

State Measures for Strengthening Corporate Integrity

Corruption is one of the most complex, difficult and corrosive problems facing the world today. Bribery of public officials and other forms of corruption in business undermine fair competition, distort economic investments and deprive governments of the resources needed to promote growth and development. These effects are felt in all regions and countries, but have caused disproportionate harm in poor communities in the developing world.

Corruption cannot be solved by either governments or companies acting alone. Companies are a common source of corrupt funds, but they are also victims of extortion with a shared stake in reform. Small local businesses are especially vulnerable to extortionate demands by corrupt public officials, while larger domestic and global corporations that manage to control bribery in their own ranks must still worry about unfair competition from less ethical peers. While companies have a major responsibility in fighting corruption, States also recognize the need to put legal frameworks, policies and programmes in place to incentivize integrity, while penalizing private sector corruption.

UNCAC and the Private Sector

Designed to provide a legislative framework for addressing corruption, the United Nations Convention against Corruption is the first global legally-binding instrument in the fight against corruption. The Convention's 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. Over 170 States parties 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 also of particular relevance to the business community. UNCAC requires States to criminalize various forms of corruption. 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 corporate integrity, detailing corruption offences that States are called upon to proscribe by legislation.

Criminalization provisions

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

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

Private sector provisions

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



Strengthening Corporate Integrity

States are expected to meet certain minimum standards when implementing their UNCAC commitments in relation to private sector corruption, including sanctions for violations by “legal persons” that are “effective, proportionate and dissuasive.” UNCAC also recognizes the essential role of incentives that encourage and reward corporate self-reporting and prevention efforts. Both types of measures signal to the private sector a State’s serious commitment to the enforcement of existing anti-corruption laws. In sending a clear message that criminal laws will be backed with enforcement action, and that corrupt practices will be investigated and punished, governments can ensure that those in the private sector continue to prioritize the strengthening of corporate integrity policies. Over time, this is likely to have the effect of reducing the incidence of corruption involving the private sector.

Both sanctions and incentives signal to the private sector a State’s commitment to strengthening corporate integrity and reducing the incidence of corruption involving the private sector.

Sanctions

There are a wide range of measures for sanctioning private sector corruption, which fall into one of eight broad categories. The possible sanctions include:

- Monetary fines
- Incarceration
- Confiscation of proceeds
- Contract remedies
- Suspension and debarment
- Denial of government benefits
- Liability for damages
- Reputational damages

Incentives

Incentives that reward a company for good practice are an important complement to enforcement sanctions. They recognize that meaningful investment in anti-corruption programmes and other measures that strengthen corporate integrity are largely voluntary and demonstrate the commitment of company leadership. They include, but are not limited to:

- Penalty mitigation
- Procurement incentives
- Preferential access to government benefits
- Reputational benefits
- Whistle-blower awards

Additional State Measures

There are various additional measures that States may use to reduce corruption involving the private sector, which complement the enforcement of sanctions and the use of good practice incentives, such as:

- Integrity pacts
- Code-based initiatives
- Public sector reforms
- Public education

Further information on State and private sector responsibilities in preventing corruption by strengthening corporate integrity are available in the UNODC “A Resource Guide on State Measures for Strengthening Corporate Integrity”.

The Resource Guide is available at <http://www.unodc.org/unodc/en/corruption/publications.html>.