



Anticorruption – laws, conventions and framework in risk mitigation

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Main content

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1. Norwegian penal code (Europe)
2. Foreign Corrupt Practices Act (USA)
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 - "Undue influence"
 - "Advantage"
 - "Facilitation payments"
 - Possible consequences of corrupt involvement

II - Framework for corruption risk mitigation

Overview of relevant penal conventions and laws regarding corruption

- OECD Convention on corruption of public servants – 1997
- Conventions from the European Council– 1999
- UN convention against bribery-2003
- Local laws and regulations
- The Norwegian penal code of corruption of 04.May 2003
 - Corruption
 - Trading in influence
 - Grand corruption
- Foreign Corrupt Practices Act – 1977 (USA)

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1. Corruption clauses stated in the Norwegian penal code

Active corruption:

Penal code **§ 276a letter b:**

- Those who promise, offer or provide any undue advantages intentionally and which are related to functions, tasks or commissions, etc., (also abroad).

Passive corruption:

Penal code **§ 276 a letter a:**

- Those who receive, request or accept, directly or indirectly, any undue advantages related to functions, tasks or commissions, etc., (also abroad).



Corruption penal clauses

Trading in influence

Penal code **§ 276 c (litra a and b)** :

- Any individual who asserts or confirms that he or she is able to exert an improper influence over the decision-making of another who is accepting/receiving/requesting or giving/promising any undue advantage

Grand corruption

Penal code **§276 b**

- Particularly affected by the size of the amount, but also other factors such as "breach of special confidence", "other harm" or "incorrect accounts"



2. Foreign Corrupt Practices Act – main content, vital terms and trial

- Anti bribery provisions
forbids companies, as well as their officers, directors, agents, and employees from "corruptly ...offer[ing], pay[ing], promis[ing] to pay, or authoriz[ing] the payment of any money, or offer, gift, promise to give, or authoriz[ing] the giving, of anything of value to ... any foreign official for the purposes of ... obtaining or retaining business."
- Accounting and internal control provisions
requires publicly traded companies and companies that file periodic reports with the U.S. Securities and Exchange Commission to make and keep accurate books and records, and to maintain effective internal accounting controls.



FCPA – vital terms

A **"covered person"** may not make a prohibited payment or offer to a foreign official with corrupt intentions

- "Covered persons" includes, for example:
 - US citizens and corporation corporations
 - Foreign subsidiaries of US corporations
 - Foreign corporations who are "issuers" registered with the SEC
 - Anyone acting in the US



FCPA – terms

"Prohibited payments or offers" include, for example:

- Cash
- Paid travel expense expenses
- Requested donations to charities
- Free upgrade of airplane seats
- "Anything of value"



FCPA – more terms

- **“Foreign officials”** includes, for example:
 - Government officials
 - Employees of state-owned or controlled entities
- **“Corrupt intentions”** includes, for example:
 - Influencing any act or decision, or
 - Securing any improper advantage, or
 - Inducing the foreign official to use his influence
 - To obtain or retain business



Undue influence – instructive handling of FCPA violations - The ABB case (2004)

- The SEC charged from 1998 through early 2003, ABB's U.S. and foreign based subsidiaries doing business in Nigeria, Angola and Kazakhstan, offered and made illicit payments totaling over \$1.1 million to government officials in these countries. According to the complaint, all of the payments were made to influence acts and decisions by the foreign officials receiving the payments, in order to assist ABB's subsidiaries in obtaining and retaining business.
- ABB consented to the entry of a final judgment enjoining it from future FCPA violations, and requiring it (i) to pay \$5.9 million in disgorgement and prejudgment interest, (ii) to pay a \$10.5 million penalty, (iii) to retain an independent consultant to review the company's FCPA compliance policies and procedures



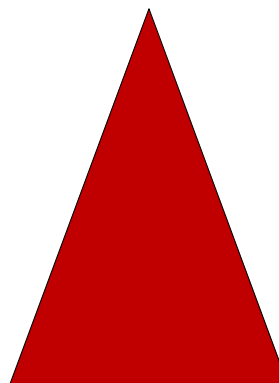
3. "Undue advantage"- overall judgement

- Purpose of the advantage...
- Function/position of the donor
- Function/position of the recipient
- The actual value of the advantage
- The character of the advantage
- Are the employers or the informed?
- Breach of national laws –i.e, the purchasing act
- Violation of internal codes
- Public or private sector



Corruption is often a matter of hidden dependent relationships

- Extortion/blackmail?
- ↑
- "Cash" advantages
 - Promise of employment
 - Holidays with the supplier
 - Hunting trips/golf trips
 - Culture/sports events
 - Dinners/seminars
 - Lunches



What is an "advantage"?

- A benefit in favour of the recipient
- "Customer care" – different kinds of enrichment/savings
 - Money transfers/covering expenses/discount expenses/discounts
 - Dinners
 - Trips/events
 - Future employment
- On occasions not direct economic advantages
 - Membership in exclusive clubs/associations
 - Positive publicity



Undue advantage – instructive court trial

- The Telia/Sonera case (2006)

The executive top management of the Swedish/Finnish telecom operator was accused of corruption, due to extensive entertainment invitations including top officials and upper management in private enterprises.

The management was acquitted, mainly due to:

- Modest value of the advantage
- Undefined range of invitations
- No ongoing negotiations with the invited persons or companies



Facilitation payments – an undue advantage?

Facilitation payments is a form of bribery made with the purpose of expediting or facilitating the performance by a public official for a routine governmental action and not to obtain or retain business or an any other undue advantage

Facilitation payments are considered illegal in many countries in the UNAC area, but in some areas, such as in the US, this is not prohibited.

TI resolution – *Resolution on facilitation payments* – encourages all enterprises to stop such payments.



Possible consequences of corrupt actions

- Penal – personal and/or for the enterprise
- Personal dismissal or warning
- Compensation claims– via a criminal or private trial

→ In Norway, new compensation clause from March 2008, as a result of enforcement of international conventions

- Possible rejection as vendor
- Strong negative impact on the company reputation

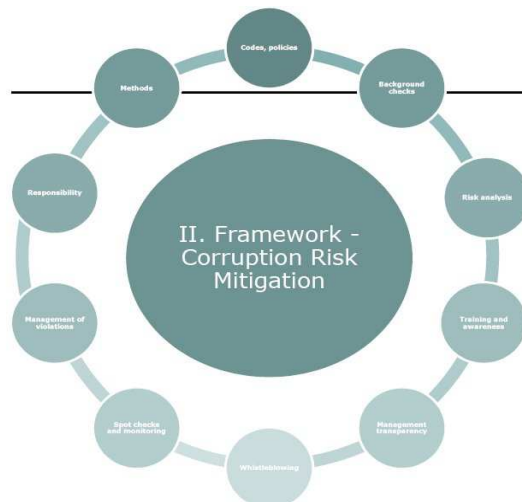


The Haliburton/KBR case – shareholders claim for compensation

- In 2007 and 2008 the CEO and other management of Haliburton subsidiary KBR, pleaded guilty in the US court in Houston, Texas, and the CEO agreed to 7 years of imprisonment due to substantial corruption in Nigeria.
- In what is believed to be the first legal action brought by shareholders against oilfield services provider Halliburton Company and its one-time subsidiary KBR, Inc., a municipal pension fund has in 2009 filed a lawsuit alleging that poor oversight and lack of internal controls at the two companies enabled a pervasive environment of misdeed and corruption, resulting in enforcement actions and substantial government penalties that have severely damaged investors' holdings.



II. Framework- Corruption Risk Mitigation



Basic conditions for effective anticorruption mitigations

- Risk based approach and efforts in order to mitigate relevant corruption risks.
- Management commitment to spend resources on long term basis is important.
- Involvement from top management and the board of directors is vital, including commitment to compliance and consequence management.



1. Code of Conduct, policies, contracts and other standards

- Clear communication of attitude towards corruption and related themes—zero tolerance, as a part of the employment contract
- Contract terms and conditions setting clear standards regarding corruption, including consequences.
- Clarify internal standards, i.e, procurement, specified gift policy, approval systems, sponsorships, etc.
- Create awareness of conflict of interest issues
- Update policies and standards continuously.



2. Background checks - due diligence

- Background checks prior to employment
- Background checks prior to contracting – who is your new Partner?
- Agents and intermediaries – clear written contracts and tasks are Mandatory.
- Who owns the company – in reality?



3. Risk analysis

- Identify critical or vulnerable business processes in the enterprise and in the industry
- Conduct risk assessment before entering into business decisions
- Develop a long term plan
- Document mitigations and improvements



4. Dilemma training and awareness

- Exercise the understanding of codes, policies, standards and compliance programmes
 - Who "draws the line", and conducts Guidance?
 - Establish an environment of openness and an arena for discussions of Dilemmas
- Be open minded and learn from others and your own mistakes



5. Transparency and ethical conduct

- Openness of top management remuneration- and bonus systems
- Openness and transparency of management private investments and board memberships etc
- General openness of violations of codes, policies and standards



6. Whistle-blowing, matters of concern and dilemmas

- An integrity channel may be mandatory, and will create confidence if effective and trustworthy
- Who will receive actual complaints, and how is the complaints managed? Board involvement?
- Is it possible to present dilemmas and receive answers – also anonymously?
- Openness of results in a general form



7. Spot checks and monitoring

- Implement spot checks for compliance purposes
- Implement monitoring and compliance controls
- Conduct and document enforced controls



8. Management of violations and reactions

- Adopt controlling mechanisms, including an open-door policy, or internal or external audit, as a necessary element to any anti-corruption policy
- Publicize annual violations of policies and standards in a general form.



9. Responsibility and reporting schemes

- Enforce responsibility for follow up actions.
- Consequence reporting directly to superiors
- Objective decisions to be conducted by top management

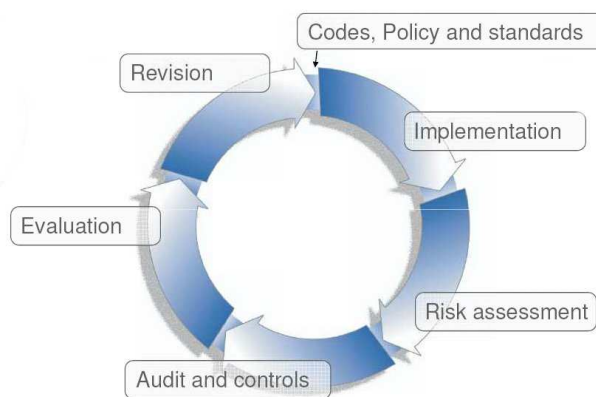


10. Methods and use of resources

- Adhere to well known and relevant principles, methods and reporting systems, including internal controls
- Follow the example of companies and industries which have had a head start in dealing with corruption
- Develop a long term plan for the systematic use of resources in preventing corruption



The Compliance Wheel



Summing up and conclusions

- Each employee is responsible for knowledge of relevant anti corruption laws and regulations, including company internal anti corruption requirements and mitigations
- The company management is responsible for company compliance, including clear codes of conduct and the use of resources in mitigating the Risks

