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International Corporate Governance Network

ICGN Guidance on Anti-Corruption Practices



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PREAMBLE

ICGN's Statement Guidance on Anti-Corruption Practices (Guidance) was first approved by ICGN members and published in 2009. At that time anti-corruption was a fairly new issue on the corporate governance agenda. Since then the visibility of bribery and corruption has continued to rise for both companies and investors. This in part reflects legislative developments, several corruption scandals involving high profile industrial companies and financial institutions in both developed and emerging economies.

The Guidance establishes the importance of combating bribery and corruption as part of the corporate governance agenda. This document presents a policy statement on why anti-corruption is an issue of concern for and investors and explains how corruption is ultimately detrimental to investor value and financial performance. This guidance provides a series of questions for investors to assist in their engagement with companies on the theme of anti-bribery and corruption. It concludes with a set of references to relevant organisations active in promoting the anti-corruption agenda that can serve as a resource to investors.

Bribery and corruption present costs that are sometimes hidden - to companies, investors, markets, economies and society. As investors pay increasing attention to ethical, environmental and social risks, their expectations of company managers and board directors are high with regard to combatting bribery and corruption.

Preventing corruption is identified as one of the ten principles of the UN Global Compact, and it is also embedded at the core of the 16th Sustainable Development Goal, focusing on peace, justice and strong institutions. ICGN's own Global Governance Principles address anti-corruption in its chapter on Corporate Culture, along with related issues including codes of conduct, whistle-blowing, and political lobbying.

This updated Guidance builds from the original ICGN Anti-corruption Guidance, which has largely stood the test of time well and requires no major overhauls. However, this latest version more clearly delineates between bribery and corruption—which are different, and not interchangeable-terms. While bribery can be more or less clearly described in legislation, corruption is broader and a bit murkier by nature. In areas such as political lobbying and donations, for example, companies can engage in activities that are effectively corrupt, but permissible by law.

This Guidance explores how companies can combat corruption internally through transparency and practices. We also recognize that investors face ongoing challenges in taking a stand against corruption. These challenges may be greatest in controlled companies where investors have limited influence over controlling shareholders.

Ultimately combating corruption is a systemic issue that affects investors negatively, even if the impact can be difficult to detect or measure directly. The rule of law is fundamental to the health of financial markets, and investors with long-term investment horizons will not want to invest in companies whose business model requires corruption. Corruption is not only ethically flawed; it is also incompatible with sustainable value creation.

ICGN policy priorities place increasing emphasis on systemic risks that face investors, particularly those with long-term time horizons. We regard corruption as a systematic risk in this context – and a matter that investors should raise with companies in their engagement--alongside other critical systemic risks such as the Covid-19 pandemic, climate change or wealth inequality.

Corruption has been with us ever since societies first came into being. It is an unfortunate dimension of human nature. But while corruption may lack the urgency of Covid-19 or climate change as an existential issue, it is important to investors, and the fiduciary duties to their beneficiaries, to use the voice of capital to take a stand on anti-corruption

Among other things this calls for more investor involvement in the policy debate relating to combatting corruption in companies and how investors can use tactics, such as collective engagement, to make progress with companies in the fight against corruption.

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ICGN Statement on Anti-Corruption Practices

1 Overview

1.1. Introduction

Corruption has long undermined efficient markets and economic development. ICGN recognises that investors have an important role to play in confronting bribery and corruption through open and constructive engagement with companies. Many companies take a wide range of effective measures to combat corruption and should be rewarded by the market for doing so. By encouraging companies to communicate openly on their anti-corruption policies and practices, such as by reporting against understandable and relevant key performance indicators within a clear and comprehensive narrative, investors can help to channel capital more efficiently, as well as promote the adoption of more effective mechanisms for detecting weaknesses in internal controls.

1.2. Policy statement on anti- corruption practices

ICGN believes that bribery and corruption are incompatible with good governance and harmful to the creation of value. It follows that shareowners and their representatives have a responsibility to demand that companies have stringent policies and internal systems to avoid bribery and corruption.

ICGN believes that investors should engage with companies to ensure they demonstrate to their owners that they have appropriate systems in place to detect any corrupt payments, benefits or other actions and take appropriate preventative and enforcement measures to deal with corrupt activities.

In addition, ICGN believes that investors have the same duties with respect to anti-bribery and corruption that they urge on their portfolio companies.

1.3. Rationale and definitions

According to Transparency International, a leading civil society organisation in the field, “Corruption is operationally defined as the misuse of entrusted power for private gain”. This includes “private-to-public” corruption, where a private commercial party may bribe a public official to obtain government business. Equally, there is “private-to-private” corruption, where one commercial party offers an inducement to another who has decision-making authority to award a piece of business, for example, a supplier bribing a commercial client.

The OECD (Organisation of Economic Cooperation and Development), the Council of Europe and United Nations Conventions do not seek to define “corruption” itself. Their focus is to identify specific offenses for a range corrupt behavior, including bribery, embezzlement, misappropriation or influence seeking.

Bribery is a subset of corruption and is defined as the giving or receiving of something of value (often money, but not always) to influence the recipient to do something to benefit the bribe payer. In most jurisdictions bribery is illegal and a criminal offense, both for the receiver and the payer of the bribe.

While receiving a bribe is certainly a corrupt activity, it warrants noting that corruption is broader in scope. Indeed, not all corrupt activities are ‘illegal’, even if they may be unethical or at odds with social norms. ICGN’s approach to anti-corruption certainly encompasses the specific act of bribery, but it ultimately takes the broader perspective to include corruption in areas that are not necessarily illegal. Political lobbying and donations are examples of legal gray areas where companies need to be alert to corruption risks.¹

Cronyism is another example of behaviour that may not be illegal but may lead to damaging outcomes to minority shareholders or other stakeholders. This can involve the choice of business partners, the terms and conditions of related party transactions or the structures of joint ventures. The risk is that misuse of power might provide private benefits of control at the expense of the company’s own reputation and long-term sustainable development.

1.4. Why corruption matters to investors

While making a corrupt payment might enable a company to win profitable business in the near term, it ultimately destroys value, both at a macroeconomic level and at an individual company level. In this context ICGN views corruption both as a systemic risk with broad social impacts as well as a company specific risk.

At a macroeconomic level, the economic cost of bribery has been estimated by independent bodies to range from 1.5- 2.5% of global GDP per annum: a level of magnitude in excess of \$2 trillion². Corruption greatly reduces efficiency by distorting competition and depriving buyers of economically superior products at the most competitive prices. Examples abound of deficient, unsafe or poorly- specified products being delivered at vastly inflated prices to governments that can ill-afford such waste. Corruption destabilises the political process and promotes conflict. It also raises the cost of doing business and deters investment. For

¹ See ICGN Guidance on Political Lobbying and Donations: <https://www.icgn.org/policy/guidance>

² Corruption: Costs and Mitigating Strategies International Monetary Fund, 2016

investors with exposure across the market, this reduces overall returns by interfering with the allocation of capital to its “highest and best use”.

For investors in individual companies that have been disadvantaged by the corrupt actions of competitors, this directly reduces returns, even in some cases threatening commercial survival. For investors in bribe-paying companies, the damage is more insidious, and is felt over the longer term. Although corrupt actions can go undetected and unpunished, when they do come to light they can trigger extremely costly and disruptive corrective actions, including legal and forensic investigations, fines, disgorgement of ill-gotten profits, corporate restructuring, dismissal of executive teams, imprisonment, cancelled contracts, debarment from client procurement lists, employee morale problems, staff defections, recruitment difficulties and reputational damage.

Companies with a reputation for weak anti-corruption controls, or which are found to have “skeletons in the closet” during pre-merger due diligence, can find that transactions are re-priced or even called off. They also will face hurdles when accessing the capital markets of countries where anti-corruption enforcement extends extra-territorially, such as in the US, the UK and increasingly other OECD countries, because past actions outside those countries will become within reach of enforcement authorities.

The legislative dimension of anti-corruption legislation continues to build in jurisdictions around the world. Some key international and national treaties and laws are presented in Annex 3 and Annex 4. From the perspective of companies, their investors and their stakeholders, these developments also raise the legal risks associated with bribery and corruption. An important feature shared by most of these frameworks is some form of extraterritoriality—which effectively expands the geographic scope of these legal risks onto a global basis. This crosscurrent of extra-territoriality also tends to reduce the risk of regulatory arbitrage from one jurisdiction to another with regard to anti-corruption practices.

Finally, whether or not corruption is detected and punished, a corporate culture that tolerates corrupt payments is also one that is much more likely to tolerate, or fail to prevent, financial fraud, theft of company assets and other actions that will directly harm investors. Corruption corrodes corporate culture and undermines the quality of management. Therefore, investors are particularly concerned that corruption reflects more broadly on the integrity and trustworthiness of management, and regard corruption as a threat to sustainable value creation.

1.5. Corporate reporting on anti-corruption practices

One challenge with fighting corruption is the “Prisoner’s Dilemma”, whereby companies which behave properly can in the short term have a competitive disadvantage to those who do not-- for example, if they lose out on contracts by refusing to pay bribes. To overcome this, it is necessary to have a market-wide solution. This can be helped by a strong, independent legal and regulatory framework, along with strict enforcement. Too often such a framework is not, or is not seen to be, in place. Alternatively, where a framework for legal enforcement is in place, enforcement may sometimes be politicised or applied selectively.

In the absence of effective law, regulation and enforcement, companies are often called upon to engage voluntarily in collaborative transparency agreements. This requires a willingness on the part of companies to engage on a subject that some may prefer not to acknowledge. ICGN encourages companies in these initiatives and believes that such reporting is positive and important. Investors can play an important role in developing market wide voluntary initiatives. ICGN also encourages companies to ensure that their financial and non-financial reporting is integrated, so that information prepared for investors is readily accessible. Supplemental reporting may be helpful, but it is important to have this cross-referred to in annual reports. The Global Reporting Initiative (GRI) and the Sustainability Accounting Standards Board (SASB) both include anti-corruption in their reporting frameworks.

2 ICGN Guidance on Anti-Corruption Practices

2.1. Link to corporate governance

Corruption impacts both individual companies as well as markets and economies more systematically. Companies should seek to implement robust practices to prevent bribery and corruption, and investors should expect company managers and boards to address these issues for the benefit of sustainable value creation. One aim of this Guidance is to inform investors and their representatives when engaging with companies on matters relating to anti- corruption practices. ICGN encourages members to consider anti-corruption practices as part of their standard review of corporate governance of the companies in which they invest.

2.2 Guidance on anti-corruption practices

ICGN identifies four areas for investors to consider when raising the subject of anti-corruption with companies:

1. Policy
2. Procedures and enforcement
3. Transparency
4. Reporting, auditing and benchmarking
5. Voluntary initiatives

The Guidance is meant to help investors to make better informed decisions regarding the anti-corruption practices of the companies in which they invest. The guidance also aims to provide clear good practice standards, against which companies may feel it appropriate to adopt and report.

2.2.1 Policy

Investors should encourage companies to have clearly stated policies to address anti-corruption throughout the organization. These policies should be endorsed at the executive management and board levels and clearly communicated within the company. The board has a particular role to play in underscoring the tone and commitment to addressing corruption and related conduct risks and should actively monitor the company's compliance and risk oversight relating to anti-corruption.

Questions to guide engagement:

1. Does the company consider corruption to be a risk? How material is this risk, and in what areas of the company's operations is it likely to arise?
2. Does the company have a formal published policy, approved by the Board, on managing the risks posed to the business by bribery and corruption?
3. If so, does this policy:
 - commit the company to eliminating bribery and corruption within the business?
 - come under the oversight of the board of directors, or an appropriate board sub-committee, such as the audit or governance committee?
 - define corruption broadly to include any gifts or services which might result in improper influence including, but not limited to, cash?
4. Is there a zero-tolerance regime in place? The concept of zero-tolerance should be clearly explained so that is understood by company employees.
5. Does the policy cover payments of gifts or services to public officials as well as commercial counterparties? Does the company engage in open contracting?

6. Does the policy address facilitation payments and detail the safeguards the company has taken to avoid abuses in this area?
7. Does the policy address potential associated conflicts of interest, including related party transactions and political lobbying or donations?
8. Does the policy extend to third parties, such as agents of the company?
9. Does it extend to the supply chain of the company and to other affiliated parties or partners, such as joint ventures?
10. To what extent is “anti-corruption” embedded within the culture of the company? What sort of actions will prove “counter cultural”?
11. Is the anti-corruption policy part of the selection process for new contractors?

2.2.2 Procedures

The company should implement comprehensive procedures to ensure effective understanding and implementation of anti-corruption policies.

Questions to guide engagement:

12. Does the company have comprehensive systems and procedures to ensure the effective implementation of the policy?
13. If so, do these procedures include: outreach to staff, suppliers, contractors, clients and other business partners, such as intermediaries, agents and consultants? What is the role of the Board in setting, promoting and observing these procedures?
14. Is there formal regular training, particularly for at-risk personnel and other key individuals inside and outside the company? Is company policy made clear to all staff?
15. Is there regular internal audit or external assurance of the effectiveness of these systems?
16. Has the company ever sought external audit of its policies and their effectiveness and if so, to what effect?
17. Is there prompt reporting of information relating to conduct or corruption breaches for the attention of the board? Is the board aware of how to respond in cases of corruption breaches?
18. Are there appropriate links to remuneration systems (in particular, to avoid inadvertently incentivising revenue generation that includes corrupt payments)?
19. Are there appropriate sanctions for individuals found to have breached the policy, including dismissal?
20. Is there a confidential internal reporting programme, such as an “employee reporting hotline”, to ensure that information about potential breaches of the policy is reported upwards as appropriate?

21. To whom is the report, made, for example, to a third party? What enforcement action is taken following such reporting? Does the company have policies and systems in place aimed at protecting employee whistle-blowers against potential retaliation or intimidation?
22. Does the board take responsibility for regular monitoring of the effectiveness of this system?
23. Does the company review a target company's anti-corruption systems and track record as part of any pre- and post-merger, joint venture or acquisitions due diligence process?
24. Does the company review joint venture partners' anti-corruption systems?
25. Do senior management encourage a culture of transparency and integrity through their own behavior? How does the Board oversee this?

2.2.3 Transparency

The company should clearly communicate its policies and procedures on anti-corruption to investors and other interested parties. This includes an explanation of the nature of board oversight.

Questions to guide engagement:

24. Does the company have internal reporting processes to the board or appropriate board committee on the number and types of relevant incidents that have been detected and remedial actions taken?
25. Does the company disclose its position on matters of public policy, political lobbying activities (including those undertaken through trade organisations and other intermediaries), political contributions and any charitable or social payments that may have enabled the company to obtain improper business benefits?
26. What reporting standards does the company use (GRI, SASB or other) to report on anti-corruption activities?

2.2.4 Reporting, auditing and benchmarking

Questions to guide engagement:

The company should benchmark its own capabilities relative to established standards and peers. This enables managers, boards, investors and stakeholders to understand a company's relative strengths and weaknesses relating to corruption risks.

27. Is there regular internal audit or external assurance of the effectiveness of these systems?
28. Has the company ever sought external audit of its policies and their effectiveness and if so, to what effect? Is this benchmarked over time?

29. Does the company make the use of third-party benchmarking?

2.2.5 Voluntary initiatives

Reflecting the economic importance of maintaining free markets and a level competitive playing field, investors and companies should participate in the public policy debate and be prepared to act collectively to address anti-corruption at both a micro and a macro level.

Questions to guide engagement:

30. Where appropriate, does the company participate actively in collaborative efforts with external parties, including other businesses, governments and civil society groups or non-governmental organisations to promote a corruption-free business environment?
 31. Does the company support international conventions combating corruption, including the adoption of beneficial ownership transparency and inclusion of anti-corruption provisions in trade deals?
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Appendix

Annex 1: Resources

Resources from other anti-corruption bodies internationally

- Department of Justice (US) November 2012, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* <https://www.justice.gov/criminal-fraud/fcpa-guidance>
- Ministry of Justice (UK) March 2011, *Guidance to Help Commercial Organisations Prevent Bribery* <https://www.gov.uk/government/publications/bribery-act-2010-guidance>
- Global Anti-Bribery Guidance: comprehensive resources website provided by Transparency International www.antibriberyguidance.org
- OECD (October 2016) Anti-Bribery Policy & Compliance Guidance for African Companies <https://www.oecd.org/corruption/anti-bribery-policy-and-compliance-guidance-for-african-companies.htm>
- Agence Francaise Anticorruption Guidance to Sapin II, France, 2018 https://www.agence-francaise-anticorruption.gouv.fr/files/files/AFA_rapportAnnuel2017GB.pdf
- United Kingdom, The United Kingdom Anti-Corruption Strategy, 2017-22 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/667020/6.3323_Anti-Corruption_Strategy_PRINT.PDF

International organisations active in anti-corruption advocacy

There are many organisations, both in the private and public sector, that provide leadership and guidance to companies and investors relating to anti-corruption practices. Some of the most active global bodies include:

The Center for Political Accountability: Focus on political lobbying and donations

The Extractive Industries Transparency Initiative (EITI): Sectoral focus on anti-corruption in the oil, gas and mineral resource sectors

International Finance Corporation: Focus on business ethics and corporate governance as anti-corruption tools

The Organisation for Economic Cooperation and Development: OECD Anti-Corruption and Integrity Forum

TRACE International: Global anti-bribery business association

Transparency International: a global civil society organisation focused on fighting corruption. It maintains a global corruption perception index for individual countries.

The World Bank Governance Indicators: A downloadable data base of indicators from over 200 countries, to reflect quality of country governance, including rule of law and control of corruption

World Economic Forum: Partnering Against Corruption Initiative (PACI)

Annex 2: The economic cost of corruption

- The IMF cites 'the annual cost of bribery alone at about \$1.5 to \$2 trillion (roughly 2 percent of global GDP)'.
The World Economic Forum estimates that the cost of corruption is at least \$2.6 trillion – or 5 per cent of global gross domestic product.
- The OCED makes the point that corruption is not only a question of ethics, we simply cannot afford such waste.

- IMF research has shown that investment in corrupt countries is almost 5% less than in countries that are relatively corruption-free.
- The World Economic Forum estimates that corruption increases the cost of doing business by up to 10% on average.
- The World Bank estimates that over \$1 trillion is paid in bribes each year (2015).

Annex 3: International Anti-corruption Treaties/Conventions

United Nations, United Nations Convention against Corruption, 2005

OECD, OECD Anti-Bribery Convention, 1997

Council of Europe/European Union, Council of Europe Criminal Law Convention on Corruption, 1999

Council of Europe/European Union, Council of Europe Criminal Law Convention on Corruption, 1999

Council of Europe/European Union, European Union Convention Against Corruption Involving Officials, 1997:

Council of Europe/European Union, European Union Convention on the Protection of the European Communities' Financial Interests, 1995

African Union, African Union Convention on Preventing and Combating Corruption, 2006

Organisation of American States, Inter-American Convention Against Corruption, 1996

Annex 4: Key national legislation

Australia, Crimes Legislation Amendment (Combatting Corporate Crime) Bill, 2017

Brazil, Clean Company Act, 2014

Canada, Canadian Corruption of Foreign Public Officials Act (CFPOA), 1998

China, The Anti-Unfair Competition Law of the Peoples Republic of China, 2017

China, The Criminal Law of the Peoples Republic of China, 1997

France, Loi Sapin II, 2017

Germany, Administrative Offences Act, 2017

Germany, German Criminal Code, 2013

Germany, Law on Fighting Corruption (Gesetz zur Bekämpfung der Korruption), 2013

Russia, Russian Federal Anti-Corruption Law, 2018

United Kingdom, The Bribery Act, 2010

United States of America, US Foreign Corrupt Practices Act (FCPA), 1997

Annex 5: Acknowledgements

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ICGN

International Corporate Governance Network

Contact

Email: policy@icgn.org

Phone: +44 (0) 207 612 7011

Post: ICGN Secretariat, Saffron

House, 6 -10 Kirby Street London

EC1N 8TS, UK

