UNITED NATIONS OFFICE ON DRUGS AND CRIME
UNITED NATIONS GLOBAL COMPACT
ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

A RESOURCE GUIDE ON STATE MEASURES FOR STRENGTHENING BUSINESS INTEGRITY

United Nations

OECD

A Resource Guide on State Measures for Strengthening Business Integrity

This work is co-published by the United Nations (United Nations Office on Drugs and Crime and the United Nations Global Compact) and the Organisation for Economic Co-operation and Development.

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Please cite this publication as:
OECD/UN (2024), *A Resource Guide on State Measures for Strengthening Business Integrity*, OECD Publishing, Paris/UN, New York, https://doi.org/10.1787/c76d7513-en.

ISBN 978-92-64-77296-0 (PDF)

Revised version, July 2025
Details of revisions available at: https://www.oecd.org/about/publishing/Corrigendum_Resource-Guide-on-State-Measures-for-Strengthening-Business-Integrity.pdf

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Acknowledgements

This publication was produced by the United Nations Office on Drugs and Crime (UNODC), the United Nations Global Compact (UN Global Compact) and the Organisation for Economic Co-operation and Development (OECD). This 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*.

We wish to extend our thanks to Noah Arshinoff as lead author of this publication.

We would like to extend our gratitude also to the experts who agreed to be interviewed for this publication and to the participants in the OECD/UNODC expert meeting and the public-private dialogue on government incentives and assessments for promoting corporate anti-corruption compliance on the margins of the OECD Global Anti-Corruption and Integrity Forum in May 2023, the members of the Anti-Corruption Leadership Hub, as well as the participants in the UNODC panel discussion on strengthening business integrity at the fourteenth session of the Implementation Review Group in Vienna in June 2023, and the participants in the Private Sector Forum co-organized by UNODC and UN Global Compact on the margins of the tenth session of the Conference of the States Parties (CoSP) to the United Nations Convention against Corruption (UNCAC) in December 2023, and provided valuable comments on this publication. We would also like to thank all the government agencies, international organizations, companies, and associations that contributed to this project, in particular the agencies, organizations, and associations that provided inputs on the case studies highlighted in this report, as well as those who responded to the public consultation in late 2023/early 2024.

We wish to acknowledge the valuable contributions of our colleagues from the partner organizations UNODC, UN Global Compact and OECD, who joined forces in producing this publication:

- From UNODC: Julia Pilgrim, Laura Bertipaglia, Sabrina D'Andrea, Princess Chifiero, Benjamin Mirichi and Florian Lair, Corruption and Economic Crime Branch (CEB), UNODC. The publication also benefited from the valuable input of CEB collectively and those who reviewed this publication, in particular Kari Lucas, Felipe Freitas Falconi, Stefanie Holling, Louise Portas, Jason Reichelt and Brigitte Strobel-Shaw. Moreover, UNODC would like to thank Martha de Haro, editor, and Indra Eleonora Espinosa García, graphic designer, for supporting this publication.
- From OECD: Elodie Beth, Brooks Hickman, Vitor Geromel and Anaïs Michel, from the Anti-Corruption Division within the Directorate for Financial and Enterprise Affairs at the OECD. The publication also benefited from the valuable input of OECD colleagues and those who reviewed this publication, in particular Nicolas Pinaud, Catherine Marty, Amelia Godber, Carissa Munro, and Rita Guelzim. Moreover, the OECD would like to thank Clara Young for editing the publication.
- From UN Global Compact: Cristina Ritter, Michelle Breslauer, Gabriela Ocampo and Fabian Espejo, for their close involvement in the drafting of this guide. We equally wish to thank the participants of the UN Global Compact whose input has helped to ensure that the guide reflects the latest developments in the global fight against corruption in the private sector.

The production of this publication was generously funded by the Siemens Integrity Initiative and the Government of the United States of America, in particular the Bureau of International Narcotics and Law Enforcement Affairs (INL), under the auspices of the Global Initiative to Galvanize the Private Sector as Partners to Combat Corruption (GPS project).

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Overview

The commitment of the private sector to fighting corruption is critical to healthy economic development. It helps ensure fair and safe markets, and the overall well-being of societies. States can help the private sector promote business integrity by playing a dual role: they can impose sanctions for misconduct and provide incentives for the implementation of good practices.

A shared responsibility

Evolving experience has shown that the path to business integrity is a shared responsibility of States and the private sector, together with civil society and academia. Collective action initiatives which bring together actors in an alliance of organizations from the public and private sector have become an integral model for promoting business integrity. Collective action and the need for public-private partnerships is acknowledged in the latest international standards such as the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2021 OECD Anti-Bribery Recommendation).

Using sanctions and incentives: What is the right mix?

Sanctions[1] alone do not result in best outcomes for reducing corruption in the private sector. Rather, governments are increasingly opting for a 'carrot and stick' approach by using incentives to foster business integrity as well. Promoting business integrity requires finding the right mix of sanctions and incentives.

Sanctions: What is the minimum governments should be complying with?

Sanctions that are "effective, proportionate and dissuasive" are a baseline United Nations Convention against Corruption (UNCAC)[2] and Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention)[3] requirement for both natural and legal persons that commit a corruption offence. Certain sanctions are mandatory under 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 in International Business Transactions (OECD Working Group on Bribery) will examine closely whether each of its members' overall mix of sanctions is optimal. 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 criminal, administrative, or civil sanctions. The examples and descriptions of sanctions can be found in chapter VI.

In a business context, sanctions can be considered effective and dissuasive if they adequately punish misconduct, eliminate illegal gains and encourage measures to prevent future misconduct. Proportionality considerations are related to the company itself, as well as to the gravity of the offence and the harm caused. Within these parameters, States have wide discretion to implement many different forms of

sanctions, and many make them available to law enforcement agencies or courts on a discretionary basis. 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.

SANCTIONS	PURPOSE & APPLICATION
Confiscation of proceeds	Used to deprive wrongdoers of ill-gotten gains and deter future violations.
Contract remedies	Enables contracting parties to communicate and enforce anti-corruption contract requirements.
Corporate reform	Requires internal changes to management and/or board composition, governance systems, and policies and procedures.
Denial of benefits	Limits or restricts access to certain government benefits and services such as export credit and trade services.
Imprisonment	Used to punish and deter individuals responsible for corrupt activity.
Liability for damages	Compensates individuals or entities whom the law recognizes as having been directly injured by an act of corruption.
Monetary sanctions	Punishes misconduct and acts as a deterrent for future violations. Can be imposed against both natural and legal persons.
Reputation	Holds wrongdoers publicly accountable.
Suspension and debarment	Used to exclude unreliable contractors from government or public market procurement processes.
Victim compensation	Restitution to communities or other social groups to correct for harms caused by corrupt acts.

Incentives: Promoting ethical behaviour

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. States may consider granting public advantages, including public subsidies, licenses, procurement contracts, development assistance and export credits to those that abide by good practice requirements. See chapter VI for more on incentives.

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 incentivizing 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 such as penalty mitigation measures can be offered to entities that have been proven to have committed an offence but show remediation efforts and cooperate with authorities over the course of an investigation or prosecution. Nonetheless, incentives that are overly generous or misapplied undermine UNCAC and OECD anti-bribery standards, as well as public confidence in the administration of justice.

INCENTIVES	PURPOSE & APPLICATION
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.

INCENTIVES	PURPOSE & APPLICATION
Preferential access to benefits	Rewards good practice with preferential access to government benefits, services.
"Allowlists" or preferred supplier lists	Encourages companies to implement robust integrity protocols in order to be added to a government's list of preferred suppliers.
Investment Promotion	Policies that require businesses to adhere to integrity standards to qualify for investment protections.
Certification	Rewards good practice with certification.
Reputation	Encourages good practice through public recognition.

Core recommendations

1. States should lead by example by implementing sound integrity policies and ensuring their consistent enforcement across public and private sectors.
2. Corporate anti-corruption programmes are a primary tool for strengthening integrity and their effectiveness should be assessed.
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 should coordinate at the international level to harmonize approaches to business integrity, avoid policy incoherence and promote a level playing field for companies.
6. States shall ensure that legal persons held liable can be subject to effective criminal and/or non-criminal sanctions, including monetary ones.
7. States should develop a set of business integrity measures that are complementary and undertake periodic reviews to evaluate their adequacy.

Purpose of the Resource Guide

This resource guide provides 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 experience of countering corruption. These include, notably, UNCAC as well as the OECD Anti-Bribery Convention and its associated 2021 OECD Anti-Bribery Recommendation.[4] This publication has been prepared in furtherance of the resolution 10/12, entitled "Providing incentives for the private sector to adopt integrity measures to prevent and combat corruption", which was adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its tenth session in December 2023.[5] It covers the most important topics related to business integrity and contains case studies that serve to share information and practices, and provide inspiration to States and the private sector.

Structure

This guide begins with an overview of the international standards from the United Nations and OECD (chapter II), discusses the role of governments (chapter III), the private sector (chapter IV), and elaborates on the multi-stakeholder approach to enhancing business integrity (chapter V). The guide then delves into the various sanctions and incentives (chapter VI) available to States, and provides a few additional measures (chapter VII) that States should consider. The guide concludes with a summary of good practices and common pitfalls (chapter VIII) to assist States in their implementation of the tools available to them as described throughout the guide.

1 Introduction

State efforts to prevent and counter corruption must consider and reflect the central role of the private sector in ensuring business integrity. 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 positive 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. Principle Ten of the UN Global Compact,[6] which commits participants to proactively develop policies and concrete programmes to address corruption internally and within their supply chains, emphasizes the importance of working with the private sector when countering corruption.

For their part, States are expected to meet certain minimum standards when implementing their commitments under UNCAC and the OECD Anti-Bribery Convention, together with its 2021 OECD Anti-Bribery Recommendation on corruption offences. These include 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”. States have wide discretion to determine the proper balance of sanctions and incentives, as well as ancillary measures for enhancing business integrity.

The Guide recognizes that a one-size-fits-all approach is not appropriate 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, and 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 in collaboration with or led by the private sector 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.

1.1. Private sector context

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 extortion 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.

1.2. 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, UN Global Compact and OECD guidance.[7] Generally, they are built on a corruption risk assessment and involve a leadership commitment to ethical business practices; awareness

training; anti-corruption 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, public authorities are increasingly 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.[8] States should help to shape these corporate investment decisions through a combination of enforcement sanctions and good practice incentives.[9] 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.

2 International standards

This part of the guide contains an overview of 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 UN 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 instruments.

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 Combating Corruption[10] 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,[11] implemented by members of the Organization of American States, contains similar objectives. The Council of Europe has also established the Group of States Against Corruption (GRECO)[12] 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."[13] Additionally, the European Union anti-corruption framework[14] strives to ensure a common high standard of legislation, either specifically on corruption, or incorporating anti-corruption provisions in other sectoral legislation.

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.

2.1. UNCAC and the private sector

Designed to provide a comprehensive 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 has 190 parties[15] that have committed to wide-ranging measures that seek to prevent corruption, criminalize bribery and other forms of corruption, strengthen law enforcement 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. Additionally, chapter IV on International Cooperation calls on States parties to cooperate with one another in criminal matters, including in relation to the private sector.

Criminalization and international cooperation provisions

Bribery of national public officials (article 15)

Bribery of foreign public officials and officials of public international organizations (article 16)

Trading in influence (article 18)

Bribery in the private sector (article 21)

Embezzlement of property in the private sector (article 22)

Laundering of proceeds of crime (article 23)

Concealment (article 24)

Obstruction of justice (article 25)

International cooperation (article 43)

Extradition (article 44)

Transfer of sentenced persons (article 45)

Mutual legal assistance (article 46)

Transfer of criminal proceedings (article 47)

Law enforcement cooperation (article 48)

Joint investigations (article 49)

Special investigative techniques (article 50)

UNCAC also contains provisions that call on States parties to enact or consider measures that promote business integrity and the reporting of corruption.

Provisions promoting integrity and reporting of corruption in the private sector

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)

2.1.1. Recent developments

In 2021, the United Nations General Assembly Special Session (UNGASS) against corruption adopted a political declaration that reaffirmed the commitment of Member States to strengthen, inter alia, ethical behaviour, anti-corruption and anti-bribery compliance efforts, integrity, accountability and transparency measures in all enterprises. Member States also encouraged 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.[16]

In 2023, the Conference of the States Parties to the United Nations Convention against Corruption adopted at its tenth session resolution 10/12 that calls upon States parties to develop effective frameworks to provide incentives for the private sector to adopt integrity measures, inter alia, with a view to tying integrity measures to participation in public programmes, such as those related to subsidies, licenses, procurement contracts and export credits, while also considering the structure and size of private enterprises.[17]

2.2. UN Global Compact – Principle Ten

With more than 22,300[18] 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.

The Ten Principles of the UN Global Compact guides business to operate in ways that, at a minimum, meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption. Principle Ten of the UN Global Compact, 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.

Global Compact Country Networks have become an essential component of the UN Global Compact. These Global Compact Country Networks are multi-stakeholder platforms where participants come together to work directly with businesses to help them promote the UN Global Compact Ten Principles.

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.[19]

2.3. 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 January 2024, there were 46 Parties to the OECD Anti-Bribery Convention.[20] All the Parties to the Convention are members of the OECD Working Group on Bribery.

It contains legally binding standards to criminalize bribery of foreign public officials in international business transactions.

OECD Anti-Bribery Convention provisions

The Offence of Bribery of Foreign Public Officials (article 1)

Responsibility of legal persons (article 2)

Sanctions (article 3)

Jurisdiction (article 4)

Enforcement (article 5)

Statute of limitations (article 6)

Money laundering (article 7)

Accounting (article 8)

Mutual legal assistance (article 9)

Extradition (article 10)

Responsible authorities (article 11)

Monitoring and follow-up (article 12)

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:

- All the Parties to the OECD Anti-Bribery Convention have adopted legislation prohibiting foreign bribery.
- The OECD Working Group on Bribery 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.

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.

2.4. 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)[21] reflects the OECD Working Group on Bribery's recommendations made through its country monitoring and ensures that it continues to respond to new threats of foreign bribery and challenges in countering it.

The 2021 OECD Anti-Bribery Recommendation introduces provisions on issues such as provisions including requirements in relation to business integrity:

- Criminalisation and Enforcement of the Offence of Bribery of Foreign Public Officials (Sections VII, XI)
- Collective Actions (Sections IV and XII)
- Addressing the Demand Side (Section XII)
- Sanctions and Confiscation (Sections XV and XVI)
- Non-Trial Resolutions (Sections XVII and XVIII)
- Reporting Foreign Bribery (Section XXI)
- Protection of Reporting Persons (Section XXII)
- Accounting Requirements, External Audit, and Internal Controls, Ethics and Compliance (Section XXIII)
- Incentives for Corporate Anti-corruption Compliance (Sections XV and XXIII)
- Public Advantages, including Public Procurement (Section XXIV)

The Good Practice Guidance on Internal Controls, Ethics, and Compliance (Annex II to the 2021 OECD Anti-Bribery Recommendation) emphasizes 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.

3 The role of governments

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. Creating a fair and competitive business environment is the responsibility of governments. Companies that feel disadvantaged compared to peers in other jurisdictions may be reluctant to put in place integrity standards if they see others not being held accountable for unethical behaviour. On the contrary, where States require integrity standards to operate in their jurisdiction, this incentivizes business integrity.

Governments must also lead by example. By ensuring a culture of integrity within, this sends a signal to the private sector and other stakeholders that promoting ethical conduct is of primary importance. Furthermore, governments are responsible for ensuring that State agencies and authorities have policies and procedures in place for preventing private sector corruption and that their personnel receive the necessary training.

3.1. 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, especially as concerns corporate liability for corruption offences and beneficial ownership transparency.

Box 3.1. Case studies: United Kingdom and France

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 (2010), *Review of Implementation of the Convention and 1997 Recommendation Phase 1ter Report: United Kingdom Phase*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/f869de88-en; United Kingdom Bribery Act 2010, https://www.legislation.gov.uk/ukpga/2010/23

France: The SAPIN II Law

In 2016, France adopted the Law on transparency, combating corruption and the modernization of economic life, known as the SAPIN II Act. The SAPIN II 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 II 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 II 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: OECD (2021), *Implementing the OECD Anti-Bribery Convention Phase 4 Report: France*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/2c7d8500-en; French Act No. 2016-1691 https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033558528 (SAPIN II Act); French Anti-Corruption Agency (May 2023) Presentation of various regulatory frameworks for promoting business integrity across the world, https://www.agence-francaise-anticorruption.gouv.fr/files/2023-05/AFA%27s%20Presentation%20FR%20UK%20US%20WBG%20Standards_May%202023_English%20version.pdf

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 of France, the United States, the United Kingdom, as well as the World Bank Group, and outlines the requirements that apply to companies in these jurisdictions.[22] 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".

3.1.1. Corporate liability

Ensuring corporate liability for corruption offences is a key feature of governments' efforts to prevent and fight corruption. Article 26 of UNCAC and Article 2 of the OECD Anti-Bribery Convention requires States Parties to establish the liability of legal persons for corruption offences.[23] 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 of managerial authority offers, promises, or gives a bribe to a foreign public official
- a person with the highest level of managerial authority directs or authorizes a lower-level person to offer, promise, or give a bribe to a foreign public official
- person with the highest level of 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 by which 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 incentivizes 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.

Box 3.2. France's duty of vigilance

The French Vigilance Law, dated 27 March 2017, subjects certain companies to effectively establishing, implementing and publishing a "vigilance plan". This plan aims to identify and prevent the occurrence of violations of the 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, https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000034290627

3.1.2. Beneficial ownership transparency

Beneficial ownership transparency can be an integral part of a legal framework that strives to counter corruption. Over the past several years, more than 100 States have made commitments[24] 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.[25] 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.[26]

Box 3.3. Slovakia: Beneficial Ownership Registry

Slovakia adopted the European Union's Anti-Money Laundering (AML) 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 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 Slovakia's Act on Public Sector Partners Register which entered into force in 2017.

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 cancelled. Fines can be up to 100% of the economic

benefit of a company's government contracts, or if that cannot be determined, up to EUR 1 million ($ 1.09 million). Authorized persons and those in management positions can be fined up to EUR 100 000 ($ 109,000). Removal from the register means a company cannot undertake contracts with the government. Disqualification has proved to be an effective sanction and 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 also applies 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).

Sources: Register of Public Sector Partners, https://rpvs.gov.sk/rpvs/ ; Data from the Register of Public Sector Partners, https://www.justice.gov.sk/sluzby/register-partnerov-verejneho-sektora/open-data ; Questionnaire on State Measures for Strengthening Business Integrity https://businessintegrity.unodc.org/bip/en/questionnaire-on-states-measures-for-business-integrity.html

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.

3.2. 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 on 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 license or other regulatory 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.

Box 3.4. 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 and medium to advanced.

Sources: Argentina's Law on Liability of Legal Persons No. 27.401, InfoLEG - Ministerio de Justicia y Derechos Humanos - Argentina ; Integrity and Transparency Register of Companies and Entities (RITE), https://www.rite.gob.ar/ ; 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_guia_para_el_desarrollo_de_politicas_de_integridad.pdf. 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/guiapymes.pdf

Box 3.5. 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: Corruption Prevention Guidelines for the Business Sector, https://jaga.id/kuisprofit?vnk=00dc737a

3.3. 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 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.

While no State has the resources or ability to police all corporate activity for potential violations, even a State's "signaling" that it is serious about enforcing its anti-corruption laws is central to strengthening business integrity. The primary audience for anti-corruption signaling 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.[27]

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 cooperate 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.

3.4. Strengthening anti-corruption and integrity practices

Governments should also take measures to strengthen the anti-corruption commitment and practices of their agencies. Chapter II of 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 those interacting with, or exposed to information regarding companies operating abroad.

4 The role of the private sector

State-led, top-down approaches imposing regulation on the private sector alone tend to tackle corruption less effectively. Better outcomes can be achieved when they are combined with a bottom-up approach of governments collectively working with the private sector to develop anti-corruption laws, strategies, policies, incentives and sanctions.

The primary responsibility of companies in the area of business integrity is to ensure that their employees, agents and business partners understand and comply with applicable anti-corruption laws.[28] To achieve this goal, companies put in place anti-corruption programmes. The business community, especially larger domestic and global companies, and industry associations can also help raise public awareness about the harm of corruption by supporting governmental and other anti-corruption initiatives and advancing good practice standards for their 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.

Box 4.1. Business to business application: ICC anti-corruption clause

The International Chamber of Commerce (ICC) was the first business organization to issue anti-corruption rules in 1977 with its Rules of Conduct to Combat Extortion and Bribery. It has since developed a battery of anti-corruption tools focused on private sector training and self-regulation. These include a model Anti-Corruption Clause to help businesspersons create trust with counterparties and prevent their relationships from being affected by corrupt practices in the negotiation and performance of contracts. The clause is designed to be included in contracts where parties commit to comply with the ICC Rules on Combating Corruption or 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.

Sources: ICC Rules on Combating Corruption, https://iccwbo.org/global-insights/responsible-business/anti-corruption/ ; ICC Anti-corruption Clause – ICC – International Chamber of Commerce, https://iccwbo.org/business-solutions/model-contracts-clauses/icc-anti-corruption-clause/

4.1. The business case for integrity: reputational impact

Ethical business practices can bring tangible advantages. Better systems and controls to prevent corruption provide for more certainty and control over operations. Perhaps more importantly, they also help to protect an enterprise's reputation – often its most valuable asset – among employees, customers, business partners and the public at large.

A company's reputation for integrity is hard-won and easily lost. While legal sanctions generally require the State 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. Surveys of corporate officers have shown that they consider reputation to be an important, perhaps even, the primary motivation for corporate investments in anti-corruption programmes and other integrity measures.[29] 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.

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. Small- and medium-sized enterprises (SMEs) are also judged on integrity by their employees, customers and business partners. SMEs can suffer economic harm from a poor reputation, particularly vis-à-vis supply chain partners who may require that they only engage with other ethical suppliers.[30] 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.[31]

A significant way a company's reputation can be impaired is through divestiture by government-controlled investment vehicles who may also make information public about a company's compromised commitment to integrity.

Box 4.2. Norway's Sovereign Wealth Fund Divests from ZTE

In 2016, Norway's sovereign wealth fund announced the fund would sell its $ 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 stipulate 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.

Sources: Norges Bank Investment Management, "Decision on exclusion of company from the Government Pension Fund Global https://www.nbim.no/en/the-fund/news-list/2016/decision-on-exclusion-of-company-from-the-government-pension-fund-global/ ; The Global Anticorruption Blog, "Norway Divests Shares in Telecom Giant ZTE over Gross Corruption: Will Others Follow?", https://globalanticorruptionblog.com/2016/01/13/norway-divests-shares-in-telecom-giant-zte-over-gross-corruption-will-others-follow/

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.

States may also use the importance of reputation as an incentive for companies to act with integrity. 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. These positive signals may also provide an advantage with consumers and when recruiting trustworthy employees, particularly in difficult business environments.

Judgments 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[32] 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.

Box 4.3. Petrobras and the rise of shareholder class actions

In 2018, a shareholder class action resulted in a $2.95 billion settlement between shareholders and Brazilian state-owned oil company Petrobras. The reputational impact to the company was reflected by the drastically declined share price which fell to $ 3 in 2016 from a previous high of $ 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 surpassed the total fines of $ 853.2 million levied on the company by U.S. and Brazilian authorities. This case clearly illustrates that the costs of these shareholder class actions can be very significant.

Sources: Pierson, B. (2018), Petrobras to pay $2.95 billion to settle U.S. corruption lawsuit. Reuters, https://www.reuters.com/article/us-petrobras-classaction-idUSKBN1ES0L2/ ; The Rise of Shareholder Class Actions in Response to Corporate Misconduct — GAN Integrity blog, https://ganintegrity.com/blog/rise-of-shareholder-class-actions-in-response-to-corporate-misconduct/

4.2. Anti-corruption programmes

Companies use anti-corruption programmes as a primary means 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)[33] and the OECD Good Practices Guidance on Internal Controls, Ethics and Compliance (2009, updated and expanded in 2021).[34] These documents outline good practices that have become global standards or are gaining traction. Importantly, however, anti-corruption programmes should not be just a matter of "ticking all the boxes". They should be risk-based, operational, documented, tested, appropriately resourced, supported by management and the entity's governing body, and otherwise meet applicable legal standards.

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

- ethical leadership
- robust assessments of corruption risks
- policies and procedures
- strong and effective reporting framework
- measure of progress and performance of routine reviews
- communication of efforts to strengthen business integrity.[35]

States are encouraged to develop the capacity to assess the effectiveness of anti-corruption programmes and to work with the private sector to help them meet their compliance obligations.

4.3. Considering small- and medium-sized enterprises (SMEs)

While SMEs may not have the same resources as larger companies, including dedicated integrity units or personnel, there has been much progress in recent 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% of businesses and more than 50% of employment worldwide.[36] 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 anti-corruption guidance and tools for SMEs including training, awareness, and educational activities. States should also clearly articulate their expectations for SMEs in developing and implementing anti-corruption programmes that provide transparent and easily accessible country-level guidance tailored to SMEs.[37]

SMEs often find themselves intertwined in the supply chains of larger organizations. Demonstrating their commitment to business integrity is crucial for SMEs to obtain business from these larger organizations. Notably, access to business opportunities may be a more effective driver to SME business integrity than the anti-corruption deterrent of threat of legal prosecution. States may consider approaching SMEs through contractual obligations or forcing large global companies to be responsible for the integrity of their entire supply chains.

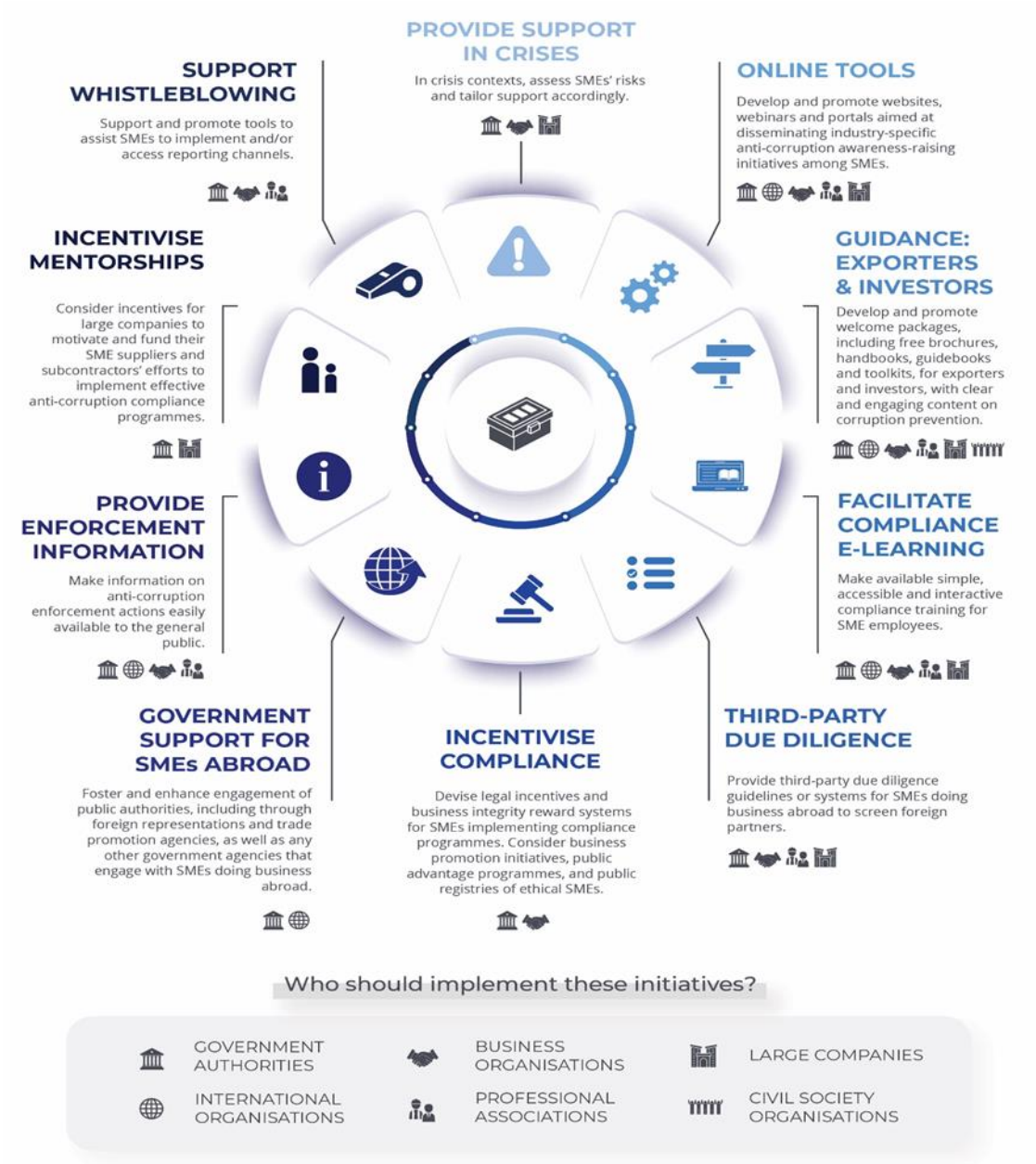
States should also consider encouraging and rewarding SMEs with higher ethics maturity through various incentive programmes. While States should take into account the particularities and differences of SMEs as compared with larger organizations, they should be careful not to create carve-outs that would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

Box 4.4. Business ethics for Asia-Pacific Economic Cooperation (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: (i) identify and set best practices; (ii) facilitate adherence to these practices through capacity building for SMEs; and (iii) 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.

Sources: Asia-Pacific Economic Cooperation, "The Value of Business Ethics for APEC SMEs", https://www.apec.org/publications/2021/11/the-value-of-business-ethics-for-apec-smes; https://mcprinciples.apec.org/about/

Figure 4.1. Overview of the OECD Toolkit for raising awareness and preventing corruption In SMEs



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.

4.4. 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 allows 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 positive on the whole, one study acknowledges that increased transparency can also expose businesses to greater risk, potentially impeding progress.[38]

4.5. The UN Global Compact Communication on Progress (CoP)

One of the leading public reporting frameworks is the Communication on Progress (CoP) established by the UN Global Compact.[39] The CoP[40] is the primary mechanism for companies participating in the UN Global Compact to demonstrate progress 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 questionnaire[41] that companies complete to update on their efforts to embed the Ten Principles into their strategies and operations, and 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 image below shows what the CoP seeks to achieve.

Figure 4.2. Why report using the CoP?

Source: UN Global Compact (own elaboration).

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 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.

4.5.1. Environmental, social and governance (ESG), and other reporting and disclosure requirements

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 lobbying.[42]

States may also 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. In addition, States, stock exchanges, procurement authorities and other actors may wish to impose additional disclosure requirements on companies. The prospect of a disclosure requirement can cause some businesses to take pro-integrity measures that they otherwise would not pursue.

Box 4.5. 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; mail outs about compliance issues; and detailed compliance reviews. Non-compliance with ESTMA may result in companies being required to pay up to CAD 250,000 ($ 186,000) per day per offence.

Sources: Extractive Sector Transparency Measures Act, https://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html ; Extractive Sector Transparency, https://natural-resources.canada.ca/our-natural-resources/minerals-mining/services-for-the-mining-industry/extractive-sector-transparency-measures-act/18180

5 The multi-stakeholder approach to enhancing business integrity

Business integrity can be made more robust through a multi-stakeholder approach to tackling corruption. This brings together government entities, businesses, civil society organizations and other relevant actors to participate in collective action, national anti-corruption strategies, public sector support for private sector capacity building, and more. Governments also have an opportunity to co-design mechanisms and tools with the private sector to strengthen anti-corruption efforts.

5.1. Collective action approaches

"Collective action" refers to the collaborative efforts of multiple stakeholders, including government entities, businesses, civil society organizations and other relevant actors to 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.

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.[43]

While collective action was once a novel approach, it is now 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.[44] The UN Global Compact produced specific guidance[45] that establishes a six-step approach (Prepare, Introduce, Develop, Implement, Evaluate and Scale & Sustain, and contains a series of sub-steps for consideration) to help design and implement collective action initiatives.[46]

Box 5.1. 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: Collective Action B20 Hub, www.collective-action.com

Some practical examples of collective action initiatives are below.

Box 5.2. 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 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% 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 $ 150 000 to $ 20 000 per port call.

Source: MACN, Country Pages – Nigeria, https://macn.dk/nigeria/

Box 5.3. 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. This has resulted in significant policy-, sector- and project-level changes in the delivery of public infrastructure projects.

Source: Infrastructure Transparency Initiative, https://infrastructuretransparency.org/where/cost-uganda/ ; 2023 Southern Africa Anti-Corruption Collective Action Award, https://collective-action.com/get-involved/events/southern-africa-anti-corruption-collective-action-forum-2023/awards

There are several examples around the world that demonstrate private sector-led collective action initiatives to counter corruption.

Box 5.4. Australia's Bribery Prevention Network (BPN)

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 among 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, Australia and New Zealand Banking Group Limited (ANZ), Commonwealth Attorney-General's Department, Broken Hill Proprietary Company Limited (BHP), KPMG, Minerals Council of Australia, National Australia Ban (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, organizes networking events and public webinars, and has commissioned research on SME needs in relation to preventing bribery and corruption.

Source: Bribery Prevention Network, https://briberyprevention.com/

Box 5.5. 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 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: (i) establishing a transparent business association free from bribery payments; (ii) raising operational standards that can control corruption risks in the private sector and (iii) 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: Collective Action Against Corruption (CAC), https://www.thai-cac.com/who-we-are/about-cac/

5.2. 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.[47]

5.2.1. 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.

Acting collectively can generate a sense of ownership and commitment in both the public and private sectors, critical for the effective implementation of the strategy. In this phase, cooperation takes 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 providing feedback on the areas with direct implications in their operations.

5.2.2. 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.[48] Co-designing regulatory frameworks can also be used as an incentive for the private sector to join such kinds of initiatives.

Box 5.6. 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 behaviours. 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: UN Global Compact, 2023, un año de logros, https://www.pactoglobal.uy/2023-logros/

Box 5.7. 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 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 of 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.

Sources: The Bribery Act, 2016 https://www.globalcompactkenya.org/index.php/knowledge-center/publication-and-resources/bribery-act-2016 ; The Bribery Guidelines, 2022, https://eacc.go.ke/default/wp-content/uploads/2020/11/PDF.-Guidelines-under-Bribery-Act.pdf ; Whistleblower Protection Bill of 2021, https://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2021/TheWhistleblowerProtectionBill_2021.pdf ; Capital Markets (Whistleblower) Regulations 2022, https://new.kenyalaw.org/akn/ke/act/ln/2022/65/eng@2022-12-31 ; Code of Ethics for Business in Kenya, https://www.globalcompactkenya.org/index.php/knowledge-center/publication-and-resources/code-ethics-business-kenya

5.2.3. Disseminating regulations and good practices

States need to not only adopt and enforce anti-corruption laws and regulations but 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 on 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.

Box 5.8. Brazil: National Integrity Award from Ministry of Agriculture, Livestock and Supply (Mapa)

The National Integrity Award, MAIS INTEGRIDADE, is the recognition awarded to companies by the Ministry of Agriculture (MAPA) 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: Ministry of Agriculture, Livestock and Supply, Selo Mais Integridade — Ministério da Agricultura e Pecuária, https://www.gov.br/agricultura/pt-br/assuntos/integridade/selo-mais-integridade

5.3. Learning from each other

Countering corruption through a multi-stakeholder approach fosters the ability to learn from one another. Governments can greatly benefit from working with non-state actors. These encompass civil society, media and business associations.

Box 5.9. The role of non-state actors

Civil society plays an important role in fostering business integrity.[1] An OECD study describes media reporting and non-governmental organizations (NGOs) as being "among the most important sources of public awareness-raising on corruption".[2]

Journalists have 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.[3] However, for the media to be an effective source of uncovering corruption, freedom of the press is essential. UNCAC article 13(1)(d) specifically calls on States parties to strengthen the participation of society in the fight against corruption by, inter alia, "respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption."[4] Access to information is a crucial aspect of enabling citizen participation – whether by individuals, groups or media.[5] Equally, press freedom, as has been noted, is often a precondition for reporting on corruption.[6]

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. Industry associations can also be prominent non-state actors in promoting business integrity in their economic sectors.

Civil society engagement occurs primarily through public education, advocacy and compliance monitoring. Advocacy organizations can support and help shape anti-corruption initiatives, government policies and legislation.[7] Business organizations and professional associations often assist smaller companies in developing anti-corruption compliance programmes.[8]

Notes:

1. 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.
2. OECD (2017), The Detection of Foreign Bribery. Available at: https://www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ENG.pdf
3. 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/
4. UNCAC, Art. 13(d).
5. UNODC University Module Series: Anti-Corruption; Module 10 Citizen Participation in Anti-Corruption Efforts.
6. OECD (2017), The Detection of Foreign Bribery. Available at: https://www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ENG.pdf
7. For example, France's main employer's federation, MEDEF, supported the introduction of the SAPIN II law in 2016 and was a key supporter of amendments to introduce Public Interest Judicial Conventions. See 2021 Interview.
8. See Annex II of the 2021 OECD Anti-Bribery Recommendation for further information.

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 on-the-ground requirements.

Capacity building is another area where the public and private sectors can learn from each other, as portrayed in the case studies below.

Box 5.10. 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.

Box 5.11. Ecuador: "CISNE" training for the general attorney of the state and council of the judiciary in ecuador on criminal compliance

Project CISNE, a four-month initiative in 2021 of the Pan-American Development Foundation, sought to train public officials in the reforms of the Integral Organic Criminal Code (Código Orgánico Integral Penal). The project's objectives included:

- Training 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.
- Providing practical tools to better understand criminal compliance and risks in Ecuador.
- Sharing 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 could be implemented.

Source: Pan-American Development Foundation, https://www.padf.org/wp-content/uploads/2022/03/Anti-Corruption-English.pdf

Box 5.12. 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 executive-level managers, 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 Global Initiative to Galvanize the Private Sector (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 by sharing challenges and good practices when governments incentivize corporate anti-corruption compliance programmes.
- Trusted dialogue series: On getting influence right, 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 State-Owned Enterprises (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.

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 website, Galvanizing the Private Sector, https://www.oecd.org/corruption-integrity/getinvolved/private-sector/

6 Sanctions and incentives

Strengthening business integrity requires states to consider the right mix of sanctions and incentives, which demonstrates their commitment to counter corruption and recognizes the importance of the private sector's contributions and efforts. Often, a sanction is connected to an incentive that seeks to alter behaviour pre-emptively. The table below demonstrates this.

Table 6.1. Sanctions, incentives and purpose

Sanction	Incentive	Purpose
Imprisonment	Exemption from prosecution Penalty mitigation	The incentive seeks to promote cooperation in investigations and provide a form of good behaviour credit to the accused.
Monetary sanctions		As with the above, good behaviour on the part of a company may result in lower monetary penalties or exemption from prosecution.
Suspension and debarment	"Allowlists" and procurement incentives.	These aim to protect public markets from unethical suppliers.
Denial of government benefits	Preferential access to government benefits and tax benefits	Ethical suppliers can receive priority access to government services as well as tax benefits, while unethical suppliers will be denied these advantages.
Reputational damage	Reputational benefits	States can promote ethical suppliers or inflict damage on the reputation of unethical suppliers through a variety of means.

6.1. Sanctions

States have at their disposal a wide range of measures for sanctioning private sector corruption. These sanctions may serve remedial, compensatory, or punitive purposes. UNCAC and the OECD Anti-Bribery Convention require that sanctions be "effective, proportionate and dissuasive". This 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 the appropriate magnitude of a sanction. Measures adequate to deter future violations by a small business may not 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.

6.1.1. Resource considerations

Measures mandated or recommended by UNCAC and the OECD anti-bribery standards to encourage private sector cooperation and reporting are essential, but these must be supported by adequate investigative resources.[49] Investigating and prosecuting corruption can present special challenges due to the complexity and concealed nature of violations. One strategy for stretching resources includes focusing enforcement resources on a specific sector or type of corruption so that information and experience developed in an initial investigation can be used in other similar actions. This type of targeted initiative is

most appropriate for States that have well developed investigative and prosecutorial services, and whose economy is dominated by specific sectors or characterized by 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.[50] 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 to avoid 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.[51]

The trend towards settlements in anti-corruption enforcement is clear. Of an identified 1,468 foreign bribery cases in the period from 1999 to May 2021, 1,242 (84.6%) were resolved through settlements.[52] Non-trial resolutions[53] 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, management overhaul, board turnover, including naming new independent board members, and even internal restructuring. A company needs to demonstrate compliance with these terms and conditions for the threat of prosecution to be dropped. Non-trial resolutions for corporations may also liberate the resources of prosecutors so they can be directed towards the prosecution of the individuals responsible for the misconduct.

Box 6.1. Non-trial resolutions followed by the convictions of managers: The Alstom Power Ltd case

On 10 May 2016, 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 £ 11 million ($ 14 million) in compensation to the Lithuanian government, a £ 6.4 million fine ($ 8.2 million) and £ 700,000 ($ 896,000) in 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 ($ 526,000). In July 2018, a former manager at Alstom Power 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 ($ 51,000) 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 ($ 64,000).

Sources: SFO (2019), Press release, https://www.gov.uk/government/organisations/serious-fraud-office ; SFO (2018), Press release, https://www.gov.uk/government/organisations/serious-fraud-office ; OECD (2019), *Implementing the OECD Anti-Bribery Convention Phase 4 Follow-Up Report: United Kingdom*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/bfa40e31-en.

Box 6.2. 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 $ 1 billion in bribes to high-ranking government officials in Malaysia and Abu Dhabi to obtain business, including underwriting three bond deals worth $ 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 $ 2.9 billion in total sanctions. In August 2018, a former manager of Goldman Sachs, pleaded guilty to participating in the scheme. As part of this resolution, he agreed to forfeit $ 43 million and stock shares valued at over $ 200 million. In April 2022, another 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 ten years' imprisonment.

Sources: DOJ (2020), Press release, https://www.justice.gov/usao-edny/pr/goldman-sachs-resolves-foreign-bribery-case-and-agrees-pay-over-29-billion ; DOJ (2022), Press release, https://www.justice.gov/usao-edny/pr/former-goldman-sachs-investment-banker-convicted-massive-bribery-and-money-laundering ; DOJ (2023), Press release, https://www.justice.gov/opa/pr/former-goldman-sachs-investment-banker-sentenced-27b-bribery-and-money-laundering-scheme.

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 stretched 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 to foster investigative steps. 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 of international cooperation. This can greatly ease each individual State's own information-gathering burden.[54] In addition, States can take the opportunity to set up joint or parallel investigative teams.[55]

6.1.2. 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.[56]

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.

Box 6.3. 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).

Sources: DOJ (2023), Remarks delivered by Deputy Attorney General Lisa Monaco on White Collar Crime at American Bar Association National Institute, https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national ; DOJ (2023), Press release, https://www.justice.gov/opa/pr/former-goldman-sachs-investment-banker-sentenced-27b-bribery-and-money-laundering-scheme

6.1.3. 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 as 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 be more difficult and time-consuming to achieve. While civil fines 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.

Box 6.4. Foreign Corrupt Practices Act (FCPA)

Under the U.S. 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 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, https://www.justice.gov/criminal/criminal-fraud/foreign-corrupt-practices-act

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.

Box 6.5. 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 was 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 (2012), Bribery Act 2010 Guidance, https://www.justice.gov.uk/legislation/bribery.

Methodology to determine the monetary sanction

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.[57] 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" and then apply a culpability "multiplier" to determine a range for fines.[58] The French Anti-Corruption Agency provides guidelines for the implementation of judicial public interest agreements (a non-trial resolution mechanism introduced by the French SAPIN II Act) which outlines the factors taken into consideration when determining the amount of the public interest.[59] 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 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.

Box 6.6. 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, the equivalent of the amount from 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, and in case of not having obtained them, the equivalent of the amount of 1,000 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 for the damages that have been caused.

Source: Mexican General Law of Administrative Responsibilities, https://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA.pdf

6.1.4. 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 common, where independent corporate monitors are appointed pursuant to prosecutorial guidelines.[60] The company may be subject to monitoring 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.

6.1.5. 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 States.[61] 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 wrongdoers 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 corruption. Confiscation may also 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".[62]

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 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.[63]

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.[64]

Calculating ill-gotten gains from corruption can be a complex task, as the full scope and nature of the illicit transactions is often difficult to determine. Various methods and approaches are used to estimate the proceeds of corruption, including forensic accounting, lifestyle analysis and asset tracing. These and other methods for calculating ill-gotten gains are addressed in an OECD- UNODC/World Bank Stolen Asset Recovery (StAR) Initiative analysis,[65] as well as a StAR Handbook for Asset Recovery for practitioners.[66]

Box 6.7. Siemens integrity initiative

In its 2008 settlement of bribery charges with the U.S. government, Siemens AG agreed to pay $ 350 million in disgorgement of profits (a form of confiscation) in addition to $ 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 $ 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 $ 120 million has been committed to 85 projects in more than 50 countries through this initiative.

Source: Siemens Integrity Initiative Annual Report 2022, https://baselgovernance.org/sites/default/files/2023-06/2022%20Annual%20Report%20of%20the%20Siemens%20Integrity%20Initiative.pdf

6.1.6. 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 requires States to establish means to compensate victims of corruption.[67]

Box 6.8. 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 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 on 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 the United Kingdom's Department for International Development (DFID) and Foreign and Commonwealth Office (FCO) made a policy decision to transfer £ 395,000 ($ 505,000) 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 Deferred Prosecution Agreement (DPA), $ 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 ($ 2.4 million) civil recovery order, Oxford Publishing Limited unilaterally offered to contribute £ 2 million ($ 2.6 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 ($ 132 million) to the United Kingdom, including payment of compensation to the people of Nigeria of £ 210,610 ($ 270,000). This settlement is part of a $ 177 million global settlement with authorities from the United Kingdom, the United States and Brazil.

Sources: OECD (2017), *Implementing the OECD Anti-Bribery Convention Phase 4 Report: United Kingdom*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/888c5655-en ; 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 ; SFO (2018), News release, "New joint principles published to compensate victims of economic crime overseas", https://www.sfo.gov.uk/2018/06/01/new-joint-principles-published-to-compensate-victims-of-economic-crime-overseas/ ; SFO, Information for victims, witnesses and whistle-blowers, Compensation Principles to Victims Outside the United Kingdom; SFO (2021), Case updates, "SFO enters into £103m DPA with Amec Foster Wheeler Energy Limited", https://www.sfo.gov.uk/2021/07/02/sfo-enters-into-103m-dpa-with-amec-foster-wheeler-energy-limited-as-part-of-global-resolution-with-us-and-brazilian-authorities/ .

Box 6.9. Inter-American Development Bank settlement sanctioning a construction company to six years of debarment and contribution of $ 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 $ 50 million to non-governmental organizations and charities benefiting vulnerable communities in IDB member countries.

Source: Inter-American Development Bank (2019), News releases, https://www.iadb.org/en/news/odebrecht-reaches-settlement-agreement-idb-group-resulting-sanctions

6.1.7. 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.[68] 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 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 undermine efforts made by States parties to implement article 9 of UNCAC.[69]

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.

Box 6.10. 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.

Source: Hellenic Single Public Procurement Authority (HSPPA), Art. 73.4.f and art.74 – Law 4412/2016, https://www.gov.gr/en/sdg/public-contracts/reporting-irregularities/competent-administrative-authorities-for-submission-of-complaints/hellenic-single-public-procurement-authority-hsppa

Box 6.11. 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), https://www.ifc.org/en/home.

Companies that do business with the government or receive concessions or other benefits, must comply with their legal responsibilities. Companies should also receive clear notice of the potential consequences for violations. This helps 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.

6.1.8. Suspension and debarment

Suspension and debarment restrictions are a severe 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 in order to protect the integrity of the procurement process or government programme. It is ordinarily imposed on a government-wide basis and may lead to cross-debarment by other States or public agencies. It can also lead to a loss of business opportunities as many companies check sanctions lists in their due diligence processes.

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. 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. The availability of alternative providers would also be considered.

Box 6.12. 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 grounds 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, the natural persons who represent it (article 54, paras. 2-3 PPA).

Source: Bulgaria Public Procurement Act (ENG translation), https://www.me.government.bg/en/library/public-procurement-act-357-c25-m258-1.html

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.[70]

Box 6.13. 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 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.

Sources: OECD (2018), *Implementing the OECD Anti-Bribery Convention Phase 4 Report: Germany*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/f0f268d1-en ; German Federal Cartel Office and its website, https://www.bundeskartellamt.de ; Guidelines on the premature deletion from the Competition Register due to self-cleaning (https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidance_self_cleaning_WebReg.pdf?__blob=publicationFile&v=3) and related Practical Guide, https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Premature_deletion_from_the_Competition_Register_due_to_self_cleaning_a_practical_guide.pdf?__blob=publicationFile&v=2 ; German Competition Act, https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html#p1558 ; German Competition Register Act, https://www.gesetze-im-internet.de/englisch_wregg/englisch_wregg.html#p0079

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 incentive 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 should take measures to prevent and detect corruption as 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 obligation 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.[71]

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 defense against the possibility of debarment.

In focus – multilateral development banks and debarment

Since 2010, the various Multilateral Development Banks (MDBs) have enforced the Agreement for *Mutual Enforcement of Debarment Decisions*,[1] also known as the Cross-Debarment Agreement. The Agreement, signed by the World Bank, the Asian Development Bank (ADB), the African Development Bank (AfDB), the European Bank for Reconstruction and Development (EBRD) and the Inter-American Development Bank (IDB) 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.

This cross-debarment cooperation among multilateral development banks aims to strengthen the effectiveness of anti-corruption measures by preventing an individual or entity from circumventing the sanctions and promotes harmonization in the fight against corruption.

In addition to cross-debarment, six MDBs — the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank (EIB), Inter-American Development Bank, and the World Bank Group — have agreed and published new General Principles for Business Integrity Programmes.[2] 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.[3] 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 subcontracting 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.

Notes:

1. 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

2. 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
3. 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

Box 6.14. 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 reviews the sufficiency of the evidence against the respondents and issues a sanctions determination made by the Chief Suspension and Debarment Officer (SDO). 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 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 that 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.

Sources: World Bank, Sanctions System, https://www.worldbank.org/en/about/unit/integrity-vice-presidency ; https://www.worldbank.org/en/about/unit/sanctions-system ; World Bank, Sanctions Board https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board

6.1.9. 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 licenses 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.[72]

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, including 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.

Box 6.15. 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 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 corrupt activity regarding the transaction and/or the applicant, the specific transaction and the applicant are subject to an enhanced due diligence process. This assessment is made through an in-depth examination of the transaction and the company's compliance management system. Measures of enhanced due diligence may extend through a period of time beyond the duration of an application.
- Should bribery or other corrupt 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.

Sources: Euler Hermes Aktiengesellschaft's web page on prevention of bribery and corruption, https://www.exportkreditgarantien.de/en/sustainability/trust/prevention-of-bribery.html ; Template of an anti-corruption declaration, https://www.exportkreditgarantien.de/_Resources/Persistent/7/8/2/9/782973b88b00e40205b4cb778d901f656728534b/korruptionserklaerung-exporteur-e.pdf ; OECD (2018), *Implementing the OECD Anti-Bribery Convention Phase 4 Report: Germany*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/f0f268d1-en.

Box 6.16. 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. While 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. If 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 does 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 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 then undertakes enquiries within the limit of its remit.

Sources: Guidance on UK Export Finance: Financial Crime Compliance, https://www.gov.uk/guidance/uk-export-finance-financial-crime-compliance ;sample application form, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1134236/BC_Application_Form_Sample_23.01.23.pdf ; OECD (2017), *Implementing the OECD Anti-Bribery Convention Phase 4 Report: United Kingdom*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/888c5655-en ; OECD (2019), *Implementing the OECD Anti-Bribery Convention Phase 4 Follow-Up Report: United Kingdom*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/bfa40e31-en ; OECD (2021), *Implementing the OECD Anti-Bribery Convention*

Phase 4 Follow-Up Report Addendum: United Kingdom: 2019 Two-Year Follow-Up Updated 2021, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/87c59a09-en.

6.1.10. Liability for damages

Liability for damages from a corrupt offence can be another significant private sector sanction. Article 35 of UNCAC states that "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 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 and making them liable for damages.

Box 6.17. CAFTA-DR

The United States and the Dominican Republic–Central America Free Trade Agreement (CAFTA-DR) contains provisions (Chapter 18 – transparency) 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.

Source: CAFTA-DR (Dominican Republic-Central America FTA), https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta

Business-to-Business

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 [see case study on the International Chamber of Commerce (ICC) anti-corruption clause in chapter IV].

Derivative actions

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 that there was a failure of oversight. Although damages can be difficult to recover, such actions serve as a warning to leadership and can catalyze investments in a company's anti-corruption efforts.

6.2. 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, licenses, procurement contracts, development assistance, and export credits.

6.2.1. Exemptions from prosecution and penalty mitigation

Various mechanisms that range from offering exemptions from prosecution to other penalty mitigation can be used to incentivize different behaviours that promote business integrity and anti-corruption compliance.[73] Conduct that qualifies for penalty mitigation can range widely from jurisdiction to jurisdiction. Factors when considering penalty mitigation may include self-reporting, implementation of robust anti-corruption programmes, cooperation with investigations, remediation measures, restitution to victims and repair to the harm caused by corruption.[74]

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.

In some cases, States may even 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 corruption accountable for their actions. Options include charging the individuals, seeking injunctions to limit their ability to serve as officers or directors of publicly listed companies, and entering into agreements that force 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.

When offering penalty mitigation or prosecution exemption incentives, States should ensure that there are reasonable and efficient investigative and judicial processes in place to encourage more cooperation by

reporting companies. For businesses, penalty mitigation or immunity is only one factor to consider when deciding whether to self-report a violation. Judgments 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.

Moreover, 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 of incentives mechanisms, build trust, and encourage the private sector to use these incentives.

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.

Source: Algeria UNCAC review, https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V2003416e.pdf

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% (the maximum fine is up to 20% 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%.

Sources: CGU, Webpage on Term of commitment, https://www.gov.br/corregedorias/pt-br/assuntos/painel-de-responsabilizacao/responsabilizacao-entes-privados/julgamento-antecipado
Law 12,846/2013: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12846.htm ; Decree 11,129/2022: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/decreto/d11129.htm#:~:text=DECRETO%20N%C2%BA%2011.129%2C%20DE%2011%20DE%20JULHO%20DE%202022&text=Regulamenta%20a%20Lei%20n%C2%BA%2012.846,administra%C3%A7%C3%A3o%20p%C3%BAblica%2C%20nacional%20ou%20estrangeira .

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.

Source: Ley 1778 de 2016 Congreso de la República, https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=67542

Finally, States should adopt policies that take self-reporting into account when granting incentives such as penalty mitigation or exemptions from prosecution. Self-reporting 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 gives 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 prevent and counter corruption. Policies that incentivize this public-private dialogue and allow space for companies to come forward can enhance a country's anti-corruption efforts.

Box 6.18. 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, these are 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 Foreign Corrupt Practices Act (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.

Sources: OECD (2020), *Implementing the OECD Anti-Bribery Convention Phase 4 Report: United States*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/0cd34e9f-en ; U.S. Department of Justice Criminal Division (Updated March 2023), Evaluation of Corporate Compliance Programs, https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl?inline= ; U.S. Department of Justice Criminal Division, 9-47.120 – Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, https://www.justice.gov/criminal/criminal-fraud/file/1562831/dl?inline=.

6.2.2. 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 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.

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.

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.[75] Companies are also expected to manage risks relating to their third-party relationships and to establish an organizational culture that encourages ethical conduct and a commitment to compliance.

Box 6.19. Compliance requirements introduced by the SAPIN II 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 ($ 109.5 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 French Anti-Corruption Agency (AFA) in December 2017 and revised in January 2021. The AFA has also drawn up several practical guides.

Failure to comply may trigger an injunction to adapt internal compliance procedures and/or an administrative penalty of up to € 1 million ($ 1.1 million) for legal persons and € 200,000 ($ 219,000) for individuals, which may also be published, broadcasted or displayed. The sanction is pronounced by an independent sanctions committee comprised of two members of the Council of State, two judges of the Supreme Court and two officials of the Supreme Audit Institutions. This administrative penalty does not result in a criminal record for the legal person.

Sources: OECD (2021), *Implementing the OECD Anti-Bribery Convention Phase 4 Report: France*, Implementing the OECD Anti-Bribery Convention, OECD Publishing, Paris, https://doi.org/10.1787/2c7d8500-en ; OECD (2021) Press release on Working Group on Bribery Phase 4 Evaluation of France, https://web-archive.oecd.org/temp/2021-12-16/619556-france-s-achievements-in-the-fight-against-foreign-bribery-need-to-be-preserved-through-legislative-reforms-and-a-reinforcement-of-resources.html ; French SAPIN II Law, https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033558528; AFA Recommendations, https://www.agence-francaise-anticorruption.gouv.fr/files/files/French%20AC%20Agency%20Guidelines%20.pdf ; AFA website, https://www.agence-francaise-anticorruption.gouv.fr/en.

Providing guidance

States parties that seek to strengthen business integrity with 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 need to identify the features an anti-corruption compliance programme must have to be effective and 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.

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.[76]

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 with periodic updates for the private sector on implementing adequate procedures to prevent corruption. This should also include the latest developments in good practice. States will need to balance a demand for precision and predictability from the private sector with an approach tailored to the defendant's specific circumstances. Further research will be needed to help States develop effective ways to assess the effectiveness of corporate anti-corruption efforts.

6.2.3. Preferential access to government benefits

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

This form of incentive is the counterpart to the sanction of denial of benefits, and suspension and debarment. 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. 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 to enterprises that take voluntary measures to strengthen their integrity.

Procurement incentives

Procurement benefits 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: reducing government market access to only those who qualify could negatively impact competition. Potential negative impacts to smaller companies can be prevented by providing appropriate technical assistance and scaling. States must, however, be vigilant of incentives 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 in charge of procurement. Mandatory programme requirements based on recognized sector-specific standards, such as codes of ethics, can be an effective way to strengthen business integrity practices, particularly in industries where a large portion of the marketplace consists of public purchasing or reimbursement. Multinational corporations frequently make available good practice guidance and training of key partners in their supply chains, including SMEs and other third-party intermediaries. Governments and industry associations also provide technical assistance to companies on the corporate integrity practices necessary for doing business with State agencies. This assistance takes the form of codes of ethics and guidance, training seminars, model content and other means.

Good practice may also be encouraged by conferring preference in public procurement on companies that take voluntary measures to strengthen their 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 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.

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. The conferring of government contracts allows States to exert their influence and engage the private sector in ensuring ethical practices.

Box 6.20. Czechia and the 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.

Sources: Directive 2014/24/EU of the European Parliament and of the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0024#d1e2838-65-1 ; Czechia's Public Procurement Act, https://sovz.cz/wp-content/uploads/2017/08/act-no.-134_2016-coll.-on-public-procurement.pdf

Procurement preferences can also encourage 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 the 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. Governments should also be aware that procurement or other incentives can create new opportunities for corruption to occur. They may promote collusion (especially in restricted markets by reducing further competition) or foster 'opportunistic' behaviours in corrupt environments (e.g. by providing an additional channel for extortion by governments). This can be mitigated by creating capacity building and training for public procurement officials so that they recognize potential conflicts of interest. Periodic monitoring and auditing of procurement processes and contracts can also help mitigate this issue.

Box 6.21. New Zealand: Mtanz

Prior to its merger with Health New Zealand in 2021, New Zealand Health Partnerships served as a 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: MTANZ Code of Ethics, https://mtanz.org.nz/MTANZ-Code-of-Ethics/6701/

Box 6.22. 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 four 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: Padrón de Integridad Empresarial, https://padron.apps.funcionpublica.gob.mx/

"Allowlists" and preferred supplier status

Some States may make use of "allowlists" that recognize a company for good practice as a counterpart to traditional debarment. Companies on a State's "allowlist" benefit from being pre-approved to respond to public tenders and enter into public procurement contracts.[77] States may require that companies pledge support for anti-corruption initiatives, provide evidence of their implementation of best practices, and require them to sign an attestation as part of the procurement process. States may also add companies to an "allowlist" of preferred contractors when they have been deemed reliable in the past. Preferred supplier status can also be communicated by publicly recognizing companies that have had their integrity measures evaluated.

Box 6.23. 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 programme, with oversight by an independent group of experts. 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 requiring companies to answer profile/conformity questionnaires and submit specific documents. The companies that are recognized in the "Pro-Ethics Register" receive public recognition of their commitment to implement 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 the strengths and shortcomings found in the evaluated anti-corruption programmes. The results are announced in an award ceremony and can have substantial beneficial impact on the reputation of a company.

Source: CGU, Empresa Pró Ética webpage, https://www.gov.br/cgu/pt-br/assuntos/integridade-privada/avaliacao-e-promocao-da-integridade-privada/empresa-pro-etica

Access to services

Preferential access may also be used to provide "fast-track" access to certain services such as customs clearance or export credit support. It is important that any preferential access programme ensures that the identified specified prevention measures have substance and 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 is critical to national authorities gathering experience and good practice for this purpose.

6.2.4. Tax benefits

States may wish to provide tax incentives or rebates if companies can demonstrate that they have taken significant measures to counter corruption. Implementing anti-corruption measures can be costly for businesses and tax incentives may provide financial recognition to companies who have taken the initiative to be integrity leaders.[78] This sends a message to the private sector that investments in quality prevention programmes are as important as other business investments.

6.2.5. 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.

Stock exchanges may use their listing requirement rules to incentivize good governance and integrity.[79] The rules impose a burden on companies to ensure they adhere 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.

Box 6.24. Compliance Requirements by the Malaysia's Stock Exchange

In December 2019, Malaysia's Stock Exchange (Bursa Malaysia Berhad) amended the Main and Access, Certainty, Efficiency (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" on its website.

Section 17A of the MACC Act criminalizes 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.

Sources: MACC Act 2009, https://www.sprm.gov.my/admin/files/sprm/assets/pdf/penguatkuasaan/act-694-bi.pdf ; Bursa Malaysia press release, https://www.bursamalaysia.com/cn/about_bursa/media_centre/bursa-malaysia-amends-main-and-ace-market-listing-requirements-in-relation-to-anti-corruption-measures ; Chapter 15 of the Main Listing requirements, https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/content_entry5ce3b50239fba2627b2864be/5ce3b5ce5b711a163beae1bd/files/MAIN_Chap15_COI_Ors_Amendments_1July2023_.pdf?1688122456 ; Chapter 15 of the ACE listing requirement, https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/content_entry5ce3b50239fba2627b2864be/5ce3ba6f5b711a155e950749/files/ACE_Chap15_COI_Ors_Amendments__1July2023_.pdf?1688122488

Box 6.25. Hong Kong, China Exchanges and Clearing Limited

Sharing the common goal of maintaining an open, fair and transparent securities market in Hong Kong, China, 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. These include 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. ICAC publishes corruption prevention guides, provides input to HKEX in its review of the ESG reporting requirements and Corporate Governance Code, gives seminars and training for listed companies executives and industry practitioners, and disseminates anti-corruption information to stakeholders.

Source: Hong Kong Stock Exchanges Listing Rules, https://www.hkex.com.hk/Listing/Rules-and-Guidance/Listing-Rules?sc_lang=en

6.2.6. Investment promotion

Enhancing integrity promotes the confidence of investors. Several governments have pursued policies that require businesses to demonstrate that they adhere to integrity standards in order to qualify for protections.[80] States are therefore turning to investment promotion as a business incentive to promote integrity, thus further strengthening the business case.

In order to attract quality investment, countries must actively work towards providing a transparent and ethical business culture.[81] For businesses, those that act with integrity will have more opportunities to invest in markets that promote ethical business practices.

Box 6.26. 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. It also explicitly points to corruption as a threat to the country's attractiveness to international investors. Additionally, in a demonstration of inter-institutional cooperation between authorities responsible for investment and integrity, the Egyptian Administrative Control Authority (ACA) – the main national anti-corruption body – has supported the General Authority for Investment (GAFI), which is Egypt's investment promotion agency, 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.

Egypt has also set up an inter-ministerial committee for investment dispute resolution and the General Authority for Investment has put in place a mediation and grievance mechanism to address investors' complaints as well as disputes arising between investors.

Source: OECD (2021), Middle East and North Africa Investment Policy Perspectives, OECD Publishing, Paris, https://doi.org/10.1787/6d84ee94-en.

6.2.7. Anti-corruption in sovereign wealth and public pension 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 in sustainable investing and integrity-driven investing. According to The Sovereign Wealth Fund Institute, in 2021, sovereign wealth funds and public pension funds held $ 10.5 trillion and $ 21.4 trillion, respectively.[82] 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.

Box 6.27. 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: (i) establish clear policies on anti-corruption, (ii) integrate anti-corruption into business operations, and (iii) 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.

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/9af1e01021a642b3aa162d140dd0069a/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 (GPFG)", https://www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/2022.09.05_gpfg_guidelines_observation_exclusion.pdf

7 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.

7.1. 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.

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.[83]

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.[84] 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.

Box 7.1. 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: Mongolian Law on Conflicts of Interests, https://track.unodc.org/uploads/documents/BRI-legal-resources/Mongolia/4_-Mongolian_Law_on_Conflicts_of_Interests.pdf

Box 7.2. 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 $ 175 000 in rewards has 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: Malaysian Anti-Corruption Commission website, 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 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.

Box 7.3. 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 grain exporting. 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 $ 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 abuse of 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% 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: MACN, Country Pages – Argentina, https://macn.dk/Argentina

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 '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 $ 13 trillion of spending every year.[85] Public corruption can be a risk wherever there is required State action, discretionary authority and a tendency towards opacity and lack of accountability. Examples commonly cited by the private sector include business licensing 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.

7.2. 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. Education can be targeted at various audiences.

7.2.1. 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', such as lawyers, accountants, auditors, real estate agents, insurance agents and art dealers. 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.

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.

Box 7.4. 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 OECD standards" with two main objectives: (i) Creating a favourable legal environment for the introduction of international anti-corruption obligations into the laws of Kazakhstan by amending certain provisions of its anti-corruption legislation; (ii) 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. It also provided training for over 700 representatives of companies, government agencies, quasi-governmental companies and representatives of Kazakhstan's universities on how to create quality compliance systems and developed an online course for an unlimited number of users.

Source: Compliance Practice, https://compliancepractice.kz/

Box 7.5. 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 plays 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: International Federation of Accountants, "IBA and IFAC announce Memorandum of Understanding between global bodies for the legal and accounting professions", https://www.ifac.org/news-events/2023-05/iba-and-ifac-announce-memorandum-understanding-between-global-bodies-legal-and-accounting.

7.2.2. Educating children and youth

Raising awareness of the harmful impacts of corruption can be widened to include the general population. UNODC's Global Resource for Anti-Corruption Education and Youth Empowerment (GRACE) initiative, for example, seeks to create a culture of rejection of corruption among children and youth by "harnessing the transformational power of education and partnerships."

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. The private sector can be also a key

partner in anti-corruption education, by sharing with young graduates real case studies on ethical issues in the companies and preparing them to become a driving force for ethical business.

Box 7.6. Côte D'ivoire: Réseau Ivoirien Des Jeunes Leaders Pour L'intégrité (RIJLI)

RIJLI is a network of youth organizations that brings together 20 or so organizations and represents the voice of young people in the fight against corruption in Côte d'Ivoire. 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 oversight.

RIJLI has undertaken several educational activities to instil 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; and 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. https://uncaccoalition.org/anti-corruption-platforms/africa/cote-d-ivoire/reseau-ivoirien-des-jeunes-leaders-pour-lintegrite/

Box 7.7. 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 students' intolerance of it.
- Encouraging them to design pre-service or in-service rehabilitation programmes for teachers to raise 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. This 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.

Sources: Response to the UNODC questionnaire 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: https://businessintegrity.unodc.org/bip/en/questionnaire-on-states- measures-for-business-integrity.html ; Nazaha website https://www.nazaha.gov.kw/nazaha/.

7.3. Gender and business integrity

Efforts to enhance inclusion and diversity through, for example, increased gender equality in the workplace, have been found to improve business integrity in various ways, including fewer instances of misconduct and stronger governance structures.[86] The reverse is true as well – greater integrity, transparency and accountability in the private sector frequently boosts inclusion, diversity and gender equality in the workplace. There are various ways that the mutually reinforcing relationship between gender equality and business integrity can be strategically integrated into corruption-fighting State incentives and sanctions directed at the private sector.

For example, various States have implemented gender quotas to improve diversity within corporate boards of publicly-listed companies, thereby ensuring that the tone at the top reflects, and benefits from, a variety of perspectives.[87] Some States have also begun to use gender-responsive procurement practices to promote diversity and fair competition among public contractors, such as using gender equality criteria as a tiebreaker when evaluating equal bids.[88] In other States, procurement laws include gender equality clauses, for example, prohibiting anyone with a conviction for discrimination or harassment from participating in public contracts, or requiring large companies to adopt gender equality plans or implement pay parity.[89] Such measures not only strengthen the integrity of procurement processes, but also leverage State spending power to promote the economic empowerment of women and men alike. Other relevant good practices include adopting gender-related certification processes, quotas, selection criteria and reporting requirements.

Under the umbrella of the Women's Empowerment Principles (WEPs), UN Global Compact and UN Women have published guidance notes on Building Inclusive Boards to Achieve Gender Equality and Gender-Responsive Procurement.[90]

7.4. 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.[91] This can involve specific reporting on environmental, social, and governance (ESG) requirements; adherence to laws that enforce labour standards; conducting risk assessments throughout the supply chain; evaluations of suppliers including small- and medium-sized enterprise (SME) suppliers and third-party intermediaries 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 by establishing reporting mechanisms to report suspected cases of non-compliance along with remediation and putting enforcement plans in place in case of discovery of corrupt activity.

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. Companies themselves have an opportunity to "push down" integrity standards in ways that can surpass State action in impact. Supply-chain training, technical assistance and preferential selection processes are just some examples of this. 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 instill good practices to remain competitive.

Preferences that reward supplier integrity give a practical market value to these good practices.

As an important step forward to strengthen supply chain transparency, the Corporate Sustainability Due Diligence Directive (CSDDD) of the European Parliament and of the Council requires European and non-

European companies to conduct environmental and human rights due diligence across their operations, subsidiaries and value chain. In particular, the CSDDD recognizes that human rights and environmental impacts can be intertwined with or underpinned by factors such as corruption and bribery. Therefore, companies should take into account these factors when carrying out human rights and environmental due diligence, consistently with UNCAC.[92]

Box 7.8. 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 applies 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: The German Federal Office for Economic Affairs and Export Control (BAFA) https://www.bafa.de/DE/Lieferketten/Ueberblick/ueberblick_node.html

Box 7.9. 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 ($ 46 million). Each parent and subsidiary organization meeting the requirements must produce a statement. To assist companies, the government of the United Kingdom has published 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".

Sources: United Kingdom Modern Slavery Act 2015, Section 54 (Transparency in supply chains), https://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted ; Transparency in supply chains: a practical guide, https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide.

7.5. Leveraging technology

Governments can reduce corruption by integrating transparency and accountability into digitalization processes. For example, the use of electronic procurement (e-procurement) systems can increase transparency, facilitate access to public tenders, reduce direct interaction between procurement officials and companies, increase outreach and competition, and allow for easier detection of corruption within the procurement cycle. Leveraging similar technology as a condition of contracting or transacting in other high-volume transaction areas such as ports or customs can help reduce the opportunities for corruption to take root and encourage business integrity.

Box 7.10. 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: Prozorro e-procurement system, https://prozorro.gov.ua/uk.

7.6. Whistle-blower recognition and compensation

Whistle-blowers play a crucial role in business integrity. They allow companies and entities to detect wrongdoing early. By reporting information that reveals a criminal offence was possibly committed, whistle-blowers enable business entities to take the necessary action to prevent and stop these wrongdoings, punish those responsible and cooperate with the competent authorities. Reports also help companies improve their risk assessment and associated mitigation plan. However, whistle-blowers are often afraid to report for fear of dismissal or other professional retaliation. To remedy this, it is essential for companies and States to put in place mechanisms to recognize, promote and protect whistle-blowers so that they feel supported and appreciated, and know that they have done the right thing.

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.[93]

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

Box 7.11. 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 of 12 months. Following this period, it has to undergo the assessment again to ensure that quality is maintained.

Source: The Ethics Institute, https://www.tei.org.za/audits/.

While preventive incentives are primarily aimed at encouraging corporate investments in good practice in anti-corruption programs, some incentives are being used to encourage reporting of potential violations by individuals.

While this is not the only way to provide recognition to whistle-blowers, it worth noting that incentives have been used for many years in the United States to encourage and compensate reporting on procurement fraud and other violations in government contracting, resulting in the government recovering over $ 72 billion between 1987-2022.[94] This has been extended 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% of any amount recovered in an enforcement action as an incentive to encourage those with information to come forward.[95]

Box 7.12. US Securities and Exchange Commission (SEC) Whistle-Blower Programme

In September 2020, the SEC awarded $ 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 another 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 $ 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.

Sources: US Securities and Exchange Commission, "SEC Issues Record $114 Million Whistleblower Award", https://www.sec.gov/news/press-release/2020-266 ; "SEC Issues Largest-Ever Whistleblower Award", https://www.sec.gov/news/press-release/2023-89

States may also encourage companies to maintain their own whistle-blower recognition and compensation programmes by providing certain benefits to companies who do so. The existence of these programmes signals that a 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 and gaining access to procurement portals to obtaining government-issued certification as a supplier with integrity.

Box 7.13. 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 ($ 2.3 million) 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 follows but the whistle-blowing serves the public interest, the reporter may be awarded up to ₩ 200 million ($ 152 000) by the Anti-Corruption and Civil Rights Commission (ACRC).

Sources: Anti-corruption and Civil Rights Commission, " The Protection of Public Interest Reporters Act", https://www.acrc.go.kr/boardDownload.es?bid=64&list_no=38924&seq=1 ; https://businessintegrity.unodc.org/bip/en/questionnaire-on-states-measures-for-business-integrity.html.

8 Good practices and common pitfalls

As this resource guide demonstrates, there are many tools, in particular sanctions and incentives, available to States to strengthen business integrity. However, each of these tools comes with good practices as well as common pitfalls to avoid. In line with the seven core implementation principles outlined at the beginning of this guide, the following considerations should help States with the implementation of any of the previously mentioned measures.

Principle 1: States should lead by example by implementing sound integrity policies and ensuring their consistent enforcement across the public and private sectors.

- **Enforcement and accountability**: Even with strong laws in place, their enforcement is crucial to meet UNCAC and OECD Anti-Bribery Convention requirements. Insufficient resources, inadequate training of law enforcement officials and systemic corruption within 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 overall anti-corruption efforts. When laws go unenforced, it signals to the private sector that they can get away with misconduct, negating any incentive to self-report acts of corruption.
- **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 favoritism 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.
- **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 due to the absence 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. Otherwise, a culture of impunity undermines trust in public institutions and fosters corruption in the private sector.

  In the same vein, States must ensure that state-owned enterprises (SOEs) equally implement and adhere to anti-corruption practices. This is especially so when SOEs interact with the private sector through contracting, partnerships or otherwise. Given the importance of SOEs in global markets, "Good governance of SOEs is critical for fair and open markets, for the functioning of their domestic economies where SOEs are active and for the delivery of public services to the general public."[96]
- **Transparency and access to information**: Lack of transparency and overly restrictive access to information hinders anti-corruption initiatives. Opaque procurement systems or limited public access to information on business dealings 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.

Principle 2: Corporate anti-corruption programmes are a primary tool for strengthening integrity and their effectiveness should be assessed.

- 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 competent authorities acquiring and maintaining relevant expertise in corporate anti-corruption compliance. This is especially important with regard to new technologies and data analytics in this area. Rigorous training for competent authorities is also required. Poor assessments of corporate compliance programmes jeopardizes the efficacy of incentive mechanisms. First, wrong signals may be conveyed to the business community through inconsistent or inaccurate assessments.[97] This creates significant distortion in the market and undermines 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. These might not have the capacity or the incentives to properly evaluate the effectiveness of companies' anti-corruption programmes.
- In addition, competent authorities need to strike the right balance between assessments based on a tailor-made approach or pre-determined criteria. Tailor-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"[98] 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 chapter VII.B.1) for the case study on corporate penalty mitigation in the U.S. framework].

Principle 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.

- Caution against over-reliance on a single tool: Sanctions and incentives work together to provide an environment that strengthens business integrity. States should not rely on one single measure as the solution to counter corruption. For example, 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 improving the business integrity climate is what works best.

Principle 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 to build ownership and strengthen compliance.

- A collaborative approach: Initiatives such as the UN 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. In addition, some states have recognized the importance of partnering with the private sector to promote business integrity through national strategies and ensure the full participation of the business community.[99]

Principle 5: States should coordinate at the international level to harmonize approaches to business integrity, avoid policy incoherence and promote a level playing field for companies.

- 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 do not 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.[100]
- 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.[101] Avoiding inconsistencies across national policies and enforcement is even more important as many domestic legal instruments have extraterritorial reach. The international community should do all it can to harmonize and ensure cooperation and consistency in the way in which it incentivizes business integrity.

Principle 6: States shall ensure that legal persons held liable can be subject to effective criminal and/or non-criminal sanctions, including monetary ones.

- Sanctions: States must ensure that their sanctions regime is appropriate and considers the various entities that might engage in corruption. Sanctions are an important tool to dissuade actors from engaging in corruption and legal frameworks should ensure that liability can be imposed on those responsible.
- Legislation and 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.

Principle 7: States should develop a set of business integrity measures that are complementary and undertake periodic reviews to evaluate their adequacy.

- Ensure coherence of policy approaches domestically: 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 with automatic debarment or other forms of punishment that would weigh against the likelihood of their 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. Conflicting mandates can lead to disjointed approaches to anti-corruption, and ineffective and incoherent use of public resources. 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 ensuring effective and consistent enforcement, States should ensure that all parties are held to account.[102] 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 public officials who solicit or receive bribes.

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Endnotes

[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.

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[6] 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

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"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.

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[11] Organization of American States, Inter-American Convention Against Corruption, Caracas 1996, https://www.oas.org/juridico/english/corr_bg.htm

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[14] For European Union anti-corruption framework, https://home-affairs.ec.europa.eu/policies/internal-security/corruption/eu-legislation-anti-corruption_en.

[15] For additional information on ratification status of UNCAC, see: https://www.unodc.org/unodc/en/corruption/ratification-status.html

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[17] Resolution 10/12 Providing incentives for the private sector to adopt integrity measures to prevent and combat corruption. CAC/COSP/2023/L.17/Rev.1, https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/resolutions/L-documents/2325251E_L.17_Rev.1.pdf

[18] On 9 June 2023.

[19] United Nations Global Compact (2023), Engage Locally, https://unglobalcompact.org/engage-locally

[20] The 46 Parties include all 38 OECD countries and 8 non-OECD countries – Argentina, Brazil, Bulgaria, Croatia, Peru, Romania, the Russian Federation, and South Africa. For more on the achievements of the Convention and OECD Working Group on Bribery see Annex A.

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[27] 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", http://www.oecd.org/corporate/oecdprinciplesofcorporategovernance.htm.

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[29] 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. Available at: https://doi.org/10.1787/467cf791-en; OECD (2020), Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change, https://doi.org/10.1787/4245d0fc-en.

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[40] UN Global Compact's Reporting Framework, https://unglobalcompact.org/participation/report

[41] UN Global Compact (2023), Communication on Progress Questionnaire, https://unglobalcompact.org/library/6106

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[48] Mark Pieth, "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.

[49] 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.

[50] OECD (2019), Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention, https://doi.org/10.1787/e647b9d1-en.

[51] See Sections XVII and XVIII of the 2021 OECD Anti-Bribery Recommendation.

[52] UNODC (2021), Alternative legal mechanisms and non-trial resolutions, including settlements, that have proceeds of crime for confiscation and return, CAC/COSP/2021/1, https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-14/V2107439_E.pdf

[53] Non-trial resolutions often require special tools to have been enacted in law before they can be utilized. These may include, for example, deferred prosecution agreements in the U.S and U.K., Remediation Agreements in Canada, or Convention judiciaire d'intérêt public in France.

[54] 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).

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

[56] Humboldt-Viadrina School of Governance (2012), "Motivating Business to Counter Corruption – A Global Survey on Anti-corruption Incentives and Sanctions", https://www.globalcompact.de/migrated_files/wAssets/docs/Korruptionspraevention/Publikationen/motivating_business_to_counter_corruption.pdf.

[57] See Section XV of the 2021 OECD Anti-Bribery Recommendation.

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

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

[67] 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. See also, 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.

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[69] 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.

[70] A mandatory approach to debarment may present risks to other important UNCAC objectives, in particular encouraging self-reporting and cooperation by individuals or organizations 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.

[71] 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 asks 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)).

[72] 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 (2019), Recommendation of the Council on Bribery and Officially Supported Export Credits, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0447#backgroundInformation

[73] 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.

[74] OECD (2017), The Detection of Foreign Bribery, https://doi.org/10.1787/8ab65bd4-en.

[75] These factors are detailed at greater length on the UNODC Business Integrity Portal, https://businessintegrity.unodc.org/bip/en/index.html. Also, Annex II of the 2021 OECD Anti-Bribery Recommendation recommends that an effective anti-corruption compliance programme "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.

[76] 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), https://www.gov.uk/government/publications/bribery-act-2010-guidance

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[80] OECD (2021), Middle East and North Africa Investment Policy Perspectives, Chapter 11, OECD Publishing, Paris, https://doi.org/10.1787/6d84ee94-en.

[81] Ibid.

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

[83] 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 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. Furthermore, Section XII of the 2021 OECD Anti-Bribery Recommendation encourages countries to raise awareness and provide training to relevant public officials on bribe solicitation risks and how to assist enterprises confronted with bribe solicitation. The 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". For guidance on specific measures under these articles, see UNCAC Legislative Guide, https://www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html, pp. 25-33; UNCAC Technical Guide, https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf, pp.13-46.

[84] In December 2023, the United States passed the Foreign Extortion Prevention Act (FEPA) which makes it a crime for a foreign official –including any employee of a foreign government or any current or former senior official of a foreign government's executive, legislative, judicial, or military branches or any immediate family member or close associate thereof – to demand or accept a bribe from a U.S. citizen or U.S. company, or from any person while in the territory of the United States, in connection with obtaining or retaining business. FEPA aims to address the demand side of corruption. See: https://www.congress.gov/bill/118th-congress/house-bill/2670/text

[85] Open Contracting Partnership, "Transforming public contracting through open data and smarter engagement", https://www.open-contracting.org/what-is-open-contracting/.

[86] See, for example: Barinato, S. (2021), "Banks with more women on their boards commit less fraud", Harvard Business Review, https://hbr.org/2021/05/banks-with-more-women-on-their-boards-commit-less-fraud ; McElhaney, K. A. & Mobasseri, S. (2012), "Women create a sustainable future", UC Berkeley Haas

School of Business, Center for Responsible Business, https://www.eticanews.it/wp-content/uploads/2012/11/Report-Women_Create_Sustainable_Value.pdf

[87] International Labour Organization (2020), "Improving gender diversity in company boards", https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---act_emp/documents/briefingnote/wcms_754631.pdf

[88] UN Women (2023), "Legal frameworks for gender-responsive procurement", https://www.unwomen.org/sites/default/files/2023-02/Legal-frameworks-for-gender-responsive-procurement-en.pdf

[89] See UNODC (2020), "The Time is Now: Addressing the Gender Dimensions of Corruption", https://www.unodc.org/documents/corruption/Publications/2020/THE_TIME_IS_NOW_2020_12_08.pdf, pp. 72-73.

[90] UN Global Compact, "Endorse the Women's Empowerment Principles". https://unglobalcompact.org/take-action/action/womens-principles/

[91] 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.

[92] Council of the European Union, Document ST_6145_2024_INIT, https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Feur-lex.europa.eu%2Flegal-content%2FEN%2FTXT%2F%3Furi%3DCONSIL%253AST_6145_2024_INIT%26qid%3D1710771430112&data=05%7C02%7Canais.michel%40oecd.org%7Cf1d079b6a3f0475dfdc708dc475a13e6%7Cac41c7d41f61460db0f4fc925a2b471c%7C0%7C1%7C638463699406542030%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C%7C&sdata=poLts6JG0sTwSOvzI2iaLcRnDwcFL%2BbdKN%2BxinkhJDM%3D&reserved=0

[93] Please refer to Section XXII of the 2021 OECD Anti-Bribery Recommendation.

[94] United States Department of Justice (2023), "False Claims Act Settlements and Judgments Exceed $2 Billion in Fiscal Year 2022", https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022

[95] Wall Street Reform and Consumer Protection Act (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), http://www.sec.gov/rules/final/2011/34-64545.pdf. See also: https://www.sec.gov/whistleblower

[96] OECD (2019), Guidelines on Anti-corruption and Integrity in State-Owned Enterprises, https://doi.org/10.1787/315dab91-en.

[97] See Responses to the 2019 Working Group on Bribery's written consultation made by Joseph Murphy.

[98] 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. https://ssrn.com/abstract=3853764 or http://dx.doi.org/10.2139/ssrn.3853764

[99] See for example the United States Strategy on Countering Corruption (2021), https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf

[100] OECD (2020), Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change, p.81, https://doi.org/10.1787/4245d0fc-en.

[101] Ibid.

[102] Ibid.

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Where anti-corruption efforts were previously the domain of governments, the private sector has increasingly become an essential actor, representing a significant paradigm shift from the early days of anti-corruption policy development. This Resource Guide provides 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 anti-corruption landscape and contains case studies that serve to share information and practices and provide inspiration to States and the private sector.

PDF ISBN 978-92-64-77296-0