

How to Evaluate Risks in the Private Sector

By

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Public Sector

Bribe recipients

- influence
- solicitation

Private Sector

Legal Entities

Grand Corruption

- Kickbacks, active bribery
- „cost of doing business“

Individuals

petty corruption



Why are companies corrupt?

- Companies represent the supply side of corruption
- They know that bribery is illegal
- So why do they continue to bribe?

Let's discuss some of the reasons



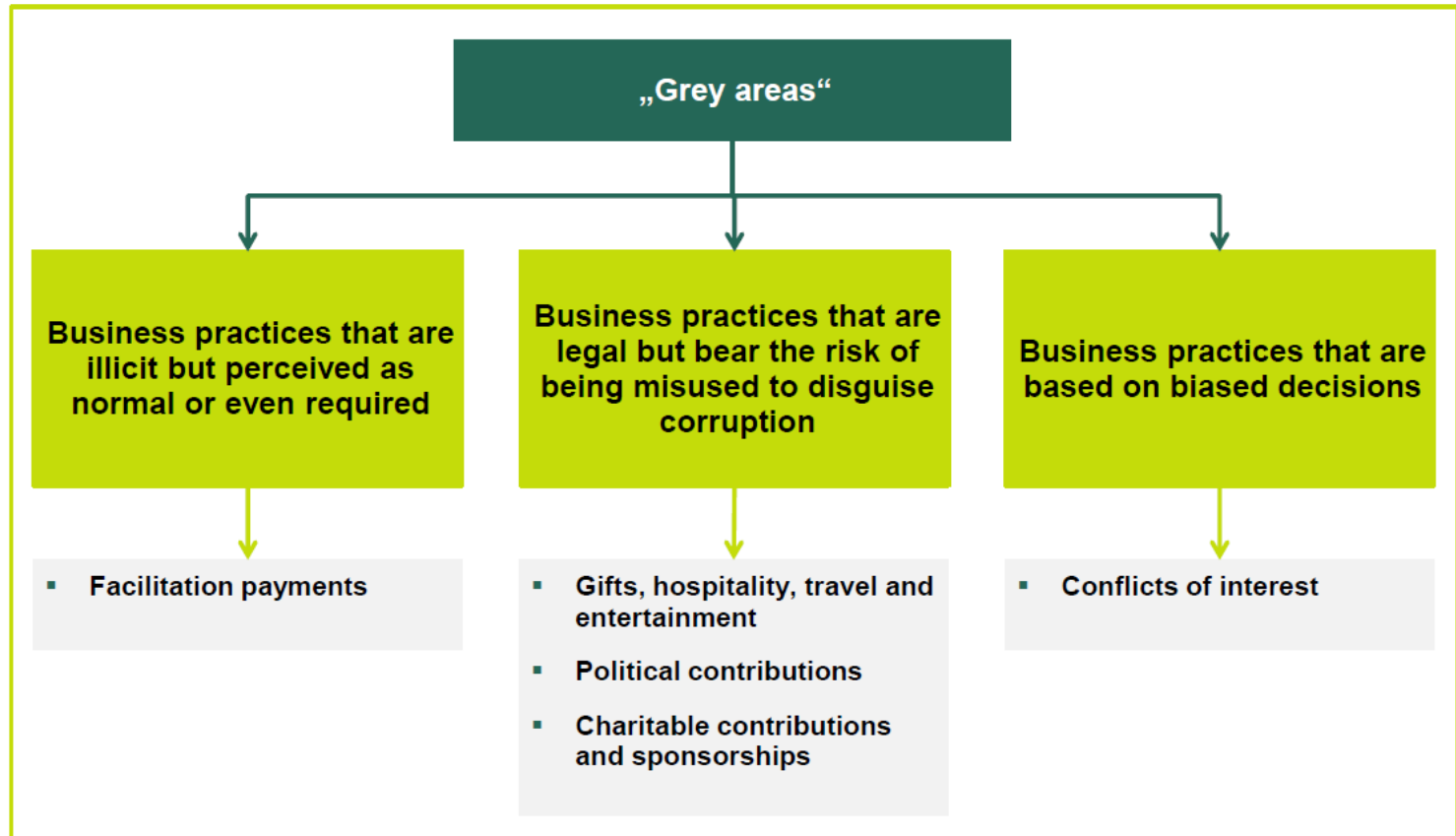
Corporate Bribery – some of the Reasons

- Sanctions don't work – very weak law enforcement
- Fines against companies don't hurt corrupt managers
- Managers are afraid to say no to extortion
- They hide behind unclear laws, cultural differences and ambiguities



Write anti-corruption policies

→ Provide policies for “grey areas”



Based on United Nations Office on Drugs and Crime, An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide (2013)

RESIST: Resisting Extortion and Solicitation in International Transactions (available in Arabic)



- RESIST is a **training tool** that provides practical guidance on how to prevent and/or respond to inappropriate demands.
- RESIST comprises **22 real-world scenarios**, organized in 2 sections:
 - Pre-sales and bidding stage
 - Post-award project implementation stage
- Each of the 22 scenarios addresses **two basic questions** in a concrete and specific manner:
 - How can the company prevent the demand from being made in the first place?
 - How should the company react if the demand is made?

Case #1 – The last-minute “closure fee” 6

Your company is bidding for a large government contract. After nine months of costly negotiations, a government official tells you that you will get the contract.

But just before the contract is actually being signed, you are asked to pay a last-minute “closure fee” by a member of the purchase committee.

Your company desperately needs the contract to reach its revenue target for this year.

(Adopted from RESIST scenario #6)



- What form of corruption is this?
- How can your company overcome this situation in a legally acceptable way without losing the contract?

Case #2 – The „special“ customs fee

You are the local manager of a company in a foreign country. You are waiting for the shipment of critical technical equipment. When the equipment finally arrives, your employee is told by a customs officer that the paperwork is “incomplete”. This will prevent the release of the equipment until the problem has been solved.

The customs official indicates that a resolution could take several weeks. He adds, however, that the problem can be solved quickly through an expeditor’s fee or cash payment of \$200, which would ensure customs clearance of the equipment in one business day.

(Adopted from RESIST scenario #12)



- What is the difference to the previous case?
- What should you do?
- Would your answer have been different if the customs official had demanded \$ 50,000?

Case #3 – The evaluation trip

Your company is a leading manufacturer for construction equipment, operating out of Saudi Arabia. Your company is currently negotiating a major sale of the technology to a foreign government.

In order to demonstrate the technical capabilities of your equipment and to show that this is state-of-the-art, you are inviting a delegation of the foreign government to a large construction equipment conference in Frankfurt/Germany. Your company pays for flight, accommodation and other travel expenses. Since the conference takes place right before the weekend, your company provides an “all-inclusive” weekend stay in Berlin/Germany, including sightseeing and a visit to a football match.



- Is this corruption or just business development?

Case #4 – The expensive dinner

Your company is bidding for a large contract in an Asian country. You are visiting the country to discuss the bid and have a 1-day meeting scheduled with a senior official at the relevant ministry. The official suggests that since you arrived the day before, you should meet for dinner the evening before to get to know each other and discuss the schedule for the next day. The official says he knows a restaurant offering typical food of the region.

You arrive at the restaurant which indeed offers local cuisine but is also one of the most exclusive in the city. You are greeted by the official who leads you to a long table where eight men are already seated. The official introduces them as his subordinates and says he thought it would help to meet his team. A long evening ensues with many courses of food and finally, the waiter approaches and places the bill for the evening firmly in front of you. It is clear that the officials have no intent of offering to pay or contributing to the bill and are already preparing to leave.



- What should you do?

Slightly adopted from Transparency International UK (2010): "The 2010 UK Anti-Bribery Act Adequate Procedures".

Case #5 – Charity or corruption?

You are bidding on a large public road construction project in a community in country Y. During the bidding phase the local mayor of this community approaches you and states that, as part of the overall construction project, the company that is awarded the contract also needs to build a public kindergarten for the benefit of the community (for free!). This is a common practice in this country, where organizations or government agencies often require assistance from companies in order to deal with budgetary constraints.

It is expected that the setup of a new public kindergarten provides an indirect benefit to the mayor in the upcoming election campaign.

(Adapted from Mark Pieth (2011): "Anti-corruption compliance")



- Does this request constitute corruption?
- Which measures should be taken in order to prevent such a situation from occurring in the future?



Case #6 – Hiring a family relative

You are the Human Resources manager of a large company and you are currently in charge for the recruitment of a new business manager in a remotely located factory.

The vacant position is publically advertised and you receive a lot of qualified applications. One of the applicants is a close cousin of yours. He has been looking for a job for months now, without much success. Unfortunately, he also does not have similar qualifications than the other candidates for this position.

You nevertheless decide to hire your cousin and give him a chance.



- Does this constitute corruption?
- Would it be different if your cousin has similar qualifications than the other applicants?

Case #7 – Ignoring red flags

A Swedish telecoms operator was keen to expand its business into countries without a modern mobile phone network. It learned that a young woman in Uzbekistan, who was reputed to have the highest political connections in the country, owned the mobile licences via a Gibraltar company.

The Swedish company conducted legal due diligence and confirmed:

- a) That the lady in question was the rightful owner of Gibraltar company, and
- b) that the company in fact owned the Uzbek mobile licenses.


They agreed to pay the sum of \$ 300m for the licences.



- **Do you see any corruption related problems with the transaction?**
- **What could or should the company have done before purchasing the licences?**

Write anti-corruption policies


→ Examples of a Code of Conduct (2/2)



Statoil

Ethics Code of Conduct

Version 5




1 Objective, target group and warrant	5	4.7 Insider information	28
2 The Ethics Code of Conduct	7	4.8 Maintaining records	29
2.1 Main purpose of the Ethics Code of Conduct	7	4.9 Information and IT systems	30
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2.3 Presentation of the Ethics Code of Conduct	8	4.11 Intoxicants	31
3 Code of business practice	11	5 Practice and follow-up	33
3.1 Correct information, accounting and reporting	11	5.1 Personal responsibility	33
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3.5 Relations with suppliers, partners and customers	16	5.5 Consequences of infringement	35
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4.5 Conflict of interest	26	App A Awareness questions for hospitality	41
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5.2 Managerial responsibility

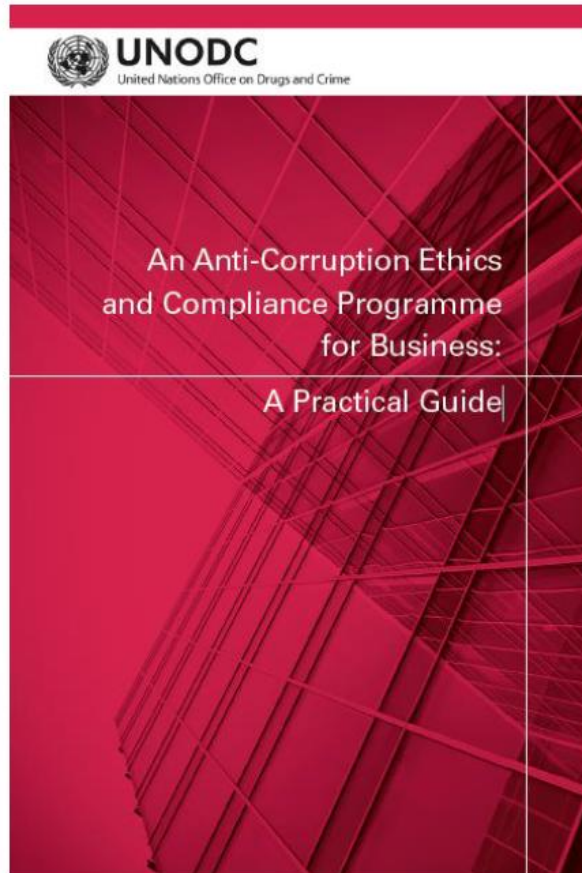
Managers must ensure that activities within their area of responsibility are carried out in accordance with the requirements set out in this document.

Managers are responsible for communicating the requirements and for providing advice with respect to the interpretation and application of the rules.

How to get started with an anti-corruption ethics & compliance program

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- 1** Obtain commitment from senior management
 - 2** Conduct a risk assessment
 - 3** Write anti-corruption policies
 - 4** Implement the program
 - 5** Review and improve the program
 - 6** Report on the status of the program

New UNODC Guide for business



- Risk assessment
- Developing and implementing an anti-corruption ethics and compliance programme
 - A. Support and commitment from senior management for the prevention of corruption
 - B. Developing an anti-corruption programme
 - C. Oversight of the anti-corruption programme
 - D. Clear, visible and accessible policy prohibiting corruption
 - E. Detailed policies for particular risk areas
 - F. Application of the anti-corruption programme to business partners
 - G. Internal controls and record keeping
 - H. Communication and training
 - I. Promoting and incentivizing ethics and compliance
 - J. Seeking guidance - detecting and reporting violations
 - K. Addressing violations
 - L. Periodic reviews and evaluations of the anti-corruption programme
- From organizational change to collective action

THANK YOU!

For more information go to:

www.transparency.org

TI's website for private sector work:

http://www.transparency.org/topic/detail/private_sector

