

# **Anti-bribery Compliance Seminar Overview**

# Anti-Bribery Compliance Seminar Overview

- Introductory Notes
- The Cost of Corruption
- Corporate Governance
- Legal Context
- Anticorruption Programme Conceptual Scheme
- Recent Development in International Cooperation

# Anti-Bribery Compliance Seminar Overview

## Introductory Notes

- Ethics, anti-corruption, and corporate governance practices figure today as mainstream considerations in business decisions about competitive advantage and financial performance.
- Corruption has many faces and many moving parts.
- In some instances business can be a source of corruption, in others it is simply a victim.

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## Introductory Notes

- The Universal Declaration of Human Rights has over time established a global consensus on the applicability of universal moral principles across all types of cultures and nations.
- These principles are now reflected in today's landmark documents of business ethical behavior: OECD Anti-Bribery Convention; UN Convention against Corruption; World Economic Forum's Partnering Against Corruption Initiative-Principles for Countering Bribery; Transparency International's (TI) Business Principles for Countering Bribery; International Chamber of Commerce Rules of Conduct to Combat Extortion and Bribery; and the UN Global Compact Principle 10 on Anti-Corruption, among others.

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## Introductory Notes

### *Definition of corruption*

- Transparency International's (TI) definition of corruption is succinct and yet comprehensive: "the abuse of entrusted power for private gain." TI's simple definition encapsulates a number of key elements:
  - It applies equally to all three sectors of governance: private, public and civil society;
  - It refers to both systemic and individual abuses that can range from dishonesty to illegal and criminal activities;
  - It covers both financial and non-financial benefits;
  - It points to the importance of governance systems in controlling and regulating how authority is exercised; and,
  - It highlights the inefficient costs associated with corruption, the diverting away resources from their intended use.

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## Introductory Notes

- Systemic corruption is by far the most damaging and the one that is most difficult to analyze and prescribe solutions.
- Variables and factors that account for its damaging effects are:
  - ✓ Undermining property rights,
  - ✓ Weakening the rule of law,
  - ✓ Limiting private sector growth,
  - ✓ Eliminating incentives to invest,
  - ✓ Debilitating institutional capacity, and
  - ✓ Delaying economic and political development.

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## The Cost of Corruption

- Resource misallocation
- Lower investment
- Reduction in competition, efficiency, and innovation
- Unresponsive policies and poor administration
- Lower employment
- Exacerbated poverty

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## Corporate Governance

- Corporate governance is the system by which companies are directed and controlled.
- Boards of directors are responsible for the governance of their companies.
- The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.
- The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.
- The board's actions are subject to laws, regulations and the shareholders in general meeting.



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## Corporate Governance Principles

- Transparency:
  - ✓ Directors must make clear to the providers of capital and other key stakeholders why every material decision was made.
- Accountability:
  - ✓ Directors should be held accountable for their decisions and account to shareholders by submitting themselves to appropriate scrutiny.
- Fairness:
  - ✓ All shareholders should receive equal consideration by the directors and management with a sense of justice and avoidance of bias or vested interests.
- Responsibility:
  - ✓ Directors should carry out their duties with honesty, probity, and integrity.

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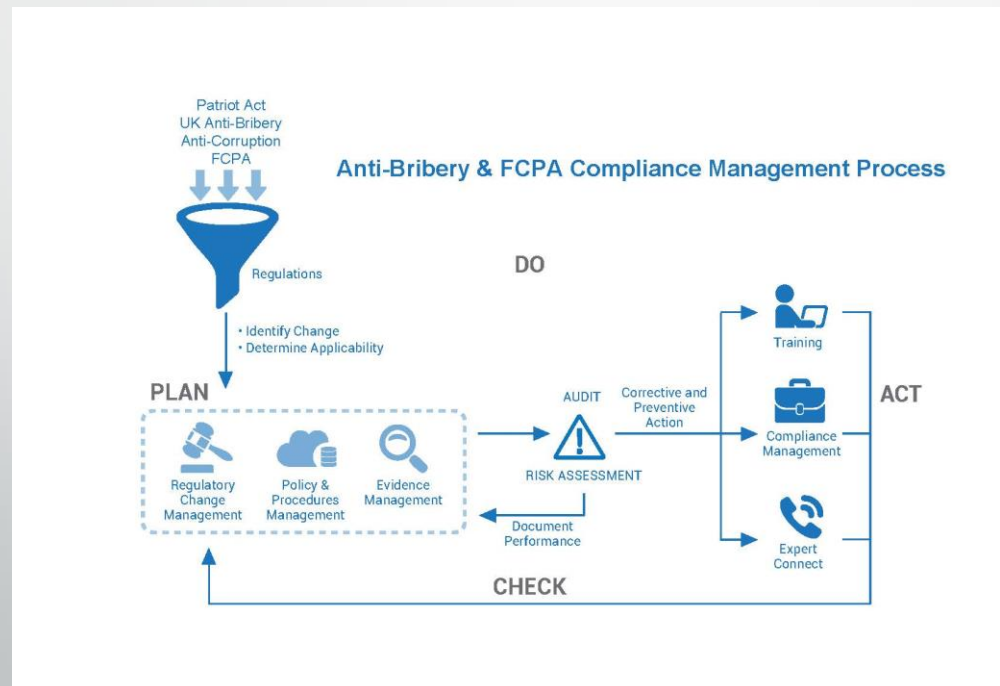
## Legal Context

- World Anti-corruption legal system
- Bribery intentions
- Anti-corruption laws prohibitions and obligations
- Consequences of non-compliance with anti-corruption laws

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## Legal Context

- The global nature and scale of the oil and gas sector, and the complexity of the working and contractual relationships with governments, venture partners, suppliers and other contractors, make compliance with anti-bribery and anti-corruption regulation something that requires significant management focus.



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## Legal Context

- In recent years, the number of countries that have established laws prohibiting corruption of their Public Officials have been steadily increasing, and many countries have laws criminalising international corruption, or rather, the corruption of Public Officials in other countries by entities within their jurisdiction.
- Many countries also have laws that prohibit bribery among private parties.

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## Legal Context

- In addition to the anti-corruption laws of each country the anti-corruption legal system includes:
  - ✓ the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions;
  - ✓ the United Nations Convention Against Corruption;
  - ✓ their subsequent amendments and additions.
- An important role in the world anti-corruption legal system is played by :
  - ✓ the Foreign Corrupt Practices Act (FCPA) issued in the United States;
  - ✓ the UK Bribery Act issued in the United Kingdom;
  - ✓ the anticorruption law issued in the Brazil.

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## Legal Context

- The Bribery intentions are:
  - ✓ to induce a Public Official or private party to perform improperly any function of a public nature or any activity connected with a business or reward them for the improper performance of such a function or activity;
  - ✓ to influence any official act (or omission) by a Public Official or any decision in violation of any official duty;
  - ✓ to obtain or secure an improper advantage in the conduct of business; or
  - ✓ in any case, to violate the applicable laws.

# Anti-Bribery Compliance Seminar Overview

## Legal Context

- Generally the Anti-Corruption Laws prohibit:
  - ✓ both direct and indirect payments – including payments to anyone while knowing the payment will be shared with a Public Official or private party.
  - ✓ as well as offers or promises to pay or give anything of value, to a Public Official or to a private party for corrupt purposes.
  - ✓ Recruitment of personnel and consultancy services and other advantages that will benefit public official or private party.
- Under the Anti-Corruption Laws, Companies Personnel can be held responsible for a corrupt offer or payment made by anyone acting on behalf of the company in connection with its business and when Company and its Personnel knew or reasonably should have known this offer or payment was improper.

# Anti-Bribery Compliance Seminar Overview

## Legal Context

- The Anti-Corruption Laws require companies to keep and maintain books, records and accounts which, in reasonable detail, accurately and fairly reflect its transactions, expenses (even if not “significant” in an accounting sense) and acquisitions and disposals of its assets.
- Even inaccuracies in the reporting of non-corrupt payments constitute violations.
- False records may trigger tax and other legal liabilities. In particular, the bookkeeping provisions of the FCPA require issuers of stock registered under U.S. securities laws, to maintain adequate internal accounting standards and control systems, and keep accurate books and records.



# Anti-Bribery Compliance Seminar Overview

## Legal Context

- Generally the anti-corruption laws prohibit bribery without exception.
- In particular, it is prohibited:
  - ✓ offering, promising, giving, paying or authorizing anyone to give or pay, directly or indirectly, material, financial or other advantage to a Public Official or private party (Active Bribery)
  - ✓ accepting or authorizing anyone to accept, directly or indirectly, a request or solicitation from a Public Official or private party of a financial or other advantage (Passive Bribery)
- Prohibited conduct includes financial or other advantage offered or received by Companies Personnel (Direct Bribery) or by anyone acting on behalf of the company (Indirect Bribery) in connection with the business of the company.

# Anti-Bribery Compliance Seminar Overview

## Legal Context

- This prohibition is not limited to cash payments, and includes for the purpose to corrupt:
  - ✓ gifts;
  - ✓ entertainment expenses, meals and travel, hospitality in general;
  - ✓ in-kind contributions, such as sponsorships;
  - ✓ business, employment or investment opportunities;
  - ✓ insider information that could be used to trade in regulated securities or commodities;
  - ✓ personal discounts or credit;
  - ✓ facilitation payments;
  - ✓ assistance to support families; and
  - ✓ other benefits or advantages.

# Anti-Bribery Compliance Seminar Overview

## Legal Context

- All dealings with, or related to, or involving a Public Official must be conducted in compliance with the Anti Bribery Laws and all related regulations.
- All dealings with, or related to, private parties considered at risk of corruption must be conducted in compliance with the Anti Bribery Laws and all related regulations.
- Companies Personnel are responsible, each for their own area of responsibility, for complying with Anti Bribery Laws and all related regulations.
- In particular, managers are responsible for supervising compliance by those that work with them and adopt measures to prevent, detect and report potential violations.

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## Legal Context

- No questionable or illegal practice can ever be justified or tolerated because it is "customary" in the industrial sector or in the countries where a company operates. No performance goal should be imposed or accepted if it can be achieved only by violating Anti Bribery Laws.
- The illegal practices include Facilitation Payments, i.e. unofficial payments made to a Public Official in order to speed up, facilitate or secure the performance of a routine action.

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## Legal Context

### *Political contributions*

- Political contributions could constitute corruption offences and therefore present a risk of consequent liability.
- The risks are that political contributions may be used by a company as an improper mean of bribery to retain or obtain a business advantage such as to win a contract, obtain a permit or license, or shape legislation favorable to the business.

### *Donations to charities/non-profit Initiatives/social projects*

- Donations to charities, administrative entities and bodies, non-profit initiatives and Social Projects present the risk of funds or assets of value being diverted for the personal use or benefit of a Public Official or private party.
- All non-profit initiatives, charitable contributions and Social Projects must be carried out in compliance with Anti-Corruption Laws and regulations.

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## Legal Context

### *Sponsorship*

- Sponsorship may also raise anti-corruption issues. All sponsorship must be approved to ensure compliance with Anti-Corruption Laws, and regulations.

### *Consequences of non-compliance with Anti-Corruption Laws*

- In recent years, enforcement of Anti-Corruption Laws has become more intense and the penalties significantly more severe.
- Physical and legal persons who violate Anti-Corruption Laws can incur considerable fines and physical persons may be sentenced to imprisonment or suffer other penalties.

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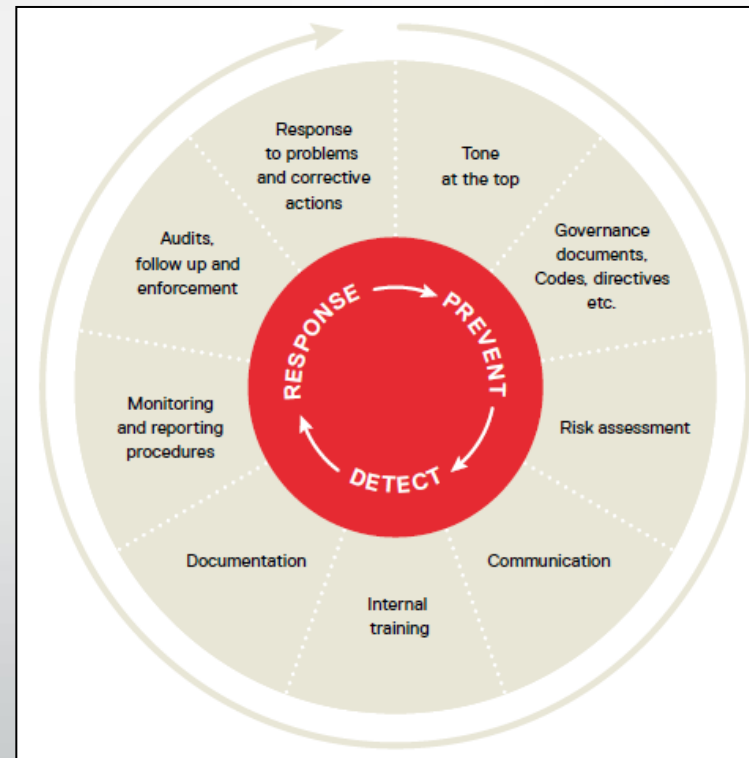
## Legal Context

### *Consequences of non-compliance with Anti-Corruption Laws*

- Other legal consequences may also derive from such violations including debarment from contracting with public entities, confiscation of profit made or requesting claims for damages. Even more importantly, such events can seriously damage a company's reputation.
- It should also be noted that, in order to maximize the effectiveness of the penalties, companies are usually prevented from indemnifying their personnel against liability under Anti-Corruption Laws.

# Anti-Bribery Compliance Seminar Overview

## Anti-corruption Programme Conceptual Scheme



*Programme Management*



# Anti-Bribery Compliance Seminar Overview

## Recent Developments in International Cooperation

- The last years have seen an extraordinary increase in Foreign Corrupt Practices Act (“FCPA”) prosecutions in the U.S., as well as a host of anticorruption initiatives around the world.
- These developments have both highlighted existing international cooperation efforts and demonstrated how such cooperation is likely to grow.
- Companies operating internationally should therefore be aware that law enforcement authorities in multiple countries are working together to an unprecedented degree to investigate and prosecute anti-corruption cases.
- Many countries are also bolstering their laws to toughen anti-corruption standards and enhance mechanisms for international cooperation.
- Because of these efforts, international cooperation and enforcement is more likely than ever to lead to multi-jurisdiction enforcement actions and liability on the same or related conduct.

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## Recent Developments in International Cooperation

- The principal framework behind international cooperation efforts is the Organization for Economic Cooperation and Development's ("OECD") Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (referred to as the "Anti-Bribery Convention"), which establishes standards for criminalizing bribery of foreign public officials in international business transactions ( 1999 and successive updating)
- In signing the Convention, the adopting countries acknowledged "that all countries share a responsibility to combat bribery in international business transactions."
- The Convention requires each adopting country to enact legislation to, among other things, "establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official . . . in order to obtain or retain business or other improper advantage in the conduct of international business."

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## Recent Developments in International Cooperation

- Significantly for multilateral enforcement, the OECD Anti-Bribery Convention expressly requires cooperation among signatory countries, and states that “each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention.”
- Because the Convention facilitates information exchange and other assistance, the probability that a defendant will be investigated and prosecuted in multiple countries—and potentially face duplicative fines and sanctions—is significantly heightened.

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## Recent Developments in International Cooperation

- On the year 2014, thirty-four OECD member countries and seven non-member countries have adopted the Anti-Bribery Convention.
- The OECD Working Group on Bribery in International Business Transactions (“Working Group”) is responsible for monitoring and assessing adopting countries’ compliance with the Convention’s provisions, namely their enactment of sufficiently strict implementing legislation.
- Implementation efforts have been mixed. Some countries promptly adopted legislation to comply with the Convention. Other countries have been slower to enact specific anti-bribery legislation, and instead have amended existing criminal laws and utilized existing enforcement mechanisms. As a result, the amount of enforcement activity has varied significantly among signatory countries.
- More recently, in response to Working Group reports, many signatory countries have begun to pass new anti-corruption laws, supplement general criminal procedure with formal anti-bribery mechanisms, and establish new enforcement authorities to oversee investigations and prosecutions.

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## Recent Developments in International Cooperation

- Anti-corruption enforcement initiatives are on the rise, even in parts of the world that had previously turned a blind eye to—or even encouraged—bribery.
- As more countries create and strengthen anti-corruption programs, enforcement authorities will have added resources and incentives for cooperation with authorities in other countries. As many cases illustrate, cooperation between prosecuting countries increases the likelihood of higher sanctions in both jurisdictions.
- The new wave of anti-corruption initiatives will likely lead to similarly significant prosecutions in the future.