

# ENSURING COMPLIANCE

A PRACTICAL  
HANDBOOK  
FOR GHANAIAN  
BUSINESSES



### **Alliance for Integrity**

The Alliance for Integrity is a global initiative bringing together all relevant stakeholders in the field of corruption prevention in the private sector. Our major goal is to raise business integrity and compliance capacities.  
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## INTRODUCTION

In today's competitive business environment, the focus of businesses need not only be on profitability but also ethics and integrity – the requirement to do the right thing even when no one is watching. This obligation brings up the issue of compliance, which is not only relevant but critical to the success of businesses, national economies and the global economy as a whole.

It is worth mentioning that compliance is not only an ethical issue, which usually has consequences such as reputational damage for offenders but also hinges more importantly on rules and regulations, non-conformance of which makes culprits liable for prosecution. Corruption prevention is one of the main targets of compliance efforts in both private and public institutions. This is due to the negative effects of corruption on businesses, the society, economies and the world at large, aside being a crime.

Corruption is an important subject for the private sector as it is amongst the most notable impediments to growth in the sector. Amongst other challenges, corruption presents a barrier to entry, reduces the growth and productivity of firms and leads to business collapse. Although the demand

side of bribery has been the focus of discussions on corruption for many years, attention on the supply side is also gaining traction in recent times.

The fight against corruption in the private sector is both an ethical case and a business case. Even though fighting against or preventing corruption is the right thing to do, businesses must make it a point to take decisive action in order to avoid the numerous risks that are associated with being corrupt. Whether it is legal, reputational or financial risk, the consequences of engaging in corruption far outweigh the motivation. Entities therefore need to take action and commit to the prevention of corruption in their organisations, whilst influencing their business partners to do same.

The Alliance for Integrity is focused on the prevention of corruption by presenting a platform that offers practical solutions to strengthen the compliance capacities of companies and their supply chains. To achieve this aim, the Alliance for Integrity undertakes capacity building and awareness raising activities amongst others. This publication titled *Ensuring Compliance – A Practical Handbook for Businesses in Ghana* is yet another effort to increase the awareness of businesses on corruption prevention and, by so-doing, improve their capacities to prevent or fight corruption.



The Alliance for Integrity understands the fact committing to prevent corruption is not an end but a means to an end. This is why it has come up with this publication to provide the know-how and guidance needed for the establishment and implementation of corruption prevention and compliance programmes by small companies and large ones alike. In this vein, this publication is designed to serve as a reference document for compliance officials, small and medium-sized companies (SMEs) and decision-makers in private sector organisations to better understand compliance and business integrity issues in Ghana. A practical guide on managing compliance needs, it highlights various challenges faced at ground level and puts forward the necessary recommendations thereof.

The publication addresses the common issues faced by companies in designing and implementing various compliance and anti-corruption measures in their organisations. It also covers the Ghanaian legal framework as well as global anti-corruption laws. Key questions pertaining to what constitutes corruption, offences as per global anti-corruption regulations and implications of non-compliance are addressed.

It is a useful tool for businesses that want to start their own compliance management systems or upgrade existing systems based on local and global best practices in their bid to be law-abiding and also be eligible to be part of the supply chains of large companies. For large businesses, the publication is a good tool for peer-to-peer learning and also strengthening their supply chains in order to ensure their own growth and sustainability. ■

Raymond Ahiadorme, Network Manager  
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# 1 BASICS



## 1.1 DEFINING CORRUPTION, CORRUPTION PREVENTION AND COMPLIANCE

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The Merriam Webster Dictionary has three main broad definitions of corruption applicable to the subject matter of this article. Firstly, as a “dishonest or illegal behaviour especially by powerful people (such as government officials or other public servants)”. Corruption is also defined as “inducement to wrong by improper or unlawful means (such as bribery). Furthermore, it is defined as “something that has been changed from its original form”.

As one may notice, the definition of corruption has no perfect fit or span and may be applicable to every context depending on the presence of two basic elements. The first element is power, right or privilege and the second is the exercise of this right or privilege in an often negative or selfish way to accrue personal benefit.

My definition of corruption will therefore be in the context of this subject: the use of one’s influence or advantage of position or status to appropriate gains for themselves or their associates through the use of the channel of trust. Corruption therefore definitely involves abuse of trust (public or private) for personal gain.

The danger of corruption is that, if left unbridled or unfettered, it has the potential to go beyond the corrupt person, thus being replicated amongst others. This undermines the very fabric of society. It stifles productivity and ends up being a long-term catalyst for other forms of deviant behaviour.

### Prevention of corruption

How do we prevent corruption? In effect, how do we stop people or put measures in place to deter people from carrying out negative activities at the position of trust that they hold, for their private benefit? The prevention of corruption means taking active steps to put measures and structures in place to ensure that incidents of corruption are reduced to the barest minimum. It does not only involve talking about the issue of corruption but also taking concrete steps to ensure that it does not occur.

The root of corruption in my estimation primarily boils down to education and culture or the wrong forms of education and culture. To prevent or deter corruption, these two cardinal issues must be tackled head-on by the institution or the society. The following measures are therefore recommended to help deal with corruption.

Firstly, people must be educated to understand the dangers that corruption presents to the society as a whole and its negative impact on organisational and societal growth.



This calls for the presence of visible role models and champions of accountability. Every organisation must train its staff and every government agency must ensure that their workers are educated on these issues. Training should focus on awareness creation about corruption and the responsibilities of individuals.

The second point, which is linked to education, is the issue of culture. Negative cultural practices in many developing countries are linked to corruption. Although proponents of these practices may say these are the traditions that must rather be preserved, their prevalence nevertheless has harmful effects on the people. A case in point is the cultural practice in Ghana which one may notice that “you must not visit a chief or someone in authority empty-handed”. Although many will claim that this is not supposed to influence decision-makers, it goes without saying that a gift of that nature cannot be entirely described as not having the potential of influencing the receiver. This practice, when extended amongst public officials, tends to be a subtle influence in the conduct of public office. It is very obvious that there must be clear norms and practices regarding what one may notice acceptable gifts and what amounts of gifts will constitute corruption of an official.

The aforementioned then leads to the third corruption-prevention recommendation, which is the institution and codification

of what constitutes acceptable behaviour for office holders or what will be ordinarily known as a code of conduct. Codes of conduct will be necessary to regulate individuals and prescribe or communicate the boundaries of acceptable behaviour. A code of conduct is simply a set of rules that spells out specific behaviour expected of a member of a group. Without a clearly spelt out code of conduct, people are bound to keep pushing the limits of rules and also reduce the application of these rules on a “to whom it may concern” basis. Adherence to a code of conduct will eliminate the practice where people interpret acceptable behaviour to suit themselves.

There should be monitoring and reporting of activities. People should understand expected behaviour and responsibilities of stakeholders. For instance, when a customer or a citizen pays for a service he or she should understand that he or she is not being done a favour but he or she deserves the service as a right. This will create an avenue for people, for instance, customers, to hold institutions and officers accountable. It will embolden people to report cases of unacceptable demands made by office holders. Office holders will, by this, appreciate that they can be held accountable for their conduct. Additionally, this means that there should be an office within institutions that must be able to receive reports of corruption and perceived corruption, investigate accordingly and deal with



offenders. This is one of the reasons why Compliance Departments are a requirement in many industries. To prevent corruption, a culture of whistleblowing should be encouraged, and whistleblowing should be viewed in a positive light. Whistleblowing is when someone reports an incidence of corruption or wrongdoing.

The sum of all measures that an organisation puts in place to ensure that it counters corruption is its compliance programme. This involves systems, procedures, and people working together to ensure the organisation complies with defined behavioural or regulatory dictates. It is important in the organisation or entity that compliance is not just seen as the duty of a select few, but the duty of everyone in the organisation. ■

## 1.2 THE LEGAL REGIME FOR COMPLIANCE, CORPORATE GOVERNANCE AND ANTI-CORRUPTION

Kimathi Kuenyehia Sr., and Sarpong Odame,  
Kimathi & Partners

The concepts of compliance, corporate governance and anti-corruption have been part of the business discourse in recent times with most companies focused on operating within the limit of the law as well as limiting their exposure to liabilities for non-compliance, poor corporate governance structures and corruption. The challenge for most businesses has been how to find a reasonable balance between complying with the myriad of laws and regulations within the specific business sector and the need to minimise the cost of doing business in order to remain competitive.

The general attitude towards compliance within the business community has been very sporadic, with most business entities having very little or no culture for compliance with laws, setting up a robust corporate governance structures and putting in place anti-corruption systems. Most companies simply find it expensive or, in some cases, simply do not think it is relevant to put in place any systems to remain compliant.

In general, the compliance regime for businesses depends largely on the sector in which it operates. However, we would discuss the basic regulations for corporate

governance compliance and anti-corruption compliance since these are of general application to all companies operating within Ghana.

The Companies Act, 1963 (Act 179) is the primary law regulating corporate compliance in Ghana. The Companies Act sets out the processes for the formal registration of companies in Ghana. It also provides the basic corporate governance structure for companies.

By way of basic corporate compliance, all companies are required to have a board of directors and shareholders (shareholders in general meeting). These two structures form the basic governance structure of the company. Every company is required to have at least one shareholder. The shareholders are the investment arm of the company. They provide capital by subscribing for shares in return for cash or payment in kind. The Companies Act also reserves some powers and decisions to only the shareholders at a general meeting.

The board of directors of every company is required to have at least two directors. These directors are responsible for the general management of the company and are allowed to form various committees for the administration of various aspects of the company. The boards of directors are also allowed to appoint one of their members

to the position of managing director to oversee the day-to-day administration of the company.

Although the directors must not necessarily be Ghanaian citizens, at least one director must be present in Ghana at all times; and, it is an offence for a company to operate with less than two directors for more than four weeks.

Ghana's corporate governance structure is one that can be described as being in its infantile stage. Unlike the United Kingdom, which has developed a corporate governance code that sets out standards of good corporate practice, Ghana does not have any such code in place. Ghana's Securities and Exchange Commission developed the Corporate Governance Guidelines on Best Practices. However, the effect of these guidelines on corporate governance practice in Ghana has been minimal.

The major issue for corporate governance in Ghana is the lack of understanding for or non-compliance with the principle of conflict of duty and disclosures.

According to the Companies Act, directors are required to avoid placing themselves in a position in which their duty to the company conflicts or may conflict with their personal interest, without the consent of the company. And, in order to gain the consent of the company, the director must make

a full disclosure of the nature and extent of any interests of the director in the transaction concerned. The director must not interfere with the voting process of the shareholders with respect to any resolution on any transaction in which the director has an interest.

In practice, this has become more of a fictional notion. For most small and medium scale businesses, the directors are usually major shareholders in the company and there may be cases where they do not comply with the regulation to avoid any conflict of duty situations. It is important that companies develop basic guidelines for its directors on how to identify conflict situations and the reporting requirements which must be followed. Extensive education in this area is also required.

Further, all companies are required to have a company secretary and an external auditor. The company secretary is required to maintain the company's statutory books and ensure that the company is compliant with the compliance requirements under the Companies Act. The auditors are required to audit the accounts of the company and provide a fair and accurate representation of the financial affairs of the company.

The practice in the past has been to appoint one of the directors to the position of company secretary or in some cases, persons with little or no knowledge of the Companies



Act. Recently, most companies have realised the need (whether natural or artificial) to procure the services of persons with extensive knowledge in the regulatory requirements of companies under the Companies Act.

Ghana has very little regulation on corruption. The primary regulation on corruption is within the public sector. The 1992 Constitution of Ghana and the Criminal and Other Offences Act, 1960, are the primary laws regulating corruption within the public sector.

Under the 1992 Constitution, a public officer must not put himself or herself in a position where his or her personal interest conflicts or is likely to conflict with the performance of the functions of his or her office. Further, under the Criminal and Other Offences Act, 1960, corruption involving both a public officer and a private individual is a crime.

Under the Criminal and Other Offences Act, any person who accepts or agrees or offers to accept any valuable consideration which influences or has the ability to influence any person in respect of his or her functions as a public officer is guilty of corruption.

Although the law does not define “valuable consideration” the popular view has been that the value of the consideration is of no consequence insofar as it influences the public officer in the performance of his or

her duty by procuring some unfair advantage. Thus, it is important to put in place systems which are efficient in fighting against corruption in the public sector.

The widespread culture within the Ghanaian business environment is for companies to distribute hampers and other gifts to public officers at the end of the financial year or on festive holidays. Although the intention of most of these companies is not to influence the public officer in the performance of his or her duties, companies must safeguard themselves in order to avoid being exposed to any allegations of corruption.

The best practice in the distribution of such gifts during the end of the financial year or on festive holidays is to distribute these gifts publicly, these gifts must be of very little intrinsic value, and the gifts must be given through officially recognisable channels. For instance, the gifts must be given to the agency through the human resource department rather than to individual officers in the agency.

It is important to remember that a semblance of corruption in itself is as damaging as engaging in an act of corruption itself. Thus, companies must educate their employees on how to deal with public officers and the various reporting procedures for officers who receive demands from public officers to engage in any act of bribery or corruption. ■

## 1.3 IMPLICATIONS OF THE NATIONAL ANTI-CORRUPTION ACTION PLAN FOR BUSINESSES

### Private Enterprise Federation

The Commission on Human Rights and Administrative Justice (CHRAJ), established in October 1993, is mandated to investigate “complaints of corruption” as well as non-compliance with the provisions of the Code of Conduct for Public Officers. Its principal function is to investigate “all instances of alleged or suspected corruption and the misappropriation of public funds by officials”. Since the establishment of CHRAJ, the country has made significant progress with the introduction and implementation of the various anti-corruption measures. However, there are still challenges due to the pervasive nature of corruption and its adverse impact on the Ghanaian society. This has led to the formulation of various Government policies and measures including the establishment of the Serious Fraud Office in 1998 which is now known as the Economic and Organised Crime Office (EOCO) and the passage of the Whistleblower Act (Act 720) in July 2006.

CHRAJ, being the public agency responsible for monitoring and preventing corruption in Ghana, together with other state agencies, such as the Metropolitan, Municipal and District Assemblies (MMDAs), private sector umbrella bodies including Private Enterprise Federation (PEF), civil society organisations (such as Ghana Integrity Initiative (GII), Ghana Anti-Corruption Coalition (GACC) and Centre for Democratic Development (CDD))

developed the National Anti-Corruption Action Plan (NACAP) to drive the implementation of activities to reduce or permanently prevent corruption.

NACAP was approved by Parliament in June 2014 to combat corruption. NACAP aims “to contextualise and mobilise efforts and resources of stakeholders, including Government, individuals, civil society, private sector and the media to prevent and fight corruption through the promotion of high ethics and integrity and the rigorous enforcement of applicable laws”. CHRAJ has coordinated and provided logistical support for the development and implementation of the NACAP. Various responsibilities have been assigned to respective institutions within the country to ensure effective implementation of anti-corruption activities.

The Private Enterprise Federation, the apex business council of the private sector in Ghana, represents the private sector on the NACAP Board and the High Level Implementation Committee (HiLIC), has consistently promoted the adoption of strict business integrity as a prerequisite for the development and growth of private enterprises. As a member of the National Anti-Corruption Action Plan and the High Level Implementation Committee, PEF together with its member associations and chambers was assigned the responsibility of ensuring that the private sector, particularly the Micro, Small and Medium Enterprises (MSMEs), do



not become prone to corruption. Other business associations and civil society organisations have also pledged to influence their members to abide by the principles of business integrity.

NACAP has over the years educated the business community on how to position themselves to avoid corruption, and or become a whistleblower when unnecessary demands are made on them. It is worth noting that bribery is not the only form of corruption in our environment. Embezzlement by a company's own employees, corporate fraud and even insider trading are forms of corrupt activities that can be very damaging to businesses.

The implementation of the NACAP would ensure that businesses are independent of demands and interferences that lead to corrupt practices. Corruption is a cost to businesses and this cost is usually passed on to consumers leading to consumers paying higher prices for goods and services that do not meet standards. NACAP's implementation would therefore ensure that consumers are not burdened unnecessarily with unwarranted costs and the quality of goods and services are at the optimum levels.

Effective implementation of NACAP would also ensure that business operations are transparent enough to build trust. NACAP's target is to improve the code of conduct for public and private sector businesses to

eradicate the general role they play as the supply side of corruption. The implementation of the code of conduct as prescribed under the NACAP would ensure that private sector businesses do business within an ethical and responsible good corporate governance framework. This would bring corruption to its barest minimum resulting in increased investments from businesses.

Through the effective coordination of stakeholders, the National Anti-Corruption Action Plan will ensure that there is an equal-level playing field for all businesses to make them more efficient and competitive, resulting in profits that would lead to increased tax revenue for Government to carry out developmental projects such as provision of good infrastructure that is very useful to businesses.

NACAP's effective implementation would ensure that there is a strong and consistent moral code for both public and private businesses to operate in an environment devoid of demand-pull and supply-push factors of corruption. These positive effects on businesses would in the long run lead to business growth, job and wealth creation and thus poverty reduction. ■

## 1.4 INTERNATIONAL REGULATIONS

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Businesses operate in an environment regulated by both local and international laws. Whilst abiding by national regulations, organisations must also endeavour to operate within the remits of international laws that affect their activities. The United States (US) Foreign Corrupt Practices Act (FCPA) 1977, the UK Bribery Act 2010, the African Union (AU) Convention on Preventing and Combating Corruption, and the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption are some of the notable international regulations businesses operating in Ghana should be concerned with.

### 1. US Foreign Corrupt Practices Act

The FCPA is a notable law that is focused on corruption in the global stage and can have far-reaching implications for companies operating anywhere in the world. The FCPA has an anti-bribery/corruption provision and an accounting provision. The anti-bribery/corruption provision is against making payment to a government official of a foreign country for purposes of securing an advantage that is not proper in order to retain or offer a business opportunity to anyone. The accounting provision demands that non-US persons or domestic issuers of securities (companies listed on any

stock exchange in the US, whether US-registered or foreign-registered) abide by the recordkeeping and internal accounting requirements.

In view of the FCPA's extraterritorial reach, it does affect the activities of both US and non-US businesses and persons who can be held liable for violations. Under the law, US persons (include US citizens and resident non-US citizens) and businesses are barred from engaging in acts that violate the FCPA regardless of where the action takes place in the world. The law also holds US persons and businesses for acts committed by their stakeholders such as directors, executives, employees, agents and foreign subsidiaries.

The FCPA also assumes jurisdiction over corrupt acts committed by any issuer (regardless of nationality) or any person or entity acting on behalf of such an issuer. The corrupt acts cover the use of US mails or any means or technology of interstate commerce (including emails, websites or servers) in the US. The FCPA also prohibits non-US persons from using the aforementioned resources to corrupt a foreign official.



For example, under the FCPA for example, an e-mail message sent through a US-hosted server or payment made through a US bank account, that is traceable to corruption can form the basis for prosecution of the culprit(s)<sup>1</sup>.

## 2. The UK Bribery Act

The Bribery Act considers the “bribery of another person, being bribed and bribing a foreign public official” as offences. Commercial organisations are also liable for prosecution under this law if they fail to prevent bribery. The Bribery Act claims jurisdiction over a corrupt act committed in the UK as well as acts committed elsewhere that have close connection to the UK. It is worth mentioning that the nationality of the offender is not consequential if the corrupt act is committed partially or fully in the UK. Those with “close connection” with the UK include citizens of that country, citizens of territories of Britain overseas, and companies/organisations formed under the laws of any UK territory. Under this law, any commercial organisation which undertakes business fully or partially in the UK irrespective of its country of incorporation will be held liable for a bribery crime. Under

this law, if a company in a country outside UK but has a subsidiary in the UK, bribes a foreign official in a third country, the UK subsidiary can be prosecuted regardless of its non-involvement in the offence.<sup>2</sup>

## 3. AU Convention on Preventing and Combating Corruption

The AU Convention on Preventing and Combating Corruption requires states that are party to it to make asset declaration mandatory for public service officials and also establish codes of conduct for the public service. Party states are also required to provide for access to information, protection of whistleblowers, standards for public procurement, accounting standards and openness in civil society participation and political party financing. States are also required to set up and sustain anti-corruption agencies/authorities that are independent of government control.

The AU Convention on Preventing and Combating Corruption also creates a framework for international cooperation amongst states in order to enhance the enforcement of laws in Africa. Furthermore, it advocates for offences such as domestic and foreign bribery, diversion of state assets by public officials, money laundering, trading in influence amongst others, to be criminalised. The

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1,2 Adapted from Arnold and Porter LLP. (2012). The extraterritorial reach of the FCPA and the UK Bribery Act: Implications for International Business. [http://files.arnoldporter.com/advisory\\_extraterritorial\\_reach\\_fcpa\\_and\\_uk\\_bribery\\_act\\_implications\\_international\\_business.pdf](http://files.arnoldporter.com/advisory_extraterritorial_reach_fcpa_and_uk_bribery_act_implications_international_business.pdf)



Convention's provisions cover both public sector and private sector corruption.<sup>3</sup>

#### 4. ECOWAS Protocol on the Fight Against Corruption

The ECOWAS Protocol on the Fight against Corruption advocates for the prevention of corruption by state parties and calls for an asset declaration regime for public office holders. It also requires protection of whistleblowers, access to information, and the establishment of an independent anti-corruption agency. It also has provisions for criminalisation of various offences by public officials and employees of private companies for various offences including bribery, money laundering and trading in influence. The protocol also calls for international assistance and cooperation amongst party states for fighting and preventing crime.<sup>4</sup>

Businesses have to be guided by these and other international regulations as they come up with their policies on compliance in order to avoid sanctions such as prosecutions, fines, reputational damage, or embargoes. ■

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3,4 Transparency International. (2006). Anticorruption conventions in Africa – what civil society can do to make them work. [www.agora-parl.org/sites/default/files/ti-undp-iss.-.-anti-corruption\\_conventions\\_in\\_africa.-.-en.-.-pace.pdf](http://www.agora-parl.org/sites/default/files/ti-undp-iss.-.-anti-corruption_conventions_in_africa.-.-en.-.-pace.pdf)

## 1.5 COST OF CORRUPTION

Edwin Langmer, Head of Compliance, Universal Merchant Bank Ghana Limited; and Chapter Co-Chair, Association of Certified Anti-Money Laundering Specialists

Corruption being “the abuse of public or private office for personal gain”<sup>1</sup> takes away from the economic, political and social development of countries, continents and the world at large. Corruption may take the form of bribery, embezzlement, nepotism or state capture<sup>2</sup>.

Several attempts have been made to categorise corruption into various types depending on the scale, actors involved, and rationale. Thus, there is petty corruption, grand corruption and looting just as there is political corruption, administrative/bureaucratic corruption, individual corruption and systemic corruption. There is also primary and secondary corruption just as there is capture or collusive corruption and extortive corruption. The aforementioned classifications cut across an entire spectrum – from politicians changing rules to favour their corrupt acts, placement of orders with non-existent companies, inflation of contracts, collusion between a public servant and a service provider to defraud the state, an individual bending rules to

his favour or stealing small cash or soliciting favours<sup>3</sup>.

In the private sector, corruption takes place in interactions with the public sector (for contracts, licenses, permits and tax reliefs/clearance) or another private sector entity (for contracts, business or favours) or even internally (for instance a marketing manager influencing a procurement manager to choose a particular service provider over others).

The problem is, whether corruption occurs in the public sector, private sector or a combination of both sectors, its effect is always resounding. Losses to corruption globally are estimated at 5% of global Gross Domestic Product (GDP) which translates to about US\$ 2.6 trillion, with losses due to bribery amounting US\$ 1.5 trillion per annum<sup>4</sup>.

The effects of corruption are as follows<sup>5</sup>:

### 1. Increase in cost of doing business

Corruption, in whatever form it takes, increases the cost of doing business as it is an extra cost to the expenditure of an

1 A definition by Asian Development Bank taken from [www.adb.org/documents/anticorruption-policy](http://www.adb.org/documents/anticorruption-policy) Accessed on May 14, 2017

2 OECD. (2014). The rationale for fighting corruption. [www.oecd.org/cleangovbiz/49693613.pdf](http://www.oecd.org/cleangovbiz/49693613.pdf)

3 Institute of Economic Affairs. (2016). The IEA corruption survey. <http://ieagh.org/wp-content/uploads/2017/05/IEA-CORRUPTION-SURVEY-REPORT.pdf>

4 OECD. (2014). The rationale for fighting corruption. [www.oecd.org/cleangovbiz/49693613.pdf](http://www.oecd.org/cleangovbiz/49693613.pdf)

5 Taken from OECD. (2014). The rationale for fighting corruption. [www.oecd.org/cleangovbiz/49693613.pdf](http://www.oecd.org/cleangovbiz/49693613.pdf)

organisation that is transferred to the end consumer. Aside transferring costs to consumers, corruption creates uncertainty in business and also puts culprits at a risk of prosecution, penalties, reputational damage and blacklisting, which ultimately makes the business environment uncondusive. It is worth mentioning that distorted markets create unfair competition and reduce the flow of foreign direct investments, which would have helped develop the business environment in many countries. Also, corruption can act as an entry barrier by preventing foreign direct investments and expansion of businesses into countries regarded as highly corrupt. The opposite also applies as countries with difficult business entry requirements often tend to have higher cases of corruption. Also, corruption can affect the growth and productivity of firms as they pay their way through every contract or challenge at the expense of innovation<sup>6</sup>. Compliance, on the other hand, has proven to drive growth. EY's Europe, Middle East and Africa Fraud Survey 2015, points to a positive relationship between revenue growth and the implementation of anti-bribery and anti-corruption programmes in companies. The study states that "good compliance is not a banner to growth or

a burden to increased profitability. It is a requirement to sustain success"<sup>7</sup>.

## 2. Waste of public resources

Corruption creates situations where resources are not allocated to the most important projects or sectors or value-for-money activities but to initiatives that provide an avenue for politicians to make money at the expense of the rest of the population.

## 3. Corruption increases poverty and denies the poor of basic services

In corrupt societies, basic services elude the poor as resources are exchanged amongst the connected and rich. This situation is also fuelled by the stealing of resources meant for the provision of basic amenities in countries around the world.

## 4. Corrosion of public trust and delegitimation of state

Corruption may create situations where state systems break down due to non-enforcement of rules and regulations because huge sums of money exchanging hands by

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<sup>6</sup> Oxford Policy Management. (2013). Corruption and private sector: A review of issues. [www.businessenvironment.org/dyn/be/docs/262/Corruption\\_and\\_the\\_Private\\_Sector\\_EPS\\_PEAKS\\_2013.pdf](http://www.businessenvironment.org/dyn/be/docs/262/Corruption_and_the_Private_Sector_EPS_PEAKS_2013.pdf)

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<sup>7</sup> Full report available at [www.ey.com/Publication/vwLUAssets/ey-emeia-fraud-survey/\\$FILE/ey-emeia-fraud-survey.pdf](http://www.ey.com/Publication/vwLUAssets/ey-emeia-fraud-survey/$FILE/ey-emeia-fraud-survey.pdf)



way of bribery. The foundations of democracy are shattered when corruption enters the political process. The ultimate effect is that the state is not trusted and citizens may decide to take the law into their own hands leading to the break-down of law and order. It is worth mentioning that aside taking resources from the state, corruption demotivates state authorities from collecting taxes, leads to accumulation of debts by governments as a result of wasteful spending and reduced revenue mobilisation. Corruption also weakens the financial stability of economies<sup>8</sup>.

With the various estimations of the cost or effect of corruption, there is an urgent need to prevent corruption at both the public level and private sector. Governments need to take action on corruption by enacting appropriate legislations and enforcing them to the letter. Political leadership is a key requirement for a successful state-driven anti-corruption programme and must not be taken for granted. Transparency International's annual Corruption Perception Index<sup>9</sup>, which ranks countries according to the perception of public sector corruption, shows a correlation between the level of economic development and rate of perceived

corruption. Developing countries therefore need to do more to curb corruption in order to derive the benefits thereof.

## Conclusion

In conclusion, corruption is a phenomenon that benefits a few and denies the majority of the people of growth and development. In some situations, corruption takes from the poor for the benefit of the rich. In the economic system, the effects may be felt more by the poor who have to dig deeper into their pockets to be able to pay for goods and services as a result of the extra cost emanating from bribery and other forms of corruption. Although estimates have pointed to very high costs of corruption in monetary terms, the far-reaching effects of corruption go beyond the dollar amounts mentioned in various survey reports every now and then. There is therefore an urgent need for all stakeholders in society to prevent and fight corruption. Business organisations, small or large, have a responsibility to take action against corruption by having the required policies and implementing them to the letter, whilst abiding by national and international regulations governing their operations. ■

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8 International Monetary Fund. (2005). Corruption: Costs and mitigating measures. IMF staff discussion note. [www.imf.org/external/pubs/ft/sdn/2016/sdn1605.pdf](http://www.imf.org/external/pubs/ft/sdn/2016/sdn1605.pdf)

9 See 2016 survey report at [www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](http://www.transparency.org/news/feature/corruption_perceptions_index_2016)

## 1.6 CODE OF CONDUCT

Frank Owusu-Ansah, Health, Safety, Security and Environment Manager, APM Terminals

As business organisations develop from the first day of their operations, they would want to behave in a uniform way or have their employees abide by certain rules or standards. These rules, regulations or standards are called code of conduct. Sometimes referred to as code of ethics a code of conduct is “a formal document that establishes behavioural expectations for the company and the people who work there”<sup>1</sup>. It can also be defined as “a written set of principles that typically works in conjunction with an organisations mission statement to clearly identify expectations regarding appropriate behaviour”<sup>2</sup>.

A code of conduct is important for business entities as it amongst other things sets to prescribe acceptable behaviours or norms; promote professional standards and set the tone for the positioning of the business. In an increasingly competitive market environment where service delivery to customers is considered second to none in terms of priority, no excuse is tolerable for customer service staff to register service failures.

Similarly, in a more competitive industrial environment where management-union relations are sensitive or need improvement, a code of conduct comes in handy to prevent the alluring temptations of cutting corners or abusing one’s authority.

It is therefore important that a business develops a code of conduct for employees in order to be able to control their activities and also avoid the consequences of letting employees work without any set of guidelines. Aside the avoidance of risks, a code of conduct can help a business to build a culture of ethics which helps its activities and image.

It is important for every business to have a code of conduct in view of its benefits compared with the dangers of not having one. This article seeks to guide business entities to set up a code of conduct for their organisation. In creating a new code of conduct or modifying an existing one, it is good to keep the language simple and understandable; devoid of legal terms; applicable to all employees; have the input and buy-in of all interested parties within the organisation and should be revised regularly to

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1 B Corporation, 2013. [www.bcorporation.net/sites/default/files/documents/bestpractices/EM\\_Creating\\_a\\_Code\\_of\\_Business\\_Conduct\\_Final.pdf](http://www.bcorporation.net/sites/default/files/documents/bestpractices/EM_Creating_a_Code_of_Business_Conduct_Final.pdf)

2 Lighthouse, 2007. [www.lighthouse-services.com/documents/Developing\\_a\\_Code\\_of\\_Conduct\\_\[A\\_Step-by-Step\\_Guide\].pdf](http://www.lighthouse-services.com/documents/Developing_a_Code_of_Conduct_[A_Step-by-Step_Guide].pdf)

reflect changes in organisational culture, as well as the organisation's dealings with internal or external regulations<sup>3</sup>.

Although, a code of conduct may be different from the other, it is recommended that all codes of conduct have some standard contents or structure in order to achieve the purpose. A good code of conduct shall include the following:

1. **Title:** It is important to choose an attractive title for your code of conduct to avoid employees seeing it as a legal document instead of an everyday guide. For instance, "Code of conduct for Company A" may sound more rigid than "Doing business with integrity – The Company A way". Whatever title a company chooses must be connected to the company's policy document, core values, and the business processes.
2. **Table of contents:** This is required for ease in identifying particular pages and topics. When there is the possibility of easy reference, employees would consider the document as being "reader-friendly" – an additional motivation to patronise it.
3. **Message from top management:** To have authenticity, it is necessary to include a preface or introductory message from a high authority in the business ideally, the Chief Executive Officer. This will give the document the endorsement of top management from the perspective of the employees.
4. **Mission statement and vision:** It is useful to link the document to the strategic direction of the organisation as contained in the organisation's vision and mission statements as well as its value statement.
5. **Scope of the code of conduct:** The scope of the code of conduct has to be stated clearly in the document. It should include the document's purpose, mandate and topics.
6. **Recommended behaviour:** The code must list recommended behaviours expected of employees when faced with a particular situation.
7. **Additional resources:** The code of conduct must list all available materials or references on ethics and compliance issues the employee can make use of.
8. **Enforcement and disciplinary action:** The code of conduct should spell out punishments for non-compliance to any of the regulations in relation to the com-

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<sup>3</sup> Deloitte Development LLC, 2005.  
[www2.deloitte.com/content/dam/Deloitte/il/Documents/risk/CCG/other\\_comitees/932\\_suggested\\_guidelines\\_writing\\_code\\_ethics\\_conduct0805.pdf](http://www2.deloitte.com/content/dam/Deloitte/il/Documents/risk/CCG/other_comitees/932_suggested_guidelines_writing_code_ethics_conduct0805.pdf)

pany's policy guidelines, commercial compliance document, employee–management and dispute settlement documents (e.g. collective bargaining agreements, employee handbooks etc.)

**9. Endorsement:** The code of conduct should have endorsement of both company management and employees. Thus should be signed by every employee of the company after contents and details explained to employees and evidence of understanding received and documented.<sup>4</sup>

### Topics for the code of conduct

The topics covered in the code of conduct should be relevant to the business and the industry it operates in and should be well articulated. The following are some suggested topics for a code of conduct:

- Accurate records, reporting and financial recordkeeping/management
- Antitrust/competitive information/fair competition
- Customer service/relations
- Customer, supplier, and vendor relationships

- Customer/supplier/vendor/contractor confidentiality
- Compliance with professional standards and rules – Conflicts of interest
- Corporate governance
- Fraud
- Gifts, entertainment, gratuities, favours and other items of value to/from customers, suppliers, vendors, contractors, government employees
- Government contracting, transactions, and relations
- Government reporting, inquiries, investigations, and litigation
- Honesty and trust
- Money laundering
- Political contributions and activity: lobbying, holding office, and finance
- Procurement/purchasing
- Professional competence and due care
- Securities trading and insider information
- Social responsibility
- Supplier, Vendor, and contractor Relationships<sup>5</sup>

<sup>4</sup> Adapted from the following sources: B Corporation, 2013. [www.bcorporation.net/sites/default/files/documents/bestpractices/EM\\_Creating\\_a\\_Code\\_of\\_Business\\_Conduct\\_Final.pdf](http://www.bcorporation.net/sites/default/files/documents/bestpractices/EM_Creating_a_Code_of_Business_Conduct_Final.pdf) and Lighthouse, 2007. [www.lighthouse-services.com/documents/Developing\\_a\\_Code\\_of\\_Conduct\\_\[A\\_Step-by-Step\\_Guide\].pdf](http://www.lighthouse-services.com/documents/Developing_a_Code_of_Conduct_[A_Step-by-Step_Guide].pdf)

<sup>5</sup> Source: Deloitte Development LLC, 2005. [www2.deloitte.com/content/dam/Deloitte/il/Documents/risk/CCG/other\\_committees/932\\_suggested\\_guidelines\\_writing\\_code\\_ethics\\_conduct0805.pdf](http://www2.deloitte.com/content/dam/Deloitte/il/Documents/risk/CCG/other_committees/932_suggested_guidelines_writing_code_ethics_conduct0805.pdf). The list presented here is not exhaustive. Other topics listed in the source cover areas such as human resource, safety, data protection and privacy issues.





Creating a good and effective code of conduct requires careful steps involving information gathering, creation of draft, review of draft, formal adoption of code, introduction of the code and enforcement of the code. Information gathering may be done by a committee set up to design the code and would involve the selection of topics based on their potential risks and intended purpose of the code. Information gathering tools such as focus groups, interviews and questionnaires may be used within the organisation to seek employees' opinions and input.

Creation of draft is an important process that must come up with values and acceptable behaviours that employees must follow instead of just a list of legal regulations. In reviewing the draft, the group tasked with the preparation of the code must make all relevant changes and submit to top management for their input. A lawyer's services may be required to advise the team but not to prepare the document entirely.

The adoption of the code by the organisation should involve the board of directors or top management for formal approval and acceptance. The critical stage of the introduction of the code should be done by top management at a company-wide programme. This should be followed by communication of the contents and training of staff on the topics contained in the code.

In enforcing the code, the compliance officer, human resource manager or whoever is tasked with that responsibility has to be firm and circumspect and ensure that provisions of the code are up-to-date in the event of possible changes in state regulations and in the business environment or in case of difficulty in implementation or the need to introduce new topics.

Implementing the code is a very vital exercise as that is what will put all the effort into action. It is expected among other things, that the company will use the process to educate employees and partners during the engagement about its policies including reward and sanction systems to enhance employee understanding. Getting the buy-in of employees will also enhance compliance and improve their behaviour, as well as helping the organisation to avoid risks exposures when the code of conduct is implemented effectively. ■



# 2 DEVELOPING A COMPLIANCE MANAGEMENT SYSTEM



## 2.1 COMMITMENT

Daniel Pippim Effah, Member, Association of Certified Compliance Professionals in Africa (ACCPA) – Ghana

**B**usiness organisations operate in a vibrant environment influenced by legal, economic, political, market globalisation and emerging technology. To remain profitable in the face of these forces that pose inherent risks, businesses continuously evaluate and modify their operational activities and at the same time abide with new regulatory and statutory requirements, whilst developing internal policies and processes to address developments.

The legal requirements entreat business organisations to operate in an ethically and legally sound manner to protect their image and avoid sanctions. Employees and other stakeholders of organisations are therefore required to abide by appropriate codes of conduct, respect laws and standards, avoid conflict of interest, and show consideration and appreciation for local customs, traditions and social behaviours of the various countries and cultures they conduct business in.

The development and implementation of Compliance Management Systems is therefore very fundamental activity that makes organisation's operations meet regulatory and statutory requirements (i.e. are within the laws applicable to such institutions).

A Compliance Management System is how an institution "learns about its compliance responsibilities, ensures that employees understand these responsibilities, makes certain that the requirements are incorporated into business processes, reviews operations to ensure responsibilities are carried out and requirements are met, take corrective action and updates materials as necessary"<sup>1</sup>.

A Compliance Management System is therefore important for business organisations in managing risks associated with changing product and service offerings and to be consistent with business processes resulting from new legislation enacted to address developments in the market place, which may result in litigation, monetary penalty and other formal enforcement actions.

"Organisations must be in compliance with laws and regulations, but when the focus is only on compliance, the result is a police environment. However, a commitment environment where each employee is committed to living according to the company's core values, employees are responsible, accept the consequences of their choices and accomplish great things"<sup>2</sup>. This suggests that

<sup>1</sup> FDIC. (2015). Division of Depositor and Consumer Protection. Retrieved from [fdic.org](http://fdic.org).

<sup>2</sup> Black Diamond Associates. (2015). "Creating a culture of commitment vs. compliance." in: Risk & Compliance, Jan - Mar ed., pp. 138-141.

for an effective compliance management system to be implemented in an organisation, there is the need to secure the commitment of employees and other stakeholders by considering the following:

### 1. Board and management oversight

The success of an organisation's compliance system to a large extent depends on the actions taken by its board of directors and senior management. Leadership by the board and senior management should set the tone in an organisation. They should:

- a. demonstrate a clear expectation about compliance,
- b. adopt clear policy statements,
- c. appoint a compliance officer with authority and accountability,
- d. allocate resources to compliance functions commensurate with the level and complexity of the institution's operations,
- e. conduct periodic compliance audits, and
- f. provide for periodic reports by the compliance officer to the board.

The first step a board and senior management should take in providing for the administration of the compliance programme is the designation of a compliance officer and/or compliance committee who will ensure that compliance policies and procedures are developed and also assure that management and employees receive proper

training on the policies and are updated on compliance issues.

### 2. Compliance programme

An organisation should establish a formal and written compliance programme to guide the compliance activities. A written programme represents an essential source document that will serve as a training and reference tool for all employees. A well planned, implemented, and maintained compliance programme will prevent or reduce regulatory violations, provide cost efficiencies, and is considered as a sound business step.

A good compliance programme includes the following components:

- a. Policies and procedures
- b. Training
- c. Monitoring
- d. Customer complaint response

Policies and procedures should include goals and procedures for meeting those goals and also be reviewed and updated as the organisation's business and regulatory environment changes. Also, a comprehensive and up-to-date training that provides accurate information for the board, management and employees is essential to maintaining an effective compliance programme. Additionally, a proactive approach should be adopted to identify procedural or training gaps to prevent regulatory violations and



swiftly handle customer complaints and evaluate compliance trends to identify systematic gaps.

### 3. Compliance audit

A compliance audit is an independent review of an organisation's compliance with internal and external laws and regulations and adherence to internal policies and procedures. The audit helps management to ensure ongoing compliance and identify compliance risk conditions. It complements the institution's internal monitoring system. The board should determine the scope of an audit, and the frequency with which audits are conducted. Regardless of whether the audit is conducted by an internal or external auditor the findings should be reported directly to the board or a committee of the board.

The aforementioned are three effective and interdependent elements organisations should consider in order to secure the commitment of their employees and other stakeholders when developing and implementing practical Compliance Management Systems. As it is not enough to design the systems without securing the commitment of the stakeholders the systems are designed for. The board and management of the organisation should be engaged to take a leadership role in ensuring compliance, allocate adequate resources to compliance functions and demand accountability. To

have an effective compliance programme means to have clear policies and procedures of the organisation's activities, training and education programmes to update employees on current issues related to their work, an effective monitoring and timely response to customer complaints and a proper compliance audit. ■

## 2.2 UNDERSTANDING RISK ASSESSMENT AND HOW TO DO IT

Benjamin Kpodo, Country Risk & Quality  
Manager, PwC Ghana Limited

### Introduction

According to Peter F. Drucker, who is regarded as the father of modern management, you can only control that which you can measure. Indeed, there cannot be effective management without measurement, regardless of the domain. Risk assessment or measurement thus provides the framework within which the risk management effort should be concentrated. It is the systematic process, involving the identification, analysis and evaluation of all key risks capable of affecting the value proposition of an organisation. Perhaps, it is the most important step in the risk management process.

In this write-up, we shall explore some practical ways by which your organisation can identify, analyse and evaluate risks necessarily attached to its value creation process – be it the production of goods or services. The article attempts to demystify the risk assessment process by explaining the various key steps involved. Finally, it will serve as a guide that can be followed by small and medium sized enterprises (SMEs) to achieve effective risk management.

Risk management on the whole and more importantly the risk assessment process requires an in-depth knowledge and understanding of the organisation. This includes the organisation's market of operation and its socio-cultural, legal and political environments as well as its strategic and operational objectives. Also, this knowledge and understanding should encompass all factors – both internal and external – that are critical to the success or otherwise of the organisation.

### Risk Identification

The risk assessment process begins with risk identification to establish all risk exposures of the organisation. The identification of risks must cover all business operations from the C-Suite or board room to the shop floor. It must focus on the value-adding activities of the organisation.

To begin, you must identify all the main activities in the organisation's value chain. What are the key components or departments of the organisation? In many well established organisations, these may be the traditional departments or functional units already in existence. If your organisation is small and these functional units are not already defined, there is the need to decouple the total business operation to key work-streams.

Key staff in each unit must be involved in the risk identification process. A bottom-up approach is recommended, as it is assumed that those closest to an activity should be more familiar with the challenges involved in the performance of that activity. This can be done by engaging staff of the various units in brainstorming sessions or by way of interviews.

Risk identification is not complete without all stakeholders recognising the identified risks as a viable threat and appropriately defining it adequately for all to understand. In defining the risk, avoid the use of terms that are vague or cannot be easily understood. This procedure is completed by generating a comprehensive list of all risks that could affect the achievement of the objectives of the organisation. This should include corruption risks which may arise as a result of the country of operation, specific industry, business processes and transactions, business partners and even employees.

After identifying the various risks that can jeopardise the success of the organisation, the next step in the risk assessment process is risk analysis. This is determining the probability or the likelihood of occurrence of each identified risk and quantifying the impact, should it materialise.

## Risk Analysis

Risk analysis can be daunting, applying complex quantitative statistical tools. However, small organisations with simple systems can use simple statistical methods. The simplest method is to rank the probability of various risks identified on the scales of low, medium and high, while their impact can be ranked as minor, major and catastrophic. The product of the probability of occurrence and the potential impact of the risk is the inherent risk. No matter the approach adopted, one needs to rely on detailed information such as business plans, sales information, production records, market forecasts etc.

The result of the risk analysis provides a rating of the significance or importance of each identified risk. It can be used to provide a risk profile for the organisation, helping it to develop its risk appetite and tolerance levels. It also results in mapping of the various risks into strategic thematic areas or functional units. Finally, it describes the mitigating controls which are in place, and helps in determining the level of investment required to increase, decrease or realign the control.





## Risk Evaluation

The final stage of the risk assessment process is referred to as the risk evaluation. ISO standard on risk management, ISO 31000<sup>1</sup>, posits that risk evaluation is a process that is used to compare risk analysis results with a set of criteria in order to determine whether or not a specified level of risk is acceptable or tolerable. This paves the way for determining the most appropriate treatment for the risks identified.

Basically, you can do four things with all identified risks: you can tolerate, treat, transfer or terminate. In more practical terms, “you can avoid the risk, you can reduce the risk, you can remove the source of the risk, you can modify the consequences, you can change the probabilities, you can share the risk with others, you can simply retain the risk, or you can even increase the risk in order to pursue an opportunity”.<sup>2</sup>

## Conclusion

To conclude, the risk assessment process is crucial to successful risk management in any organisation. All organisations including SMEs need to take steps in assessing their risk exposures, in order to maximise value

and minimise or avoid undesirable deviations from their stated objectives or becoming the subject of prosecutions, fines or reputational damage due to non-compliance to rules and regulations. The steps explained above, can thus serve as effective building blocks; to build an effective risk management practice in all organisations. ■

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<sup>1</sup> The publication is available at: [www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso\\_31000\\_for\\_smes.pdf](http://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso_31000_for_smes.pdf)

<sup>2</sup> Praxiom Research Group Limited, 2010; [www.praxiom.com/mitigation-strategy.htm](http://www.praxiom.com/mitigation-strategy.htm)

## 2.3 DEFINING THE PROGRAMME

Theodora Senaya, Member, Chartered  
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The business environment of organisations is increasingly becoming more complex especially in this 21st century. Businesses have to actively handle challenges such as the pros and cons of emerging technologies, industry standardisation and compliance with regulatory and statutory requirements and responsibilities in order to stay ahead of competition, continue being profitable and consolidate the relevance and future of the organisation.

All these variables combine to create inherent risks which the organisation must insulate itself from by developing and maintaining an effective and efficient Compliance Management System that is fused and synchronised with its risk strategy. This must also translate into the day-to-day processes, procedures and activities of both management and employees of the organisation. Hence, the system becomes the blueprint upon which other facets of the organisation are built.

The Compliance Management System is a five-stage cycle that involves an organisation:

- a. Learning about its compliance responsibilities.
- b. Transmitting a clear understanding of the compliance responsibilities to its employees.
- c. Fusing and synchronising the compliance responsibilities into its core business processes.
- d. Reviewing its processes and procedures to determine if they are abreast with its compliance responsibilities.
- e. Taking corrective actions and/or updating processes and procedures where necessary.

This cycle is continuous and failure to comply could lead to the imposition of sanctions, penalties and in some cases prosecutions.

To achieve a potent and competent Compliance Management System, it should be built on three key interdependent pillars namely:

- a. The board of directors and senior management oversight
- b. A compliance programme
- c. A compliance audit.

### Board of Directors and Senior Management

The board of directors and senior management usually have the sole responsibility of ensuring that there is a Compliance Management System in place in an organisation and the success or failure of it largely depends on them. The approach and zeal of top management (tone at the top) towards a Compliance Management System directly influences its success. Top management therefore needs to adopt the following

approaches to ensure the success of the organisation's Compliance Management System:

- a. A clear demonstration and communication of compliance expectations. They should own the process and translate it directly to all employees of the organisation and ensure that they also imbibe and demonstrate it in the discharge of their various roles. This might involve education, trainings and workshops as well as the allocation of necessary resources.
- b. The adoption of policy statements to serve as a blueprint for processes and procedures. These could also serve as reference points for employees and management.
- c. The appointment of one or more compliance officer(s) with the authority and independence to access all information on the organisation's operations, cross departmental lines and institute corrective actions if need be. The officer(s) should have a clear and deep understanding of all facets of operations in order to effectively probe their compliance and subsequently submit their compliance audit reports to the board. In very large organisations, there could rather be an entire department instead of an officer playing this role.

## Compliance Programme

The compliance programme consists of an organisation's policies and procedures, trainings, monitoring and the handling of complaints from both internal and external customers. The programme should be formally outlined and documented to serve as a reference point if need be.

Policies and procedures ensure organisation-wide consistency as far as operations, industry and regulatory compliance is concerned and should therefore be regularly reviewed and updated when such variables in the business environment change.

Both management and employees are then all trained and educated on these policies and procedures and how they should translate at their various roles in their day-to-day activities. Additional training should be provided when updates are made to the existing policies and procedures.

Monitoring seeks to observe whether the policies and procedures are been adhered to and practiced and also helps to identify any further need for training and education.

Complaints from both internal and external customers could reveal a weakness in the existing processes and procedures and trigger a review and successive updates if need be.



## Compliance Audit

The compliance audit is a review of an organisation's compliance with laws, regulations and internal policies and procedures by an independent body. The independent body could either be internal or external or in some cases a combination of both with the report being submitted to the board. The board determines the frequency and scope of the audit, albeit this may be influenced by factors such as organisation size, number of branches/offices, volume of transactions etc. Hence, the scope and frequency for a large organisation like Fidelity Bank will definitely differ from that of a microfinance company. The tone at the top will determine how swiftly management responds or reacts to findings in the report.

In conclusion, a properly functioning Compliance Management System is characterised by clearly established compliance responsibilities; ensures that employees clearly understand them; is made part of the core business processes and procedures and is reviewed frequently to ensure responsibilities are carried as expected and corrective actions are taken should the need be. This can be achieved through collaborative functions of effective board of directors and senior management oversight, a well-laid-out compliance programme and an effective compliance audit. ■

## 2.4 IMPLEMENTING THE SYSTEM

Daniel Pippim Effah, Member, Association of Certified Compliance Professionals in Africa (ACCPA) – Ghana

Implementing a Compliance Management System does not make your business fool-proof; however, it helps build a stable and resilient business that will be able to proactively identify gaps in activities and support the introduction of consistent business processes for the growth and development of the business.

The state of being in accordance with established guidelines or specifications, or the process of becoming so, is reliant on the processes, systems, regulations and people modules that businesses put in place to start implementing an effective Compliance Management System in their setups.

### 1. Processes

Processes are what organisations actually follow to implement their strategies. A clear step-by-step process is what aligns a business' operations to its goals and strategies. Organisations must often translate obscure regulatory language into concrete activities put into clearer and well-structured processes.

A well-designed process provides the roadmap to successfully implement your Compliance Management System. Processes are the wheels that enable business activi-

ties to move from one stage to the other in a workflow to realise the goals of the organisation. Each stage of the business process must be reviewed and where necessary improved to conform to regulatory requirements whilst adjusting timely existing policies and regulations to new ones.

Actors including employees, management and other stakeholders entrusted with responsibilities within the various process stages must be made to understand their roles and be held accountable. However, where necessary, systems and technology must be introduced into the process to improve and make workflow more efficient. A clear and simplified process is always required to implement your Compliance Management System.

### 2. Systems

As regulations and other guidelines have increasingly become a concern of corporate management, companies are turning more frequently to specialised compliance systems, software and other technological tools to ensure that their day-to-day activities conform to standards set.

Expenditure on information technology has been on the rise in the last decades with continued investments in in-house skills to support application development, compliance and data security among other functions. Businesses must invest in the right

systems and cutting-edge technologies to help improve their activities, secure their data and also help tackle their compliance needs. This is important for businesses, to help implement an effective Compliance Management System.

### 3. Regulations

Businesses operate within a complex system of laws, regulations and standards governing their internal and external relationships and practices. The impact of a failure to meet regulatory requirements can be substantial – not limited to financial, criminal, and reputational penalties and damages. The issues of regulations and compliance are becoming increasingly important since business organisations face more challenges than ever when implementing their strategies. The extent and complexity of the requirements are constantly on the rise; an increasing rate of guidelines coming into force and the cost of non-compliance are rising rapidly.

There is the need for businesses to provide interactive compliance policies that engage, educate and make all employees appreciate and be committed to the regulations and their own internal policies. There should also be the implementation of regulations throughout the organisations to make all employees responsible and be required to be compliant with the standards set to achieve business goals.

### 4. People

The most important module to implement an effective Compliance Management System is the people. The people element including employees, management, board of directors and other stakeholders in the system is the pivot around which all the other modules revolve.

A successful compliance system is dependent on a strong foundation of ethics that are openly endorsed by senior management. There should be a high ranking compliance officer with the authority and resources to manage the programme on a day-to-day basis. The compliance officer must be in charge and ultimately responsible for corporate conduct, even including the board of directors.

The board of directors equally has a key role to ensure compliance policies, regulations, systems, procedures and the people are in place and should monitor the implementation, and effectiveness of the compliance system. The business should employ competent personnel who should be assigned appropriate responsibilities, given the required state-of-the-art training and skills to be able to meet every challenge on the job.



Finally, the employees must be held accountable for their work, be compensated properly and treated with the greatest respect.

Businesses in every sector are under increasing scrutiny by the government, regulators and other stakeholders to comply rigidly with regulations from the government and their own internal policies. They must have well-structured processes, competent people and high-tech systems to start implementing their Compliance Management System. The aforesaid are critical elements that every business must put their focus on to have an effective and successful Compliance Management System. ■

## 2.5 MEASURING AND EVALUATING COMPLIANCE PROGRAMMES – PRACTICAL INSIGHTS

Ibtissam Bougataya, Head of Compliance, Middle East & Africa, and Ronke Ampiah, Pricing, Market Access and Government Affairs Director – North & West Africa, Merck

At both national and international levels, legislators are passing increasingly stringent transparency and anti-corruption legislation and the general public's expectations of companies as regards integrity are rising all the time. According to the United Nations Office on Drugs and Crime (UNODC)'s *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*<sup>1</sup>, "The implementation of an anti-corruption (or compliance) programme should be regarded as a continuous learning and improvement process".

At Merck, we believe that implementing a strong and embedded compliance culture is a journey counted in years and largely consists of four main phases:

- PHASE 1: The Oblivious (fragmented and local solutions, inconsistent policy portfolio, decoupled from business, reactive),
- PHASE 2: The Beginners (centralisation, more consistent policy portfolio, focus on investigative and corrective measures),
- PHASE 3: The Compliance Professionals (central function with strong global network, governance and advisory role, focus on prevention and detection),
- PHASE 4: The Compliance and Ethics Masters (network organisation, potentially embedded in business; consistent and lean policy framework, part of the corporate culture).

It is the belief at Merck that compliance with laws and statutory regulations is absolutely imperative to responsible business conduct. As an international company operating in various markets, compliance is our license to operate. It is our number one priority and we set high requirements for effective compliance management, including the evaluation of our compliance programme on a regular basis.

To Merck, compliance means observing legal and company internal regulations and the basic ethical principles anchored in our company values. The German Stock Corporation Act, the Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act are some of the main legal foundations for compliance at Merck. We want to avoid not only breaches of the law, but also investigations to determine whether anything went wrong. This is essential in order to protect Merck's reputation. Violations would heavily damage the

<sup>1</sup> Available at [www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf)



company and draw on our resources, which should instead be invested in products and markets.

Within the scope of our compliance programme, a high degree of importance is attached to training employees via online courses and on-site events. By presenting various training topics, particularly on the code of conduct, corruption, antitrust and competition law as well as healthcare compliance, the e-learning courses serve to sensitise employees and management to the consequences of compliance violations and to show ways of preventing them. Since Merck set up a central SpeakUp line, employees have been able to report compliance violations by telephone or via a web-based application in their respective national language. In 2010, Merck set up a Compliance Committee to guide these processes.

The UNODC publication also notes that “periodic reviews and evaluations keep policies and procedures up-to-date and relevant for employees and business partners”. Therefore, it is important for a business to continuously assess its compliance programmes to ensure that the programme is adapted to current requirements and legislation. The compliance function at Merck is separate from the business functions. Our compliance activities focus on governance and ethics and offer a supportive business advisory role.

Merck regularly reviews and assesses the implementation status of the compliance programme at its subsidiaries abroad. In cooperation with Group Internal Auditing, the Compliance Office regularly reviews the implementation of group-wide compliance measures. The audits regularly focus on the local compliance structure, the compliance measures taken and the existence of corresponding compliance guidelines and processes.

When it comes to evaluation and measurement, there is no single criterion that can definitively determine whether a compliance programme is effective or not. However, the ultimate aim is to establish a compliance culture that ensures that each and every staff member is aware of doing the right things and doing them right.

To ensure a comprehensive evaluation of compliance programmes, the UNODC publication proposes the following three major criteria:

- 1. Effectiveness:** the extent to which anti-corruption policies and procedures have contributed to the programme’s specific objectives, for instance minimising the risk of facilitation payments.

**2. Efficiency:** minimising the costs of the anti-corruption programme, while ensuring the benefits of the anti-corruption policies and procedures, including lower legal, commercial and reputational risks.

**3. Sustainability:** the extent to which the anti-corruption policies and procedures and their related results help to minimise the risk of corruption in the long run.

Merck has established many metrics to assess the performance of its compliance programme, e.g.;

- Employee surveys/interviews,
- Number/content of calls to the SpeakUp line,
- Monitoring trainings, evaluating the percentage of employees who complete trainings on Merck's dedicated training platform (Code of Conduct, Global Competition, Antitrust Awareness, Global Anti-Corruption Standards, Merck Pharma Policies),
- Face-to-face training courses,
- Setting up a pre-approval process for activities and defining adequate threshold limits for approvals,
- Performing business partner risk management evaluations and documenting the results accordingly,
- Setting up corporate governance and ethics committees such as the Compliance Committee.

With these criteria in mind, companies can further assess other aspects of the compliance programme such as:

- The programme's overall design;
- The approach used to implement the programme to test whether all the elements have been effectively rolled out;
- The programme's impact, to measure how well it is working and whether employees are retaining its core messages, whether training methods are working;
- Whether the written policies and procedures in place are resulting in compliance, such as ensuring that representations made to the public are not deceptive;
- Whether the programme and associated policies and procedures reflect developments in the law;
- Whether those written policies and procedures are easily understood;
- Whether the verification function is properly designed to detect illegal conduct; and
- Whether the reporting system works as intended, if employees are willing to use it, or whether there is a fear of retaliation.



- Up to which level support of the programme is shown by management, what are the areas of resistance and root-cause analysis,
- Degree of collaboration and cooperation on the implementation of the programme with internal and external partners, areas for improvements,
- Independency and impartiality of the compliance teams and the way the programme is run,
- Proficiencies and competencies of compliance teams, improvement potentials and sharing experiences of each with respect to programme performance,
- Gathering and analysing feedback on the programme from government regulators and sector associations.

Lastly, it is important that the potential findings from the evaluation of the compliance programme are communicated to the relevant employees at the highest levels of the compliance function and shared with the company's management. Measuring and evaluating compliance programmes are the only ways to assess if the internal compliance programme is running effectively and to take actions at the highest level of management within the company to correct any deviation. This is the only way to make sure that good governance and ethics are in place within a company.

At Merck, we also go a step further by publicly communicating our compliance efforts in our Corporate Responsibility Report. All these efforts are taken to make sure compliance is firmly anchored in the minds of our employees. We believe that the culture of compliance and ethics is a journey that can take years. Yet this is the only way to protect and sustain the true value of the company, its roots and its future. ■

## 2.6 INTERNAL COMMUNICATION

Aubrey Aidoo Esq. CCOTM, ACI Arb,  
Associate Legal Officer, West African Gas  
Pipeline Co. Ltd.

When an organisation creates its compliance programme, it has to be communicated to users. The organisation's internal communication processes are useful in making employees aware of the compliance programme and also allows for feedback to be received for improvements to be made.

### Creation, Assimilation and Internalisation of Compliance Values

The Compliance Management System is a wheel that requires a mechanism to be spun when surrounded by as many stakeholders and interested parties as possible to enable appreciation of the tenets that hinge the foundation of the institution's compliance regime. This cycle is churned in two spheres which are the calendric cycle of time and dates and the activity process of creation of the compliance regime; assimilation of information and practice; and finally internalisation of the compliance values. The best Compliance Management System setup is to have a cycle spanning a calendar year repeated annually including exercises and training.

### Creation

It is imperative that a company appoints a person to be in charge of its compliance functions distinct from its auditors in the position of compliance officer. This person shall in conjunction with representatives from the various divisions act as a risk manager and technical advisor to, create or manage the compliance regime. The exercise to create a compliance regime must emanate from a document approved by the company's senior management and board of directors. This forms the bedrock for the company's compliance culture.

### Assimilation

The processes of sharing the constituents of a compliance regime are crucial to the implementation and functionality of the regime. The company must first ensure that its directors and senior management are aligned with the compliance regime and take steps to decentralise the policies and practices down to all levels of staff and even to partners and contractors. A company is in a better position to ensure successful compliance implementation if the tone for its compliance regime is set at the top. Furthermore, the company must endeavour to include, as part of the induction programme for new staff, an overview of its Compliance Management System to orient the staff on the company's position on compliance. The assimilation process should

include the use of e-mails, monthly newsletters, suggestion boxes, hand-outs, mandatory training, screensavers, posters and fliers, interactive competitions and open-house forums amongst others. The company must find ways to generate interest of all stakeholders in its Compliance Management System. This can be achieved through placing emphasis on key compliance topics such as conflict of interest, whistleblowing, gift and hospitality policy, anti-bribery and anti-corruption practices and other ethics and operational policies. The message must be clear, precise and concise. Images illustrating the company's position must be used interchangeably with slogans and catch phrases.

## Internalisation

This is the component of internal communication that utilises facilities of the company to form a culture amongst the staff to the extent of getting them to unconsciously act and react in a manner that is in line with the company's target. A combination of the abovementioned cycles will ensure that compliance activities become part of an employee's behaviour. To internalise the wheel of a Compliance Management System, the company must establish periodic meetings amongst the compliance management officers for assessment, reports and implementation of updated practices common to the company's policies and experiences. Severability of inapplicable

practices and regulations is as important as are updates.

## Example of an internal communication piece for introducing a new policy on whistleblowing

### What is whistleblowing?

The term whistleblowing can be defined as "raising a concern about a wrongdoing within an organisation. The concern must be a genuine concern about a crime, criminal offence, miscarriage of justice, dangers to health and safety and of the environment – and the cover up of any of these".<sup>1</sup>

### Notations

For a successful whistleblowing mechanism to survive the company must adopt certain practices and the employees must also correspond with selected principles.

### Company

- Must ensure anonymity of the whistleblower and protection against disclosure of identity and reprisal
- Must provide easily accessible ethics/reporting line
- Must indicate acts to be reported
- Must encourage adherence to company compliance regime

<sup>1</sup> Taken from <http://wbhelpline.org.uk/about-us/what-is-whistleblowing/> (last accessed on 26 May 2017)



### Employee

- Must not be vindictive
- Must not be compromised by fear
- Must not blow whistle for want of reward

Whereas compliance may be an emerging trend especially in Africa, aspects of the practice has always existed in various forms including the use suggestion boxes amongst others. Internal communication, which is part of the standard procedures of a company, plays a major role in implementing Compliance Management Systems. ■

## 2.7 EMPLOYEE TRAINING

Edwin Langmer, Head of Compliance,  
Universal Merchant Bank Ghana Limited;  
and Chapter Co-Chair, Association of  
Certified Anti-Money Laundering Specialists

Regulations in many industries now make it mandatory for employees to be trained in compliance. Employee training involves the organisation putting together a plan to disseminate information to its staff. Employee training embodies compliance with internal policies and external regulations, a critical one of universal acclaim being anti-corruption regulations. Training is critical for the success of every compliance programme and must be held regularly beginning from the time the policy comes into effect.

The content of employee training in anti-corruption regulation often centres on critical issues which form part of the risk universe of the institution. It is supposed to equip employees with skills to prevent, detect, monitor and report corruption issues. In order to be effective, employee training must have the buy-in of senior management and the organisation's board of directors. This is called "setting the tone at the top". It is much easier for training programmes to be implemented and enforced if they are sanctioned by the board.

Even without the presence of regulations, employees must be trained in compliance to ensure that the organisation is protected against the swathe of increasingly complex and severe risks that confront it as a business. These risks are usually serious and the weight of their impact if they should crystallise, depending on how regulated the industry may be, could have far-reaching implications on the organisation. Non-compliance usually and always involves regulatory risk, operational risk, financial risk, and reputational risk.

Compliance training helps the organisation to:

- Create awareness among employees on the importance of compliance standards.
- Create room for the organisation to defend itself in the event of employee misconduct.
- Protect employees from potential lawsuits and personal liability.

### Modes of employee training

There is no prescribed format for delivering employee training. The mode of training will depend on a number of factors such as resources available, what needs to be communicated during the training, the nature of the audience, etc. The commonest forms of employee training are:

**1. Face to face:** In face to face training the facilitator or the trainer personally interacts with the learners and delivers the subject matter accordingly. The advantage is that it makes room for more dialogue and feedback from both trainer and trainee. It however has the disadvantage of being unwieldy where a huge audience is concerned or where branches or locational regions are not in close proximity with each other. Additionally, trainees may feel embarrassed to ask certain questions for clarification although this could make the training session a lot more interesting and applicable to their circumstances. The skillset and effectiveness of the trainer in this system is paramount for effective delivery.

**2. Computer-based training:** This involves the learner interacting with the learning programme or trainer via a computer system. This method is convenient and ensures that as many people as possible can be trained within the shortest possible time. However it does not offer the benefit of adequate and instantaneous feedback especially where there is no trainer virtually involved.

**3. Emails, newsletters and magazines:** These involve sending periodic updates to staff. This is the best method for covering issues for which staff just need to be reminded.

**4. Other teaching and learning aids:** These can be used depending on the complexity of the organisation. The essential aim will be the delivery of relevant know-how to staff and obtaining adequate feedback about the exercise's effectiveness.

For employee training in anti-corruption regulations to be effective, it is important to segregate the employees into their separate functions in order to deploy curricular materials that one can be customised or arranged to suit each role. Employee training is therefore hardly a one-size-fits-all affair. Employees whose areas of operations make them most vulnerable to corruption risk must therefore receive different forms of training which will aim to create awareness, identify and detect corrupt activity. Such employees will usually be in the purchasing and procurement departments, those involved in corporate sponsorships or marketing and those who negotiate contracts on the company's behalf.

Other employees from sections such as internal audit, human resources and finance should be trained in monitoring and have their awareness levels increased in identifying and evaluating corruption risks.

It must be noted, however, that – as pointed out earlier, – anti-corruption is everyone's duty and involves concerted stakeholder efforts to be adequately dealt with.





Employees must also be evaluated on the training they undergo in order for the organisation to have an indication of the effectiveness of the training so that corrective action can be taken for the improvement of the programme. The evaluation also conveys a message to employees on how seriously the organisation takes this training programme. To ensure that the importance of the training is underscored, this assessment can be incorporated into employees' periodic performance appraisals.

Finally, it must be noted that every organisation must periodically assess or reassess its corruption risk since the business environment is constantly changing. Regular assessment of risks will ensure that emerging risks are identified in order for relevant programmes and employee training will be designed to counter them. ■



# 3 INDIVIDUAL ISSUES



## 3.1 THIRD-PARTY COMPLIANCE

Abraham Agbozo, Compliance and Governance Manager, Newmont Ghana Gold Ltd.

Compliance means conforming to internal and external prescriptions on corporate governance. The internal prescriptions may include a code of conduct, policies, standards, guidelines, and procedures. The external prescriptions may include laws, regulations and voluntary commitments – international, national and local.

The basis for third-party compliance is both legal and practical. Most anti-corruption and governance statutes impose liability on a commercial organisation for the acts of an associated person that violates the provisions of the statute. For example, the UK Bribery Act 2010, section 7 provides that a commercial organisation is guilty of an offence when a person associated with that commercial organisation bribes another person intending to obtain or retain an advantage in the conduct of business for the commercial organisation. Simply put, a person is associated with a commercial organisation if that person performs services for or on behalf of that commercial organisation. An associated person may include joint venture partners, consultants, local agents, contractors, sub-contractors, sales agents and distributors; in other words, anybody who can speak on behalf of the commercial organisation.

Even in the absence of express statutory language holding the commercial organisation liable for the offences of an associated person, the effectiveness of any compliance regime hinges on commitment by every person that is associated with that organisation. Third parties must necessarily be committed to the compliance programme, or the organisation must ensure third parties buy in to the programme. Components of an effective third-party compliance regime include effective due diligence checks, training and implementation of governance procedures.

Due diligence of a contractual counterparty mitigates risk. In the context of anti-corruption statutes like the Foreign Corrupt Practices Act, 1977 (FCPA) and the UK Bribery Act, the key risk that due diligence or Know Your Customer (KYC) may seek to mitigate is bribery and corruption. Equally, there is a commercial rationale, that is, to establish that the third party has capability to provide the services it is being engaged for. But broadly and beyond that, due diligence should aim at an alignment of values. The due diligence on counterparty must seek to find out whether a contractor's values in the conduct of its business are consistent with that of the commercial entity. Consequently, the strength of any KYC or due diligence process lies not only in the quality of checks which are undertaken but also in the understanding of staff as to the extent of their obligation to conduct them.



Due diligence can be carried out internally or by engaging an external provider. Where possible, individuals with company-wide focus and less direct interest in the particular transaction or project should have oversight of the due diligence process, e.g. the legal or compliance department. However, both the compliance department and people with direct interest in the particular transaction should be able to recognise red flags and know how to react appropriately. There should be a clear framework on how red flags should be escalated and dealt with internally, and what level of management sign-off is required before any engagement that raises red flags can proceed.

After such a vendor or contractor passes due diligence and is integrated into the supply chain system, there is the need for periodic training. Effective training and contractor buy-in to a company's compliance regime mitigates the external sources of risk arising from third-party interactions with regulators, government officials and other stakeholders in the execution of the third party's contractual obligations to the business.

Governance documents including the company's code of conduct, policies and procedures must be developed and shared with such third parties. These documents must set out expectations for behaviour for employees, for partners, vendors and contractors when they are working on behalf

of the company. And among other things, such governance documents must specify minimum acceptable requirements for behaviours, decisions and performance.

Finally, training such third parties on the governance documents and the compliance regime within which the company operates should be conducted on a regular basis. The training must be tailored to address the concerns of the third parties and respond to the issues they confront in their interactions with stakeholders. A one-size-fits-all compliance training rolled out to different functional areas in an organisation is ineffective. Consequently, training design and delivery must be a collaborative endeavour between the operational side of the business and the compliance function. The input of the business end of the organisation is essential to the delivery of an effective training programme and ultimately contributes to the success of the compliance programme. ■

## 3.2 DEALING WITH AGENTS – THE DILEMMA AND WAY FORWARD

Frank Owusu-Ansah, Health, Safety, Security and Environment Manager, APM Terminals

The complex nature of business operations translate to high operational costs, which many organisations may not be able to afford; at least not at the very early stages of their operations. Even for large companies, it may not make strategic sense to run every activity of the business from within. It is for this and other reasons that business organisations rely on other entities to get things done. A relationship of this nature can be described as an agency arrangement and involves an entity (principal) delegating another entity (agent) to act on its behalf. Examples of principal-agent relationship include a foreign-based company appointing a local company to facilitate the acquisition of a business registration certificate and an operating license; a company operating locally (for instance an insurance, shipping or banking institution) engaging the services of another company or individual to secure or serve clients on its behalf; or a Small and Medium-size Enterprise (SME) with no accounting staff, taking on the services of an accounting firm or tax consultant to prepare its accounts and file its tax returns on its behalf.

In such arrangements, the principle is that the activities of the agent in dealing with third parties, affect the principal once carried out within the terms of the agency agreement. This demands that the principal

should be aware of the agent's activities and be liable for the consequences once the agent does overstep its authorities to undertake activities it is clearly forbidden to. In this type of business relationship, because the agent's authority is reliant on the principal, the principal should always have the power of control and the agent must execute the instructions of the principal in a faithful manner and act in the interest of the principal at all times.

In some instances, principals use agents to undertake unlawful acts and only dissociate themselves from those acts if the wrongdoings are uncovered. This should never be the case. Corruption or illegality must not be transferred as what is bad is bad and hiding behind agency arrangements and technicalities to prove innocence should not even be contemplated. Again, because of the devastating economic and social effects of corruption on the actors and collaborators, it becomes a disadvantage to the principal, its global clients and provides long-term damages to the company's reputation<sup>1</sup>. The agent must not abuse the principal's trust to engage in illegalities in order to destroy the image of the principal willingly or unintentionally. It must, however, be noted that both agents and principals are punishable for corrupt acts under the laws of Ghana.

<sup>1</sup> Source: UK Bribery Act, 2010



This is why in dealing with agents, the principal must conduct due diligence before even entering into the arrangement in the first place. It is also important that, the terms of the agreement are clear to both parties in order for them to know their limits. Furthermore, the principal must monitor and control the agent's activities regularly to ensure they are doing the right thing. Also, as you set up and improve your compliance system as a principal, you must ensure that your agents – whether business organisations or individuals – get in tandem with the required processes and procedures to avoid creating problems for your business.

In undertaking the due diligence, there is the need for the prospective agent (individual or business) to complete a checklist prior to being engaged. Whilst that is being done, the company (principal) should also conduct searches online and on a trusted database to verify if the potential agent is connected to a foreign government entity or is being or has ever been investigated for corruption or criminal or civil violations. The initial checklist should include the background of the potential agent (company name, industry, and addresses) owners' details; executives' details; relationship of the agent with foreign/local government officials; previous relationship with a political party or government-owned organisation. Other aspects of the checklist should include the criminal record (if any) of the

prospective agent and its shareholders and principals over the last ten years.<sup>2</sup>

After the agreement comes into effect, a new checklist should be developed for each new activity. It is important for companies to use a risk-based approach in establishing a due diligence process. Depending on the level of risk, the principal may either have an open source background check, an enhanced due diligence or a deep dive involving onsite inspections and interviews with associates<sup>3</sup>.

In conclusion, much as it is important for businesses to use the services of agents for their operations, they need to know their agents well and have well-structured agreements. Principals should also be aware that the actions of the agents can affect their image and operations and must therefore make it a point to monitor and supervise the agents' activities. It is also imperative that the principal gives its agents certain compliance standards to meet in order to remain agents or even become one in the first place. Finally, never should a business engage an agent as a way of "outsourcing" corruption as this is not only unethical but also illegal and punishable by law. ■

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2 Source: Mayer Brown. "Guidelines for Due Diligence Checklist – American Bar Association." 26 April 2017. American Bar Association.

3 Source: Ernst & Young LLP. "Third-party due diligence – Key components of an effective, risk-based compliance program." 2011.

## 3.3 DEALING WITH COMPETITION

Nana Efua Rockson, Group Head –  
Corporate Affairs & Marketing, GLICO Group

### Introduction

The dilemma in today's competitive market for many businesses is how to stay ahead of the game while churning out innovative products and playing fairly. Sustainable organisations, although strategize for profitability, must adhere to existing state laws and regulations to command profits. This article explains what GLICO Group, a company with subsidiaries in various industries in Ghana, does in terms of dealing with competition within the stipulated regulations governing the industries in which the business operates.

### Industry dynamics: regulatory bodies

Businesses operate in industries, most of which have regulators. For instance, the business of insurance (both life and non-life) is regulated by the National Insurance Commission (NIC). The National Health Insurance Authority (NHIA) regulates the health insurance industry whilst the Security and Exchange Commission (SEC) regulates the securities market, with the National Pensions Regulatory Authority (NPRO) taking responsibility of the pensions business.

With a plethora of regulations for businesses to deal with, the laws of a country play an integral part in the regulatory framework of these authorities. Businesses therefore need to integrate the frameworks and guidelines set by the regulators into their corporate strategy and organisational Compliance Management System. Besides these regulatory laws businesses should also endeavour to be part of the various voluntary principle-based associations such as the Private Health Insurers Association (PHIA) and the Ghana Insurers Association (GIA), among others, as may be applicable. These associations have standardised frameworks within which their members are required to conduct business.

### Overcoming competition – the GLICO way

It is exceptional today to find a business without competition. With the advancement of technology, competition is present at the local, international and global levels. Irrespective of whether competitive rivalry is lukewarm or heated, every company is challenged to craft a successful strategy for competing – ideally one that produces a competitive edge over rivals and strengthens its position with buyers.<sup>1</sup>

<sup>1</sup> Executing Strategy: Text and Readings, 11ed, McGraw-Hill.



At GLICO GROUP, all our companies operate in a highly competitive market and strategic planning is integral to our operations. To mention but a few, there are currently 23 life insurance companies and 26 non-life insurance companies. With health insurance, there are currently 11 licensed private health providers operating in Ghana. These local players exclude the many competing from international markets but serving the same customer base.

At GLICO GROUP, we recognise that our stakeholders are our greatest asset. At the heart of our operations are people – our customers and our employees. These groups of people are the lifeline in staying ahead of competition strategically. Below are some few ways we work with our “people” to counteract competition:

- **Customer-focused approach to service**  
Our customers are our number one priority. Thus, we view every interaction with them as an opportunity to grow their confidence in our brand. We use varied channels to reach out and keep our customers satisfied. Our ability to consistently deliver quality and speedy services such as settling claims promptly within the defined benchmarks and our ability to offer precise products and services to manage clients’ unique and evolving risks, are all examples of dealing with competition and staying relevant as a brand.

- **Products that offer value**

All our products are designed to offer value to our customers. We are committed to offering customised insurance and financial products to meet the evolving needs of our clients. We do this to offer our clients the peace of mind needed to operate in a competitive but secured environment. Our teams of marketing and technical persons listen to clients, and pay attention to the external environment to adapt or develop products. For example our “Anidaso” (meaning “Hope” in the local Akan dialect) plan was designed to offer the “Abossey Okai market” (a dense automobile spare parts hub of Accra) protection benefits as they go about the hustle and bustle of life.

- **Our core values**

One of our core values is “ethics”, defined as, “we abide by the rules and principles set by regulators of the industries we operate”. This value, in addition to our own principles of business conduct, keeps us ahead of the competition as the core of our corporate culture is working with integrity.

For example, section 2 and 204 of the Insurance Act, 2006 (Act 724) stipulates what the duties of boards of directors should be. It further guides the establishment and maintenance of risk management control functions, and determines what established strategies,



policies, procedures, and controls should be. Knowing these, guide our operations. For instance, all our companies conduct annual compliance audit to ensure that our systems and strategies are in alignment with regulations and that we are competitive. To this end, we have a fully functional Internal Control & Compliance Department at the Group level to ensure enforcement.

- **Collaboration with competitors at the association level**

GLICO companies are members of industrial associations. For example, GLICO LIFE and GLICO GENERAL are vibrant members of the Ghana Insurers Association (GIA). The GIA is a voluntary association of insurers and reinsurance companies that aims at harnessing the collective voice of its membership.

The GIA, and many like them, become the platform where we channel unfair and unhealthy practices that lead to competitive rivalry. At such gatherings, members agree to codes of business conducts and set minimum standards for compliance and punishments when standards are flouted. This continuously helps to protect the integrity of the industry.

## Conclusion

It is important that businesses consider the laws of the country, the regulatory framework of the industries they operate in, ethics and compliance issues in operating in the midst of competition. The urge to meet sales targets and increase client base should not lead employees and companies to flout laws and break the regulations governing their businesses. Every company should make a conscious effort to be a good corporate citizen and strategize to be ahead of the competition by delivering what the customer needs. ■

## 3.4 FACILITATION PAYMENT AND CORPORATE COMPLIANCE PROGRAMME

Atta Gyamena Reindorf, CAMS Head of Compliance, CAL Bank Ltd.

### What Is Facilitation Payment?

When we talk of facilitation payment, we are referring to a financial payment that is made to an official of an entity (government) or an individual with the aim of ensuring a smooth and expedited administrative process. The administrative process may involve release of funds, signing a business contract, processing approved loan facility, rendering of paid services, etc. directly or indirectly in favour of the person making the payment. It is important to note that the person making the payment does so only to 'facilitate' smooth and expedited action, since without the payment the person (payer) would still be entitled to the service. Facilitation payment is sometimes called 'grease payment' since it is meant to ease and speedily get recipients to act in the payer's favour.

In the past, facilitation payment was thought to be a payment made to public or government officials to incentivise them to complete some action or process expeditiously; an action to the benefit of the person making the payment. In other words, it was a payment made to government officials to facilitate approval of some type of business transaction or activity. As much as that is still true today, facilitation payment has gone from being just a public sector

phenomenon to something that happens in the private sector as well. The act has become common in private sector entities as competition and scramble for business intensify. Corporate officials and management in their quest to win new deals and deepen existing business relationships have had to make all kinds of payments in order to secure the business.

### Forms of Facilitation Payment

It is important to stress that whereas facilitation payment was made in monetary terms in the past, the payment forms have evolved recently to include anything of value. Facilitation payment now takes the form of cash or items of value. These may include charitable contributions, entertainment, use of services, food items, parcels of land and houses, provision of use of properties such as venues, yachts, vehicles etc. Clearly, such payments could pass for bribes and would be subject to criminal investigations.

In Ghana, facilitation payments are sometimes camouflaged and coined in different terms such as business promotions, Finder's Fee (FF), business development, etc. The practice is sometimes referred to as "putting weight on the paper", inferring that documents need to be 'supported' with money in order to be signed or processed. In the financial services sector for example, facilitation payment is sometimes made as

interest differential where interest paid to an entity for investment made is lower than what is agreed with the financial institution. The difference is then paid out to officials of the entity as FF or business promotion. The practice may, however, be different in other sectors.

### Is Facilitation Payment a Bribe?

The big question that comes up with facilitation payment is whether it constitutes a bribe or not. Whereas some may see and deem it as a bribe, others do not. Those who believe facilitation payments are not bribes argue that these are unofficial fees paid to “facilitate” expeditious processing of transactions that they are already entitled to, and therefore, it cannot be said that they are influencing the officials who receive it. However, others believe that facilitation payments are bribes because they are paid to obtain non-discretionary acts from public and private sector officials. One such person is Phillip M. Nichols (2013). In his article, *Are Facilitating Payments Legal?*<sup>1</sup>, he argues strongly that facilitation payments are bribes which are usually small in size, and might seem inconsequential but are not legal.

There are two major global legislations that are relevant as far as facilitation payment is concerned. These are the Foreign Corrupt Practices Act, 1977 (FCPA) of the United States, and the United Kingdom (UK)'s Bribery Act 2010. Whereas the FCPA does not include facilitation payment among the actions that are deemed criminal, the UK Bribery Act specifically prohibits facilitation payment. Thus, while companies in the US could get away with small payments to facilitate routine government or supplier action, companies in the UK cannot.

The UK Bribery Act is broad and extraterritorial in nature. Companies can even be prosecuted if they fail to prevent their employees from engaging in any bribery act. Under the UK Bribery Act, companies could also be prosecuted if facilitation payment is made on their behalf by third parties. Again under the Act, both the receiver and the giver of facilitation payment are offenders and can be prosecuted irrespective of where the payment took place. Companies in Ghana must, therefore, be aware that facilitation payment to or receipt from a UK company is prohibited. In Ghana, although the term does not exist as such in the laws, public officials are prohibited from accepting payments or favours that are directed at influencing them.

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<sup>1</sup> Source: Nichols, Philip M., *Are Facilitating Payments Legal?* (December 1, 2013), *Virginia Journal of International Law*, Vol. 54, No. 1, p. 127, 2013.

## Dealing with Facilitation Payment using Compliance Programme

A company's compliance programme must consist of detailed planned activities and actions that will enable the organisation comply with its own internal policies and procedures, external laws, rules and regulations to which it is a subject, as well as international best practices. In developing their compliance programmes, companies must take into account their jurisdiction, the company's model, and counterparty's position on facilitation payment.

Companies can follow the following simple steps in protecting themselves against the risk of facilitation payment:

### 1. Develop Staff Code of Conduct and Ethics On Facilitation Payment

The company must develop or review their code of conduct and ethics policies to clearly state their position on facilitation payment. Most companies' codes do not make explicit stance on facilitation payment. Ideally this must come from top management to all staff. Staff must be made to read and affirm their compliance to this code. The code must also be complied with by the company's board of directors, shareholders, suppliers, etc.

### 2. Develop Systems to Provide Constant and Continuous Reminders to Staff On Facilitation Payment

The company must also develop systems that ensure that employees are constantly reminded of their obligations to observe the code of conduct and refrain from engaging in facilitation payment. This can be in the form of a corporate dashboard where the company, on an agreed scheduled periodic basis, provides information on facilitation payments and anti-bribery and anti-corruption to employees. Here, the company can issue regular bulletins to convey information on facilitation payment to staff. Again, there can be daily or episodic news flashes on facilitation payment to staff. This will consolidate acculturation of the company's ethical values on facilitation payment.

### 3. Develop Anti-Bribery and Corruption (ABC) and whistleblowing policy

If the company does not already have an Anti-Bribery and Corruption (ABC) policy, the company should consider developing one to conform to international best practice. To afford staff anonymity and protection in reporting wrongdoing in the organisation, the company must also develop a whistleblowing policy. These policies should be approved by the company's senior management and board of directors and well-communicated to all employees.



#### 4. Reward Staff Who Exhibit High Sense of Integrity Under Special Circumstances

In order to promote good ethical behaviour and conduct among employees, the company should handsomely reward employees who exhibit high levels of integrity and ethical behaviour under difficult and special circumstances. When such rewards are given, the company should communicate it to all employees to drum home the message.

of prosecution as compliance and ethical issues become even more pronounced in the corporate world. There is also the fact that even proponents of facilitation payments accept that there is a thin line between facilitation payment and bribery. Companies must, therefore, institute and implement appropriate compliance programmes to protect their institutions against the risk of facilitation payment. ■

### Conclusion

In the past, facilitation payments were more prevalent in the public sector as they were demanded by government officials in exchange for providing a service. However, due to competition and struggle for new business deals, the practice has crept into the private sector. Whereas certain countries do not consider facilitation payments as bribes, countries such as the UK prohibit the act as it can create an unfair or improper advantage for those who pay it.

In Ghana, whereas there is no expressed legislation on facilitation payments, bribery and corruption are criminal offenses under the Criminal Offences Act, 1960 (Act 29). Direct and indirect acts of corruption are illegal, as well as attempting, preparing or conspiring to bribe both agents and principals. No matter which stance a company may take, facilitation payments can really embarrass a company apart from the risk

## 3.5 CONFLICT OF INTEREST

Efua Garbrah-Sarfo, Director, General Services, and Lawrence Quartey, Information Officer, Volta River Authority

### What is conflict of interest?

Conflict of interest describes a situation in which a person's self-interest or private interest appears to influence the objective exercise of his professional responsibility.

Therefore, when the impartiality of a person is compromised because of a clash between his self-interest (secondary interest) and professional responsibilities (primary interest), a conflict of interest is said to have been committed.

### Motivation for conflict of interest

According to Bhargava (2002)<sup>1</sup>, conflict of interest arises because of personalities and the environment the personalities are placed in. Motivating factors include:

- Peoples' desire to be rich, famous, liked and
- Family or societal pressures

Studies in psychology have confirmed that generally people easily understand how conflict of interest may sway the decision of others, but often find it difficult to

perceive that similar conflicts might prejudice their own decisions.

### Causes of conflict of interest

- When individuals have incentives that conflict with their professional responsibilities, often in ways that are not transparent to the public or in their own minds.
- Having multiple roles in an organisation can lead to conflict of interest. One may not be objective in his or her actions when playing a number of roles in an organisation.

### Cases of conflict of interest

The Sarbanes-Oxley Act of 2002<sup>2</sup>, which prohibits amongst others, auditors from rendering consulting services to the companies they audit, was passed following a case of conflict of interest in the United States of America.

Conflicts of interest in the workplace include but not limited to the following:

- When an employee of a company uses his spare time to do freelance work for another company with the skills he or she has acquired from the company he or she works for.

<sup>1</sup> Bhargava, R. Conflict of Interest lecture notes, 2002.

<sup>2</sup> Source: [www.sec.gov/about/laws/soa2002.pdf](http://www.sec.gov/about/laws/soa2002.pdf)

- When a male manager of a company dating a female employee ends up granting her a day off or promotion not because she deserves it professionally, but because of the love relationship.
- When an employee accepts money or a gift from a client in exchange for important, confidential information about his or her company that will help his or her client establish a similar company.
- When a relative applies for a job and one is involved in the hiring process and consequently scores the relative exceptionally high even if the relative did not perform well enough, yet gets employed.

### Consequences of conflict of interest

- Conflict of interest causes employees to act out of interests that are divergent from those of their employer or coworkers.
- Conflict of interest is most of the time bad news for an employee's reputation, integrity and trustworthiness in the eyes of management and stakeholders.
- Conflict of interest is also perceived by management as gross misconduct meriting dismissal or other disciplinary sanctions.
- Conflict of interest also motivates professionals to act in ways that violate their professional responsibilities and hurts their client and employers. For example, a professor in designing a

course he knows will be evaluated by his students decides to make it easier in order to score high marks to earn himself a promotion.

### Ways to prevent conflict of interest

Conflict of interest can be prevented through the establishment of policies that identify or list situations that constitute unethical behaviour and clearly state all the potential resulting actions the organisation may take in response to any conflict of interest situation.

Model companies for instance have codes of ethics that clearly define the acts of conflict of interest for its employees. The code sees the acts of conflict of interest as coming from situations such as<sup>3</sup>:

- Employees who engage in any business venture that compete with the business of the company;
- Employees who own companies or who are directors of companies which execute contracts or act as a supplier for their mother organisations for financial gains.
- Employees who willfully make purchases on behalf of their organisations at inflated market values or in quantities not justified by reasonable requirements for their operations, or which

<sup>3</sup> Taken from Volta River Authority Code of Ethics, November 2015.





result in financial loss to their companies.

- Employees who engage in employment activities, paid or unpaid, regular or casual, but without permission during office hours.
- Employees who induce customers and potential customers to pass on official jobs to them to execute as private jobs or accept offers from customers to undertake jobs which should be executed by their mother companies.
- Employees who act as consultants to a competitor or potential competitor, supplier or contractor, regardless of the nature of the employment while still in the employment of their mother company.
- Employees who accept gifts, discounts, favours or services from a customer/potential customer, competitor or supplier, unless equally available to the clients of the customer, potential competitor, or supplier.

Other possible preventive measures may include:

1. Ensuring organisational managers and policy makers constantly evaluate whether professionals and employees face incentives to act counter to their responsibilities.
2. Declaring to an employer and clients any financial interest in any project, supplier, contractor or business related to one's official duties.
3. Avoiding the acceptance of lavish and frequent entertainment with clients, suppliers or contractors that may place one under an obligation to return a favour or lead one to compromise one's impartiality.
4. Ensure more than one officer is involved when making collective decisions and handling tasks that are vulnerable to malpractice such as procuring materials/services, selecting contractors/suppliers, tendering and supervising a contractor's work performance, etc.
5. Explaining to staff what constitutes a conflict of interest
6. Having a list of situations, with definitions where relevant, that may be considered as conflict of interest.
7. Defining chains of reporting to ensure anonymity and freedom from repercussion to encourage employees to come forward with information concerning conflict of interest.
8. Providing procedures by which alleged conflict of interest situations are examined and those to conduct the investigations.
9. Maintaining the code of ethics or policy actively by continuing to add to or alter it in response to the organisation's needs.
10. Ensuring consistent application of the code of ethics or policy at all times to all employees, be they regular or managerial staff. ■

## 3.6 GREY AREAS

Emmanuel Natteh MacCarthy,  
Internal Audit and Compliance Manager,  
Ghana Home Loans

There are institutions with well-established and resourced compliance departments but their internal audit departments continue to issue adverse audit findings with regard to bad business practices. One may ask, why should this be, especially where the compliance test reports are satisfactory?

The above scenario happen because the compliance team ticks boxes of defined compliance checklists. This checklist may not have been updated in a long while and could be out of touch with current developments within the industry. Those adverse compliance audit findings may therefore not have been clearly defined in the compliance manual.

Risk that affects a business could originate from both internal and external sources, local and international sources, among others. Thus, it behoves organisations to devise strategies to control and address the risk. It is, therefore, a wakeup call for management to reconsider their approach towards identifying and defining the risks in the business and to develop a framework to regulate them. To identify risks therefore means finding out the likely inactions, which if ignored, will have far-reaching consequences on a business. This brings about the issue of grey areas. "If you refer to something as a grey

area, you mean that it is unclear, for example because nobody is sure how to deal with it or who is responsible for it, or it falls between two separate categories of things".<sup>1</sup>

As businesses focus on making profits and staying within the rules and regulations that govern their activities, grey areas may derail their compliance efforts and thus need to be checked. Going by the aforementioned definition, a grey area can be difficult to deal with if the right precautions are not taken. In the area of anti-corruption, issues such as facilitation payments, agents and middlemen, gifts and hospitality as well as charitable donations and political contributions constitute grey area that must be addressed.

It is necessary to establish internal policies to deal with grey areas in order to avoid corruption risks to the business. A business needs a clear policy on facilitation payment to the effect that such payments should not be made or received under any circumstance by any employee or agent of the company. In Ghana, although the term 'facilitation payments' is not captured in the laws, payment of any amount to public office holders to influence them in the discharge of their duties is prohibited.<sup>2</sup> Agents and middlemen

<sup>1</sup> [www.collinsdictionary.com/dictionary/english/grey-area](http://www.collinsdictionary.com/dictionary/english/grey-area)

<sup>2</sup> Taken from: Ashong Benjamin & Associates. (2017). Ghana. Bribery & Corruption 2017, 4th Edition. Retrieved May 5, 2017, from Global Legal Insights: [www.globallegalinsights.com/practice-areas/bribery-and-corruption/global-legal-insights---bribery-and-corruption/ghana#chaptercontent9](http://www.globallegalinsights.com/practice-areas/bribery-and-corruption/global-legal-insights---bribery-and-corruption/ghana#chaptercontent9)



as a grey area should be tackled through the definition of clear boundaries for such partners to ensure they do not become conduits for corruption. Agents and middlemen must be screened and selected based on clearly-defined policies to guard the company against corruption risks.

Gifts and hospitality are used by some organisations to appease their clients and partners. Although gifts may be 'harmless' they are sometimes used as a disguise for bribes. Businesses must establish policies that should set limits for the value of gifts that can be given out to or accepted from partners. Charitable donations have also come to stay as a public relations tool for companies. That notwithstanding, they must not be used to attract favours or as baits for contracts. Similarly, political donations must be watched carefully and policies designed to address them. Whilst contributions to political parties are not illegal in Ghana, they need to be done within the acceptable framework and rules by citizens<sup>3</sup> of the country. The basis of a political contribution must not be the promise of a contract upon the success of the beneficiary political party at the polls.

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<sup>3</sup> Section 23 of the Political Parties Law, Act 574 (2000) states that "(1) Only a citizen may contribute in cash or in kind to the funds of a political party. (2) A firm, partnership, or enterprise owned by a citizen or a company registered under the laws of the Republic at least seventy-five percent of whose capital is owned by a citizen is for the purposes of this Act a citizen".

A company therefore has a responsibility to create a policy to guide its funding of political parties to avoid possible abuse. The approach to this exercise may, however, vary from organisation to organisation but must be able to cover all potential grey areas. It is important that businesses set up codes of conduct to guide their employees on what constitutes acceptable practice and what does not and give directions on grey areas for instance and how they should be tackled.

It is worth mentioning that for any business to survive in the 21<sup>st</sup> century, it must pay close attention to compliance issues emanating from global, national and local sources. These sources include all stakeholders such as standard regulatory authorities, local authorities, board policies and procedures, best practices, industry benchmarks and key performance indicators, among others.

Being a compliant organisation is a process, a journey that starts with asking questions and providing answers to these questions. With periodic reviews and streamlining of activities to protect people and property, and ensuring adherence to national and international laws and regulations, a company will over time embed compliance in their work culture and gain the benefits as a business. ■

## 3.7 EVALUATION AND MEASUREMENT BY THE PUBLIC PROCUREMENT AUTHORITY

Rhoda Appiah, Head of Public Relations,  
Public Procurement Authority

Public procurement is a critical activity in the running of public institutions. It is also an area that provides an interface for business activity between the public sector and the private sector. The importance of public procurement demands for regular monitoring and evaluation by the regulator to ensure an improved system of public procurement.

In 2003, the World Bank Working Group on Benchmarking, Monitoring and Evaluation at a roundtable meeting in Johannesburg, South Africa designed and introduced the three distinct public procurement monitoring tools for measuring country performances. These are:

- The Baseline Indicators Tool;
- The methodology for measuring and monitoring of procurement performance;
- The performance assessment system

The Government of Ghana, in a corresponding move a few years after the enactment of the Public Procurement Act, 2003 (ACT 663) (as amended), with the assistance from the Swiss Confederation, also developed the Public Procurement Model of Excellence (PPME) Assessment Tool to augment its monitoring and evaluation activities in the country. The web-based package allows for

qualitative and quantitative measurement of public procurement activities. It collects data on procurement from the entity level to generate overall results pertaining to the quality and performance in the whole country or even within a particular sector. Though the assessment tool may be unique to Ghana, the lessons learnt are worth sharing and can be adapted for use in any procurement context. So far, over one thousand (1,000) procurement entities selected from the public sector have been assessed using the PPME Tool which analyses data collected through the use of an evaluation grid and contract data sheets.

**Evaluation grid:** The evaluation grid is a matrix of rows and columns (as in an Excel Worksheet) which sets out the key performance criteria used for the assessment of all procurement entities. This system allows entities to be assessed equally on the same platform for the purposes of comparison. The evaluation grid has forty-nine (49) Key Performance Criteria (KPCs) which are important characteristics that a well-functioning procurement system should have. To guide the data collection process, the evaluation grid also has set certain minimum levels of compliance. These are used to assess the level of compliance with each of the KPCs.

**Contract data sheets:** The contract data sheet on the other hand, is used to capture quantitative data on actual procurement transactions of entities. It is this data that the system uses to generate the Performance Measurement Indicators (PMIs).

**Data collection and analysis:** Data collection for this assessment exercise is an evidence-based process which is normally undertaken by a team of well-trained assessors with proven skills in procurement and research. The data collection process takes the form of actual visits to each of the procurement entities where the evaluation grid is used to collect information on the entity's performance. The data is then entered into the PPME platform by the trained data entry clerks.

**Reports:** Two types of reports are generated from the PPME Tool. There are qualitative and quantitative reports.

- **QUALITATIVE REPORTS:** Also known as the Performance Assessment System (PAS) Report, it dwells more on individual entity performance providing a snapshot of their performances under four main headings namely: Management System, Information and Communication, Procurement Process and Contract Management. The PAS Report allows for the comparison of results of an entity with those of others. This can be done among entities in the same ministry, region or

sector. It is also possible to compare performances based on the type of procurement method, type of funding or against the national average.

- **QUANTITATIVE REPORTS** on the other hand come in the form of a Performance Measurement Indicators (PMI) Report which is generated from information collected from the Contract Data Sheets. These reports show in concrete terms the progress that an entity is making in its procurement process in terms of advertisement of tender opportunities, publication of contract awards, tender participation, tender processing lead time, contract dispute resolution, etc.

## Use of Results

The Public Procurement Authority (PPA), as a regulatory body, is required inter alia to advise the Government on issues relating to public procurement, develop proposals for the formulation of public procurement policies, and ensure the development of training and strict adherence to ethical standards. Over the years, these empirical monitoring and evaluation activities have yielded immense benefits to the PPA, in fulfillment of its functions stipulated in Section 3 of Act 663 as amended.

For instance, the report of the first assessment exercise formed the basis for the development of training modules for the

short-term nationwide training programmes. Beneficiaries of these training programmes included procurement officers, members of Entity Tender Committees, Tender Review Boards and Oversight/Investigative Bodies. To a large extent, we believe that these training activities have had a tremendous effect on the procurement function and precipitated the development of the current scheme of service for procurement officers in the civil/local/public services as part of the broader career path development for practitioners.

The 2007 assessment reports also revealed several lapses in the procurement processes of second cycle institutions, where a large amount of their expenditure are in the purchase of food items and other consumables which poses a challenge to the procurement processes. On the basis of that report, the PPA developed and issued specific guidelines and processes for low/minor value procurement for these institutions. The recommendations of the assessment report have also given rise to the development of a procurement records management manual designed to guide procurement officers in effective records keeping.

Contract management as a critical component of the public procurement process has also been cited in our assessment reports as being yet another challenge confronting the smooth implementation of the public procurement law. Entities seem to be more

interested in the processes leading to the award of contracts rather than the usual execution of these contracts. Thus, in our bid to encourage entities and procurement officers to show greater commitment to the process of contract management, the PPA is currently working on training modules on Contract Management that will be used by trainers to build the capacities of procurement functionaries in this regard. A simplified electronic format has also been developed for entities to capture data on salient aspects of their contract awards for posting on PPA's website and the procurement bulletin.

Finally, as a way of motivating entities to aspire for excellence, the performance of each entity in these assessment exercises is rated according to a five-stage classification regime. These groups are known as the Stages of Maturity, with stage 1 being the Non-Conforming Class and stage 5 being the Excellence Class.

Thus, being in a particular class gives the entity an indication of what its current level of performance is and the specific areas of improvement it needs to pay attention to. Moreover, the periodic nature of these assessments provides individual entities and the PPA an opportunity to track the effects of any policy intervention that is made over time.



Considering the cascading effect that these assessment activities could have on the efficiency of PPA as a regulatory body, the Authority is planning to make this tool not just a PPA tool but rather a self-assessment tool for individual entities to monitor their own performances on a regular basis so as to deepen the level of integrity of the system. It is anticipated that these assessments will go a long way to improve the quality of procurement processes, locate performance gaps, and prioritise opportunities and areas for improvement according to world class standards. As the public procurement system improves, it is believed that private sector organisations that do business with public sector organisations will leverage the gains. ■

## 3.8 COMPLIANCE FROM THE ANTITRUST PERSPECTIVE

Emmanuel Doni-Kwame,  
Secretary-General, ICC Ghana<sup>1</sup>

Over the years, legal and compliance requirements affecting companies (both small and large) have shown a steep increase across the globe. This phenomenon reflects the rapid development of the normative values underlying the regulation and governance of business conduct, and the increasing ethical expectations of society at large. This has become apparent in a wide variety of areas: from anti-bribery and corruption, to environmental, health and safety, to data privacy and antitrust or competition laws. Managing the steady growth of these legal compliance requirements creates increasing challenges to businesses. By promoting open international trade and investment across frontiers and helping all businesses (whether large or small) meet the demands and opportunities of globalisation, the International Chamber of Commerce (ICC) seeks to play a key role in assisting a growing understanding between business and antitrust agencies in relation to antitrust compliance, and is uniquely positioned to do so.

Compliance with antitrust laws has become particularly important due to the unprecedented proliferation of these laws across the globe. Existing antitrust laws are constantly evolving and new laws are being adopted. Sanctions for antitrust violations are often substantial and reputational damage to the companies as a result of an adverse antitrust finding is massive.

The issue of antitrust compliance is particularly filled with challenges at the moment, since (to date) there is no international consensus among antitrust enforcement agencies on how best to support (or even encourage) business in their genuine antitrust compliance efforts. Moreover, while many companies already have antitrust compliance programmes in place to help protect themselves (and their shareholders) by reducing the scope for future infringements through suitable training and uncovering potential infringements early, ICC feels strongly that it is now appropriate to develop practical tips, guidance and advice to assist companies in building and reinforcing credible antitrust compliance programmes, taking into accounts both the risk these companies face and the resources available to them with the introduction of the ICC Antitrust Compliance Toolkit<sup>2</sup>.

<sup>1</sup> ICC Ghana is part of the global network of national committees of the International Chamber of Commerce (ICC). The International Chamber of Commerce is the voice of world business and has a long history of developing voluntary rules, guidelines and codes to facilitate business and spread good practice. Examples of these include: ICC's URBPO: the first ever Uniform Rules for Bank Payment Obligations, ICC Incoterms, ICC model contracts, The Consolidated ICC Code of Advertising and Marketing Communication Practice.

<sup>2</sup> Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2013/04/ICC-Antitrust-Compliance-Toolkit-ENGLISH.pdf>





The ICC Antitrust Compliance Toolkit covers how to embed an antitrust compliance culture and policy in an organisation, allocation of resources within the organisation, identification and assessment of risks and tailoring antitrust compliance know-how at the foundation level. For reinforcement of existing programmes, there has to be a concerns-handling system and investigations, internal due diligence and disciplinary action, antitrust incentives and monitoring and continuous improvement.

The above elements in the ICC Antitrust Compliance Toolkit are not intended to represent a comprehensive or prescriptive list of what an antitrust compliance programme must include, but seek to reflect what is commonly regarded as good practice in the field. Indeed, antitrust agencies themselves recognise that there can be no “one-size-fits-all” approach, and that each compliance programme has to be designed to meet the specific antitrust risks faced by the company in question.

This is precisely what the Toolkit does. The strongest driver for compliance with antitrust law is the desire to conduct business ethically and to be recognised as doing so. While the penalties for non-compliance can be very significant, a company’s reputation is seriously damaged by the adverse publicity attracted by a decision that it has violated the law.

Therefore, the point of any antitrust compliance programme is (ultimately) to reduce the risk of an antitrust violation occurring at all. However, as a fear of violating the law (particularly where individual criminal penalties are in play) can frighten employees and sometimes unwittingly chill perfectly legitimate completion, a well-designed programme will empower employees to act confidently within the scope of the law. ■



## FURTHER READING

- A Guide for Anti-Corruption Risk Assessment, UN Global Compact 2013
- African Union Convention on Preventing and Combating Corruption, 2003
- Fighting Corruption in Sport Sponsorship and Hospitality, UN Global Compact 2013
- National Anti-Corruption Action Plan, 2014
- No eXcuses, Countering the Ten (10) Most Common Excuses for Corrupt Behaviour, Alliance for Integrity, 2016
- Resisting Extortion and Solicitation in International Transactions, International Chamber of Commerce (ICC), Transparency International, United Nations Global Compact, World Economic Forum 2011
- United Nations Convention against Anti-Corruption, 2003

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