may not be possible to qualify for the reduced sanctions or the declination to prosecute without an effective anti-corruption programme to help the company detect, investigate, and remediate misconduct. Professional associations and other civil society organizations can assist States in articulating their expectations for internal investigations.⁴⁷

D. CONSIDERING SMALL AND MEDIUM-SIZED ENTERPRISES (SME)

While SMEs may not have the same resources as larger companies, including dedicated integrity units or personnel, there has been much progress over the last number of years to assist SMEs in a “race to the top” towards integrity. States can assist in driving integrity for SMEs by considering their different profiles and providing them with resources so that they can implement adequate anti-corruption procedures adapted to their risk profile.

On a global scale, SMEs represent about 90 per cent of businesses and more than 50 per cent of employment worldwide.⁴⁸ As such, they are integral players in the implementation of international integrity standards, including UNCAC and the OECD Anti-Bribery Convention. Many SMEs are also family businesses, making them intertwined and inextricable from the communities they serve. The promotion of integrity among SMEs transcends markets and has a social dimension which can positively impact the lives of entire families and communities.

States have an important role to play in providing smart anti-corruption guidance and tools for SMEs including training, awareness, and educational activities. States should also clearly articulate their

⁴⁷ For example, the Canadian Bar Association has published guidance on how to conduct an effective internal investigation: <https://www.cba.org/Publications-Resources/Practice-Tools/Guide-for-Internal-Investigations-of-White-Collar>. Similarly, the Bar Council of Paris, France, has adopted a new Appendix XXIV of the Paris Bar Internal Regulations: Handbook for Lawyers who are tasked with running an internal investigation: <https://www.avocatparis.org/conseil-de-l-ordre/annexe-xxiv-vademecum-de-lavocat-charge-dune-enquete-interne-0>. This appendix was adopted on 13 September 2016 and amended on 10 December 2019. This Appendix was complemented by a Guide (Guide: the French lawyer and internal investigations, issued on 12 June 2020) aimed at identifying best practices to be implemented by lawyers in conducting internal investigations: https://www.cnb.avocat.fr/sites/default/files/cnb_guide_the_french_lawyer_and_internal_investigations.pdf

⁴⁸ World Bank, *Small and Medium Enterprises (SMEs) Finance*. <https://www.worldbank.org/en/topic/sme/finance>

expectations for SMEs in developing and implementing anti-corruption programmes that provide transparent and easily accessible country level guidance for SMEs that speaks to their particular realities.⁴⁹

SMEs often find themselves intertwined in the supply chains of larger organizations. Demonstrating their integrity credentials is crucial for SMEs in order to obtain business from these larger organizations. Notably, the threat of legal prosecution may not be effective in dissuading SMEs from engaging in corruption. Rather, access to business opportunities is reportedly a more effective driver. States may consider approaching SMEs through contractual obligations or forcing large global companies to be responsible for the integrity throughout their supply chains. SMEs, who have an economic interest in participating in these supply chains, may then find the business case for integrity more powerful as it opens more doors to potential business partners.

States should also consider encouraging and rewarding SMEs with higher ethics maturity through various incentive programmes. While States should take into account the particularities and differences of SMEs as compared with larger organizations, they should be careful not to create carveouts that would allow SMEs to maintain unethical practices.

[CASE STUDY: BUSINESS ETHICS FOR APEC SMES INITIATIVE]

Launched in 2010, the Business Ethics for APEC SMEs Initiative is the world's largest public-private partnership to strengthen ethical business practices in the medical device and biopharmaceutical sectors. The collective work of over 2,000 stakeholders has enabled this initiative to: (1) identify and set best practices, (2) facilitate adherence to these practices through capacity building for SMEs, and (3) monitor / evaluate progress within each APEC economy. In addition to the advancement of high-standard codes of ethics for nearly 20,000 enterprises, the initiative has championed research into the business case for corporate integrity with a focus on small and medium enterprises (SMEs). Published in a 2021 report titled "The Value of Business Ethics for APEC SMEs", a detailed assessment of several hundred SMEs across the APEC region found that those with high indicators of ethics maturity had stronger economic performance during the COVID pandemic. They were more likely to grow revenues, add employees, increase employee wages, as well as grow revenue from international customers and expand their businesses into new markets. Equally impactful, the analysis also showed that although the average maturity was higher for companies with over 100 employees, even SMEs under that size can develop medium maturity programmes and experience similar economic benefits.

Source: <https://www.apec.org/publications/2021/11/the-value-of-business-ethics-for-apec-smes>

Source: <https://mcprinciples.apec.org/about/>

⁴⁹ See more at: OECD (2022), *Toolkit for raising awareness and preventing corruption in SMEs*, OECD Business and Finance Policy Papers, OECD Publishing, Paris, <https://doi.org/10.1787/19e99855-en>.

[CASE STUDY: OVERVIEW OF THE OECD TOOLKIT FOR RAISING AWARENESS AND PREVENTING CORRUPTION IN SMEs]



Who should implement these initiatives?



Source: OECD (2022), *Toolkit for raising awareness and preventing corruption in SMEs*, OECD Business and Finance Policy Papers, OECD Publishing, Paris, <https://doi.org/10.1787/19e99855-en>. This infographic has been designed using assets from Freepik.com.

E. TRANSPARENCY, ACCOUNTABILITY AND PUBLIC REPORTING

Public reporting is a central tool for communicating corporate engagement on a range of sustainability issues, including efforts to prevent and counter corruption. Public reporting on anti-corruption programmes is grounded on several assumptions – in particular, that transparency can improve internal practices, strengthen public credibility, and provide necessary information to investors and other stakeholders. Reporting provides an opportunity for awareness raising within an organization and an increased focus on leadership and resources. It can also allow for benchmarking and improvements to be made over time. While increasing transparency is on the whole something very positive, one study acknowledges that increased transparency can also expose businesses to greater risk, potentially impeding progress.⁵⁰

UNGC Communication on Progress

One of the leading public reporting frameworks is the Communication on Progress (CoP) established by the UN Global Compact.⁵¹ The CoP⁵² is the primary mechanism for participating companies of the UN Global Compact to demonstrate progress made in the areas of governance, human rights, labour, environment and anti-corruption against the Ten Principles and the Sustainable Development Goals (SDGs). The CoP is an annual questionnaire⁵³ that companies complete to update on their efforts to embed the Ten Principles into their strategies and operations, as well as efforts to support societal priorities. The questionnaire provides a standardized way to measure progress, facilitate recognition and transparency and compare corporate actions. The questions are designed to highlight gaps and challenges, showcase successful initiatives and inspire future action, while the complementary data platform allows participants to track progress over time.

The CoP seeks to:

- 1) build credibility and brand value by showcasing the commitment to corporate sustainability, the Ten Principles of the UNGC, and the Sustainable Development Goals (SDGs);
- 2) Measure and demonstrate progress in a consistent and harmonized way;
- 3) Obtain insight, learn, and continuously improve performance of participants; and
- 4) Compare progress against peers through access to one of the world's largest sources of free and public corporate sustainability data.

As part of the CoP mechanism, the UN Global Compact also requires participating companies to report on internal anti-corruption policies and programmes, on the effectiveness of their implementation and

⁵⁰ UN Global Compact Network UK (2020), *Debating Disclosure: The Pros and Cons of Corporate Transparency*, https://www.unglobalcompact.org.uk/wp-content/uploads/2021/12/GCN_UK_Debating_Disclosure_Briefing_2020-1-003.pdf

⁵¹ UN Global Compact (2023), *Communication on Progress Guidebook*. <https://unglobalcompact.org/library/6107>

⁵² UN Global Compact's Reporting Framework: [Reporting | UN Global Compact](#)

⁵³ UNGC (2023), *Communication on Progress Questionnaire*. <https://unglobalcompact.org/library/6106>

on any involvement in collective action initiatives against corruption. To publicly report anti-corruption efforts is an opportunity for companies to demonstrate their level of accountability and commitment to strengthening business integrity.

ESG Reporting

Companies are increasingly pursuing responsible conduct and reporting on their actions for multiple reasons. Environmental, social and governance (ESG) information is guiding the decisions of mainstream investors, as well as those of consumers, local communities and civil society organizations that are expecting greater action, transparency and accountability from business. Once a purely voluntary activity, there is a trend towards mandatory non-financial reporting, particularly given the increasingly complex risk environments in which businesses operate and the rapid rise of disclosure requirements. Today, some of the largest ESG framework providers are the Global Reporting Initiative (GRI) and the European Sustainability Reporting Standards, which require companies to report on a range of governance factors, including business ethics and corporate culture, anti-corruption and anti-bribery, the protection of whistle-blowers, and activities related to political influence including lobbying⁵⁴.

Responsible Political Influence

Businesses may also be political actors, notably when involved in lobbying and influence activities, including in election campaigns and financing of political parties. Across various jurisdictions, this form of activity may be regulated and subject to disclosure requirements. It is also susceptible to political backlash when in disaccord with public policy positions. In many respects, today's businesses might also be viewed as social actors – with responsibilities that balance bottom-line financial results with societal and sustainability impacts. This generally heightens expectations for upholding values, promoting integrity and transparency, and expanding multi-stakeholder engagement. Such a role also holds implications for a range of corporate responsibility initiatives, including support for the Sustainable Development Goals.

V. THE MULTISECTORAL APPROACH TO ENHANCING BUSINESS INTEGRITY

Achieving ambitious public sector goals requires the confluence of multiple actors and, in the case of anti-corruption objectives, the participation of the private sector is of vital importance. This represents an opportunity for governments to co-design mechanisms and tools that adequately respond to the efforts and capabilities of those targeted by anti-corruption measures. Promoting business integrity through a

⁵⁴ European Commission, "COMMISSION DELEGATED REGULATION (EU) .../... of 31.7.2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards" (2023), [csrd-delegated-act-2023-5303_en.pdf \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2023/5303/en/pdf)

multisectoral approach that involves multiple stakeholders, including government entities, businesses, civil society organizations, and other relevant actors, represents an opportunity to enhance business integrity. Tackling corruption is possible through a variety of approaches including collective action, national anti-corruption strategies, public sector support for private sector capacity building, and more.

A. COLLECTIVE ACTION APPROACHES

“Collective action” refers to collaborative efforts involving multiple stakeholders, including government entities, businesses, civil society organizations, and other relevant actors, to collectively address corruption challenges and promote integrity.

The concept of collective action recognizes that countering corruption requires the joint commitment and coordinated action of various parties. It emphasizes the importance of collaboration, partnership, and shared responsibility to achieve meaningful impact.

Collective action approaches can take various forms, such as sectoral initiatives, industry alliances, anti-corruption coalitions, public-private partnerships, and collaborative platforms. At its heart, anti-corruption collective action brings companies and other concerned stakeholders together to tackle shared problems of corruption, raise standards of business integrity and level the playing field between competitors.⁵⁵

Collective action initiatives have gained momentum in recent years with over 302 initiatives covering 25 sectors and 85 countries in effect as of 2023.⁵⁶ It is also recognized and encouraged through various legal instruments including as a potential tool for strengthening business integrity, such as in the 2021 UNGASS political declaration and the 2021 OECD Anti-Bribery Recommendation.⁵⁷ Also in 2021, the United Nations Global Compact has developed specific guidance: “Uniting against Corruption: A Playbook on Anti-Corruption Collective Action”⁵⁸.

Collective action takes a variety of forms and can be designed and implemented in many ways according to multiple dimensions.⁵⁹ Collective action is unique, flexible, dynamic and constantly evolving. It can adapt to respond to the challenges it seeks to address. Indeed, global resources have stated that “governments and private sector stakeholders can improve the level of anti-corruption awareness

⁵⁵ Basel Institute on Governance, *Private Sector and Collective Action*, FAQs <https://baselgovernance.org/private-sector>

⁵⁶ Basel Institute on Governance, B20 Collective Action Hub - <https://collective-action.com/>

⁵⁷ Both the 2021 UNGASS political declaration and the 2021 OECD Anti-Bribery Recommendation explicitly recognise collective action. 2021 OECD Anti-Bribery Recommendation, Section XII(iv) recommends that States consider fostering, facilitating, engaging, or participating in anti-bribery collective action initiatives with private and public sector representatives, as well as civil society organisations. Specifically, Raising awareness of foreign bribery among the private sector (Section IV.ii), Addressing the Demand Side (Section XII.iv), Actions by Business Organisations and Professional Associations (Good Practice Guidance on Internal Controls, Ethics and Compliance (Annex II).B.4))

⁵⁸ The publication can be accessed here: [Uniting against Corruption: A Playbook on Anti-Corruption Collective Action](https://ungc-communications-assets.s3.amazonaws.com/docs/publications/2021_Anti-Corruption_Collective.pdf).

⁵⁹ United Nations Global Compact (2021), *Uniting Against Corruption: A Playbook on Anti-Corruption Collective Action*. https://ungc-communications-assets.s3.amazonaws.com/docs/publications/2021_Anti-Corruption_Collective.pdf

within companies, including SMEs, if they support, encourage, and/or get involved with collective action initiatives. Government authorities alone often do not have the same knowledge of the risks and needs of private sector entities operating in a certain industry. Business organizations and associations can also be important partners where they contribute knowledge of the sectors/industries in which their members operate and may provide the leadership needed to bring businesses together. Large companies can build partnerships with civil society organizations or professional associations to develop training and materials for SMEs in their supply chains.”⁶⁰

Collective action can be especially impactful when it targets the public sector itself. Collective action can “complement, enhance and further develop current and future laws and regulations whenever the latter are weakly enforced or simply non-existent.”⁶¹ It might even be said to be evolving toward a “hybrid co-regulation” where formal regulation efforts at a global and national level have increasingly been complemented by self-regulation efforts stemming from proactive cooperation between business actors from specific sectors or geographies.⁶²

[CASE STUDY – B20 COLLECTIVE ACTION HUB, BASEL INSTITUTE ON GOVERNANCE]

The B20 Collective Action Hub is a global resource centre on anti-corruption collective action. It offers a range of anti-corruption publications and tools, plus a database of over 300 collective action initiatives and projects designed to raise standards of integrity and fair competition. The B20 Hub was launched in 2013, following a mandate from the B20 group of business leaders for the Basel Institute on Governance to develop and maintain this hub in collaboration with institutional partners. All resources are freely accessible, and a helpdesk function is available for users to ask specific questions.

Source: www.collective-action.com

Civil society organizations such as the Basel Institute on Governance have “published guidance for corruption prevention authorities on how to engage the private sector in collective action against corruption. The guidance emphasizes that governments should collaborate with the private sector on corruption prevention activities, support and incentivize such activities, and demonstrate leadership by becoming a participant in collective action.”⁶³

The United Nations Global Compact has also established a collective action six-step approach (Prepare, Introduce, Develop, Implement, Evaluate and Scale & Sustain, and contains a series of sub-steps for

⁶⁰ OECD (2022), Toolkit for raising awareness and preventing corruption in SMEs, OECD Business and Finance Policy Papers, OECD Publishing, Paris, <https://doi.org/10.1787/19e99855-en>

⁶¹ United Nations Global Compact (2021), *Uniting Against Corruption: A Playbook on Anti-Corruption Collective Action*. At p.10. https://ungc-communications-assets.s3.amazonaws.com/docs/publications/2021_Anti-Corruption_Collective.pdf

⁶² United Nations Global Compact (2021), *Uniting Against Corruption: A Playbook on Anti-Corruption Collective Action*. At p.10. https://ungc-communications-assets.s3.amazonaws.com/docs/publications/2021_Anti-Corruption_Collective.pdf

⁶³ OECD (2022), Toolkit for raising awareness and preventing corruption in SMEs, OECD Business and Finance Policy Papers, OECD Publishing, Paris, <https://doi.org/10.1787/19e99855-en>. See also: Basel Institute on Governance (2022), [Engaging the private sector in Collective Action against corruption](#), Basel, p.2

consideration) which can be used as a guide to design and implement collective action initiatives.⁶⁴

[CASE STUDY – COST UGANDA]

CoST – the Infrastructure Transparency Initiative is a global initiative improving transparency and accountability in public infrastructure. CoST Uganda is a national chapter of CoST International, a charity based in the United Kingdom.

Established in 2013, the specific objectives of CoST Uganda are:

- *To create a strategic platform for information sharing and joint advocacy with key stakeholders at different levels in the delivery of public infrastructure projects.*
- *To promote transparency, accountability and value for money in the delivery of public infrastructure through increasing access to and interpretation of disclosed project and contract data.*
- *To collaborate with procurement entities to integrate CoST core features in the delivery of public infrastructure in Uganda.*

CoST Uganda won the [2023 Southern Africa Anti-Corruption Collective Action Award](#), presented by the Basel Institute on Governance, for its success in improving interactions between the private sector and government, resulting in significant policy, sector and project-level changes in the delivery of public infrastructure projects.

Collective action can also be a powerful option when “the influence of one individual company is not enough to change the *status quo*...[and]...the only available alternative is to join forces with other companies and start collaborating. One company alone may not be able to address the quality or integrity of the standards and practices of the business environment in which it operates, for example, weak, insufficient or non-existent institutional and governance frameworks.”⁶⁵

[CASE STUDY – NIGERIA: MARITIME ANTI-CORRUPTION NETWORK]

The Maritime Anti-Corruption Network (MACN) in collaboration with the Convention on Business Integrity, has worked to keep seafarers calling at Nigerian ports safe from corrupt demands since 2019. The objective of the initiative was to address corruption in Nigeria’s port sector, which posed significant risks to shipping companies, taking forms such as extortion, harassment, and threats of violence. The initiative aimed to bring together shipping companies, civil society and government to work towards improved transparency, a stronger governance and accountability frameworks for port call procedures, and increase the ease of doing business in Nigerian ports. A key contributor to success was the Anti-Corruption HelpDesk concept, a 24/7 public-private real-time resolution-mechanism. If a stakeholder deviates from standard port operating procedures, a MACN member can contact the HelpDesk team which can then escalate the matter in the various

⁶⁴ United Nations Global Compact (2021), *Uniting Against Corruption: A Playbook on Anti-Corruption Collective Action*. https://ungc-communications-assets.s3.amazonaws.com/docs/publications/2021_Anti-Corruption_Collective.pdf

⁶⁵ United Nations Global Compact (2021), *Uniting Against Corruption: A Playbook on Anti-Corruption Collective Action*. At p.11. https://ungc-communications-assets.s3.amazonaws.com/docs/publications/2021_Anti-Corruption_Collective.pdf

government agencies affected. More than 800 ships have used the HelpDesk, reporting 129 incidents where a corrupt demand has been made. Of all the cases, 99 per cent have been resolved. Since 2021, vessels have reported an average case resolution time of 1 to 8 hours, an improvement over the 7-10 days it took prior to the HelpDesk structure. For a shipowner, the operational costs (staying in port, being delayed, processing paperwork) have therefore been reduced from approximately US\$150,000 – US\$20,000 per port call.

Source: <https://macn.dk/nigeria/>

Collective action has benefits for all parties involved, including:

- **Creating a deeper understanding of corruption issues.** A multidisciplinary approach to countering corruption allows for a more comprehensive understanding of the phenomenon. Knowledge from various disciplines such as political science, law and public administration, combined with disciplines such as business studies, economics, business administration and finance, make it possible to identify innovative solutions tailored to reality.
- **Consolidating knowledge and financial and technical resources to achieve greater impact.** The experience gained through lessons learned in the public and private sectors offer an important source of knowledge in countering corruption. With increasing collaboration models including public-private partnerships, joint ventures, foreign investments, socio-political engagement of companies and the growing commitment of companies to implement ESG principles, integrating knowledge from both side is gaining importance to advancing successful initiatives.
- **Creating solutions that are perceived as more credible, acceptable and are more sustainable.** Solutions to corruption problems are more credible, acceptable and sustainable when they take into account the challenges faced by the private sector in implementing such solutions. For example, national anti-corruption strategies require multi-stakeholder participation throughout the entire cycle of the strategies, from design to implementation. Involving the private sector in the formulation of these strategies allows for better reflection of the needs, challenges and opportunities of the private sector. It also promotes the implementation of anti-corruption strategies by companies, since by getting involved in their development process, they will make the anti-corruption strategies their own rather than having them imposed upon them. Rather, these policies can become a set of strategies that the company owns and are responsible for.
- **Help ensure fair competition and a level playing field for all stakeholders.** Through collective action approaches, companies are required to consider their broader integrity commitments among a diverse set of stakeholders, including policymakers, regulators, investors and society at large. This promotes awareness of the governance dimension of competition law and policy and thus the importance of maintaining a balance between competition policies and corporate practices to enhance competition and create a level playing field for investors, employees, customers and suppliers.
- **Provide a framework for international operation and exchange of best practices.** Given the diversity of contexts and challenges faced by the business community around the world in

adopting anti-corruption commitments and solutions at the global, regional and national levels, their experience is a valuable source of knowledge from which others can learn. Whereas government regulation is a top-down approach, collective action initiatives require a commitment by companies and therefore a bottom-up approach. The actions of companies are not limited to internal measures such as adopting anti-corruption programmes or codes of ethics, but transcend to the external level through proposals aimed at building an integrated business environment in which transactions with their stakeholders are governed by high ethical standards.

- **Create a more stable and enabling business environment.** Collective action makes it possible to propose ambitious interventions in strategic economic sectors vulnerable to corruption where integrity and transparency are essential for their stability and for ensuring a State's economic and social well-being.
- **Complement existing anti-corruption efforts in vulnerable regions and sectors, where industry or government-led regulations are not robust.** The capabilities of companies in terms of transparency, integrity and anti-corruption have increased considerably over the years. Their role is not limited to being the targets of regulators' rules. Often, the regulatory framework has fallen short in addressing sector specific corruption issues. Companies have therefore developed sector specific policies that allow them to carry out their activities in an ethical and transparent manner. The public sector can learn from these private sector advances and good practices when formulating laws, regulations and policies.

a) Anti-Corruption Declarations

Anti-corruption declarations are one of the main types of collective action approaches to countering corruption. They are “voluntary, public commitments in which signatories jointly agree not to engage in corruption during a specific project or transaction. Their objective is to open up a space for frank discussions about the different corruption risks experienced specifically by individual companies and also generally within the sector. Discussing these critical issues makes it possible to collectively set behaviour expectations for all stakeholders in the group. The practices should be contrasted against the principles stated in the anti-corruption declaration to draw a clear, public line between what is acceptable and what is not.”⁶⁶

b) Integrity Pacts

Integrity pacts are a multi-stakeholder tool for strengthening integrity in public procurement. As the name suggests, they are a contractual agreement between a government agency procuring goods or services and companies that wish to participate in the procurement in which all parties commit to

⁶⁶ United Nations Global Compact (2021), *Uniting Against Corruption: A Playbook on Anti-Corruption Collective Action*. At p.12. https://ungc-communications-assets.s3.amazonaws.com/docs/publications/2021_Anti-Corruption_Collective.pdf

certain minimum standards of integrity and transparency. Compliance is usually overseen by an independent monitor, often from civil society, with sanctions for non-compliance.

The integrity pact concept originated with the non-governmental organization *Transparency International* in the 1990s and has since been applied in at least 32 countries and 160 major public tenders in voluntary jurisdictions alone.⁶⁷ Several countries have adopted regulations that mandate the use of integrity pacts in certain public procurement projects, often over a particular value.⁶⁸ Core elements for an integrity pact include a pledge by the government and bidders not to offer or accept bribes, “revolving door” restrictions on post-government employment, procurement transparency requirements, disclosures regarding agents and intermediaries, and appointment of an independent monitor. Specific details, which can vary significantly, are spelled out in a formal contract document. Non-compliance may require a bidder to withdraw from a project, and other sanctions may also be applied.⁶⁹

Integrity pacts may be project-specific, sectoral or applied on a government-wide basis. Project-specific pacts have focused on infrastructure development relating to water supply and other public services. Integrity pacts have also been used to strengthen integrity practices on a sectoral basis, committing participating companies to minimum integrity standards in their interactions with government. In addition, a number of States have adapted the integrity pact concept for use on a government-wide basis.

c) Principles-Based Initiatives

Principles-based initiatives are another common form of collective action. They are “long-term, voluntary agreements around common standards in which stakeholders agree not to engage in corruption in their daily business at a sectoral, local, or national level. Sometimes there may be an additional goal of incentivizing the government to start implementing much needed anti-corruption laws and norms, or to align with regional or global standards. This type of initiative allows for the slow, long-term process of trust-building among competitors of many types and sizes (e.g. multinational enterprises, large local companies and SMEs).”⁷⁰

⁶⁷ *Basel Institute on Governance, B20 Collective Action Hub, “Integrity Pacts around the world”*. <https://collective-action.com/explore/integrity-pacts/about/around-world/>

⁶⁸ India, Pakistan and Mexico all have regulations requiring the use of integrity pacts and have made use of them on numerous occasions. See: *Basel Institute on Governance, B20 Collective Action Hub “Regulations and policy support for Integrity Pacts”*. <https://collective-action.com/explore/integrity-pacts/about/regulations-and-policy/>

⁶⁹ Practical issues in designing an integrity pact relate to the specific standards and procedures used to ensure integrity, the scope and nature of procurement transparency, sanctions for non-compliance, and the selection and authority of an independent monitor. A monitor’s independence, experience and resourcing are critical ingredients essential to a pact’s operational success as well as its public credibility.

⁷⁰ United Nations Global Compact (2021), *Uniting Against Corruption: A Playbook on Anti-Corruption Collective Action*. At p.12. https://ungc-communications-assets.s3.amazonaws.com/docs/publications/2021_Anti-Corruption_Collective.pdf

B. CO-DESIGNED NATIONAL POLICIES AND LEGAL FRAMEWORKS

Public authorities can work with the private sector and other stakeholders when designing national policies and legal frameworks to counter corruption. Various stakeholders may have valuable information and useful recommendations for crafting more effective strategies better tailored to their country's particular needs and circumstances. A broad range of voices can help build a common vision and increase the legitimacy of the laws and policies, including buy-in from the population. Those who feel that their voices were heard in the creation of a policy are more likely to be allies in pushing the strategy forward and ensuring its effective implementation.⁷¹

a) National Anti-Corruption Strategies

The private sector can contribute substantially to the life cycle of a national anti-corruption strategy, beyond mere compliance with its provisions. Starting from the corruption risk assessment, governments, can obtain valuable information related to the corruption challenges faced by the business community in their country. During the formulation of anti-corruption priorities and objectives, companies can recommend policies and legal frameworks that are needed to address corruption schemes affecting their enterprises and suggest practical initiatives to enhance business integrity. Businesses can guide governments to ensure policy tools are implementable and practical rather than theoretical and unenforceable.

Moreover, acting collectively can generate a sense of ownership and commitment in both the public and the private sectors, critical for the effective implementation of the strategy. In this phase, cooperation can take the form of joint anti-corruption training sessions, promotion of shared values and ongoing dialogue for the development of regulations. Finally, the private sector can play a key role in monitoring and evaluating the impact of the strategy by holding the government accountable and by providing feedback on the areas with direct implications in their operations.

[CASE STUDY – PARAGUAY: PUBLIC PROCUREMENT]

Paraguay was hit hard by the COVID-19 pandemic, and the public demanded insight into public spending that had hit record numbers. In response, the [Dirección Nacional de Contrataciones Públicas](#) (DNCP), Paraguay's public procurement agency, modernized its system including tools such as a new policy on buying frequently purchased goods and a red flags dashboard. Paraguay made information and dashboards on emergency procurement publicly available within weeks of the pandemic starting as well as offering new guidance and

⁷¹ UNODC (2015), *National Anti-Corruption Strategies: A Practical Guide for Development and Implementation*. https://www.unodc.org/documents/corruption/Publications/2015/National_Anti-Corruption_Strategies_-_A_Practical_Guide_for_Development_and_Implementation_E.pdf

coordination for all procuring agencies. The government implemented more controls in COVID-19 purchases and included COVID-19-related items in their virtual catalog for faster and better emergency purchasing. In addition, civil society organizations, journalists, and the public are better able to monitor government spending as access to information is in an open data format and available across the entirety of the procurement cycle.

Source: <https://www.open-contracting.org/impact-stories/impact-paraguay/>

Source: <https://www.open-contracting.org/2021/05/03/calling-for-accountability-how-paraguays-open-emergency-procurement-can-help-restore-public-trust/>

b) Anti-Corruption Legal Frameworks

Companies can play an active role in the design and formulation of regulatory frameworks to promote integrity and counter corruption. This is especially so where the capacities of regulatory bodies are limited. Companies can engage with public institutions to develop a hybrid form of regulation based on public law (hard law) and private agreements (soft law). In this way, collective action can co-design both sanctions and incentives.⁷² Co-designing regulatory frameworks can also be used as an incentive for the private sector to join such kinds of initiatives.

[CASE STUDY – URUGUAY: LEGISLATIVE ASSISTANCE]

The private sector was called upon to provide legislative assistance in the formulation of anti-corruption regulations in the private sector. The draft anti-corruption law contemplates that the existence, execution and effectiveness of transparency and business ethics programmes or anti-corruption mechanisms within companies, mitigates the sanctions for acts of corruption. In the case of SMEs that often do not have the capacity to develop this type of programme, the existence of educational and awareness-raising processes that promote transparency, integrity and business ethics within these types of companies, allows for sanctions for corrupt acts to be implemented on a graduated scale. It is proposed that the Uruguayan State can grant benefits to companies that collaborate in a timely manner with the provision of information in relation to corrupt behaviors. The draft anti-corruption law contemplates fines, disqualifications, and other administrative dispositions for companies that commit acts of corruption. By involving the private sector, the State has ensured the law is reflective of realities and provided the private sector with ownership and accountability in the implementation of the law.

Source: United Nations Global Compact.

⁷² Pieth, Mark. "Collective Action and Corruption." Collective Action: Innovative Strategies to Prevent Corruption. Zurich/St.Gall: Dike, 2012. 3–22. https://baselgovernance.org/sites/default/files/2019-06/190613_WP_13.pdf

[CASE STUDY – KENYA: STRENGTHENING THE IMPLEMENTATION OF THE CODE OF ETHICS FOR BUSINESS IN KENYA & OPERATIONALIZATION OF THE BRIBERY ACT OF 2016]

Global Compact Network Kenya, as a convener of the private sector in Kenya, has supported the Government in drafting, publishing, and publicizing various national anti-corruption policies and continues to influence the legislative ecosystem as a way of strengthening business integrity. In the absence of legislation, businesses in Kenya championed the Code of Ethics for Businesses in Kenya as an initiative to promote and enhance the ethics and integrity of business conduct in line with the Ten Principles of the UN Global Compact in the areas of human rights, labour, environment and anti-corruption. This collective action initiative was endorsed in 2012 and acted as an integrity roadmap for more than 800 businesses that are signatories to the Code in the absence of the specific relevant legislation. It now acts as a complementary tool to the legal frameworks that have since stemmed from the Bribery Act of 2016. Kenya's Bribery Act, 2016 places obligations on public and private entities to put in place procedures that are appropriate to their size, scale and nature of operations, for prevention of bribery and corruption. It is an offence for an entity to fail to put in place the bribery and corruption prevention procedures as required under the Act. The Ethics and Anti-Corruption Commission (EACC) is required under the Act to assist public and private entities to develop and implement the procedures for prevention of bribery and corruption. The Kenyan EACC has developed guidelines that private entities are required to adopt. Through the collective action, Kenya has drafted and enacted the Bribery Regulations and Guidelines of 2022 to operationalize the Bribery Act through a multi-stakeholder consultative process. The regulations lay out the procedures and mechanism for effective implementation of the Bribery Act while the guidelines assist private and public entities in the preparation of procedures for the prevention of bribery and corruption.

Source: [The Bribery Act, 2016](#)

Source: [The Bribery Guidelines, 2022](#)

Source: [Whistleblower Protection Bill of 2021](#)

Source: [Capital Markets \(Whistleblower\) Regulations 2022](#)

Source: [Code of Ethics for Business in Kenya](#)

c) Disseminating Regulations and Good Practices

States need to not only adopt and enforce anti-corruption laws and regulations but must also communicate and disseminate them. States should provide businesses with guidance about the compliance requirements of legislation, how to design effective anti-corruption programmes and policies to respond to the law, and best practices to counter corruption. In determining best practices, the private sector should be involved early to assist governments with understanding the on-the-ground realities, their capacity and limits for implementation, and a forward-looking plan for how to continuously improve best practices. Communicating expectations is key and must be done by the State to the private sector and vice versa.

[CASE STUDY - BRAZIL: NATIONAL INTEGRITY AWARD FROM MINISTRY OF AGRICULTURE, CALLED “MAPA+INTEGRIDADE”]

The National Integrity Award is the recognition awarded to companies by the Ministry of Agriculture in Brazil. It was created with the aim of promoting, recognizing and rewarding practices of integrity by companies in the agribusiness sector from the point of view of social responsibility, sustainability and ethics, as well as curbing practices of fraud, bribery and corruption. The award aims to promote integrity, ethics and sustainability programmes; raise awareness among agribusinesses and cooperatives of the important role they play in combating corrupt and unethical competitive practices; recognize the integrity and ethical practices implemented by agribusinesses and cooperatives in the domestic market by encouraging them to participate in the Comptroller General’s (CGU) Pro-Ethics Award; and reduce the risks of fraud and corruption in public-private sector relations related to agribusiness.

Source: <https://www.gov.br/agricultura/pt-br/assuntos/integridade/selo-mais-integridade>

C. LEARNING FROM EACH OTHER

Countering corruption through a multisectoral and multi-stakeholder approach fosters the ability to learn from one another. The private sector, in as much as it can guide public authorities, can equally learn from them. The same is true of the public sector. Governments can learn from private-sector actors through a variety of means, including training on anti-corruption issues, advising on risk factors, and even in legislative drafting to ensure legal frameworks respond to the on-the-ground requirements.

Capacity building is another area where the public and private sector can learn from each other. Capacity building occurs in both directions, from public to private entities and from private to public entities. For example, in Ukraine, the Global Compact Local Network obtained support from the Ministry of Digitalization to produce a video course with a key objective: to promote the principles of honest work in small and medium-sized enterprises. Conversely, as an example of private sector-led capacity building, in Ecuador, compliance officers of the World Compliance Association, a non-profit association of compliance professionals and organizations, coordinated a training programme for prosecutors and judges on how to evaluate the effectiveness of anti-corruption programmes.

[CASE STUDY – UKRAINE: PUBLIC SECTOR SUPPORTING CAPACITY BUILDING OF COMPANIES]

UN Global Compact Ukraine launched the “Anti-Corruption” video course with a pivotal objective – fostering the principles of honest work within small and medium-sized enterprises. By instilling these principles, these businesses become vital links in the supply chains of larger

Ukrainian and international companies, thereby contributing to a robust and healthy economy in Ukraine.

The Ministry of Digital Transformation of Ukraine and the Entrepreneurship and Export Promotion Office provided crucial support for the creation of the course. Accessible through the Diia.Business portal and Diia.Digital education, the video course comprises five modules, each lasting 5-8 minutes, enabling swift and effective learning.

This collaboration, a part of the Anti-Corruption Collective Action programme of UN Global Compact Ukraine, involved over 50 experts from both private and public sectors dedicating over two years to its development. The course draws from the ‘Typical Anti-Corruption Programme of a Legal Entity’ from the National Agency on Corruption Prevention (NACP), the recommendations of the UN Global Compact on collective actions against corruption, and international norms.

[CASE STUDY – ECUADOR: “CISNE” TRAINING FOR THE GENERAL ATTORNEY OF THE STATE AND COUNCIL OF THE JUDICIARY IN ECUADOR ON CRIMINAL COMPLIANCE]

Project CISNE is an initiative of the Pan-American Development Foundation that sought to train public officials in the reforms of the Integral Organic Criminal Code (Código Orgánico Integral Penal). The project's objectives include:

- *Train officials of the State Attorney General’s Office and the Council of the Judiciary on anti-corruption programmes, the new Criminal Code reforms and their application.*
- *Provide practical tools to better understand criminal compliance and risks in Ecuador.*
- *Share international experience regarding criminal compliance.*

Various lawyers from Ecuador and Spain collaborated on this project. The initiative successfully trained more than 30 judges and 30 prosecutors from different provinces in Ecuador in matters of corporate criminal compliance. The project allowed for an extensive exchange of experiences on the criminal liability of legal persons, encouraging prosecutors and judges to reflect on how the latest reforms to the criminal code can be implemented.

Source: <https://www.padf.org/wp-content/uploads/2022/03/Anti-Corruption-English.pdf>

[CASE STUDY – THE GLOBAL INITIATIVE TO GALVANIZE THE PRIVATE SECTOR AS PARTNERS TO COMBAT CORRUPTION: THE ANTI-CORRUPTION LEADERS HUB]

The [Anti-Corruption Leaders Hub](#) (ACLH) is a multi-stakeholder community that provides a platform for c-suite executives, alongside government leaders and civil society champions, to advance innovative solutions to engrained and emerging corruption challenges. The ACLH has been developed by the OECD in coordination with the United States Department of State. The ACLH promotes anti-corruption efforts and shapes international, regional, national and sectorial anti-corruption agendas. Together, this collective action reinforces international

efforts to curb bribery, promote business integrity and responsible influence, and contribute to a level playing field.

As part of the GPS, the ACLH oversees a number of technical workstreams that advance anti-corruption reforms in core priority areas, including:

- [Promoting corporate anti-corruption compliance through government incentives and assessment](#), aimed at building a peer-learning community to discuss the challenges faced when governments incentivize and assess corporate anti-corruption compliance programmes, and identify good practices and other solutions that both governments and companies can use to improve corporate compliance efforts.
- [Trusted dialogue series: On getting influence right](#), aimed at convening a community of government and business representatives through a series of online and in-person meetings to discuss key political engagement issues facing relevant sectors, identify core principles of responsible corporate political engagement, and develop implementation guidelines on responsible political engagement for the private sector.
- [Compliance Without Borders](#), aimed at building anti-corruption capacity in SOEs through short-term secondments of compliance experts to SOEs.
- [Business integrity & supply chain risks](#), aimed at defining practical steps business and governments can take to increase integrity in supply chains behind government contracts. It focusses on public supply chains and specifically sectors where governments procure goods, works and services harbouring high corruption and integrity risks.

Going forward, ACLH members will focus on issues such as strengthening compliance functions, leveraging responsible business conduct (RBC) tools to respond to integrity risks, strengthening the use of technology for preventing, detecting and responding to integrity risks, supporting government capacity for assessing and accounting for corporate anti-corruption compliance measures and programmes, and implementing anti-corruption in infrastructure.

Source: OECD

D. THE ROLE OF OTHER NON-STATE ACTORS

Civil society has increasingly played a more important role in fostering business integrity within the private sector in response to anti-corruption efforts. Local networks, for example, have become an essential component of the United Nations Global Compact. These local networks are multi-stakeholder platforms where participants come together to work directly with businesses to help them promote the UN Global Compact Ten Principles. These networks seek opportunities for collaboration between governments, private companies, the UN and civil society to advance the Sustainable Development Goals in a specific geographic context. They help companies understand what responsible business

means within different national, cultural and language contexts and facilitate outreach, learning, policy dialogue, collective action, and partnerships.⁷³

Non-governmental organizations and the media have been particularly recognized as crucial to countering corruption. An OECD study on the Detection of Foreign Bribery even describes media reporting and NGOs as being “among the most important sources of public awareness-raising on corruption”.⁷⁴

Journalists have, either working alone or collaborating with others, provided investigative reports on major cases of domestic and transnational corruption. The exposure of corruption offences can force local competent authorities to take investigative and prosecutorial action.⁷⁵ However, for the media to be an effective source of uncovering corruption, freedom of the press is essential. UNCAC article 13(d) specifically asks States Parties to strengthen the participation of society in the fight against corruption by “respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.”⁷⁶ Press freedom, as has been noted, is often a precondition for reporting on corruption.⁷⁷

Non-governmental organizations have also played an important role in recognizing anti-corruption efforts in the private sector. Many organizations have created awards programmes that recognize individuals and organizations in leading and influential roles in combating corruption in the private sector.

[CASE STUDY – ALLIANCE FOR INTEGRITY]

Alliance for Integrity is a business-driven, multi-stakeholder initiative seeking to strengthen corruption prevention measures in the economic system and global supply chains. As a learning and implementation network, the initiative promotes collective action by all relevant actors from the private sector, the public sector and civil society.

Alliance for Integrity is currently active in 14 countries worldwide. Key activities include awareness raising, building compliance capacities among small and medium-sized enterprises (SMEs) and addressing, through public-private dialogue, the framework conditions for trade and investment. Solutions successfully tested in one country are replicated in other regions and fed into the global policy dialogue.

Source: <https://www.allianceforintegrity.org/en/alliance-for-integrity/about-us/>

⁷³ United Nations Global Compact (2023), *Engage Locally*. <https://unglobalcompact.org/engage-locally>

⁷⁴ OECD (2017), *The Detection of Foreign Bribery*, <https://www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ENG.pdf>

⁷⁵ For example, the Organized Crime and Corruption Reporting Project (OCCRP) and the International Consortium of Investigative Journalists (ICIJ) have published details of many corruption schemes around the world. <https://www.occrp.org/en/investigations> ; <https://www.icij.org/investigations/>

⁷⁶ UNCAC, Art. 13(d).

⁷⁷ OECD (2017), *The Detection of Foreign Bribery*, <https://www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ENG.pdf>

The 2021 OECD Anti-Bribery Recommendation highlights that business organizations and professional associations also contribute significantly to assisting companies in the development of effective internal controls, including anti-corruption policies and procedures. Their support may include the dissemination of information on relevant developments in international and regional forums, making training, prevention, and other compliance tools readily available, and providing advice on carrying out due diligence and advice on resisting corruption and responding to demands.⁷⁸

[CASE STUDY – INTERNATIONAL BAR ASSOCIATION AND INTERNATIONAL FEDERATION OF ACCOUNTANTS ANTI-CORRUPTION MANDATE]

In 2018, the International Bar Association (IBA) and the International Federation of Accountants (IFAC) enhanced their efforts to work together with legal and accountancy professions to tackle anti-corruption issues. Representing more than 170 jurisdictions worldwide, the partnership committed to playing a vital role in training, educating and supporting legal and accounting professionals to uphold the highest levels of integrity and ethical standards.

In 2023, the relationship formalized as the organizations signed a Memorandum of Understanding providing a framework for expanding the cooperation between the IBA and IFAC. This emphasizes the value in learning from each other and places a particular focus on anti-corruption and how the professions can work more closely together in the fight against money-laundering and economic crime with key stakeholders such as the United Nations and Financial Action Task Force.

Source: <https://www.ifac.org/news-events/2023-05/iba-and-ifac-announce-memorandum-understanding-between-global-bodies-legal-and-accounting>

Source: https://www.ifac.org/flysystem/azure-private/uploads/PPRAG/IBA-IFAC_Anti-Corruption_Mandate_Final.pdf

VI. USING SANCTIONS AND INCENTIVES

Effective sanctions for corruption offences are required under the UNCAC and the OECD Anti-Bribery Convention. However, these instruments also recognize the essential role of incentives that encourage and reward corporate self-reporting and prevention efforts. Both types of measures signal to the private sector a State's commitment to finding the right balance required to effectively counter corruption. By sending a clear message that criminal laws will be backed with enforcement action, and that corrupt practices will be investigated and punished, governments can ensure that those in the private sector continue to prioritize the strengthening of business integrity policies. But enforcement should also be complemented by access to incentives to reward good behaviour and the implementation of good practices. For example, businesses may invest more in an anti-corruption programme if this is a requirement or provides them with an advantage to access to government markets. Being potentially

⁷⁸ See: Section XXIII.C.ii. and Annex 2.B of the OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. OECD/LEGAL/0378

barred from participating in those same markets if a company has committed corrupt acts may serve as an equally important sanction signalling States' expectations from the private sector. Ultimately, States should also take into account the potential multijurisdictional aspects of cases when determining and applying the relevant sanctions and incentives mechanisms, and the subsequent need to cooperate and coordinate with other jurisdictions.

Over time, this is likely to have the effect of reducing the incidence of corruption involving the private sector. When sanctions are combined with appropriate incentives, the public and private sector can achieve higher levels of integrity.

A. SANCTIONS

States have at their disposal a wide range of measures for sanctioning private sector corruption. These sanctions, which fall into eleven broad categories, may serve remedial, compensatory, or punitive purposes.

The UNCAC and OECD Anti-Bribery Convention requirement that sanctions be “effective, proportionate and dissuasive” will usually be satisfied through a mix of sanctions and complementary measures that could include monetary sanctions, confiscation of the bribes and proceeds of bribery, and remedial measures that compensate victims of corruption. Taken together, these should be of sufficient magnitude to deter future misconduct. Factors including organizational size and severity of misconduct are critical when assessing appropriate magnitude of a sanction. Measures adequate to deter future violations by a small local business may not necessarily be adequate for a larger company. Conversely, the substantial penalties applied to a large national or multinational company could be disproportionate for a smaller enterprise. Sanctions should be effective, proportionate, and dissuasive.

Resource considerations

States should consider whether they have adequate resources and enforcement powers before providing incentives to encourage cooperation. Investigating and prosecuting corruption can present special challenges due to the complexity and concealed nature of violations. Measures mandated or recommended by UNCAC as well as the OECD anti-bribery standards to encourage private sector cooperation and reporting are essential, but these must also be supported by adequate investigative resources.⁷⁹ Cases involving large or systemic corruption can require substantial resources to investigate and have generated several strategies for stretching their resources. One strategy includes focusing enforcement resources on a specific sector or type of corruption, so that information and experience

⁷⁹ Section VII of the OECD Anti-Bribery Recommendation asks member countries to provide adequate resources to law enforcement authorities so as to permit effective investigation and prosecution of foreign bribery.

developed in an initial investigation can be utilized in similar actions involving other companies in the same sector. This type of targeted initiative will be most appropriate for States that have well developed investigative and prosecutorial services, where the economy is dominated by specific sectors, or where there is economic concentration in specific high-risk sectors.

Another approach for stretching scarce enforcement resources has been to encourage the settlement of corporate actions through non-trial resolutions, thereby avoiding the time and resources needed to prosecute an action to completion.⁸⁰ The objective of most corporate enforcement actions is to penalize responsible individuals, eliminate any resulting business benefit, and prevent a future recurrence. When this can be achieved through a settlement, it may be advantageous to both parties by avoiding costly litigation. According to the 2021 OECD Anti-Bribery Recommendation, settlements should follow the principles of due process, transparency, and accountability. More particularly, settlements should be concluded by an agreement according to clear and transparent framework and criteria, subject to judicial oversight, and sufficiently transparent to ensure public confidence in the process while complying with data protection rules and privacy rights as applicable.⁸¹

The trend towards settlements in anti-corruption enforcement is clear. Of an identified 1,468 foreign bribery cases covering the period from 1999 to May 2021, 1,242 (84.6 per cent) were resolved through settlements.⁸² Non-trial resolutions contain various forms of sanctions beyond monetary penalties. They often impose terms and conditions upon companies that function as a type of corporate parole mechanism. These conditions can include enhanced auditing requirements, third-party compliance monitoring, requiring board turnover, including naming new independent Board members, overhauling management, and even internal restructuring. A company needs to demonstrate compliance with these terms and conditions for the threat of prosecution to be dropped.

[CASE STUDY – NON-TRIAL RESOLUTIONS FOLLOWED BY THE CONVICTIONS OF MANAGERS]

The Alstom Power Ltd case

On 10 May 2016, the company Alstom Power Ltd pleaded guilty in the United Kingdom to conspiracy to corrupt in relation to a contract to upgrade the burners at the Lithuanian Power Plant, following an investigation by the UK Serious Fraud Office. Alstom Power Ltd was ordered to pay including £ 6.4 million fine, £ 11 million in compensation to the Lithuanian government, and £ 700,000 of prosecution costs. This guilty plea was followed by the conviction of three managers. In May 2018, a former manager at Alstom Power Ltd pleaded guilty to conspiracy to corrupt and was sanctioned with a term of imprisonment of three years and six months along with a confiscation order of £ 410,786.14. In July 2018, a former manager at Alstom Power

⁸⁰ OECD (2019), *Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention*. www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm

⁸¹ See Sections XVII and XVIII of the OECD Anti-Bribery Recommendation.

⁸² UNODC (2021), [Alternative legal mechanisms and non-trial resolutions, including settlements, that have proceeds of crime for confiscation and return](#), CAC/COSP/2021/1

Sweden AB also pleaded guilty to conspiracy to corrupt. He was sentenced to a term of imprisonment of two years and seven months and ordered to pay £ 40,000 in costs. In December 2018, a former manager at Alstom Power Ltd's Boiler Retrofits unit was convicted after trial. He was sentenced to a term of imprisonment of four years and six months and ordered to pay costs of £ 50,000.

Source: [SFO press release \(25 November 2019\)](#)

Source: [SFO press release \(19 December 2018\)](#);

Source: Working Group on Bribery, [Phase 4 Two-Year Follow-Up Report of the United Kingdom \(2019\)](#).

[CASE STUDY – THE 1MDB CASE]

In October 2020, the Goldman Sachs Group Inc. (Goldman Sachs) and its Malaysian subsidiary GS Malaysia pleaded guilty to participating in a corruption scheme to pay over US\$ 1 billion in bribes to high-ranking government officials in Malaysia and Abu Dhabi to obtain business, including underwriting three bond deals worth US\$ 6.5 billion on behalf of the 1Malaysia Development Bhd (1MDB), a Malaysian state-owned and -controlled investment fund. Goldman Sachs entered into a deferred prosecution agreement in the United States and reached separate parallel civil or criminal resolutions with other authorities, including in Malaysia, Singapore, the United Kingdom, and the United States. It agreed to pay over US\$ 2.9 billion in total sanctions. In August 2018, a former manager of Goldman Sachs, pleaded guilty to participating to the scheme. As part of this resolution, he agreed to forfeit US\$ 43 million and stock shares valued at over US\$ 200 million. In April 2022, a former manager of Goldman Sachs was convicted at trial for his role in the bribery and money laundering scheme. In March 2023, he was sentenced to 10 years' imprisonment.

Source: [DOJ Press release \(22 October 2020\)](#);

Source: [DOJ Press release \(8 April 2022\)](#)

Source: [DOJ Press release \(9 March 2023\)](#)

While States may use settlements to impose sanctions, they may also allocate a portion of the monetary fine imposed, or other assets obtained through the resolution, to help finance their anti-corruption enforcement efforts, potentially easing the burden of stretching limited resources.

A third strategy for stretching scarce investigative resources has been for law enforcement agencies to build on the enforcement efforts of counterpart agencies in other States. Where applicable, the agencies may take advantage of UNCAC and OECD Anti-Bribery Convention articles requiring mutual legal assistance, the exchange of information pertaining to corruption offences and other forms international cooperation, which can greatly ease each individual State's own information-gathering burden.⁸³ In addition, States may take the opportunity to set up joint or parallel investigative teams.⁸⁴

⁸³ The OECD Anti-Bribery Recommendation recommends that member countries provide adequate resources to authorities in charge of mutual legal assistance procedures (section XIX(A)(viii)).

⁸⁴ As encouraged by Section XIX(c)(v) of the OECD Anti-Bribery Recommendation.

a) Imprisonment

The prosecution of individuals can be a powerful tool for strengthening business integrity, especially when such action may result in imprisonment. Imprisonment is a common sanction for violations of anti-corruption laws, and an express enforcement priority in many States. Business surveys have identified this form of sanction among the most effective deterrents to corruption involving business, particularly when liability extends to supervisory and management functions.⁸⁵

As in other criminal contexts, the prosecution of individuals for corrupt acts is contingent on clear legal standards of conduct, a fair and impartial judicial system, and due process protections to prevent abuse. Prosecutors generally must prove their cases beyond reasonable doubt at trial. Although negotiated settlements may occur in legal systems that permit non-trial resolutions, individuals may be less likely than companies to “settle” an enforcement action, particularly if it would result in incarceration.

[CASE STUDY: UNITED STATES ENFORCEMENT AGAINST INDIVIDUALS]

United States enforcement officials regularly emphasize in their public statements the priority given to prosecuting individuals as well as companies for violations of the Foreign Corrupt Practices Act (FCPA). Since 2017, more than 150 individuals have been charged publicly with criminal violations of the FCPA, nearly 100 have pleaded guilty, and 12 individuals have been convicted at trial. During that time, 38 corporations have entered agreements with the U.S. Department of Justice to resolve criminal charges for FCPA violations. In a high-profile case related to the 1MDB scandal, a former manager of The Goldman Sachs Group Inc. was convicted at trial and sentenced to 10 years’ imprisonment in 2023 (for more details on the 1MDB case, see previous case study).

Source: [Remarks delivered by Deputy Attorney General Lisa Monaco on White Collar Crime at American Bar Association National Institute](#) (2 March 2023)

Source: [DOJ Press release](#) (9 March 2023);

Source: United States Department of Justice

b) Corporate Reform

While an organization cannot go to jail, it can be required to implement various reform measures as a condition of a settlement. There are many examples of multinational companies that have strengthened their anti-corruption programmes in response to a formal legal enforcement action, and this is a standard requirement for settlement in some jurisdictions. In some States, independent monitoring is

⁸⁵ See, e.g., Humboldt-Viadrina School of Governance, “Motivating Business to Counter Corruption - A Global Survey on Anti-corruption Incentives and Sanctions” (2012), available at https://www.globalcompact.de/migrated_files/wAssets/docs/Korruptionspraevention/Publikationen/motivating_business_to_counter_corruption.pdf.

common, where independent corporate monitors are appointed pursuant to prosecutorial guidelines.⁸⁶ The company may be subject to monitorship for a set period to ensure it is acting on its commitments made under the legal enforcement action. In addition, settlements may require turnover of a company's board of directors or senior management, the termination of culpable employees, and impose various audit and other accounting requirements. Reform measures ensure responsibility for past actions while remediating a company to ensure appropriate prevention measures are in place to avoid future misconduct.

c) Monetary Sanctions

Monetary sanctions are common for private sector violations of anti-corruption laws. They are applicable to both natural and legal persons in most States. Fines are designed to punish misconduct and act a deterrent to future violations by the offender and others.

Nature and scope

Monetary sanctions for a corruption offence may be criminal, civil or administrative in nature. In a pragmatic calculus, the amount rather than the nature of the sanction drives its effectiveness. Fines imposed after a criminal conviction send the strongest deterrent message, because of the stigma of conviction. Criminal proceedings, however, may require law enforcement agencies to meet a higher burden of proof and thus may be more difficult and time-consuming to achieve. While civil fines may carry less stigma, they can still provide effective enforcement and may avoid some of the evidentiary and legal challenges associated with criminal prosecution. In some States, these civil fines are linked to financial reporting or other technical offences. For example, a public company may be fined criminally or civilly for failing to properly disclose bribery payments in its published financial reports or for improperly deducting a misreported bribe as a business expense. Administrative fines are a further non-criminal option, typically administered through an agency rather than judicial proceedings.

[CASE STUDY – FOREIGN CORRUPT PRACTICES ACT]

Under the US Foreign Corrupt Practices Act, a natural or legal person who bribes a foreign public official may face criminal sanctions for bribery or, in the case of bribery on behalf of an “issuer” subject to U.S. securities laws, either criminal or non-criminal sanctions for bribery as well as false accounting or internal controls violations. Civil violations of the FCPA require a lower standard of proof than criminal violations. Criminal liability can be imposed on companies and individuals for knowingly and wilfully failing to comply with the FCPA’s accounting provisions. Criminal violations of the accounting provisions often, but do not always, accompany a criminal

⁸⁶ First issued in 2009, the US prosecutorial guidelines provide for the appointment of an independent monitor: <http://www.justice.gov/dag/morford-useofmonitorsmemo-03072008.pdf>.

bribery charge. Tax avoidance based on a failure to properly account for bribery also offers a criminal or civil basis for enforcement action.

Source: United States Foreign Corrupt Practices Act, United States Department of Justice

A monetary sanction may be imposed on legal persons for violations of a State's anti-corruption laws, including - where appropriate - the failure of a company to prevent misconduct by its employees or agents. Some States make a company responsible for violations under common law principles, while others do so by statute. One benefit of the legislative approach is that it provides advance notice to companies of their responsibility to prevent bribery or other corrupt acts by employees. This places the onus on companies to address corruption risks pre-emptively by strengthening their anti-corruption programmes. A legislative offence for failing to prevent corruption establishes the legal basis for enforcement action when violations occur.

[CASE STUDY – UK BRIBERY ACT, S.7 FAILURE TO PREVENT]

Article 7 of the United Kingdom's Bribery Act establishes an express offence for the corporation for failing to prevent bribery by an employee or affiliated person, as well as a defence to this provision if adequate anti-corruption programmes are in place. A primary objective of this offence is to encourage more companies to establish prevention programmes. Much of the desired effect of this provision was achieved even before the first formal action had been brought, with the rapid adoption across industries with operations in the United Kingdom of the minimum compliance practices outlined in an informational guidance document.

Source: UK Ministry of Justice, Bribery Act 2010 Guidance (2012), available at <https://www.justice.gov.uk/legislation/bribery>.

Calculation

Fines should reflect the gravity of an offence, taking into account an enterprise's size, culpability and other factors such as the harm caused by misconduct, the amount of the bribe paid, and the profits and other benefits derived from the corrupt transaction.⁸⁷ In general, legislation will set out either a maximum fine or base penalty level and the actual fine will be determined upon consideration of aggravating or mitigating factors. For example, in the sentencing model used in the United States, enforcement authorities establish a "base fine" organization and then apply a culpability "multiplier" to determine a range for fines.⁸⁸ Culpability factors that can affect a criminal fine include: whether high-level personnel were involved in or condoned the conduct; prior criminal history; whether a company

⁸⁷ See: Section XV of the OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. OECD/LEGAL/0378

⁸⁸ US Sentencing Commission (2021), *Guidelines Manual 2021*, available at <https://www.ussc.gov/guidelines/2021-guidelines-manual-annotated> Chapter 8, Part C.

had an effective anti-corruption programme; voluntary disclosure; cooperation; and acceptance of responsibility. In addition, the United States has a separate alternative fine provision that would allow courts to impose a fine up to twice the pecuniary gain obtained by the defendant or twice the pecuniary loss suffered by any other person.

[CASE STUDY – MEXICO’S GENERAL LAW OF ADMINISTRATIVE RESPONSIBILITIES]

The General Law of Administrative Responsibilities in Mexico defines sanctions for individuals and legal persons. In the case of natural persons, an economic sanction may reach up to two times the benefits obtained or, in case of not having obtained them, for the equivalent of the amount from one 100 to 150,000 times the daily value of the “Unidad de Medida y Actualización” (Unit of Measurement and Updating - UMA). In the case of legal persons, an economic sanction may reach up to two times the benefits obtained, in case of not having obtained them, for the equivalent of the amount of 1000 up to 1,500,000 times the daily value of the Unit of Measurement and Updating. Mitigation will be considered an extenuating circumstance when the administration, representation, surveillance bodies or partners of the legal entities report or collaborate in investigations by providing the information and elements they possess and compensate the damages that have been caused.

Source: https://www.diputados.gob.mx/LeyesBiblio/ref/lgra/LGRA_orig_18jul16.pdf

d) Confiscation of Proceeds

Confiscating the proceeds of corruption is another important measure to disincentivize corrupt acts. The confiscation of proceeds can dwarf legal fines in a major corporate corruption case.

The 2021 OECD Anti-Bribery Recommendation specifically recognizes the important role that confiscation can play in the sanctions regime of States⁸⁹. It calls for States to use their national laws for the identification, freezing, seizure, and confiscation of bribes and the proceeds of bribery of foreign public officials, or property the value of which corresponds to that of such proceeds. It also emphasizes that States should be proactive in their approach, engage in awareness raising activities with law enforcement and other competent authorities, and consider developing and disseminating guidelines to assist in implementation.

Confiscation or asset forfeiture is used to deprive wrong doers of their ill-gotten gains and deter violations of anti-corruption laws. The practice is common, particularly for violations in antitrust or competition laws and in combating organized crime. Confiscation serves several purposes such as deterring potential offenders, remedying enrichment that has occurred due to the corrupt act, or repairing damage that has been done to victims as a result of the corruption. Confiscation may also

⁸⁹ See Section XVI of the 2021 OECD Anti-Bribery Recommendation for further information.

prevent the “penetration of illegal proceeds of corruption into the legitimate economy” and eliminate the “instruments used to commit subsequent offences such as money laundering”.⁹⁰

Confiscation is typically limited to the recovery of the amount that is ascertained to have been earned or acquired from illicit conduct. This may be the profit from a particular contract award secured through bribery, the savings from “expediting” regulatory requirements, or a competitive advantage gained through strategic bribery. Confiscation can also be extended to confiscation or forfeiture of physical assets that have been acquired with the illicit proceeds, which may possess a higher value.

In some cases, the confiscated proceeds may be returned to the victims or used to compensate for the damages caused by the corrupt practices. This is particularly relevant when the corruption offence resulted in financial losses for individuals, organizations, or the state. Confiscated economic benefits may be returned to their legitimate owners, used to compensate injured parties pursuant to article 57(3)(c) of the UNCAC, or allocated to other State purposes. Such other purposes may include grant activities that help to reduce the corrosive impacts from corruption. A 2009 World Bank settlement that helped to fund the Siemens Integrity initiative is illustrative, resulting in the allocation of substantial funding to anti-corruption initiatives for more than a decade.⁹¹

Depriving wrongdoers of the economic benefit from corruption serves both the State interest in eliminating the business incentives for bribery and the interest of competitors in creating a more level economic playing field. Sanctions that merely fine an enterprise for improper conduct, while leaving economic benefits in place, are less likely to deter future violations, particularly in environments where the risk of discovery, investigation and prosecution is already low. In fact, one analysis found that statutory fines alone, without confiscation, would likely not adequately sanction bribery in purely economic terms in most countries.⁹²

Confiscation awards can have a substantial deterrent effect on a company.⁹³ In a number of corporate foreign bribery actions, they have contributed to settlement amounts in excess of US\$ 100 million.

Calculating ill-gotten gains from corruption can be a complex task, as corruption often involves hidden and illicit transactions. Various methods and approaches are used to estimate the proceeds of corruption, including forensic accounting, lifestyle analysis, as well as asset tracing. Various methods for

⁹⁰ OECD (2018), *Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia*. <https://www.oecd.org/corruption/acn/OECD-Confiscation-of-Proceeds-of-Corruption-Crimes-ENG.pdf>

⁹¹ World Bank Press Release No. 2009/001, describing US \$100 million fund established pursuant to Siemens settlement agreement. See also Siemens Integrity Initiative, <https://www.siemens.com/global/en/company/about/compliance/collective-action.html>

⁹² OECD (2016), *Is foreign bribery an attractive investment in some countries?*, in OECD Business and Financial Outlook (Chap. 7), <https://www.oecd.org/corruption/BFO-2016-Ch7-Bribery.pdf>

⁹³ OECD (2018), *Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia*. <https://www.oecd.org/corruption/acn/OECD-Confiscation-of-Proceeds-of-Corruption-Crimes-ENG.pdf>

calculating ill-gotten gains are addressed in an OECD-Stolen Asset Recovery Initiative (StAR) analysis,⁹⁴ as well as a StAR Handbook for Asset Recovery for practitioners.⁹⁵

[CASE STUDY – SIEMENS INTEGRITY INITIATIVE]

In its 2008 settlement of bribery charges with the US government, Siemens AG agreed to pay US\$ 350 million in disgorgement of profits (a form of confiscation) in addition to US\$ 100 million in fines plus additional penalties to German authorities. In a subsequent settlement with the World Bank Group, Siemens committed to invest a further US\$ 100 million in a global initiative to support anti-corruption organizations and projects to counter corruption in the private sector. As of March 2023, around US\$ 120 million had been committed to 85 projects in more than 50 countries through this initiative.

Source: [Siemens Integrity Initiative Annual Report 2022](#)

e) Victim Compensation

Some States and other organizations have used monetary sanctions or other penalties (e.g. disgorgement, confiscation) as a means to compensate victims of corruption. This method could include requiring a company to establish a fund to help finance anti-corruption activities. The company could be otherwise required to finance non-governmental organizations or charitable activities. Victims' compensation can be part of a trial or a non-trial resolution.

UNCAC specifically recognizes that States should find ways to compensate victims of corruption. Article 35 requires States Parties to take measures to ensure that entities and persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Additionally, Article 53(b) calls on States Parties to take measures to permit their courts to order those who have committed corruption offences to pay compensation or damages to another State Party that has been harmed by such offences. Further, Article 57 (3(c)) on return and disposal of assets further emphasizes the importance of returning confiscated property, inter alia, to its prior legitimate owners or of compensating the victims of the crime.⁹⁶

⁹⁴ OECD/The World Bank (2012), Identification and Quantification of the Proceeds of Bribery: Revised edition, February 2012, OECD Publishing. <http://dx.doi.org/10.1787/9789264174801-en>. In addition to describing calculation methods, the analysis provides a number of case examples.

⁹⁵ StAR (2021), *Asset Recovery Handbook: A guide for practitioners, Second edition*. The guide contains information on securing evidence, strategic considerations, securing and managing assets, and guidance on international cooperation. Available at: <https://star.worldbank.org/publications/asset-recovery-handbook-guide-practitioners-second-edition>

⁹⁶ See, UNODC "Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation", <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>

[CASE STUDY – LITHUANIA’S LAW NO. XIII-2263]

In accordance with the Law no. XIII-2263 of 27 June 2019, punitive measures may be imposed on a legal person in addition to penalties, including a contribution to a fund for victims of crimes.

Source: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/62c6fce09cc111e9aab6d8dd69c6da66>

[CASE STUDY – ENFORCEMENT AUTHORITIES ENSURING VICTIM COMPENSATION THROUGH NON-TRIAL RESOLUTIONS – EXAMPLES OF CASES IN THE UNITED KINGDOM]

Compensation has been provided to States or communities affected by bribery in two cases prosecuted by the UK Serious Fraud Office (SFO). The 2016 UK Anti-Corruption Summit brought together nine nations that pledged to establish shared principles for compensating countries impacted by corruption. The UK’s policy rationale for pursuing compensation payments is outlined in the summit’s communique as “an important method to support those who have suffered from corruption.” In 2018, the SFO, the Crown Prosecution Service (CPS), and the National Crime Agency (NCA) published joint principles on the compensation of victims of economic crime overseas. More recently, the SFO published in its website a guidance on the “General Principles to Compensate Victims (including affected States) in bribery, corruption and economic crime cases”. Some non-trial resolutions that included victim compensation obligations were described in the OECD Working Group on Bribery Phase 4 evaluation report of the United Kingdom as follows:

- *Smith & Ouzman – Compensation was not ordered by the court, but DFID and FCO made a policy decision to transfer £ 395,000 to Mauritania and Kenya. For Mauritania, where the public official in question had remained in post since the corruption was discovered, the United Kingdom made a payment to the World Bank to fund infrastructure projects in the country. For Kenya, the United Kingdom agreed the funds would be spent on purchasing ambulances for the country.*
- *Standard Bank – As part of the court-approved DPA, US\$ 7 million compensation was ordered to be paid directly to the Government of Tanzania. In providing the payment to Tanzania, the SFO was assisted by the FCO and DFID working in collaboration with the Ministry of Finance of the Government of Tanzania.*
- *Oxford Publishing Limited – In addition to the £ 1.9 million civil recovery order, Oxford Publishing Limited unilaterally offered to contribute £ 2 million to not-for-profit organizations for teacher training and other educational purposes in sub-Saharan Africa. This benefit to the people of the affected region has been acknowledged and welcomed by the SFO, but the SFO decided that the offer should not be included in the terms of the court order, as the SFO considers it is not its function to become involved in voluntary payments such as this.*
- *Amec Foster Wheeler Energy Limited – As part of a court-approved DPA, the company was ordered to pay financial penalty and costs amounting to £ 103 million to the United Kingdom, including payment of compensation to the people of Nigeria of £ 210,610. This*

settlement is part of a US\$ 177 million global settlement with authorities from the United Kingdom, the United States, and Brazil.

Source: [OECD Working Group on Bribery Phase 4 evaluation report of the United Kingdom](#)

Source: OECD (2019), [Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention](#)

Source: SFO news release, [“New joint principles published to compensate victims of economic crime overseas”](#)

Source: SFO, Information for victims, witnesses and whistle-blowers, Compensation Principles to Victims Outside the United Kingdom

Source: SFO case updates [“SFO enters into £103m DPA with Amec Foster Wheeler Energy Limited”](#).

[CASE STUDY – REPUBLIC OF KOREA’S RETURN OF PROPERTY ACQUIRED THROUGH CORRUPT PRACTICES]

Under Korea’s Civil Act together with the Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corrupt Practices and the Criminal Act, Korea may undertake matters necessary for the return of the property of the victim of a predicate offence.

Source: Civil Act: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=29453&lang=ENG

Source: Act on special cases concerning the confiscation and return of property acquired through corrupt practices: https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=56120&type=part&key=9

Source: Criminal Act: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=28627&lang=ENG

[CASE STUDY: INTER-AMERICAN DEVELOPMENT BANK SETTLEMENT SANCTIONING A CONSTRUCTION COMPANY TO 6 YEARS OF DEBARMENT AND CONTRIBUTION OF US\$ 50 MILLION TO NGOS AND CHARITY]

In September 2019, the Inter-American Development Bank (IDB) reached a negotiated resolution agreement with a construction company due to corrupt practices in two IDB-financed projects. As part of the settlement, the company was debarred for six years, followed by a period of conditional non-debarment applied to several of its subsidiaries, and agreed to integrity reforms to be implemented under the supervision of an independent monitor. In addition, the company committed to contributing US\$ 50 million to non-governmental organizations and charities benefiting vulnerable communities in IDB member countries.

Source: IADB, <https://www.iadb.org/en/news/odebrecht-reaches-settlement-agreement-idb-group-resulting-sanctions-0>

f) Contract Remedies

Contract remedies offer another channel for combating private sector corruption. Breach of legal standards can be grounds for terminating a contract or provide a basis for contractual restitution. In many jurisdictions contracts procured through corruption are tainted, making them void or voidable at

the expense of the corrupt party under civil and commercial laws.⁹⁷ These are common remedies available in most States for general failures of contract and may be explicitly extended to corruption offences.

States may themselves be victims of corruption and are encouraged by article 34 of the UNCAC and section IV(ix) of the 2021 OECD Anti-Bribery Recommendation to consider the annulment or rescission of corruption-tainted contracts or concessions. In circumstances that may not warrant termination of a contract or concession, other remedial action may include imposing contractual damages or contractual financial penalties as a lesser penalty. This form of a sanction is remedial in nature, designed to preserve public resources and the integrity of the procurement process. A company that engages in corruption in connection with a public contract, whether to obtain or retain business or in its execution, cannot be trusted to perform its responsibilities in the public interest. Contracts obtained through corruption also undermine procurement integrity, which could impact on the efforts that States Parties have made pursuant to article 9 of the UNCAC.⁹⁸

Contract remedies in public procurement or similar settings are ordinarily established by laws or regulation and may be reinforced through explicit contract conditions and requirements. A common practice for States has been to mandate the routine inclusion of anti-corruption provisions in their procurement contracts and concession agreements. Whether in regulatory or contract form, anti-corruption provisions can be used to address: (a) general integrity expectations, (b) mandatory reporting of good practices; (c) potential violations, (d) access to records and other cooperation in the event of an investigation, and (e) remedies for confirmed violations.

[CASE STUDY – GREECE AND THE USE OF INTEGRITY CLAUSES]

In June 2021, the Hellenic Single Public Procurement Authority (HSPPA), after consultation with Transparency International – Greece, added an Integrity clause in the updated standard procurement documents for the conclusion of supply and service contracts. The intention is to prevent the violation of integrity standards and the management of existing or potential conflicts of interests. The obligations and prohibitions of this clause apply to any tenderer (natural or legal person or association of undertakings). A detailed binding declaration of integrity is included in the tender documents and is meant to be signed by the contractor or its subcontractors prior to the conclusion of the contract. Where there is a proven breach of the integrity commitment, the contracting authority has the right to unilaterally terminate the contract and impose relevant sanctions, including the potential exclusion from any further contracts.

⁹⁷ See United Kingdom example where contract may be voidable at option of innocent party: [Enforceability of contract procured by corruption - Allen & Overy](#)

⁹⁸ States Parties are directed in article 9 to take necessary steps to “establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.” These systems will generally include measures that discourage inconsistent private sector conduct, including through rescission of bribe-tainted contracts or other appropriate remediation.

Source: <https://www.eaadhsy.gr/index.php/en/#> (art. 73.4.f and art.74 – Law 4412/2016)

[CASE STUDY: CONTRACT REMEDIES IN IFC PRACTICE]

The International Finance Corporation (IFC), a member of the World Bank Group, is dedicated to supporting private sector development in developing countries. To ensure that the companies it supports adhere to ethical and sustainable practices, the IFC integrates integrity commitments into its financing and investment agreements. The specific contract remedies outlined in agreements with the IFC may vary based on factors such as project nature, jurisdiction, and sector. In the financing agreements established between the IFC and supported companies, a sanctionable practice provision may be included. This provision requires the counterparty to represent that neither it, nor its affiliates, agents, owners or sponsors have engaged in corrupt acts in relation to the project, and that they will not do so during the term of the IFC's financing. Moreover, the financing agreement could link the funding to milestones outlined in a compliance action plan, established during contract negotiations based on the outcomes of the IFC's due diligence process. A potential breach of contractual terms can have both enforcement and contractual implications. First, if suspicions arise regarding sanctionable practices, including corruption, the IFC, acting through the World Bank Group's Integrity Vice Presidency, may initiate an investigation and potentially debar the company from accessing World Bank Group financing in the future. Second, a breach of the sanctionable practices provision may result in commercial remedies, such as mandatory prepayment of a loan and termination of the contract.

Source: International Finance Corporation (IFC).

Companies that do business with the government, or receive concessions or other benefits, should understand their responsibilities under the law and receive clear notice of the potential consequences for violations. This will help ensure that contractors and grantees take their responsibilities seriously and can also strengthen the legal basis for remedial action.

In addition, contract remedies on the company side (business to business), are an important part of maintaining ethical supply chains. Contractors who make use of anti-corruption clauses will be able to enforce non-performance of their contracts for breaches of those provisions, thereby maintaining the integrity of their supply chain.

Contract remedies are an important tool for both public-sector contracting authorities and the private sector to ensure contracts do not get tainted by corruption. The absence of express remedial authority may preclude termination of a contract despite clear evidence of corruption. Courts may not be authorized to annul contracts tainted by corruption in the absence of express contractual clauses prohibiting corrupt conduct.

g) Suspension and Debarment

Suspension and debarment restrictions are a more drastic sanction for private sector corruption. Suspension and debarment are court-ordered or administrative actions taken by governments or organizations such as multilateral development banks (MDBs) to address corruption offences committed by individuals or corporate entities. They are meant to prohibit individuals or companies from participating in government contracts, subcontracts, loans, grants and other assistance programmes. It is ordinarily imposed on a government-wide basis and may lead to cross-debarment by other States or public agencies.

[CASE STUDY – BULGARIA’S PUBLIC PROCUREMENT ACT]

According to the Public Procurement Act (PPA), the conviction of a candidate/participant for certain types of criminal offences, including active and passive foreign bribery, is a ground for mandatory exclusion from participation in a public procurement procedure. It is indirectly applicable to legal entities, given that the grounds also apply to the exclusion of natural persons who represent the candidate/participant by right or are their proxies, as well as to the members of its management and supervisory bodies, and where these bodies include a legal entity - also the natural persons who represent it (Article 54, para 2-3 PPA).

Source: [Bulgaria Public Procurement Act](#) (ENG translation)

While both suspension and debarment are designed to protect public procurement and other forms of public financial assistance from falling victim to corruption, there are some key differences between them:

- Suspension is a temporary measure taken when there is evidence of corruption or misconduct. It involves the immediate and temporary exclusion of an individual or entity from participating in government contracts or receiving government funding. The purpose of suspension is generally to allow for an investigation to take place to determine the validity of the allegations. During the suspension period, the accused party is typically prohibited from engaging in any new government contracts or transactions.
- Debarment is a more severe action that involves the exclusion of an individual or entity from participating in government contracts or receiving government funding. It is typically imposed when corruption or serious misconduct is substantiated through an investigation or legal process. Debarment can be imposed for a specified period, such as five years, or it can be indefinite, though some jurisdictions allow companies to end debarment by “self-cleaning”, which may involve anti-corruption compliance enhancements. The objective of debarment is to prevent corrupt individuals or entities from benefiting from government contracts or funds and to protect the integrity of the procurement process. Debarment has serious consequences, potentially taking a company out of the marketplace long enough to lose competitive standing in a field. Debarment can generally be categorized as being either punitive or remedial:

- **Punitive** model: Debarment is a punishment for bribery or misconduct that is often imposed automatically once a finding of misconduct has been made.
- **Remedial** model: Debarment focuses on procurement integrity and the principle that governments should only do business with “responsible” contractors. In this approach, bribery is an important factor, but is also considered along with other factors, such as a company’s remediation and prevention efforts and the availability of alternative providers would also be considered.

In most States, the authority to impose suspension and debarment sanctions is established by law and is limited to actions by a contractor that violate a set list of laws or regulations. Grounds for debarment vary, but will generally include contract fraud, false statements, bribery, accounting irregularities, poor performance or non-performance of a contract obligation, as well as failures to comply with specific integrity, environmental or other legal requirements. Sanctions may be applied on a comprehensive basis or be limited to certain categories of activity or affiliates of an enterprise. For example, debarment involving a large multinational corporation may focus on a particular offending affiliate rather than the entire global enterprise.

Debarment also has potential collateral consequences. Procurement agencies may resist using debarment as a tool due to the disruption it can cause to operations or the practical difficulty in finding substitute sources for goods and services. Sanctions that threaten the viability of a large enterprise can also displace tens of thousands of jobs across the organization and its supply chain. For the private sector, the threat of debarment can be a strong incentive for strengthening business integrity.

Where debarment is discretionary, cautionary letters requiring an enterprise to provide reasons why debarment should not be imposed have contributed to significant settlement concessions, including commitments to strengthen internal integrity protocols. In some cases, warning letters have been succeeded by settlement conditions that mandate independent compliance monitoring for a specified period, typically of three to five years. This negotiating tactic may not always be available for debarment in the punitive model, to the extent debarment is non-discretionary once evidence of a violation has been found.⁹⁹

[CASE STUDY: EXAMPLE OF AN EXCLUSION MECHANISM: GERMANY’S COMPETITION REGISTER]

Since 2021, Germany’s Competition Register, an electronic platform hosted by the German Federal Cartel Office, allows contracting authorities in Germany to address misconduct in

⁹⁹ A mandatory approach to debarment may present risks to other important UNCAC objectives, in particular encouraging self-reporting and cooperation by individuals or organisations who will have little incentive to raise violations that may cut them off from essential future business. In practice, this harsh consequence and disincentive to private sector cooperation has been mitigated by avoiding threshold determinations of the violation. However, avoidance can have other unintended consequences, such as making it more difficult to administer confiscation or other remedial measures or to secure compensatory relief for victims.

procurement processes by excluding the relevant company while also encouraging accountability and rehabilitation:

- *Final convictions and penalty orders issued by criminal courts for offences including corruption and bribery are registered in the Competition Register and enable contracting authorities to comply with their general obligation to exclude companies convicted of corruption from public procurement, in accordance with the German Public Procurement Act.*
- *Companies may be removed from the Competition Register in two cases. Entries in the register will be automatically deleted three or five years (depending on the specific offence) after the date of the company's final conviction (Section 7 of the Competition Register Act). The company can also demonstrate at any time that it took adequate "self-cleaning" measures under public procurement law. The onus to prove the adequacy of self-cleaning measures is on the company and the decision is ultimately taken by the contracting authority or by the Federal Cartel Office. The prerequisites for self-cleaning are defined in section 125 of the German Competition Act and the Guidelines issued by the German Federal Cartel Office. Effective Corporate Compliance is a key issue here.*

Source: [Working Group on Bribery Phase 4 monitoring report of Germany](#)

Source: German Federal Cartel Office and its [website](#)

Source: [Guidelines on the premature deletion from the Competition Register due to self-cleaning](#) and related [Practical Guide](#)

Source: [German Competition Act](#)

Source: [German Competition Register Act](#)

Coordination of suspension and debarment with procurement agencies is important to ensure that debarment determinations are made and implemented on a consistent basis. While law enforcement agencies are ordinarily responsible for investigating allegations and determining guilt, remedial debarment determinations will often be made independently by other agencies of the government. These agencies may not always appreciate a broader law enforcement perspective or may be guided by countervailing concerns about the possible disruption of operations resulting from debarment determinations. Such differences are best resolved through an appropriate mechanism for inter-agency coordination.

It is also important to ensure that the application of debarment does not result in policy incoherence hindering the efforts of law enforcement that encourage companies to self-report and cooperate in investigations. This can occur where debarment regimes are automatically triggered by a criminal conviction. Companies may have less incentives to come forward and cooperate with law enforcement if their good will at remediation will result in being automatically excluded from government contracting. The discretionary model allows for the particularities of each case to be considered and may be better suited to States that wish to incentivize voluntary self-disclosure and remediation.

Inter-agency coordination can also help to identify potential corruption violations. Procurement agencies are a common channel for detecting potential corruption violations, and they should understand that this is a part of their mandate. UNCAC guidelines for ensuring procurement systems that prevent corruption are detailed in article 9 of UNCAC. Inter-agency cooperation is also encouraged by the 2021 OECD Anti-Bribery Recommendation (section XI). At an operational level, personnel engaged in procurement for the government should receive training on anti-corruption requirements and procedures as well as their responsibility to report concerns or suspicious circumstances for further inquiry. Government contractors and grantees can also be required, as a condition of contract, to report material corruption incidents.¹⁰⁰

Because of the severity of this sanction, especially for individuals and smaller businesses, clear standards of conduct and procedural protections to prevent abuse are essential. States should also consider issuing robust guidance on expectations regarding anti-corruption programmes and whether they can be relied on as a defence against the possibility of debarment.

h) Multilateral Development Banks and Suspension and Debarment

Since 2010, the various Multilateral Development Banks (MDBs) have enforced the *Agreement for Mutual Enforcement of Debarment Decisions*,¹⁰¹ also known as the Cross-Debarment Agreement. The Agreement, signed by the World Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank stipulates that entities debarred by one MDB will be sanctioned for the same conduct by the other signatories.

A debarment decision will be eligible for cross debarment if it:

- is for fraud, corruption, collusion or coercion
- is public
- is for more than one year, and
- is not based on a decision of national or other international authority.

After it has debarred an entity, an MDB sends a Notice of Debarment Decision to the other signatories. This cross-debarment cooperation among multilateral development banks aims to strengthen the effectiveness of anti-corruption measures and promote harmonization in the fight against corruption.

¹⁰⁰ Anti-corruption training for agency personnel is part of a State's UNCAC implementation responsibility, described earlier. Mandatory reporting of legal violations by government contractors is among the common regulatory and contract measures outlined in the preceding section on contract remedies. The Anti-Bribery Recommendation XXIV also ask countries to "provide guidance and training to relevant government agencies on suspension and debarment measures applicable to companies determined to have bribed foreign public officials and on remedial measures which may be adopted by companies, including internal controls, ethics and compliance programmes or measures, which may be taken into consideration" (section XXIV(iv)) and to "raise awareness through regular training and other means about the foreign bribery offence and reporting obligations to officials in government agencies" (section XXI(vi)).

¹⁰¹ *Agreement for Mutual Enforcement of Debarment Decisions* (2006), African Development Bank Group, Asian Development Group, European Bank for Reconstruction and Development, Inter-American Development Bank, World Bank Group. Available at: https://www.adb.org/sites/default/files/institutional-document/32774/cross-debarment-agreement_0.pdf

It helps prevent debarred individuals or entities from circumventing sanctions by seeking contracts with other participating institutions.

In addition to cross-debarment, six MDBs—the African Development Bank ([AfDB](#)), Asian Development Bank ([ADB](#)), European Bank for Reconstruction and Development ([EBRD](#)), European Investment Bank ([EIB](#)), Inter-American Development Bank ([IDB](#)), and the [World Bank Group](#)—have agreed and published new General Principles for Business Integrity Programmes.¹⁰² The General Principles set out important guidance relating to the MDBs' efforts to ensure the funds they lend to States are used only for development purposes. The General Principles are intended as guidance relating to the prevention of fraud and corruption and can be adopted and implemented by entities in all sectors and of all sizes.¹⁰³ Companies that adhere to these principles should be able to avoid finding themselves in a situation where the cross-debarment agreement is triggered.

Importantly, MDB requirements may also have an impact on business-to-business practices, requiring due diligence procedures before entering into a sub-contracting arrangement with a supplier or an agreement with an agent. States may also be able to legislate due diligence requirements for business partners obliging contracting entities to conduct a certain level of due diligence on their business partners. For the private sector, it is becoming more and more important to have a fulsome view into the supply chain and ensure that suppliers do not run afoul of anti-corruption laws and policies.

[CASE STUDY – WORLD BANK SANCTIONS SYSTEM]

The World Bank has detailed procedures for investigating and sanctioning fraud or corruption involving World Bank-supported operations. Its sanctions system is a key component of the World Bank's anti-corruption efforts and involves three independent offices working to address fraud and corruption matters efficiently and fairly.

The World Bank's Integrity Vice Presidency (INT) monitors integrity risks in World Bank operations and receives allegations about potential misconduct from a variety of sources, including its online complaint form. All allegations are reviewed and assessed by INT, and matters related to sanctionable misconduct within INT's mandate may warrant full investigation. When INT completes an investigation and believes it has found credible evidence of sanctionable conduct, INT can seek sanctions against the firms and individuals involved (referred to in the sanctions system as "respondents") by either submitting a sanctions case to the first tier of review in the sanctions system, or by negotiating a settlement.

The World Bank's Office of Suspension and Debarment (OSD) provides the first level of adjudication in the World Bank's sanctions system. Prior to the issuance of any sanctions, OSD

¹⁰² World Bank (2023), *MDB General Principles for Business Integrity Programmes*. Available at <https://thedocs.worldbank.org/en/doc/528f96bfd7a3991fba23747e20ed6dc0-0530012023/mdb-general-principles-for-business-integrity-programmes>

¹⁰³ For an overview of MDB efforts to counter corruption, see: Basel Institute on Governance (2023), *Business integrity programmes: multilateral development banks harmonize their guidance*. Available at <https://baselgovernance.org/blog/business-integrity-programmes-multilateral-development-banks-harmonise-their-guidance>

reviews the sufficiency of the evidence against the respondents and issue a sanctions determination made by the Chief Suspension and Debarment Officer. Most sanctions involve debarment with conditional release, but other potential sanctions include (i) reprimand, (ii) conditional non-debarment, (iii) debarment, or (iv) restitution, all of which may extend to a respondent's affiliates, successors, and assigns. Debarments of over one (1) year are also subject to mutual enforcement by four other multilateral development banks.

The World Bank's Sanctions Board is the second tier of review for sanctions cases. A case reaches this stage if the respondent chooses to contest liability and/or the sanction recommended by the first-tier review officer. The Sanctions Board reviews cases de novo, without reexamining decisions made at the first tier. The Sanctions Board considers the entire case record and affords the parties an opportunity to make any additional arguments, furnish new evidence, and be heard at a hearing if one is so convened. Sanctions Board decisions are final and unappealable.

An entity sanctioned with conditional release will not be released from sanction until the conditions for release have been met to the satisfaction of the World Bank's Integrity Compliance Officer. Such conditions typically require a sanctioned entity to develop and implement integrity compliance measures that reflect the principles set out in the World Bank's Integrity Compliance Guidelines, or, in the case of sanctioned individuals, to undertake integrity compliance training. If the conditions for release are not met at the end of the minimum period of sanction, the sanction will continue until such time as they are met. Uncontested SDO Determinations and Sanctions Board Decisions are published in full and are available publicly. Furthermore, the World Bank maintains a public list of debarred entities.

Source: <https://www.worldbank.org/en/about/unit/integrity-vice-presidency>

Source: <https://www.worldbank.org/en/about/unit/sanctions-system>

Source: <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board>

i) Denial of Government Benefits

Limiting access to benefits or services is another potential sanction for corruption, analogous to the suspension and debarment for government procurement.

Governments provide a range of benefits and support to their citizens and companies, from licences for doing business and exporting to tax incentives and job-creation for export operations. These are privileges granted by the government that may be restricted or withdrawn as a sanction for violations of law or not adhering to contractual agreements, including corruption offences. The link between

benefit restrictions and corruption is especially strong for international business activities supported by a national export credit agency.¹⁰⁴

Many States also provide access to trade commissioner services to assist domestic companies with their exporting ambitions and reaching new markets. These services may include funding assistance, access to various networks, assistance navigating import/export requirements include obtaining appropriate visas, and assistance navigating the business environment in a given market. Denying these benefits to a company may result in significant lost value. Similarly, providing access based on adherence to specific integrity principles can help encourage compliance.

[CASE STUDY – CUBA: NEW CRIMINAL CODE (LAW 151)]

The New Criminal Code (Law 151), incorporated new sanctions for legal persons, among them those of intervention, publication of the conviction and suspension or revocation of benefits and facilities granted by the State, which were not previously stipulated, specifying the purposes and general rules for their determination and imposition, and for the formation of the joint sanction in its case.

Source: <https://www.wipo.int/wipolex/en/text/586229>

[CASE STUDY – THE EXAMPLE OF GERMANY, REPRESENTED BY EULER HERMES]

Euler Hermes Aktiengesellschaft (Euler Hermes) is mandated by Germany as Germany’s Export Credit Agency. The German framework includes contractual remedies and mechanisms incentivizing applicants and/or exporters to implement anti-corruption programmes in order to avoid delay or denial of cover:

- *Mandatory anti-corruption declaration: No export credit guarantees are provided for transactions which were arranged through criminal offences, including corruption. In order to be eligible for support under the German export credit scheme, any applicant must therefore be able to confirm that no bribery or other corruptive activity is or will be involved in the particular transaction. An applicant must also generally inform of any criminal charges, investigations, sentences, official measures etc. in connection with corruption allegations involving the applicant, any of its employees, members of its management, owners or any agents acting on its behalf.*
- *Enhanced due diligence: If the latter is in the affirmative or if there is any other indication of corruptive activity regarding the transaction and/or the applicant, the specific transaction and the applicant are subject to an enhanced due diligence process. This*

¹⁰⁴ Article XXV of the 2021 OECD Anti-Bribery Recommendation makes specific reference to officially supported export credits and refers to the 2019 *Recommendation on Export Credit Agency Practices* which recommends that countries take appropriate measures to deter bribery in the export transactions that they support. OECD/LEGAL/0447, “*Recommendation of the Council on Bribery and Officially Supported Export Credits*” (2019). Available at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0447#backgroundInformation>

assessment is made through an in-depth examination of the transaction on the one hand and the company's compliance management system on the other hand. Measures of enhanced due diligence may extend through a period of time beyond the duration of an application.

- *Should bribery or other corruptive activity retrospectively be determined in relation to a particular transaction, the Federal Government is contractually entitled to a release from liability and/or to reclaim any amounts already disbursed.*

Source: [Webpage of Euler Hermes Aktiengesellschaft's website on prevention of bribery and corruption](#);

Source: [Template of an anti-corruption declaration](#)

Source: [Germany's Phase 4 evaluation report](#)

[CASE STUDY – THE EXAMPLE OF UK EXPORT FINANCE (UKEF)]

UK Export Finance (UKEF) is a government department and is the United Kingdom's official Export Credit Agency (ECA). UKEF requires applicants and/or exporters to provide information on their anti-corruption processes, and in certain circumstances directs applicants and/or exporters to further information on sources of best practice:

- *Prior to any support being provided, applicants and/or exporters must fill out an application form, which includes anti-corruption representations and warranties. Applicants/exporters also undertake to report any corrupt activity in connection with any export contract to UKEF. Whilst there is no legal requirement under United Kingdom law for commercial organizations to have a code of conduct in place, it is strongly recommended to do so. In the event that an applicant and/or exporter indicates in the application form that they have no such code of conduct and/or procedures, UKEF directs them to relevant guidance issued by the United Kingdom's Ministry of Justice.*
- *UKEF is committed to taking reasonable and proportionate measures to identify and mitigate the risk of UKEF supporting transactions involved in financial crime. UKEF's framework for considering financial crime risk comprises of the following risk areas or domains: money laundering, breaches of sanctions, fraud, facilitation of tax evasion, terrorist financing and bribery and corruption.*
- *UKEF takes a risk-based approach to requests for exporter support, including whether the support is sought for a specific export contract or more broadly for general working capital for an exporting counterparty's entire business.*
- *Despite not being regulated, through the risk assessment and due diligence process, UKEF seeks to consider best practice methodology to proportionately identify financial crime risk or red flag indicators to then assess and consider the extent of the risk and the options to mitigate. The due diligence process includes collaboration and partnership across the government estate to shift the due diligence from sole reliance on open-source media checks to being intelligence-led. UKEF would not provide cover if due diligence concludes*

that a transaction is tainted by corruption. UKEF has no tolerance for being a victim of financial crime. Nor will UKEF tolerate providing support for transactions outside of its financial crime risk appetite.

- *At any time during the contract, UKEF has the right to audit the records of the applicants and/or exporters that relate to obtaining the contract supported by UKEF.*
- *Following the provision of support, UKEF can also exercise financial recourse to the applicant and/or exporter or cancel the insurance cover, if the applicant and/or exporter admits to, or is convicted of, corruption and UKEF has suffered a loss.*

Since 2019, UKEF has had a dedicated Compliance Function. This function has since expanded to comprise of a Financial Crime Due Diligence division (responsible for transaction screening and enhanced due diligence measures ensuring “risk owners” understand the financial crime risks, have controls available and can deliver safe business) and a Compliance Division (responsible among other things for strategy, policy and compliance assurance activities). Suspicions may be escalated to UKEF’s Compliance Function, who would then undertake enquiries within the limit of its remit.

Sources: [Guidance on UK Export Finance: Financial Crime Compliance](#); examples of samples application form ([link 1](#), [link 2](#))

Source: [UK Phase 4 report \(2017\)](#)

Source: [Two years follow-up report \(2019\)](#)

Source: [Additional follow-up report \(2021\)](#)

j) Liability for Damages

Liability for damages from a corrupt offence can be another significant private sector sanction. Article 35 of UNCAC requires “each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.” States should ensure that victims, including a competitor and the State itself, have a right to initiate legal proceedings against those responsible for compensation for the consequences of corruption.

The domestic laws in most States authorize legal proceedings for compensation for damages caused by individuals and organizations as a matter of course. States may also consider establishing an express private action procedure for compensatory damages resulting from a corruption offence. As in other civil actions, the victim will ordinarily have to prove the breach of duty, the occurrence of damage, and a causal link between the corruption offence and damage. In a business setting, compensation may include lost profits and other indirect or non-financial damages.

Other general business laws can also provide a basis for civil action against companies that engage in corruption. For example, competitors in some States have relied upon “unfair competition” laws to seek

damages for lost business. In others, criminal laws relating to conspiracy or participation in criminal groups have been used by customers harmed by a corrupted procurement process.

International Trade Treaties

The use of international trade and investment treaties may also result in consequences against a private company, or even a State, for failing to adhere to the anti-corruption commitments under the treaty.

[CASE STUDY - CAFTA-DR]

The United States and the Dominican Republic–Central America Free Trade Agreement (CAFTA-DR) contains provisions that allows parties to incentivize anti-corruption efforts in order to level the playing field by suspending trade benefits under the agreement. Under CAFTA-DR, the countries commit to implementing measures to prevent and counter corruption, including adopting and enforcing laws against bribery, establishing transparent and accountable government procurement processes, and ensuring effective enforcement of anti-corruption measures. Measures suspending trade benefits have been invoked under this agreement due to the failure to address corruption. The suspension of trade benefits sent a strong signal that failing to uphold anti-corruption commitments under international trade agreements can have significant economic consequences.

Source: <https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta>

The private sector has also been active in ensuring that business to business relationships take stock of anti-corruption provisions and develop integrity clauses to protect their investments.

[CASE STUDY – BUSINESS TO BUSINESS APPLICATION: ICC ANTI-CORRUPTION CLAUSE]

The International Chamber of Commerce has developed a model clause to help businesspersons create trust with counterparties and prevent their contractual relationships from being affected by corrupt practices.

The model clause helps preserve trust between contractual parties and prevents corruption in both the negotiation and performance of contracts. It is intended to be included in contracts where parties commit to comply with the [ICC Rules on Combating Corruption](#) or commit to put in place and maintain a corporate anti-corruption programme.

The general aim of the model clause is to provide parties with a contractual provision that will reassure them about the integrity of their counterparts during the pre-contractual period as well as during the term of the contract and even afterwards. Three options are possible – parties may include in their contracts:

- **Option 1:** A short text that incorporates Part I of the ICC Rules on Combating Corruption 2011 by reference,

- **Option 2:** *The full text of Part I of the ICC Rules on Combating Corruption 2011, or*
- **Option 3:** *A reference to a corporate compliance programme, as described in Article 10 of the ICC Rules on Combating Corruption.*

Where options 1 or 2 are chosen, a party who fails to comply with the incorporated anti-corruption provisions will be given a chance to remedy the non-compliance and to raise the fact that it has put in place adequate anti-corruption preventive measures as a defence. If the non-complying party does not or cannot take remedial action and does not raise or sustain a defence, the other party can choose to suspend or terminate the contract.

Source: [ICC Anti-corruption Clause – ICC – International Chamber of Commerce](#)

Investors also possess tools to hold companies accountable. In some countries, shareholders can bring “derivative” actions, or lawsuits initiated on behalf of a company against the company’s senior leadership for breach of duty or other violations of their responsibilities. They have been used to bring legal proceedings against public companies for bribery offences, alleging that the leaders of the company committed securities fraud or a failure of oversight. Although damages can be difficult to recover, such actions serve as a warning to leadership and can catalyse investments in a company’s anti-corruption efforts.

k) Reputational Damage

For many companies, large and small, the single greatest threat from a corruption scandal may often be reputational. As with individuals, a company’s reputation for integrity and trustworthiness is hard-won and easily lost. Protecting this asset is a primary leadership responsibility. Surveys of corporate officers have shown that they consider that reputation is an important, perhaps even the primary motivation for corporate investments in anti-corruption programmes and other integrity measures.¹⁰⁵

Although not technically a sanction, it is associated with the stigma of violating criminal law or other fundamental aspects of the legal order. The reputational effects of a corruption scandal may last for many years, even long after remediation efforts have been put in place. Companies may find it more difficult to win contracts, engage suppliers, and attract talented employees if their brand is tainted by corruption. Large national and multinational enterprises make an enormous investment in their “brand”, and they depend on a good reputation to attract and retain employees, investors, business partners and customers. A company’s reputation for integrity can take years to build, and even longer to repair following a high-profile corruption scandal. While legal sanctions generally require the State

¹⁰⁵ OECD (2022), “Anti-corruption compliance in times of crisis: Building resilience and seizing opportunities”, *OECD Business and Finance Policy Papers*, No. 19, OECD Publishing, Paris, <https://doi.org/10.1787/467cf791-en>; OECD (2020), *Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change*. <https://www.oecd.org/daf/anti-bribery/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf>

to bring evidence to prove its case, reputations are judged by public opinion and can be won or lost in the span of a news cycle.

Reputational risk is primarily associated with larger companies that have a national or international profile, but it can also be a significant factor for small businesses. SMEs are also judged on integrity by their employees, customers and business partners. As such, they can suffer economic harm from a poor reputation. In fact, given that SMEs may not fear enforcement of corruption offences, reputational risk, particularly vis-à-vis supply chain partners, can be a significant motivating factor.¹⁰⁶ As large national and multinational companies work to strengthen integrity practices in their supply chains, local partners with a poor reputation or inadequate anti-corruption practices will increasingly be passed over.¹⁰⁷

In many jurisdictions, laws have been passed to combat labour abuses by putting the onus on companies to ensure they are aware of all elements of their supply chain. SMEs, which often depend on being part of these supply chains, will increasingly need to ensure they maintain a reputation of being champions of integrity as larger companies navigate these complex rules.

Information on a business' reputation is conveyed through a variety of channels. Courts and law enforcement institutions have a responsibility towards public justice. Non-governmental entities including media, investors and businesses providing commercial due diligence services also have a role to play to promote transparency. Part of their role is to ensure that an offender's true reputation is known so that people can do genuine due diligence and take appropriate mitigation measures. Media reporting and due diligence services rely in part on information provided by law enforcement agencies, although many States limit official disclosures by law enforcement during a pending investigation or possibly during court proceedings, and in some cases even after the proceedings have ended.

[CASE STUDY – NORWAY'S SOVEREIGN WEALTH FUND DIVESTS FROM ZTE]

In 2016, Norway's sovereign wealth fund [announced](#) the fund would sell its US\$15 million holdings in Chinese telecom giant ZTE and make no future investment in the company because of the risk the company would become involved in corruption scandals. The fund's investment guidelines provide that it may exclude any company where there is an unacceptable risk that the company contributes to or is responsible for activities that result in the violation of human rights, lead to severe environmental damage, or further gross corruption. The reputational damage is significant as ZTE lost access to the world's largest sovereign wealth fund and one of the largest pools of capital investment.

Source: <https://www.nbim.no/en/the-fund/news-list/2016/decision-on-exclusion-of-company-from-the-government-pension-fund-global/>

¹⁰⁶ OECD (2020), [Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change](#), pp. 23-24.

¹⁰⁷ See United Nations Global Compact (2016), *Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers*. <https://unglobalcompact.org/library/153>

Governments can publish information about corruption cases on their websites, including through press releases that describe the resolution of enforcement actions, either through trial or non-trial resolutions, or through actual court filings. This practice adds a reputational aspect to the imposed legal sanctions by making a wide range of information, including the reasons for imposing a sanction about a case, publicly accessible. In some countries, the publication of a judgment can be an optional, complementary sanction for legal persons. Judges can be encouraged to promote transparency about concluded corruption cases to inform the public about corruption risks and to signal that society does not tolerate corruption.

Company financial reports that are filed with securities regulators are a common source of information about pending investigations, as are formal court filings that initiate or settle an enforcement action. Civil society reporting also relies on information that companies make available through corporate responsibility disclosures, such as environmental, social and governance reporting obligations, and other means. A number of the reports released by civil society organizations rank corporate compliance efforts in relation to their peer organizations, providing a reputational boost or decline for company.

[CASE STUDY – PETROBRAS AND THE RISE OF SHAREHOLDER CLASS ACTIONS]

In 2018, a shareholder class action resulted in a [US\\$ 2.95 billion settlement between shareholders and Brazilian state-owned oil company Petrobras](#). The reputational impact to the company could be seen by the drastically declined share price which fell to US\$ 3 in 2016 from a previous high of US\$72 in 2008.

The shareholder class action claimed that investors suffered large losses due to material misstatements in the company's filings with the U.S. Securities and Exchange Commission (SEC). The total size of the settlement surpasses the total fines levied on the company by regulators where U.S. and Brazilian authorities levied a total of US\$ 853.2 million in fines. This case clearly illustrates that the costs of these shareholder class actions can be very significant.

Source: [The Rise of Shareholder Class Actions in Response to Corporate Misconduct — GAN Integrity blog](#)

B. INCENTIVES

Incentives that reward a company for good practice are an important complement to enforcement sanctions. They recognize that meaningful commitment to and investment in anti-corruption programmes and other measures that strengthen business integrity are largely voluntary and can be encouraged through inducements that signal their priority to company leadership.

Section XXIII(D) of the 2021 OECD Anti-Bribery Recommendation emphasizes that government agencies may consider encouraging companies to prevent and detect foreign bribery by using incentives for

corporate compliance in the context of law enforcement actions as well as in connection with decisions to grant public advantages, including public subsidies, licences, procurement contracts, development assistance, and export credits.

a) Exemptions from Prosecution and Penalty Mitigation

Penalty mitigation factors and other law enforcement incentives are an important tool for encouraging the prevention, detection, and reporting of bribery and corruption violations. They can also promote cooperation with law enforcement investigations, restitution to victims, and remediation to prevent future misconduct from occurring. Collectively, these various mechanisms can be used to incentivize different behaviours that promote business integrity and anti-corruption compliance. The types of qualifying conduct for penalty mitigation or other incentive mechanism, however, can range widely from jurisdiction to jurisdiction.

Penalty mitigation factors and other incentive mechanisms, such as immunity from prosecution, are addressed in article 37 of UNCAC on fostering cooperation with law enforcement authorities as well as in the OECD Anti-Bribery Recommendation, in particular sections XVIII on non-trial resolutions and XXIII(D)(iii) on compliance efforts.

Mitigation may take the following factors into account, among others:

- **Self-reporting:** Corruption may go undetected without the cooperation of a participant in or witness to the offence. To encourage participants to come forward, States could consider providing penalty mitigation for those who self-report wrongdoing before the authorities become aware. These incentives also serve to advance the broader goal of depriving offenders of the proceeds of crime and recovering such proceeds. Business self-reporting has been an important source of information that leads to investigations for law enforcement authorities in several States, particularly in cases involving the bribery of foreign public officials by multinational enterprises.¹⁰⁸
- **Implementation of robust anti-corruption programmes:** A well-designed incentives mechanism can encourage the investment in anti-corruption measures, such as robust anti-corruption programmes, employee training and auditing controls, and mechanisms ensuring the prompt reporting of potential violations. For instance, according to an OECD Study on Corporate Anti-Corruption Compliance Drivers, published in 2020, 58 per cent of the systems for resolving foreign bribery cases without a trial in OECD countries considered the existence of a corporate anti-corruption programme as a mitigating factor.
- **Cooperation with investigations:** Incentives should also strike an appropriate balance between the potential investigative benefits that result from the cooperation of offenders and the administration of justice, particularly in view of the public perception of the benefits for this

¹⁰⁸ OECD (2017), *The Detection of Foreign Bribery*. www.oecd.org/corruption/the-detection-of-foreign-bribery.htm

cooperation. On one hand, penalty mitigation or immunity, if granted too freely to a private enterprise, can be counterproductive. This could arise if full immunity is granted for an anti-corruption programme that appears sound on paper but may not be effective in practice. On the other hand, the benefits from cooperation must be seen by the offenders to outweigh the potential risks associated with reporting or the costs associated with the implementation of a sound anti-corruption programme. Where there is a perception that the costs are too great, companies may be less cooperative and calculate that they are better off doing nothing and risking discovery.

- **Restitution to victims/repairing of the harm causes:** States should consider penalty mitigation measures where restitution to victims has been made, or where restitution is an agreed upon condition of a settlement.

Companies sanctioned for misconduct may receive credit for their efforts to implement an anti-corruption programme before the misconduct occurred. They may also receive credit for efforts made to enhance their anti-corruption programmes after the fact to prevent future misconduct. States may also impose a reduced sentence on companies and natural persons if they reported the offence to the authorities before it was detected and cooperated with the investigation by providing documents or securing the participation of witnesses within their control.

While some States may be reluctant to let offenders of serious crimes, such as corruption, receive significantly reduced or even no punishment, companies and individuals who self-report and/or substantially cooperate with the investigation demonstrate their commitment to taking responsibility for past misconduct. In this regard, they are materially different from offenders who seek to avoid responsibility at all costs.

At the most extreme, States may opt to decline entirely to prosecute an individual or a company. This should not mean that there is no cost for their transgressions. States may still seek to impose disgorgement or other conditions on the transgressor to ensure that the offender does not profit from the wrongdoing. In addition, they should seek to hold the individuals and executives who were involved in the corruption accountable for their actions. Options include charging the individuals, seeking injunctions to limit their ability serve as officers or directors of publicly listed companies, and entering into agreements that forces their removal from executive positions. In addition, though a company may not face prosecution, the reputational harm may still consist of a severe punishment. Even when opting for declination, States may wish to issue press releases or other communication materials explaining their decision consistent with due process considerations. These public facing decisions may still name the company involved and thereby affect how they may be perceived by the public and their consumers.

Penalty mitigation or immunity is only one factor that companies consider when deciding whether to self-report a violation. Judgements are also made about the risk of discovery or prosecution and the

consequences of a disclosure. When there is a perception that self-reporting will lead to lengthy investigative or judicial proceedings, the calculation may be made that it is less risky to remain silent – especially where the risk of discovery and prosecution is thought to be low. States that ensure that there are reasonable and efficient investigative and judicial processes in place will encourage more cooperation by reporting companies.

For these reasons, governments should provide for a clear and predictable framework determining the factors considered in the granting of incentives based on corporate compliance efforts. While factors will mostly pertain to the behaviour of the alleged offender, the business environment and the size, type, legal structure and geographical and industrial sector of operation of companies should also be considered. Officials responsible for granting incentives and the private sector need to know what factors will be taken into account in the assessment and how they will be weighted. Guidance provided to officials is essential for incentives to be consistently used while providing some parameters to guide decisions when considering the specific circumstances of the alleged offender. Guidance provided to the private sector may also help raise awareness and knowledge on incentives mechanisms, build trust, and encourage the private sector to use these incentives.

Finally, States should adopt policies that incentivize self-reporting as it is a crucial means for obtaining information about otherwise hidden corruption schemes. This information allows States to identify problematic areas and assign resources to places most in need. It also allows States to self-assess what areas of their own anti-corruption are and are not working and giving them essential data on where adjustments are required. States, therefore, should not only think of self-reporting as a measure necessary for penalty mitigation, but something that will help them in their approach to preventing and countering corruption. Policies that incentivize this public-private dialogue and allow space for companies to come forward can in fact prove useful measures for enhancing a country's anti-corruption efforts.

[BOX: EXAMPLES OF MITIGATION INCENTIVES FOR SELF-REPORTING]

Algeria: Article 45 of law 06-01 stipulates that any person may be exempted from, or have penalties reduced, if they report a corruption offence to the authorities prior to the beginning of any judicial proceedings.

Brazil: Law 12,846/2013 provides for the mitigation of fines where entities cooperate with the authorities (Article 7, item VII). Article 23, item IV of its regulatory Decree 11,129/2022 stipulates that cooperating factors such as self-reporting/voluntary disclosure may reduce the basis for calculating the fine by up to 2 per cent (the maximum fine is up to 20 per cent of gross income, depending on the circumstances). Additionally, full cooperation with authorities during the administrative liability procedure can reduce the fine by up to 1.5 per cent.

Colombia: Article 19 of Law 1778 of 2016 encourages companies that have committed transnational bribery to go to the Superintendency of Companies and report the offence committed. Self-reporting may lead to either total exoneration or partial exoneration of the sanction as long as information and evidence is provided in a timely manner within the time limit set by the Superintendency.

[CASE STUDY: CORPORATE PENALTY MITIGATION IN THE US FRAMEWORK]

The United States framework provides for a series of documents, including guidelines and policy instruments, establishing and raising awareness of corporate sanction mitigation factors. These documents include:

- *United States Sentencing Commission's Organizational Sentencing Guidelines. Published annually since 1991, this is the first formal guidelines for corporate penalty mitigation. Under the guidelines, companies can receive sentencing reductions for establishing an effective compliance and ethics programme as well as for self-reporting, cooperation, or acceptance of responsibility. Although technically limited to sentencing in criminal cases, the guidelines have much broader practical importance. Federal prosecutors, for instance, consider these guidelines, among other policy and legal instruments, when deciding whether to prosecute a company for violations as well as when determining appropriate penalties to seek or impose through non-trial resolutions.*
- *The FCPA Resource Guide. In November 2012, the US Department of Justice (DOJ) and the Securities Exchange Commission (SEC) released the first version FCPA Resource Guide. The Guide is a detailed compilation of information about the FCPA, its provisions, and enforcement. It addresses a wide variety of topics, including who and what is covered by the FCPA's anti-bribery and accounting provisions; the definition of a 'foreign official'; what constitute proper or improper gifts, travel and entertainment expenses; the nature of facilitating payments; how successor liability applies in the mergers and acquisitions context; the hallmarks of an effective corporate compliance programme; and the different types of civil and criminal resolutions available in the FCPA context. In July 2020, the DOJ and SEC issued a second version of the Guide to reflect developments since the first edition was adopted. In March 2023, they also issued a Spanish-language version.*
- *The DOJ Guidance Evaluation of Corporate Compliance Programs. First released in February 2017, this Guidance was most recently updated in March 2023. It aims to assist prosecutors in determining whether and to what extent a company compliance programme was effective at the time of the offence. This document outlines the framework by which DOJ Criminal Division prosecutors evaluate corporate compliance programmes when determining the appropriate form of resolution. If a prosecution or enforcement action is appropriate, it also informs decisions impacting the level of*

monetary sanctions or the extent of compliance obligations that should be sought or imposed.

- *The DOJ Criminal Division’s Corporate Enforcement and Voluntary Self-Disclosure Policy. Revised and updated in January 2023, this policy establishes a presumption of declination companies that satisfy three factors: voluntary self-disclosure, full cooperation in the investigation of the wrongdoing, and timely and appropriate remediation to prevent future wrongdoing. It also defines what each of these factors requires to qualify. If a resolution is nonetheless warranted even though the company satisfied all three factors, it can be eligible for a 50-75% reduction in the fine. A company that does not self-report will, at most, be eligible for a 50% reduction if it cooperates and remediates.*

Source: [OECD Working Group on Bribery Phase 4 evaluation report of the United States](#)

Source: [U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs \(Updated March 2023\)](#)

Source: [U.S. Department of Justice Criminal Division, 9-47.120 – Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy.](#)

b) Failure to Prevent and Regulating Compliance

Some States have adopted a system that rewards prevention procedures by allowing these to be used as a defence for corporate liability offences. In this way, a company that is charged with a criminal or administrative offence will have a full defence to the competent authority if it can demonstrate that it had sufficient procedures in place designed to prevent corruption. Companies that do not have such systems in place risk being convicted of an offence.

Under the *UK Bribery Act 2010*, failing to prevent corruption by an associated person is a strict liability offence that is only applicable to legal persons. Having adequate procedures in place at the time of the offence may constitute a complete defence for the company. In the event of conviction, the anti-corruption policies and procedures in place at the time will impact significantly on sentencing and will be assessed for possible mitigation.

To assist companies in determining what constitutes adequate procedures, the government of the United Kingdom has published guidance on the elements of an anti-corruption programme that might satisfy this defence under the Bribery Act 2010, including: proportionate procedures, top-level commitment, risk assessment, due diligence, communication (including training), and monitoring and review. The burden of proof is on the defendant company to demonstrate these adequate procedures.¹⁰⁹

¹⁰⁹ United Kingdom Ministry of Justice, *The Bribery Act 2010 - Guidance about procedures which relevant commercial organizations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010)* pages 20-31. <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

As an alternative model, France's Sapin II law requires companies meeting certain criteria to implement an anti-corruption compliance programme (see case study below for more details on the Sapin II law requirements). These companies can be sanctioned administratively if they fail to implement their compliance obligation, even in the absence of any suspected foreign bribery violation.

[CASE STUDY: COMPLIANCE REQUIREMENTS INTRODUCED BY THE SAPIN 2 LAW IN FRANCE]

Article 17 of the Law requires the directors of companies employing at least 500 employees, or belonging to a group of companies whose parent company has its headquarters in France, and whose workforce includes at least 500 employees, and whose sales or consolidated sales exceed € 100 million, to put in place, independently of any suspicion of a criminal offence, measures and procedures designed to prevent and detect the commission, in France or abroad, of acts of corruption or influence peddling. This obligation extends to subsidiaries and companies controlled by these groups in France and abroad. This general obligation to prevent and detect bribery and influence peddling consists in the development and the effective application of eight measures: i) a code of conduct; ii) an internal reporting system; iii) a risk mapping; iv) third-party due diligence ; v) accounting control procedures; vi) "a training programme for managers and staff who have the greatest exposure to bribery and influence peddling risks ; vii) a disciplinary system; and viii) an internal control and assessment system for measures implemented. The modalities for implementing these measures are developed by non-binding Recommendations published by the AFA in December 2017 and revised in January 2021. The AFA has also drawn up several practical guides.

Failure to comply with compliance requirements may trigger an injunction to adapt internal compliance procedures and/or an administrative penalty of up to € 1 million for legal persons and € 200 000 for individuals, which may also be published, broadcasted or displayed. This administrative penalty does not result in a criminal record for the legal person.

Sources: Working Group on Bribery, [France's Phase 4 Monitoring Report](#) and its [press release](#)

Source: [French Sapin 2 Law](#)

Source: [AFA Recommendations](#)

Source: [AFA's website](#)

Maintaining adequate procedures to prevent corruption implies that companies consider the basic minimum criteria for an effective anti-corruption programme: strong, explicit and visible support and commitment from leadership; risk-based operational guidelines and training; channels for seeking advice and reporting concerns; and systems and controls for oversight and periodic reviews to refine the programme based on evolving risks.¹¹⁰ Companies are also expected to manage risks relating to their

¹¹⁰ These factors are detailed in Part IV(C) of the Guide, and at greater length on the [UNODC Business Integrity Portal](#). Also, Annex II of the 2021 OECD Anti-Bribery Recommendation recommends that an effective anti-corruption compliance programmes "be developed on the basis of a risk assessment addressing the individual circumstances of a company, in particular the foreign bribery risks facing the company (such as its geographical and industrial sector of operation, and regulatory environment, potential clients and business partners, transactions with foreign governments, and use of third parties)". The size, type, and legal structure of the company should be also taken into account.

third-party relationships and to establish an organizational culture that encourages ethical conduct and a commitment to compliance.

Providing Guidance

States Parties that seek to strengthen business integrity by incentives for anti-corruption compliance programmes or measures will want to consider specialized guidance and training for law enforcement personnel to ensure that the rewards accurately reflect the quality of the anti-corruption programme and its implementation. Expertise in the evaluation and assessments of anti-corruption compliance programmes is a key element to ensuring the successful application of this incentive. States will thus need to identify the features that the components of an anti-corruption compliance programme must have to be effective and will have to elaborate on what additional elements are needed to go beyond minimum criteria. Raising awareness and expertise on the specificities of sectors, and types of companies is also highly encouraged. If the requirement is placed on businesses to establish such programmes and procedures, the equivalent requirement should exist to assess their efficacy.

Communication of expectations with the private sector is also crucial. Businesses will require guidance on how to address the requirements set out in law, as well as how to properly implement their programmes. States should publish appropriate guidance along with periodic updates for the private sector on expectations for the implementation of adequate procedures to prevent corruption to capture the evolutionary nature of good practice. Developing guidance on how to meet anti-corruption compliance requirements is a challenging exercise for States, which will need to balance a demand for precision and predictability from the private sector with the need to adopt approach tailored to the defendant's specific circumstances. Further research will be needed to help guide States in thinking how to develop effective tools and methodologies for assessing the effectiveness of corporate anti-corruption efforts.

c) Procurement Incentives

Another option for incentives is procurement benefits for businesses that demonstrate a meaningful commitment to integrity practices. These may be in the form of an eligibility requirement or affirmative competitive preference. Either form can be applied in both the public and private sectors. States offering procurement incentives must be cognizant of possible trade-offs such as reducing access to government markets to only those who qualify which could negatively impact competition, by example by providing a barrier of access for SMEs or fostering collusive practices. States must protect against the possible misuse of these incentives to prevent them from becoming an administrative means to extort bribes from businesses.

The simplest form of this incentive is a requirement that companies meet certain minimum good practice standards as a condition for doing business with State agencies. Mandatory programme requirements based on recognized sector-specific standards can be an effective way to strengthen

business integrity practices, particularly in those industries where a large portion of the marketplace consists of public purchasing or reimbursement. Multinational corporations frequently make available good practice guidance and training key partners in their supply chains, including SMEs. Governments and industry associations have also responded by providing technical assistance to both large and small companies on corporate integrity practices, through codes of ethics and guidance, training seminars, model content and other means.

Good practice may also be encouraged through the giving of a preference in public procurement that rewards voluntary measures that an enterprise has taken to strengthen its integrity. This form of incentive – sometimes referred to as a “genuine” incentive – offers a counterpoint to suspension and debarment for corrupt acts. In a responsible contractor procurement model, a company’s poor record or practice on corruption will weigh against its suitability as a business partner for the government. Conversely, companies that have made business integrity a priority are more likely to be responsible and trustworthy and may be rewarded for this in the competitive process.

This basic principle is central to commercial business dealings, particularly in preferential selection processes that give priority to local business partners with a proven record of reliability and integrity. Similar considerations inform government procurement and serve both to protect State fiscal and procurement interests and to advance benchmark practices for contractor integrity. As with mandatory programme requirements, potential negative impacts for smaller companies can be addressed through, technical assistance and phasing.

Procurement preferences can also provide a practical alternative for encouraging private sector integrity in States that face resource constraints or other obstacles to a traditional enforcement approach. Incentives that reduce the impact of sanctions can only have a limited effect in environments where the perceived risk of discovery and prosecution is low or non-existent. By contrast, incentives that reward good practice of companies that have invested in an effective prevention programme can potentially still be effective in the absence of a meaningful law enforcement risk. Governments that use preferences to promote compliance, however, will need to devote resources to ensuring that they are reserved for companies that have put into place genuine anti-corruption programmes or other measures. When using business integrity registers, governments will also need to regularly update them to ensure that they do not impede participation from companies that have taken steps to develop adequate anti-corruption programmes. Otherwise, they will reward undeserving companies and, in the process, hurt legitimate companies that may not receive the benefits. Governments should also be aware that procurement or other incentives can provide a new opportunity for corruption to occur, for example by promoting collusion (especially in restricted markets by reducing further competition) or may foster ‘opportunistic’ behaviours in corrupt environments (e.g. by providing an additional channel for extortion by governments).

[CASE STUDY – NEW ZEALAND: MTANZ]

Prior to its merger with Health New Zealand in 2021, New Zealand Health Partnerships served as public enterprise owned and operated by 20 District Health Boards. It was tasked with procurement of medical equipment, devices, and services and required all suppliers to either be a member of the Medical Technology Association of New Zealand (MTANZ), which has an obligatory code of ethics; or otherwise adhere to the MTANZ Code of Practice which is made publicly available alongside other resources. While this structure is no longer in place in New Zealand, it illustrates that State agencies have partnered with associations to advance corporate integrity in public procurement.

Source: <https://mtanz.org.nz/MTANZ-Code-of-Ethics/6701/>

[CASE STUDY: MEXICO'S BUSINESS INTEGRITY REGISTER]

The Ministry of Public Administration of Mexico maintains a register of companies that have an integrity policy, called the Business Integrity Register. Additionally, companies that submit their Integrity Policies to the Ministry for evaluation can receive the Business Integrity Distinction, which is valid for 4 years and recognizes companies that comply with the minimum elements established in article 25 of the General Law of Administrative Responsibilities

Companies whose integrity policies comply with the law receive a Business Integrity Badge to highlight their commitment to promote business integrity, which is a distinction granted by the Ministry.

Source: <https://padron.apps.funcionpublica.gob.mx/#protocolo>

d) Compliance Requirements of Stock or Commodities Exchanges

Certain incentives may result from compliance requirements imposed by stock exchanges that set rules, regulations, and standards to ensure fair, transparent, and orderly trading of securities within their marketplace. These requirements are designed to maintain market integrity, protect investors, and promote confidence in the financial system.

Stock exchanges may likewise impose various corporate governance standards and disclosure obligations on companies prior to accepting to list them. This may include providing audited statements that inform investors about the company's financial performance, and also about their corruption-related or other risk. Corporate governance requirements are often required to ensure companies follow best practices in terms of board composition, independent directors, shareholder rights, and more frequently a commitment to transparency and public reporting.

To ensure the above requirements are met, stock exchanges may also maintain compliance departments or regulatory bodies responsible for overseeing and enforcing requirements. These compliance departments can investigate potential violations and impose penalties or sanctions for non-compliance.

[CASE STUDY: COMPLIANCE REQUIREMENTS BY THE MALAYSIA’S STOCK EXCHANGE]

In December 2019, the Malaysia’s Stock Exchange (Bursa Malaysia Berhad) amended the Main and ACE Market Listing Requirements to incorporate anti-corruption measures. According to the revised listing requirements, a listed issuer and its board of directors must ensure that “policies and procedures on anti-corruption that are, at a minimum, guided by the Guidelines on Adequate Procedures issued pursuant to section 17A(5) of the Malaysian Anti-Corruption Commission Act 2009” (MACC Act 2009) and “policies and procedures on whistleblowing” are “established and maintained” and “reviewed periodically to assess their effectiveness, and in any event, at least once every 3 years”. A listed issuer and its board of directors must also ensure that “corruption risk is included in the annual risk assessment of the group” and must publish “its policy on anti-corruption” and “its policy and procedures on whistleblowing” its website. Section 17A of the MACC Act criminalises the offence of corruption committed by a commercial organization. Section 17A (1) provides that a commercial organization commits an offence if a person associated with it corruptly gives, offers or promises any gratification to any person with an intent to obtain or retain business or a business advantage for the said commercial organization. Section 17A (4) provides that an organization may defend themselves in the event of being charged if it proves that “adequate procedures” were in place to prevent its associated persons from undertaking corrupt conducts in relation to its business activities.

Source: MACC Act 2009

Source: [Bursa Malaysia press release](#)

Source: [Chapter 15 of the Main Listing requirements](#)

Source: [Chapter 15 of the ACE listing requirement](#)

[CASE STUDY – HONG KONG EXCHANGES AND CLEARING LIMITED]

Sharing the common goal of maintaining an open, fair and transparent securities market in Hong Kong, the Independent Commission Against Corruption (ICAC) of the Hong Kong Special Administrative Region of the People’s Republic of China has been collaborating with The Hong Kong Exchanges and Clearing Limited (HKEX) to incorporate anti-bribery requirements in the Listing Rules, including requiring listed companies to establish, on a comply-or-explain basis, anti-corruption and whistle-blowing policies and systems, as well as to disclose their compliance information and performance in anti-corruption in their corporate governance report and environmental, social and governance (ESG) report. In addition, ICAC has been providing corruption prevention services to HKEX and relevant professional bodies to strengthen the anti-corruption capacity of listed companies, through publishing corruption prevention guides, providing input to HKEX in its review of the ESG reporting requirements and Corporate Governance Code, giving seminars and training for listed companies executives and industry practitioners, and disseminating anti-corruption information to stakeholders.

Source: [Hong Kong Stock Exchanges Listing Rules](#)

Stock exchanges may use their listing requirement rules to incentivize good governance and integrity.¹¹¹ The rules impose a burden on companies to ensure they are adhering to compliance requirements or risk facing consequences. The incentive is the benefit that comes with public listing, but it is attached to a suite of sanctions procedures.

e) Anti-Corruption and Sovereign Wealth Funds

Institutional investors present a powerful, yet generally underutilized, avenue for incentivizing and sustaining integrity-driven business practices. By conditioning investment upon certain governance standards – for example, corporate compliance, due diligence and transparency – institutional investors can use the vast sums of money at their disposal to encourage business integrity, which also promotes financial stability within their portfolios.

Sovereign wealth funds and public pensions funds, among the wealthiest institutional investors globally, have been leading the way when it comes to sustainable investing and integrity-driven investing. According to The Sovereign Wealth Fund Institute, in 2021, sovereign wealth funds and public pension funds held US\$ 10.5 trillion and US\$ 21.4 trillion, respectively.¹¹² By embedding anti-corruption standards into their investment, stewardship and divestment policies, various state-owned investors are leveraging their significant capital to promote more transparent and accountable business practices.

[CASE STUDY: NORWAY'S GOVERNMENT PENSION FUND GLOBAL – INVESTING IN BUSINESS INTEGRITY]

Norway's Government Pension Fund Global, the largest sovereign wealth fund worldwide, has a variety of tools for ensuring that the companies in which it invests uphold the Fund's long-term financial interests.

Norges Bank Investment Management (NBIM), which manages the Fund's assets, publishes "expectations documents" that communicate the Fund's investment priorities and standards. One such document focuses on anti-corruption. It explains how corruption undermines long-term business performance and economic efficiency, and it provides three business integrity pillars for investees to follow: (1) establish clear policies on anti-corruption, (2) integrate anti-corruption into business operations, and (3) report and engage on anti-corruption programming. Pursuant to these established expectations, NBIM actively monitors companies to ensure that their practices align with the Fund's investment agenda, and may choose to invest, divest or engage accordingly.

¹¹¹ See for example: Ontario Securities Commission, *Settlement Agreement: In the Matter of Katanga Mining Limited, et al.*, (2018) at para 35-6. Available at: https://www.osc.ca/sites/default/files/pdfs/proceedings/set_20181214_katanga-mining.pdf.

¹¹² Sovereign Wealth Funds Global (2022), *2022 Annual Report: State-Owned Investors 3.0*. <https://globalswf.com/reports/2022annual#executive-summary-1>. The US\$ 10.5 trillion includes both sovereign wealth funds and quasi-sovereign wealth funds, the latter of which have at least partial government ownership.

Moreover, the Council on Ethics, which functions independently from NBIM, also monitors the Fund's portfolio and may recommend that NBIM closely observe or exclude a particular company until corruption risks have been addressed. When investigating a company, the Council on Ethics monitors more than 80,000 media sources in 20 different languages, examines court documents, and requests information from the company in order to determine whether there is an unacceptable risk that the company contributes to, or is responsible for, gross corruption or other serious financial crime. Although NBIM is not obliged to follow the advice of the Council on Ethics, it tends to follow the Council's recommendations.

Through its expectations documents, management practices, and Council on Ethics, Norway's Government Pension Fund Global exemplifies various ways that institutional investors can incentivize integrity-driven corporate practices.

Sources: Norges Bank Investment Management (2023), "Anti-corruption: Expectations towards companies",

<https://www.nbim.no/contentassets/6ca89f09d9ec4af9b976c3dad755bd0c/expectations-document---anti-corruption.pdf>

U4 Anti-Corruption Resource Centre (2022), "Investigating the ethics of investments",
<https://www.u4.no/publications/investigating-the-ethics-of-investments.pdf>

Government of Norway (2021), "Guidelines for Observation and Exclusion of companies from the Government Pension Fund Global (GPF)",

<https://www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/quidelines-for-observation-and-exclusion-of-companies-from-the-gpfg-19.11.2021.pdf.pdf>

f) Preferential Access to Government Benefits

Preferential access to government support or services may include public subsidies, licences, development assistance, officially supported export credits, access to trade assistance, or otherwise.

This form of incentive is the counterpart to the sanction of the denial of benefits. As noted earlier, evidence of bribery or that a company is not conducting business with integrity may be grounds for the denial or withdrawal of government benefits. In contrast, these benefits may also be made available on a preferential basis to individuals and companies that are able to demonstrate a commitment to good practice. As with a procurement preference, this incentive may take the form of an eligibility requirement – for example, that an applicant for government benefits meets specified minimum programme standards. Preference may also be given for voluntary measures taken by an enterprise to strengthen its integrity.

Preferential access is most commonly associated with government procurement opportunities addressed previously, but it may also be applied to other categories of government benefits or services. For example, a company able to demonstrate a commitment to ethical practice might be given "fast-track" access to customs services or a preference in export credit support. Investments in quality anti-

corruption systems and controls can also be rewarded through targeted corporate tax benefits, mirroring the kind of expense deductions and credits widely available for business-generating activities. This can send a message to the private sector that investments in quality prevention programmes are as important as these other business investments.

Whether preferential access to benefits is based on mandatory standards or on voluntary good practice, it will be important to ensure that the specified prevention measures that are identified as good practices have substance and that the measures do not have unintended disparate effects on smaller companies. As with other types of incentives, developing methodologies and tools to assess the effectiveness of anti-corruption efforts is as essential as it is challenging. Although the factors may vary according to the types of incentives and their beneficiaries, strong and effective inter-agency cooperation will be critical to enable national authorities to gather experience and good practice for this purpose.

[CASE STUDY: JORDAN]

The concerned government agencies, such as the Customs Department, the Institution for Standards and Metrology, and others, deal with companies that adhere to the standards of integrity and transparency in a preferential access, so that they are exempted from complex bureaucratic procedures.

Source: Submission of Jordan: [Questionnaire on States measures for business integrity](#)

g) Reputational Benefits

Reputational benefits can be another tool for encouraging business integrity, through public acknowledgement of a company's commitment to good practice and combating corruption.

As with reputational sanctions, positive information about a company's integrity will ordinarily be communicated through non-governmental channels in the private sector, the media and civil society. People in a particular industry are generally aware of which companies operate with integrity and they will take this into consideration in their risk and business planning with other companies. Companies that have earned a good reputation make for better business partners, and this will often be reflected in a competitive preference in procurement and other business selection processes. States can reinforce this positive market signal through measures of their own that encourage and reward good practice. This can be in the form of an awards programme, certification process, or otherwise. Potentially such awards, certifications, or other markers that a company is committed to integrity and anti-corruption compliance may also provide an advantage with consumers as well as when recruiting trustworthy employees, particularly in difficult business environments.

Judgements about business integrity are also shaped by a company's own public reporting on its anti-corruption activities, through the [UN Global Compact Communication on Progress](#) and similar channels,

as well as public recognition of its membership in or support for integrity initiatives. Similarly, positive recognition in a comparative survey conducted by civil society can enhance a company's reputation for integrity.

[CASE STUDY: BRAZIL: EMPRESA PRÓ ÉTICA (PRO-ETHICS REGISTER)]

The Ethos Institute and Brazil's Office of the Comptroller General have created a "pro ethics list" to recognize companies that meet a high standard of anti-corruption practice. Some of the requirements for making this list are a rigorous code of conduct, effective training, a reporting system and complaints procedure, financial disclosure, and participation in collective action. Assessments are conducted by the Office of the Comptroller General, in the role of Executive Secretariat of the program, with oversight by an independent group of experts, and there is periodic updating of both benchmark standards and company assessments.

Empresa Pró Ética (Pro-Ethics Register) is a biannual evaluation established by a regulation to which companies answer to profile/conformity questionnaires and submit specific documents. The companies that are recognized in the "Pro-Ethics Register" get the public recognition of their engagement with the implementation of compliance measures and are authorized to use the "Pro-Ethics Register" brand. The programme promotes the organizational culture of integrity and aims to reduce risks of fraud and corruption in public and private relations.

In addition to the evaluation report with improvement recommendations sent to each participating company, the Office of the Comptroller General publishes a dedicated report for each edition that presents a critical analysis of the profile of companies and, mainly, the strengths and shortcomings found in the evaluated anti-corruption programmes. The results are announced in an award ceremony. It can have a real beneficial impact on the reputation of a company.

Source: <https://www.gov.br/cqu/pt-br/assuntos/integridade-privada/avaliacao-e-promocao-da-integridade-privada/empresa-pro-etica>

Another notable development has involved the creation of "allowlists" that recognize a company for good practice, as a counterpart to traditional debarment.

C. ADDITIONAL MEASURES AND INITIATIVES

This section briefly surveys additional measures that States may use to reduce corruption involving the private sector, as an adjunct to enforcement sanctions and good practice incentives. A number of these additional measures respond to resource and other practical challenges that can undermine a more traditional law enforcement approach.

a) Consensus Frameworks

A consensus framework is a voluntary and principles-based agreement or commitment by different parties within the same economic sector to convene on a routine basis and facilitate discussions and action items that support ethical business conduct. Consensus frameworks are tasked with setting foundational integrity principles as well as identifying and achieving common goals to strengthen ethical conduct and collaboration. Often used in the health sector, the first Consensus Framework was adopted in 2014 between several leading international bodies representing patients, physicians, pharmacists, nurses, hospitals, and the pharmaceutical industry. In 2016, Canada and Peru became the first two countries to adopt a Consensus Framework at the national level, each representing an expanded set of stakeholders, including engagement by State agencies. From 2016-2022, these countries were joined by Australia, Brazil, Chile, China, Japan, Kenya, Mexico, New Zealand, the Philippines, and Viet Nam in adopting a Consensus Framework, with a majority involving direct participation or indirect support from one or more State agencies.

While still in their early stages of implementation, consensus frameworks have helped to harmonize codes of ethics, provide joint training curriculum and activities, and joint public policy recommendations. State agencies have played important roles in convening the parties to a consensus framework demonstrating the importance of the public and private sector working together to advance business integrity.

[CASE STUDY – AUSTRALIAN CONSENSUS FRAMEWORK FOR ETHICAL COLLABORATION]

Launched in 2018, the Australian Consensus Framework for Ethical Collaboration was realized through the work of several healthcare organizations, including the Australian Orthopaedic Association. The Framework was supported by the Federal Minister of Health, State Ministries of Health, and the Therapeutic Goods Administration. After rapidly ascending into the world's largest Consensus Framework with more than 70 parties representative of Australia's health system, it was formalized into the Australian Ethical Health Alliance (AEHA). Governed by a multi-year action plan as well as an elected steering committee from among the parties, there is active participation and contributions to the AEHA's efforts to bolster public and private sector integrity for use of and access to medicines and medical devices and standards of conduct.

Source: <https://www.ethicalhealth.org.au/>

b) Public Sector Reforms

Civil service and regulatory reforms that reduce the opportunities for corruption are another potential area for cooperation between States and the private sector. Like integrity pacts and code-based initiatives, this alternative form of engagement can be especially valuable where there are obstacles to more traditional State enforcement.

Several of the private sector collective action initiatives described previously have gone beyond the development of code-based standards and programme support to address a broader range of common regulatory concerns. Initiatives of this type recognize that the environment in which businesses operate can often be as important as any specific actions undertaken by individual companies. Businesses can lead, promote and support the enactment and enforcement of robust national and international legal frameworks that seek to eliminate corrupt practices and stress the advantages for corruption-free business environments that attract foreign direct investment. They can also lend expertise and resources to build the capacity of local governments to develop, implement and enforce laws and regulations to combat corruption in all its forms.

While measures described in this Resource Guide focus primarily on business integrity, there is also a “demand” side to corruption that must be addressed under the UNCAC and the 2021 OECD Anti-Bribery Recommendation. Articles 7 and 8 of UNCAC contain detailed recommendations for strengthening public sector integrity, through better systems for recruiting, retaining and compensating civil servants and additional measures that emphasize integrity, honesty and fairness in the performance of official duties. Article 9 of UNCAC details further measures for promoting transparency, competition and accountability in public procurement and the management of public finances. Article 10 of UNCAC requires States to take measures to enhance transparency in its public administration and to seek to simplify administrative procedures.¹¹³ Furthermore, Section XII of the OECD Anti-Bribery Recommendation encourages countries to raise awareness and provide training to relevant public officials on bribe solicitation risks and steps to be taken to assist enterprises confronted with bribe solicitation. OECD Recommendation on Public Integrity also broadly requires countries to “provide sufficient information, training, guidance and timely advice for public officials to apply public integrity standards in the workplace”.¹¹⁴

Civil service and regulatory reforms serve the broader purpose of making government more transparent, efficient and accountable, but can also significantly advance private sector objectives through sanctions and incentives. Civil servants who understand the importance of integrity, operate in a clear and transparent environment and are properly compensated are less likely to demand or accept bribes from private actors. Companies can conduct their operations with more certainty and confidence that they will be treated reasonably and fairly. Measures that encourage the reporting of illicit conduct, that regulate the “revolving door” between employment in government service and business, and that address potential conflicts of interest from gifts and political contributions can be especially helpful in raising business integrity standards.

¹¹³ For guidance on specific measures under these articles, see [UNCAC Legislative Guide](#) at pages 25-33; [UNCAC Technical Guide](#) at pages 13-46.

¹¹⁴ See [OECD Recommendation on Public integrity](#).

[CASE STUDY – MONGOLIA PREVENTING CONFLICTS OF INTEREST IN THE PUBLIC SECTOR]

Certain categories of public officials are subject to a two-year cooling-off period after leaving office (art. 22 COI Law). This restriction, among others, applies to officials who held a political, administrative, or special office of the State, and to former managers and administrative officials of the State or locally owned legal persons (art. 3.1.4 COI Law and art. 4 ACL).

Source: <https://track.unodc.org/uploads/documents/BRI-legal-resources/Mongolia/4 - Mongolian Law on Conflicts of Interests.pdf>

[CASE STUDY – MALAYSIAN ANTI-CORRUPTION COMMISSION]

The Malaysian Anti-Corruption Commission (MACC) has a formal procedure for recognizing and rewarding civil servants who report on public bribery offences. The initiative is designed to raise public sector awareness about corruption, encourage reporting of violations and improve public perceptions about the integrity of civil servants. Reports are made to the Anti-Corruption Commission or law enforcement authorities and, on successful prosecution of an offence, may entitle a reporting official to public recognition and a financial award based on the circumstances of the case. As of 2022, a total of US\$ 175,000 in rewards have been awarded by the MACC to civil servants who have contributed information on corrupt practices that have been instrumental in legal action against offenders. Other provisions under Malaysian law regulate gifts in connection with an official's public duties and require public officials to report any bribe offered, promised or given to them.

Source: https://www.sprm.gov.my/index.php?page_id=75&articleid=481&language=en

Civil service and procurement reforms are primarily a State responsibility, but local business communities can make a valuable contribution to these efforts. Private enterprises are on the corruption frontlines, whether as a source or as a victim of corruption. Thus, they can often help to identify priority risks and effective response options. Private sector practices for identifying and mitigating corruption risks, training employees and monitoring for compliance can also benefit parallel initiatives in State agencies to combat corruption.

[CASE STUDY – ARGENTINA: MARITIME ANTI-CORRUPTION NETWORK (MACN)]

Shipping companies operating in Argentina faced challenges in connection with the inspections of holds and tanks, customs declarations, and on-board inspection practices related to the grain export process. Data from MACN member companies highlighted a systemic issue with illicit cash demands for payment for grain holds inspections, including cases of extortion. Failing an inspection was costly since it meant ships were considered off-hire. Depending on market conditions, port costs, and commercial delays accrued from each extra day in port could amount to more than US\$ 50,000 per day. To address this issue, MACN and national partner, Bruchou & Funes de Rioja, launched a collective action initiative with local industry and government

stakeholders to investigate the root causes of the problem and to advocate for reforms to tackle corruption in the sector.

The initiative resulted in the modernization of the inspection system in line with international standards which reduced the possibilities for abusing discretionary powers to extort vessels trading in Argentina. Further, the collective action partners put in place reporting and appeal mechanisms where both public and private players could report incidents or ask for a second opinion on a specific inspection.

Multi-stakeholder collaboration resulted in broader acceptance and more sustainable anti-corruption measures, reinforcing continued engagement among public, private, and civil society entities. As a result of the collective action, MACN observed a sustained 90 per cent drop in reported corruption incidents with a particularly significant decrease in large cash demands. The initiative demonstrated that it is possible to address systemic corruption by building strong alliances between the public and private sectors.

Source: <https://macn.dk/Argentina>

UNCAC recognizes a further private sector role in preventing the misuse of procedures regulating private entities, such as the licences and other approvals needed to undertake commercial activities.¹¹⁵ Laws and regulations that are poorly designed, duplicative, or unnecessary make it harder for companies to do business. They also create opportunities for corruption, whether by businesses willing to pay to expedite or circumvent a burdensome regulation or by public officials who condition action on a “facilitating” payments or other improper arrangements.

Government procurement is particularly susceptible to corruption due to its magnitude. According to an advocacy group, one in every three dollars in government spending is, on average, spent through a contract with a private company. This collectively makes public contracting the world’s largest marketplace, [covering US\\$ 13 trillion of spending every year](#).¹¹⁶ Public corruption can be a risk wherever there is required State action, discretionary authority and a tendency towards opacity and a lack of accountability. Examples commonly cited by the private sector include business licencing and construction permits, securing basic public services, customs processing and the administration of environmental, health and safety regulations.

Whether a particular form of regulation is overly burdensome or only unwelcome by regulated parties will not always be clear, but engagement with the private sector to identify consensus areas for reform can be beneficial to both sectors. This form of civic action has a long history in many States, through open and transparent participation by business associations and individual companies in public policy debates over the proper role and content of business regulation. A number of the private sector collective action initiatives described in the preceding section have also focused on this involvement.

¹¹⁵ Article 12(2)(d).

¹¹⁶ Open Contracting Partnership, <https://www.open-contracting.org/what-is-open-contracting/>

[CASE STUDY – UKRAINE: PROZORRO]

Prozorro is a transparent, open-source e-procurement system that enables government agencies to conduct procurement deals electronically. Launched in 2016, Prozorro has made information about public contracts in Ukraine easily accessible. Initially conceived as a tool for fighting corruption, the potential benefits of the system are much broader — increasing competition, reducing the time and money spent on contracting processes, helping buyers make better decisions and making procurement fairer for suppliers. While Prozorro is credited with decreasing corruption and increasing competition, it does not reduce corruption by itself. By providing transparency of data, it is one element of public sector reform that assists in countering corruption and anti-competitive practices.

Source: <https://www.open-contracting.org/impact-stories/impact-ukraine/>

Source: <https://prozorro.gov.ua/en/about>

c) Code-Based Initiatives

Code-based initiatives are another tool for raising standards of integrity and compliance within or across business sectors. These are voluntary collective action initiatives by business, which are often in coalition with or facilitated by civil society organizations and public authorities.

Code-based initiatives focus on raising overall standards of practice within a business community or for a specific public purpose. They are typically national or regional in scope, but they may also have a sectoral focus. Most build on a common set of standards, reflected in a code of conduct or guidelines for anti-corruption programmes. National initiatives tend to focus on smaller businesses with limited experience or resources, and they will often combine a formal public commitment to minimum integrity practices with various kinds of practical implementation support. While sectoral initiatives can also serve smaller businesses, they are more typically begun with larger enterprises and the different corruption challenges they face.

Whether national or sectoral in scope, code-based initiatives can be a valuable adjunct to more traditional enforcement efforts. They give a focus and shared sense of purpose to participating organizations, facilitate the development and sharing of good practices, and provide a framework for identifying and addressing common challenges. They also provide ethical companies with some assurance that they will not be undercut by rivals, through informal peer pressure and more formal oversight mechanisms.

[CASE STUDY – NIGERIA’S CONVENTION ON BUSINESS INTEGRITY]

The Convention on Business Integrity (Cbi) was established in 1997 with the mission of promoting ethical business practices, transparency and fair competition in the private and public sectors. Signatories of this Convention undertake to observe the values of the Code of Business Integrity, both within their own organizations and in their dealings with customers and partners. The code includes both sanctions and incentives for the organizations involved.

To show their pledge to Cbi, signatories enter into a purely moral commitment with the intent of benefiting from and upholding the platform of credibility which the Cbi members share. Cbi members benefit from reducing uncertainty and risks of corruption to their business, minimizing the risk of criminal and civil sanctions, raising employee awareness of integrity principles, and enhancing their reputation.

Source: <https://www.cbinigeria.com/about/>

Code-based and similar collective action initiatives are not a substitute for legal enforcement and other mandated UNCAC measures but offer an important supplemental channel for advancing business integrity practices that may be encouraged through State recognition and other means.

d) Education

Activities that raise public awareness about the harms of corruption can also be an effective tool for strengthening business integrity and reducing corruption involving the private sector.

While there are many root causes of corruption, experience has shown that a lack of awareness about its corrosive impacts is an important contributing factor. Enforcement sanctions and good practice incentives can influence the cost-benefit analysis by an individual or organization considering corruption, but corrupt acts may also reflect a poor understanding of the harms caused by corruption. Practices that have become entrenched may appear more of an inconvenience than a crime, and therefore, may not be seen as being blameworthy.

Behavioural research suggests that by changing social attitudes about particular illicit conduct, social acceptance and, therefore the incidence, of certain forms of corruption can be reduced.¹¹⁷ While there are bad actors who may knowingly and intentionally engage in anti-social conduct based on a calculation of risk and benefit, many others believe themselves to be honest and fail to appreciate the significance of their conduct or are otherwise able to rationalize misconduct.¹¹⁸ Tax reporting and illegal land transfers in rural settings are illustrative, where communal attitudes often have a greater impact on conduct than laws do. More recent research points to evidence that most promising results seem to emanate from interventions that raise the (material) costs of corruption while simultaneously increasing

¹¹⁷ See, for example, D. Ariely, *“The (Honest) Truth About Dishonesty”* (HarperCollins 2012).

¹¹⁸ N. Mazur et al, *“The Dishonesty of Honest People: A Theory of Self-Concept Maintenance,”* Journal of Marketing Research (2008); J. Dana et al, *“Exploiting Moral Wiggle Room: Behavior Inconsistent with a Preference for Fair Outcomes,”* Economic Theory (2007).

the (social-normative) benefits of behaving ethically, often influenced by peer-groups, ethical leadership, and behavioural nudges.¹¹⁹

Educating Professionals

Educational approaches have more recently involved educating professional bodies who are often on the front lines of either facilitating corruption as “enablers” or guarding against corruption as “gatekeepers”. Rather than stigmatizing gatekeepers, governments and the private sector could work together to ensure that professional industries do not function as intermediaries in hiding and laundering stolen assets in safe havens.

In the absence of consistent regulation or global standards on professional enablers and their role in corruption and money laundering, one way is to bring gatekeepers together to ensure cross-sectoral collaboration and promote peer learning and self-regulation. UNODC and the joint UNODC-World Bank Stolen Asset Recovery Initiative support the World Economic Forum’s Gatekeeper Taskforce, which includes leaders in finance, investment, corporate law, real estate and art and antiquities markets. The taskforce has developed the Unifying Framework,¹²⁰ which is a framework for self-regulation and collective action across all gatekeeping industries worldwide, regardless of sector. It was developed over a two-year period by intermediaries (including leaders in finance, investment, corporate law, art and antiquities markets, and real estate) for intermediaries.

The Unifying Framework aims at establishing a common basis for the types of measures all intermediaries should be taking, irrespective of their size, sector and type of operation concerned. To strengthen integrity, transparency and accountability, the framework establishes five core principles: (1) Establish clear, concrete and up-to-date policies; (2) Promote effective due diligence; (3) Center a culture of integrity through training and incentives; (4) Foster a “speak-up” culture; (5) Collaborate across industries and sectors.

Some regulators and industry associations have invested in educating professionals about integrity standards and aligning them with the goals of the State to counter corruption.

[CASE STUDY: KAZAKHSTAN BAR ASSOCIATION (KAZBAR) AND LEGAL POLICY RESEARCH CENTRE (LPRC)]

Kazakhstan launched the “Implementation of a systematic, structured and effective policy of improving business integrity and developing corporate governance in Kazakhstan according to

¹¹⁹ Jenkins, Matthew, *The effectiveness of integrity led anti-corruption interventions*, u4 helpdesk answer, 4 November 2022. Online: <https://www.u4.no/publications/the-effectiveness-of-integrity-led-anti-corruption-interventions>

¹²⁰ World Bank and World Economic Forum (2021), *The Role and Responsibilities of Gatekeepers in the Fight against Illicit Financial Flows: A Unifying Framework*. <https://star.worldbank.org/publications/role-and-responsibilities-gatekeepers-fight-against-illicit-financial-flows-unifying>

OECD standards” with two main objectives: 1) Creating a favourable legal environment for the implementation of international anti-corruption obligations into the laws of Kazakhstan by amending certain provisions of its anti-corruption legislation; 2) Promoting international anti-corruption standards and clean business (compliance) practices in corporate and academic circles. The project developed and supported a culture of anti-corruption compliance in Kazakhstan’s corporate sector by participating in the legislative process, training over 700 representatives of companies, government agencies, quasi-governmental companies, and representatives of Kazakhstan’s universities on how to create a quality compliance systems, and developing an online course for an unlimited number of users.

Source: <https://compliancepractice.kz/>

[CASE STUDY – KUWAIT: ANTI-CORRUPTION COURSES]

Kuwait established the Kuwait Anti-Corruption Authority (Nazaha) in 2016 with a mandate to cooperate with educational institutions in the field of combatting corruption, by:

- Assisting them in setting up a mechanism to combat corruption and achieve transparency among workers in educational institutions and work to achieve quality in education to meet desired integrity standards.*
- Cooperating in designing training programmes for students to make them aware of the values of integrity and the importance of adhering to them and developing a culture of preserving public money and public utilities.*
- Encouraging them to raise students' awareness of the seriousness of the dangers of corruption and the intolerance of it.*
- Encouraging them to design pre-service or in-service rehabilitation programmes for teachers in the field of raising awareness about the dangers of corruption and combating it.*

One example of implementation is the assistance Kuwait Anti-Corruption Authority provided in developing a course on anti-corruption legislation at the Faculty of Law at Kuwait University in coordination with Kuwait Transparency Society. The particular course was approved by the Faculty of Law of Kuwait University and launched in July 2020, providing specialized anti-corruption training for soon-to-be lawyers.

Source: Response to UNODC Business Integrity Questionnaire:

<https://businessintegrity.unodc.org/bip/en/questionnaire-on-states-measures-for-business-integrity.html>

Source: <https://www.nazaha.gov.kw/EN/pages/default.aspx>

Source: <https://www.nazaha.gov.kw/EN/DocLib/Kuwait%20Integrity%20and%20Anti-Corruption%20Strategy.pdf>

Educating youth

Education is not only for professionals. Raising awareness of the harmful impacts of corruption may take on other innovative approaches that target the general population. UNODC's Global Resource for Anti-Corruption Education and Youth Empowerment (GRACE), for example, seeks to create a culture of rejection of corruption among children and youth by "harnessing the transformational power of education and partnerships."¹²¹

A range of options for raising awareness is available, from small educational workshops to general public awareness campaigns and reform initiatives that target specific actions such as petty corruption among traffic police or customs inspectors. A common approach is to educate young people, whether through university level programmes or other awareness raising campaigns.

[CASE STUDY - CÔTE D'IVOIRE: RÉSEAU IVOIRIEN DES JEUNES LEADERS POUR L'INTÉGRITÉ (RIJLI)]

RIJLI is a network of youth organizations that brings together twenty or so organizations and represents the voice of young people in the fight against corruption in Côte d'Ivoire. The RIJLI's mission is to promote good governance and to fight corruption by promoting integrity, the principles of responsibility, accountability, transparency, respect for the law, civic-mindedness and citizen control.

RIJLI has undertaken several educational activities to instill the next generation with a sense of responsibility to counter corruption. This includes the promotion of integrity values in three secondary schools in Côte d'Ivoire, advocacy for greater inclusion of young people in electoral and political processes, creation of a framework for discussion between young people and the Ministry for the Promotion of Good Governance and Anti-Corruption. The organization is also a member of the regional anti-corruption platform of UNODC.

Source: Réseau Ivoirien des Jeunes Leaders pour l'Intégrité.

Consistent with article 13 of the UNCAC, many governments conduct public education campaigns to raise awareness about the harm from corruption, as well as to publicize their efforts to address the problem. Campaigns are also conducted by civil society organizations, often with the support of allied private sector interests.

e) Whistle-Blower Incentives

While preventive incentives are primarily aimed at encouraging corporate investments in good practice in anti-corruption programmes, incentives can also be used to encourage reporting of potential

¹²¹ UNODC Global Resource for Anti-Corruption Education and Youth Empowerment (GRACE): <https://grace.unodc.org/>

violations by individuals. Reporting incentives can also have the desired effect of enhancing good practices for fear of whistle-blowers discovering and reporting offences.

Such incentives have been used for many years in the United States to encourage and reward reporting on procurement fraud and other violations in government contracting, resulting in the government recovering over US\$ 72 billion between 1987-2022.¹²² This form of whistle-blower incentive extends to securities law violations by public companies, including the failure to properly record and report instances of bribery. In the United States, under the Dodd-Frank Act, the Securities and Exchange Commission (SEC) is authorized to award a whistle-blower from 10 to 30 per cent of any amount recovered in an enforcement action.¹²³ Awards are mandatory, subject to a US\$ 1 million recovery threshold and certain other requirements. A successful applicant for a whistle-blower award must have been the original source for “high-quality” information that was provided voluntarily and led to the successful enforcement action. There is an exclusion for public officials, as well as individuals convicted of a crime relating to the reported information or who gain knowledge through the performance of audit services under the securities law. Provisions have also been made to encourage employees to report offences internally within a company before reporting to securities regulators.

[CASE STUDY – U.S. SECURITIES AND EXCHANGE COMMISSION (SEC) WHISTLE-BLOWER PROGRAMME]

In September 2020, the SEC awarded US\$ 114 million to a single whistle-blower. The individual provided critical information that led to successful enforcement actions against a company engaged in securities fraud. The whistle-blower had repeatedly reported concerns internally, and despite personal and professional hardships, the whistle-blower alerted the SEC and the other agency of the wrongdoing and provided substantial, ongoing assistance that proved critical to the success of the actions. In another case in 2023, the SEC awarded a whistle-blower nearly US\$ 279 million for information that led to successful enforcement actions. Payments to whistle-blowers are made out of an investor protection fund, established by Congress, which is financed entirely through monetary sanctions paid to the SEC by securities law violators.

Source: <https://www.sec.gov/news/press-release/2020-266>

Source: <https://www.sec.gov/news/press-release/2023-89>

States may also encourage companies to maintain their own whistle-blower reward programmes by providing certain benefits to companies who do so. The existence of these programmes signals that a

¹²² US Department of Justice, “False Claims Act Settlements and Judgments Exceed \$2 Billion in Fiscal Year 2022” (2023), available at <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022>

¹²³ Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), Pub. Law No. 111:203 (2011). Criteria for issuance of a whistle-blower award are detailed in final rules published by the US Securities and Exchange Commission, “Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934”, Release No. 34-64545 (12 August 2011), available at <http://www.sec.gov/rules/final/2011/34-64545.pdf>. See also: <https://www.sec.gov/whistleblower>

company is committed to discovering any wrongdoing in its ranks and dealing with it appropriately, include rewarding the person who provided the information. The “reward” for companies who have such programmes in place may range from being included on a government whitelist, gaining access to procurement portals, and obtaining government issued certification as a supplier with integrity.

[CASE STUDY – REPUBLIC OF KOREA: WHISTLE-BLOWER REWARD PROGRAMME]

Under the Act on the Protection of Public Interest Whistleblowers in the Republic of Korea, internal whistle-blowers may be entitled to a reward of up to ₩ 3 billion where the information directly results in the recovery of or increase in revenue of the public institutions through penalty surcharges and others. Even when no direct recovery of or increase in revenue followed, if the whistleblowing serves the public interest, then the reporter, with a recommendation of the relevant agency, may be awarded up to ₩ 200 million by the Anti-Corruption and Civil Rights Commission (ACRC).

Source: https://www.acrc.go.kr/boardDownload.es?bid=64&list_no=38924&seq=1

Source: <https://businessintegrity.unodc.org/bip/en/questionnaire-on-states-measures-for-business-integrity.html>

Whistle-blower rewards should be packaged with protections for reporting persons. Financial incentives may not be sufficient for whistle-blowers to gain comfort in exposing corruption. Assisting the authorities may come at great personal risk, and therefore States should implement robust whistle-blower protections to guard against reprisals. Recognizing the challenges faced by reporting persons, the 2021 OECD Anti-Bribery Recommendation requires countries to establish “strong and effective legal and institutional frameworks to protect and/or to provide remedy against any retaliatory action” for qualified whistle-blowers. This includes shifting the burden of proof so that the whistle-blower does not have to establish that the allegedly adverse action was not in retaliation for the report.¹²⁴

Companies play an important role in providing a safe environment to report corruption abuses and internal systems are essential to well-functioning whistle-blower protections.

[CASE STUDY – SOUTH AFRICA: SAFELINE BY THE ETHICS INSTITUTE]

Safe Reporting Service Provider Standard (SafeLine) is a whistle-blower reporting certification standard designed with the primary purpose of protecting the whistle-blower who is doing the right thing by reporting unethical conduct, often at personal risk. This individual must be able to trust that their report will be treated in a confidential, secure, and timely manner. SafeLine provides an official, externally provided certification to give peace of mind to the whistle-blower, assuring them that the line they are using has been assessed by an expert and deemed reliable. A safe reporting line that is successful in fulfilling the criteria is granted certification for a duration

¹²⁴ Please refer to section XXII of the 2021 OECD Anti-Bribery Recommendation.

of 12 months. Following this period, it has to undergo the assessment again to ensure that quality is maintained.

Source: <https://www.tei.org.za/safe-reporting-service-provider-certification/>

f) Beneficial Ownership Transparency

Over the past several years, more than 100 States have made commitments¹²⁵ to implementing beneficial ownership transparency measures as a means to combat the use of corporate vehicles to engage in money laundering and corruption. A beneficial owner is generally defined as the natural person who can be found at the end of an ownership chain.¹²⁶ A beneficial owner is a person who ultimately has the right to some share of a legal entity's income or assets, or the ability to control its activities. Beneficial ownership transparency reveals how companies and other legal entities or arrangements, such as trusts, are owned and controlled by their beneficial owners.¹²⁷

Beneficial ownership differs from legal ownership. Legal persons, which include companies, can own other legal persons, including other companies. Historically, transparency in company ownership has focused on legal ownership, or the level of ownership immediately above a company.

Beneficial ownership transparency seeks to change the regulatory landscape for incorporation and prevent a jurisdiction from being used as a secrecy jurisdiction where corporate vehicles can be used to obscure ill-gotten gains and the proceeds of corruption. Beneficial ownership information may be used for various purposes. When such information is made public, it can also facilitate anti-corruption compliance efforts of other companies that are attempting to complete due diligence on their business partners or in the context of mergers and acquisitions.

[CASE STUDY - SLOVAKIA: BENEFICIAL OWNERSHIP REGISTRY]

Slovakia adopted the EU's Anti-Money Laundering Directive definition of beneficial ownership but added an aspect on joint control and coordinated action based on their own practical experiences of wrongdoing. This means that somebody may not meet the definition and threshold of beneficial ownership on their own, but they may meet it together with one or multiple other people. Joint control and coordinated action are assumed, for instance, if people are family members, or if different shareholders show a similar voting history. The beneficial owner definition was introduced to the AML Act by the Act on Public Sector Partners Register which entered into force in 2017.

¹²⁵ See global status of commitments to Beneficial Ownership Transparency: <https://www.openownership.org/en/map/>

¹²⁶ The Financial Action Task Force defines a Beneficial Owner as "natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement":

<https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-transparency-beneficial-ownership.pdf.coredownload.pdf>

¹²⁷ See Open Ownership, What is Beneficial Ownership? <https://www.openownership.org/en/about/what-is-beneficial-ownership-transparency/>

In the Public Sector Partners Register, the responsibility for registration is delegated to a locally based ‘authorized person’ such as an attorney, notary, auditor, banker, or tax advisor. Verification documents showing how a beneficial owner was identified are publicly available on the Register and validated by the authorized person. The register has independent oversight and is governed by a Registration Court. Anyone can submit a justified claim querying data to the Registration Court, and if the Court finds it reasonable, there is a proceeding to require the company to verify the data they submitted. It is unique in that it contains this reverse burden of proof mechanism. If queried data remains incorrect or incomplete, the Court can fine the company, remove them from the register and current government contracts can be canceled. Fines can be up to 100 per cent of the economic benefit of a company’s government contracts, or if that cannot be determined, up to € 1 million. Authorized persons and those in management positions can be fined up to € 100,000. Removal from the register means a company cannot undertake contracts with the government. Disqualification has proved to be an effective sanction and it is based on a court decision that a natural person shall not act as a member of the statutory body or supervisory body in a company or cooperative. This shall also apply to acting as the head of a branch of an enterprise, head of a foreign person’s enterprise, head of a branch of a foreign person’s enterprise, or as an authorized signatory (procurator).

Source: <https://rpvs.gov.sk/rpvs/>

Source: <https://www.justice.gov.sk/sluzby/register-partnerov-verejneho-sektora/open-data/>

Source : <https://businessintegrity.unodc.org/bip/en/questionnaire-on-states-measures-for-business-integrity.html>

g) Corporate Liability

Ensuring corporate liability for corruption offences is a legal approach that States can employ to counter corruption by adopting or enhancing their corporate liability frameworks. Article 26 of UNCAC and Article 2 of the OECD Anti-Bribery Convention require their Parties to establish the liability of legal persons for corruption offences. The 2021 OECD Anti-Bribery Recommendation, more specifically, recommends that member countries should either take a “flexible” approach for establishing the liability of legal persons for foreign bribery based on acts committed by any relevant person or, for those countries that limit companies’ responsibilities to acts and omissions of specific corporate officers, a “functionally equivalent” approach that will establish liability when:

- a person with the highest level managerial authority offers, promises, or gives a bribe to a foreign public official;
- a person with the highest level managerial authority directs or authorises a lower level person to offer, promise, or give a bribe to a foreign public official; and
- a person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics, and compliance programmes or measures.

Extending liability to corporations for corrupt practices committed by their employees or agents as well as any affiliate or subsidiary aims to deter such behaviour by imposing penalties and sanctions on the corporate entity itself. In fact, this is already a standard the Parties to the OECD Anti-Bribery Convention must abide. The 2021 OECD Anti-Bribery Recommendation provides that member countries should ensure that legal persons cannot avoid responsibility by using intermediaries, including related legal persons and other third parties, irrespective of their nationality, to offer, promise, or give a bribe to a foreign public official on its behalf. Furthermore, member countries should have appropriate rules or other measures to ensure that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity.

Therefore, States that have not done it yet may enact laws or amend existing legislation to explicitly establish or attribute liability for corruption offences based on the actions of their employees, agents, or representatives acting on behalf of, in the interest of, or for the benefit of the company.

Robust corporate liability frameworks send a strong deterrent message to corporations, discouraging them from engaging in corrupt practices as the parent company could be held liable for the actions of any of its affiliates, employees or agents. It also incentivises the implementation of a risk based anti-corruption programme covering related legal persons and third parties operating in different countries and markets. This tool will vary in its applicability among States as it is dependent on the particularities of individual legal systems and legal customs as it pertains to corporate liability.

[CASE STUDY - FRANCE'S DUTY OF VIGILANCE]

The French Vigilance Law, dated 27 March 2017, subjects certain companies to effectively establish, implement and publish a “vigilance plan”. This plan aims at identifying and preventing the occurrence of violations of human rights and fundamental freedoms, health and safety of individuals and the environment, resulting from the activities of the company and those of the companies it controls, directly or indirectly, as well as from the activities of subcontractors or suppliers with which it has an established commercial relationship. A vigilance plan should include (i) a risk mapping, (ii) procedures for regular assessment of the situation of subsidiaries, subcontractors or suppliers with whom an established commercial relationship exists, in the light of the risk map, (iii) appropriate actions to mitigate risks or prevent serious harm, (iv) a reporting mechanism drawn up in conjunction with the company’s representative trade unions, and (v) a system for monitoring the measures implemented and evaluating their effectiveness. This so-called “duty of vigilance” is applicable to French companies that, at the end of two consecutive financial years, employs, together with their direct and indirect subsidiaries, more than 5,000 persons in France, and to French companies employing, together with their direct and indirect subsidiaries, more than 10,000 persons in

the world. Any interested party may put obliged companies under formal notice to establish, publish and implement a vigilance plan. Should the company not respond within three months, the court may, at the request of any interested party, order the company to comply with its obligations, possibly under penalty payment. Furthermore, failure to comply with this duty of vigilance may give rise to civil liability for the obliged company and result in the obligation to compensate for any damage caused. The court may also order the publication, dissemination or posting of its decision or an extract therefrom.

Source: [Law no. 2017-399 of 27 March 2017 on the duty of vigilance of parent companies and ordering companies.](#)

h) Supply Chain Transparency

Another tool that States have been employing is requiring due diligence throughout a company's supply chain to assess compliance with anti-corruption obligations.¹²⁸ This can involve requiring specific reporting on environmental, social, and governance (ESG) requirements, adherence to laws that enforce labour standards, and strong vetting of third-party intermediaries.

To adhere to these various obligations, organizations are faced with implementing robust due diligence measures that promote transparency and integrity throughout their supply chains. By creating these requirements, States may force companies to proactively address corruption risks by conducting risk assessments throughout their supply chain, evaluations of suppliers based on anti-corruption criteria, imposing contractual obligations that explicitly require suppliers to comply with anti-corruption laws and regulations, ongoing monitoring of supplier's compliance with these obligations, establishing reporting mechanisms to report suspected cases of non-compliance, and have remediation and enforcement plans in place in case of discovery of corrupt activity.

[CASE STUDY - THE UNITED KINGDOM MODERN SLAVERY ACT]

Under Section 54 (Transparency in Supply Chains) of the Modern Slavery Act 2015, certain commercial organizations must publish an annual statement setting out the steps they take to prevent modern slavery in their business and their supply chains. This reporting obligation applies to any body corporate or partnership (wherever incorporated or formed) carrying on a business or part of a business in the United Kingdom, which supplies goods or services and whose total annual turnover is over £ 36 million. Each parent and subsidiary organization meeting the requirements must produce a statement. To assist companies, the government of

¹²⁸ The OECD Due Diligence Guidance for Responsible Business Conduct provides practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises by providing explanations of its due diligence recommendations and associated provisions. Implementing these recommendations can help enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships.

the United Kingdom published a guidance ([Transparency in supply chains: a practical guide](#)) explaining “who” is required to publish a slavery and human trafficking statement, and “how” to write, approve and publish such a statement either individually or as a group. If a business fails to produce a slavery and human trafficking statement for a particular financial year the United Kingdom Secretary of State may seek a judicial injunction requiring the organization to comply with its obligation. Failure to comply with the injunction may expose the organization to an “unlimited fine”. The guidance provides that “it will be for consumers, investors and non-governmental organizations to engage and/or apply pressure where they believe a business has not taken sufficient steps”.

Source: [United Kingdom Modern Slavery Act 2015, section 54 \(Transparency in supply chains\)](#)

Source: [Transparency in supply chains: a practical guide](#).

i) Reporting Requirements

States may adopt measures that target higher risk economic sectors, or business activity that is of particular interest to their jurisdiction. They can do so by implementing transparent reporting requirements that aim to reduce the likelihood of corruption taking root in an industry sector.

[CASE STUDY - CANADA’S EXTRACTIVE SECTOR TRANSPARENCY MEASURES ACT]

To enhance transparency and reduce corruption in the global oil, gas and mining sectors, the Extractive Sector Transparency Measures Act (ESTMA), requires companies in those sectors that are active in Canada to publicly disclose, on an annual basis, certain types of payments made to governments in Canada and abroad. The ESTMA disclosure requirement applies to companies which are engaged in the commercial development of oil, gas or minerals that are either: (i) publicly listed on a Canadian stock exchange, or (ii) private companies that do business in Canada if certain asset, revenue and employee thresholds are met (section 8(1) of ESTMA). All entities under the ESTMA, including those that do not enrol or submit a report, may be subject to compliance verification and enforcement actions. Compliance activities include: initial report validation based on the ESTMA Report Validation Checklist; reconciliation exercises to identify anomalies in the data; mailouts about compliance issues; and detailed compliance reviews. Non-compliance with ESTMA may result in companies being required to pay up to Can\$ 250,000 per day per offence.

Source: <https://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html>

Source: <https://natural-resources.canada.ca/our-natural-resources/minerals-mining/services-for-the-mining-industry/extractive-sector-transparency-measures-act/18180>

j) Unexplained Wealth Orders, Asset Declarations and Non-Conviction based Confiscation

As States have grappled with the influx of ill-gotten gains, largely from the proceeds of corrupt activities, they have sought new tools to target illicit wealth. Three examples are provided below.

1. Unexplained Wealth Orders are a legal tool used in certain jurisdictions to investigate and uncover assets or wealth that appears to be disproportionate to a person's known income or lawful activities. Unexplained Wealth Orders aim to combat money-laundering, corruption, and other forms of illicit financial activities. An Unexplained Wealth Order requires the individual or organization to provide a legitimate explanation for the origin of their wealth or assets which they are unable to adequately explain through legitimate means. It shifts the burden of proof onto the subject of the order to demonstrate that their wealth is lawfully acquired. If the subject fails to provide a satisfactory explanation, the authorities may seek forfeiture of the assets. While Unexplained Wealth Orders primarily target individuals, they can indirectly apply to corporations if the assets in question are owned or controlled by a corporate entity.
2. Asset declarations are official documents or filings required by certain jurisdictions or organizations to gather information about an individual's assets, income, liabilities, and financial interests. Asset declarations are typically submitted by public officials, government employees, elected representatives, and sometimes individuals in specific roles or positions of public trust. The purpose of asset declarations is to promote transparency, integrity, and accountability in public service. By requiring individuals to disclose their financial information, asset declarations aim to prevent conflicts of interest, detect corruption, and promote public trust in government and public institutions.
3. Non-conviction-based confiscation refers to a legal process through which authorities can confiscate assets or property without requiring a criminal conviction of the owner. It is a mechanism used in some jurisdictions to target the proceeds of crime or assets derived from criminal activities.

Non-conviction-based confiscation mechanisms have long been recognized under UNCAC (Article 54.1(c)), and has been repeated through the 2021 UNGASS political declaration (paragraph 40).¹²⁹ The Financial Action Taskforce (FATF) defines non-conviction-based confiscation as a “means of confiscation through judicial procedures related to a criminal offence of which a criminal conviction is not required.”¹³⁰ This concept is based on the principle that certain assets, such as those acquired through

¹²⁹ 2021 UNGASS political declaration mentions that States should “[...] adequately address requests based on non-criminal proceedings, including civil, administrative non-conviction-based proceedings, as well as those related to information concerning unexplained assets held by public officials, where appropriate and consistent with domestic legal systems and applicable international obligations [...]”. <https://baselgovernance.org/sites/default/files/2021-06/UNGASS%20Corruption%202021%20Political%20Declaration.pdf>

¹³⁰ France Guilherme (2022), *Non-conviction-based confiscation as alternative tool to asset recovery*, Transparency International Anti-Corruption Helpdesk Answer. https://knowledgehub.transparency.org/assets/uploads/helpdesk/Non-Conviction-Based-Forfeiture_2022.pdf

illegal activities, should not be protected by the rights of the individual who obtained them. It aims to prevent criminals from enjoying the benefits of their illicit activities, even if they are not convicted due to legal technicalities or other factors.

Under the guidance of the Conference of States Parties, in July 2021, the UNCAC Asset Recovery Working Group developed a note on 'Procedures allowing the confiscation of proceeds of corruption without a criminal conviction'. It provides a roadmap for States wishing to implement a similar tool and provides global examples to draw from.¹³¹

The return of confiscated assets is covered by Article 57 of UNCAC. In an effort to provide clarity to its operation, a UNODC paper¹³² explains the complexity of the provision that sets forth a series of asset return obligations of varying degrees for States Parties to the Convention vis-à-vis particular assets once they have been recovered by the host State through some manner of confiscation.

[CASE STUDY - PERU'S 2019 EXTINCIÓN DE DOMINIO LAW]

Extinción de Dominio, which translates to "extinction of ownership" or "forfeiture of assets," is a legal mechanism that allows the state to confiscate property or assets that have been acquired through illegal activities, such as organized crime, corruption, drug trafficking, or money laundering.

The Extinción de Dominio process typically involves a legal proceeding where the state must demonstrate that the assets in question are linked to criminal activity. The burden of proof may differ from country to country, but it generally requires a preponderance of evidence or a lower threshold than the criminal standard of beyond a reasonable doubt.

Once the court declares assets as subject to Extinción de Dominio, they are forfeited to the state and can be used for various purposes, such as compensating victims, funding law enforcement activities, supporting social programmes, or combating organized crime.

Source: https://www.unodc.org/documents/legal-tools/Ley_Modelo_Sobre_Extincion_de_Dominio.pdf

¹³¹ UNODC (2021), Procedures allowing the confiscation of proceeds of corruption without a criminal conviction. CAC/COSP/WG.2/2021/4. https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2021-September-6-10/CAC-COSP-WG.2-2021-4/V2104979_E.pdf

¹³² UNODC (2023), Confiscated Asset Returns and UNCAC: A net for all fish. https://www.unodc.org/documents/corruption/Publications/2023/UNODC_Confiscated_Asset_Returns_and UNCAC_-_A_Net_for_All_Fish_2023.pdf

VII. SUMMARY OF GOOD PRACTICES AND COMMON PITFALLS

As this guide demonstrates, there are many tools available to States to strengthen business integrity. However, each of these tools comes with good practices as well as common pitfalls to avoid. The following considerations should help States with the implementation of any of the previously mentioned measures.

1. Legislation vs. Guidance

Criminalizing corruption and going after the proceeds of corruption is an essential step. But laws alone are insufficient to strengthen integrity in the private sector.

Businesses yearn for guidance on the implementation of laws and regulations. The private sector generally gravitates towards certitude. While a degree of flexibility in the application or enforcement of legislation may allow for the consideration of variations among businesses requiring different anti-corruption procedures, it is generally recommended that States outline their expectations as a way of guiding the private sector to implement relevant measures.

2. A collective approach to business integrity

Business integrity is best achieved through a collaborative multi-stakeholder approach and States are encouraged to involve the private sector when designing and promoting incentives or sanctions, in order to build ownership and strengthen compliance. Initiatives such as the United Nations Global Compact, the B20 Collective Action Hub, and the Anti-Corruption Leadership Hub provide examples of how to involve the private sector, specifically as it relates to collective action initiatives.

3. Assessing corporate compliance

As with the need for guidance, competent authorities must be invested with the required resources and expertise to carry out their duties. This is especially crucial in the context of non-trial resolutions where authorities will assess and evaluate corporate anti-corruption programmes, board expertise, training programmes, and other integrity measures. The assessment of corporate anti-corruption programmes is also essential when granting incentives to promote business integrity.

Assessing corporate compliance demands specific skills and a comprehensive understanding of business operations as well as the challenges of designing, implementing, and reviewing internal controls and other compliance measures. Sustaining an ongoing dialogue with the business community and

compliance practitioners is crucial to ensuring that competent authorities acquire and maintain relevant expertise in the realm of corporate anti-corruption compliance. Rigorous training for competent authorities is also required. Furthermore, a deficiency in adequate expertise to assess corporate compliance programmes jeopardises the efficacy of incentive mechanisms. First, wrong signals may be conveyed to the business community through inconsistent or inaccurate assessments.¹³³ Companies lacking an effective anti-corruption compliance programme might find themselves rewarded, whereas the efforts of other companies might go unnoticed. This would create a significant distortion in the market and undermine government efforts to promote compliance. Second, a lack of expertise can lead enforcement agencies or other government authorities to outsource the assessment of compliance programmes to external parties that might not have the capacity or the incentives to properly evaluate the effectiveness of the companies' anti-corruption programmes.

In addition, competent authorities need to strike the right balance between assessments based on a tailored-made approach or pre-determined criteria. Tailored-made approaches enable competent authorities to consider internal and external factors, including the company's structure and size, the sector of operations, and the business environment it navigates. A tailored assessment may also prove advantageous for businesses, notably those functioning in highly exposed sectors. Furthermore, requiring companies to develop their own metrics to assess the effectiveness of their anti-corruption programme may enable competent authorities to evaluate the company's understanding of how and why its programme is effective. Nevertheless, embracing a tailor-made approach has limitations. Clear, consistent, and foreseeable expectations, indicators, and methods are imperative for the private sector to invest in, develop, and implement what competent authorities would consider as an effective anti-corruption programme. This challenge is exacerbated by the "trade-offs involved in employing different quantitative and qualitative approaches when measuring corporate compliance",¹³⁴ and the fairly nascent research in this area. Further work in this domain could help governments and private sector practitioners identify good practices to measure effective anti-corruption compliance. The development of consistent practices at a global level could also help private sector practitioners implement good practices across the jurisdictions in which they operate.

For example, the United States Department of Justice publishes detailed assessment criteria and guidance on the questions that should be examined to determine whether a corporate anti-corruption programme is effective in practice (see case study previously mentioned).

¹³³ See Responses to the 2019 Working Group on Bribery's written consultation made by Joseph Murphy.

¹³⁴ Rorie, M. & Rooij, V, B. (2021). "Measuring Compliance: The Challenges in Assessing and Understanding the Interaction between Law and Organisational Misconduct." In *Measuring Compliance: Assessing Corporate Crime and Misconduct Prevention*, 2021, Amsterdam Law School Research Paper No. 2022-30, Center for Law & Behavior Research Paper No. 2022-02, Available at SSRN: <https://ssrn.com/abstract=3853764> or <http://dx.doi.org/10.2139/ssrn.3853764>

4. Avoiding policy incoherence

Many of the tools in this Resource Guide are complementary, but it is imperative that in their efforts to prevent and counter corruption, States pass laws and regulations that do not counteract each other. For example, if States adopt regimes to promote non-trial resolutions with the stated purpose that companies will implement robust anti-corruption programmes and self-report instances of non-compliance upon discovery, they should not also be threatened by automatic debarment or other forms of punishment that would weigh against the likelihood of them self-reporting.

To remain consistent, States must also ensure that the mandates of various ministries and anti-corruption authorities are in harmony with one another. Where possible, States should avoid the possibility of conflicting mandates which can lead to disjointed approaches to anti-corruption, as well as ineffective and incoherent use of public resources unless the authorities concerned coordinate. On the other hand, having multiple potential sites of enforcement can prevent or hinder State capture.

While each sanction and incentive targeting the private sector may have its own stated purpose, they must also be drafted and framed in a way that seamlessly interact with each other. Otherwise, there is the risk that the overarching policy intent will be negated by competing, and even conflicting laws, regulations, and policies. UNCAC Article 5(3) stresses the importance of periodic review to “evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.”

With a view to ensure effective and consistent enforcement, States should ensure that all parties are held to account.¹³⁵ While holding legal persons liable of corruption is instrumental, enforcement should also be pursued against individuals engaged in corrupt conducts. Similarly, steps should be taken to trigger the liability of the public officials who solicit or receive bribes.

As noted below, policy consistency should also be ensured at a global level to avoid additional difficulties for companies operating internationally and navigating between different systems and regulatory requirements.¹³⁶ Avoiding inconsistencies across national policies and enforcement is all the more important as many domestic legal instruments have extraterritorial reach.

5. Over-reliance on a single tool

Sanctions and incentives work together to provide the environment that strengthen business integrity. States should not rely on one single measure as being the solution to counter corruption. For example,

¹³⁵ OECD (2020), *Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change*, p.81. <https://www.oecd.org/daf/anti-bribery/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf>

¹³⁶ OECD (2020), *Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change*, p.81. <https://www.oecd.org/daf/anti-bribery/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf>

though beneficial ownership transparency has been increasing in popularity, it alone will not suffice. It requires a coordinated effort to ensure law enforcement agencies can collect, verify, and interpret the data, and that anti-money laundering and tax laws be drafted in a way that supports the transparency initiative. The same can be said of other tools: a holistic approach to engaging with the private sector and to improving the business integrity climate is what works best.

6. Lack of independence and impartiality

When attempting to carry-out anti-corruption policy reform and encourage integrity in the private sector, it is essential that State institutions responsible for addressing corruption do not suffer from a lack of independence and impartiality. Political interference, nepotism, or favouritism can compromise the effectiveness and credibility of anti-corruption efforts. If institutions are not sufficiently autonomous, they may be unable to investigate and prosecute corruption cases, grant incentives, or otherwise be able to adequately provide the incentive structure that fosters a culture of compliance in the private sector.

7. Inadequate enforcement and accountability

Even with strong laws in place, their enforcement is crucial. Insufficient resources, inadequate training of law enforcement officials, and systemic corruption within the law enforcement agencies can hamper effective implementation. Additionally, if corrupt officials are not held accountable and face consequences for their actions, it sends a message of impunity, undermining the overall anti-corruption efforts. Furthermore, when laws go unenforced, it signals to the private sector that they can get away with misconduct, thus negating any incentive to self-report acts of corruption.

8. Public sector integrity

The public sector should model the type of environment it desires from the private sector. For example, when public officials solicit bribes for common interactions with companies such as for licensing procedures or via customs declarations, this undermines efforts to reform the private sector and encourage business integrity. The failure to prevent corruption in the public sector through a lack of codes of ethics, supervision, appropriate training for public officials, and transparency provisions cannot be compensated for by promoting integrity in the private sector. For private sector integrity to be incentivized, public sector integrity must be modelled and, if necessary, enforced through disciplinary procedures and/or criminal proceedings to avoid creating a culture of impunity that undermines trust in public institutions and fosters corruption in the private sector.

9. Limited transparency and access to information

The lack of transparency and overly restrictive access to information may further hinder anti-corruption initiatives. Opaque procurement systems or limited public access to information on business dealings more generally, can create an environment conducive to corruption. When States wish to provide incentives to the private sector to encourage compliance with anti-corruption requirements, their own processes should also be transparent with open communication, the sharing of good practices, and the provision of transparent information to the public.

10. Ineffective whistle-blower protection

Whistle-blowers can be a valuable source of information to expose corruption in the private sector. However, if there are no adequate protections in place for whistle-blowers, such as safeguards against retaliation and provisions for anonymity or, at least, confidentiality, individuals may hesitate to come forward due to fear of reprisals. Failing to protect whistle-blowers can weaken efforts to uncover corruption. Furthermore, whistle-blowers take great risk to their reputation and earning potential. States may wish to consider the possibility of offering rewards to whistle-blowers who provide authorities with useful information to investigate, prosecute, or otherwise remediate corrupt behaviour.

11. Insufficient international cooperation

Corruption often transcends national boundaries. Inadequate international cooperation and coordination can limit the effectiveness of anti-corruption efforts at the domestic level. To prevent and counter corruption effectively, States need to collaborate on investigations, share information, and cooperate in the recovery of illicitly acquired assets.

Having a comprehensive domestic approach to prevent and counter corruption may be hampered if States don't sufficiently cooperate with each other. This problem is further exacerbated where there is policy incoherence at a regional and global level. Where one State may offer self-reporting incentives, this may be offset if another State favours strict prosecution. Similarly, a company will be reluctant to investigate a potential misconduct in the context of proceedings conducted by a jurisdiction if such efforts may contravene data privacy requirements in another jurisdiction.¹³⁷ The international community should do all it can to harmonize and ensure consistency in the way in which they incentivise business integrity.

¹³⁷ OECD (2020), *Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change*, p.81. <https://www.oecd.org/daf/anti-bribery/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf>

ANNEX A: COMMON PRACTICES

SANCTIONS	PURPOSE
Monetary sanctions	Punish misconduct and deter future violations
Imprisonment	Also punitive and deterrent, focused on individuals
Confiscation of proceeds	Used to deprive wrong doers of ill-gotten gains and deter future violations
Contract remedies	A tool for communicating, enforcing anti-corruption contract requirements
Victim Compensation	Restitution to communities or other social groups to correct for harms caused by corrupt acts.
Suspension and debarment	Used to bar unreliable contractors from government or public market procurement process
Denial of benefits	Limits or restricts access to certain government benefits and services such as export credit and trade services.
Liability for damages	Compensates individuals or entities whom the law recognises as having been directly injured by an act of corruption
Reputation	Holds wrong-doers publicly accountable

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INCENTIVES	PURPOSE
Penalty mitigation	Encourages self-reporting of offences, credits company prevention efforts
Procurement incentives	Rewards good practice through procurement preference
Compliance requirements	Encourages open disclosures and reporting to benefit from stock exchange listing, and other regulatory authorities.
Preferential access to benefits	Rewards good practice with preferential access to government benefits, services
Certification	Rewards good practice with certification to be a “preferred supplier”.
Reputation	Encourages good practice through public recognition
Whistle-blower incentives	Encourages reporting by individuals of potential violations

ADDITIONAL MEASURES	PURPOSE
Integrity pacts	A tool for raising integrity standards on project or sectoral basis, through contractual commitments and third-party oversight.
Collective action	Multi-stakeholder approach that brings companies together with other parties, such as government and/or civil society to tackle specific corruption issues.
Code-based initiatives	Voluntary initiatives by business used to raise awareness and strengthen integrity practices on a local, regional or sectoral basis.
Public sector reform	Cooperative public/private initiatives that target the demand side of corruption, through civil service and regulatory reforms, including transparency of e-procurement among others.
Education	Activities that raise public awareness about the harm from corruption the capacity to take action.
Corporate liability	Legal tool that holds the parent company responsible for actions of affiliates, suppliers, third parties, and others down the supply chain.
Unexplained wealth orders and asset declarations	Legal tool that requires the individual/corporation to provide evidence of their acquisition of wealth or assets.
Beneficial ownership transparency	Prevents the misuse of corporate vehicles and allows for better due diligence.
Assessments	Public authorities determine the effectiveness of anti-corruption programmes and anti-corruption initiatives.
Supply chain transparency	Requirements that mandate transparency and disclosures throughout a company's supply chain.

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