
Chapter 3

Corporate compliance programs and integrity systems

All stakeholders must contribute to the fight against corruption in business. Businesses, which are often the source of bribes and illicit payments, also have a role in reducing corruption—and have begun to act accordingly. Individual companies are taking action, and some industries in specific countries have taken collective steps as well. This chapter summarizes anti-corruption action at the individual-company level, which was discussed in the workshop on Corporate compliance programs and integrity systems. (Chapter 5 presents the workshop on collective action by businesses).

In the wake of numerous corporate scandals and in an ever-changing regulatory environment, business leaders are becoming more aware of the legal and reputational risks associated with corruption. This workshop addressed the components of effective corporate compliance programs and tools to assist business, large and small, to design and implement appropriate integrity systems.

Three overall themes—“three ‘Ts’”—stood out.

- “Tone at the top.” In business, as in government, strong leadership and personal commitment from the top are essential.
- “Tone in the middle.” Statements of principle from company leadership are not sufficient. Companies also need effective ethics and compliance systems to ensure that middle management endorses and applies anti-corruption policies.
- “Trust.” Companies need the trust of governments and customers to secure their social “license to operate.” They also need the trust of their employees if their anti-corruption strategies are to be taken seriously.

Rebecca Li of Hong Kong's Independent Commission Against Corruption (ICAC) chaired the workshop. The other participants included

- One company practitioner: Eddie How, Regional Head of Business Integrity, Shell Eastern Petroleum Pte Ltd, Singapore.
- Two consultants: Neil Thamotheram, PriceWaterhouseCoopers, (Thailand), and Peter Coleman. Deloitte (Singapore);
- One civil society representative: Jermyn Brooks, Director, Private Sector Programs, Transparency International; and
- One regulator: Juthika Ramanathan, Accounting and Corporate Regulatory Authority (ACRA), Singapore.

1. Drivers: why do companies need to develop compliance and integrity programs?

Recent events have highlighted the need for integrity in business.

The scandals surrounding the collapse of Enron led to calls for higher standards of senior management accountability, both in the US and internationally. The Enron affair undermined public trust in major companies, and governments and companies themselves are still working to rebuild confidence. One important outcome was the 2002 US Sarbanes-Oxley Act (SOX) which has led to important corporate governance reforms. Other countries have introduced their own corporate governance reforms; Japan's measure, passed into law in 2006, is known informally as "J-Sox".

A second, related driver has been tighter enforcement of the US Foreign Corrupt Practices Act (FCPA). The FCPA applies to both US companies and individuals, and foreign companies listed in the US. All OECD countries now have legislation similar to the FCPA in place—criminalizing bribery of foreign public officials anywhere in the world (for instance, in Asia and the Pacific). Enforcement of such legislation has increased in OECD countries because of the monitoring mechanism under the OECD Anti-Bribery Convention.

Many countries are now stepping up their anti-corruption efforts. The clearest example is Siemens, which was convicted of foreign bribery and subjected to millions of euros in fines and confiscation in the US and Germany.

Asia-Pacific countries are also cracking down on companies that bribe. Juthika Ramanathan's presentation on Singapore's Accounting and Corporate Regulatory Authority (ACRA) and Mr. Wang Huanggeng's view from the Chinese Ministry of Supervision present ongoing initiatives to combat private sector corruption.

Finally, high ethical standards are good business, enabling companies to attract and retain the best staff; win the respect of customers and suppliers; and ultimately operate profitably and sustainably.

2. What are the keys to good compliance programs?

Transparency International, the International Chamber of Commerce and the World Economic Forum's Partnering Against Corruption Initiative have issued guidelines for effective compliance programs. Key factors include:

- Strong leadership. Business leaders must make clear, through action as well as words, that high standards of ethics are essential to their companies' success.
- Codes of ethics. Companies' ethics codes must take into account their specific industries and cultures. Shell's Statement of General Business Principles is an example.
- Implementation. Statements of principle are not enough. Company compliance programs must include training, risk assessments, and audits.

Peter Coleman of Deloitte emphasized the importance of "whistle-blowing." Companies must provide concerned employees with a secure means of communication to report suspected ethical lapses to senior management. Whistle-blowing systems must be properly publicised within the company, but also be truly confidential.

Eddie How explained how Shell's integrity system works. The Business Integrity Division receives extensive resources, and Mr. How's sole responsibilities are related to business integrity.

The main elements of successful compliance programs apply to both companies and public sector agencies. Clare Wee of the ADB's Integrity Division cited similar components in the workshop on Fighting Corruption and the Sustainable Development Agenda.

3. Some problem situations

The workshop briefly addressed how to deal with problem situations. What can companies do if they believe that competitors are winning contracts through bribery? Or if they discover evidence of internal corruption?

Several important factors should guide companies' actions in these situations, including the quality of evidence and the likely attitude and responsiveness of the host government.

Where companies uncover evidence of internal corruption, they may be reluctant to report to government agencies they believe to be corrupt. Similarly, companies are often reluctant to report cases of bribery by their competitors, particularly if the evidence is incomplete. They may choose to stop competing for projects in the same jurisdiction, rather than reporting their suspicions.

4. Challenges

Challenges in promoting corporate compliance and integrity systems include

- poor ethical standards at the senior level: the “tone at the top” is not always as positive as it should be;
- ensuring compliance at the middle-management level is always demanding, especially in high-risk countries;
- major companies (such as Shell) can afford business integrity divisions; this is more difficult for smaller firms with limited resources;
- honest companies have to develop strategies to win business in the face of competition from corrupt rivals.

5. Emerging best practice for business: Selected resources

- Business Anti-corruption Portal, in addition to providing country information, includes flow charts explaining the due diligence process etc. www.business-anti-corruption.com/Home.asp
- Control Risks and Simmons & Simmons. 2007. Facing up to Corruption. A Practical Business Guide, offers a combination of analysis and advice www.control-risks.com/pdf/Facing_up_to_corruption_2007_englishreport.pdf
- International Chamber of Commerce Rules of Conduct and Recommendations to Counter Extortion contains a set of principles that can be used as a model for individual company codes www.iccwbo.org/policy/anticorruption/
- OGP—International Association of Oil & Gas Producers is a leading industry association. The OGP has published a number of reports on issues related to corruption. These include Guidelines on Reputational Due Diligence www.ogp.org.uk/pubs/356.pdf and OGP Training

Template. Combating Corruption www.ogp.org.uk/pubs/352.pdf

- TRACE International is a US-based membership organization, originally set up to vet and validate commercial agents and other intermediaries. Most of its resources are now restricted to members, but a number of “articles and publications” are publicly accessible www.traceinternational.org
- Transparency International Business Principles for Countering Bribery include a guidance document and a six-step implementation process www.transparency.org/global_priorities/private_sector/business_principles
- Transparency International Anti-corruption Training Manual is designed specifically for the infrastructure, construction and engineering sectors. The manual aims to help users achieve a better understanding of corruption and how to avoid it. It can be used by individuals, and by companies as part of their corporate training www.transparency.org/tools/contracting/construction_projects/section_b
- UN Global Compact—‘Business Against Bribery’ is a book-length report with examples of best practice in due diligence and other areas www.unglobalcompact.org/Issues/transparency_anticorruption/Publications_x_Documents.html
- World Bank: “Towards a More Systematic Fight Against Corruption—the Role of the Private Sector” presents an e-discussion from July 2006 siteresources.worldbank.org/CGCSRLP/Resources/ediscussion.pdf
- World Economic Forum—Partnering Against Corruption Initiative www.weforum.org/en/initiatives/paci/index.htm

The workshop on *Corporate compliance programs and integrity systems* presented a number of perspectives on ethical business behaviour. The drivers that motivate companies to develop compliance and integrity programs include (i) increased regulation resulting from high-profile corporate scandals; (ii) stricter enforcement of the US Foreign Corrupt Practices Act (FCPA) including against non-US companies listed on US stock exchanges; (iii) stricter enforcement of foreign bribery in other parties to the OECD Anti-Bribery Convention; (iv) legal reforms in emerging markets; (v) the financial crisis and the decreasing public trust in companies; and (vi) the business case — unethical behaviour is not sustainable in the current business environment.

Challenges include how to operate in an environment with corrupt competitors, internal corruption within a company and/or a group of companies, and how to address the specific needs of SMEs. The role of the public sector was

also debated; speakers stated that legal frameworks should address private-to-private corruption and that corporate disclosure requirements can help to strengthen the regulatory framework. Participants concluded both policy and regulation are needed, in addition to voluntary initiatives designed and implemented by the private sector. The fight against corruption requires that the private and public sectors, as well as civil society, work together.

Corporate Compliance Programs and Integrity Systems: Singapore's Experience

Juthika Ramanathan, Chief Executive, Accounting and Corporate Regulatory Authority (ACRA), Singapore

The Accounting and Corporate Regulatory Authority (ACRA) of Singapore is responsible for the registration and regulation of companies, businesses, limited liability partnerships, and public accountants and accounting entities. Hence, ACRA plays a direct role as the regulator of corporate bodies, overseeing their incorporation and operational affairs including compliance with relevant legislation such as the Companies Act. In its oversight of the auditing profession, ACRA also indirectly works toward ensuring corporate compliance with disclosure requirements and the integrity of the financial reporting regime.

ACRA's vision is for Singapore to be the trusted and best place for business. Our mission is to provide a responsive and trusted regulatory environment for businesses and public accountants. Essential to achieving this mission is continually strengthening the integrity of our regulatory framework through constant review and refinement of our legislation and policies, as well as effective corporate regulatory actions.

A disclosure-based regime

Singapore operates a disclosure-based regime based on a regulatory strategy involving an informed market that reacts to relevant information. On a fundamental level, company directors have the duty to act in the best interests of the corporate entity. These include disclosure obligations, which are primarily the responsibility of directors, who rely on information and advice given by others such as advisors or employees under certain conditions. Annual audits required of larger companies contribute to ensuring the integrity of the information that is conveyed to shareholders and other stakeholders (such as creditors)—and help guarantee that corporations are equipped with a system of internal controls which assure effective corporate compliance with relevant obligations.

Government bodies and relevant laws

ACRA and other bodies administer several pieces of legislation, which contribute to upholding the integrity of the disclosure-based regime in Singapore. Apart from ACRA, the other relevant regulatory bodies are:

- Singapore Exchange, which regulates listed companies;
- Monetary Authority of Singapore, which supervises financial markets;
- Commercial Affairs Department and the Corrupt Practices Investigation Bureau, which investigate and enforce relevant laws; and
- Insolvency and Public Trustees Office, which administers insolvency laws.

The role of ACRA

ACRA administers business legislation such as the Companies Act, Business Registration Act, and the Limited Liability Partnerships Act. The upcoming Limited Partnership Act will also be administered by ACRA (the Bill was first read in Parliament in October 2008). ACRA also administers the Accountants Act and oversees the registration and regulation of public accountants. One of the objectives of corporate regulation is to minimize corporate misdeeds, including but not limited to corruption.

The Companies Act and directors' duties

Directors are key players in controlling companies. A natural starting point in regulating corporations is to ask what duties are imposed on these leaders.

Under the Companies Act, directors have a duty to “at all times act honestly” (Companies Act, section 157) and to disclose any “conflict of interests” to the other directors (section 156). An officer or agent of a company shall not make improper use of any information acquired by virtue of his position to gain an advantage for himself or others, or cause detriment to the company (section 157). Two other mechanisms aim to regulate conduct of directors and provide adequate transparency. First, certain transactions—such as loans to directors, loans to persons connected to the directors of a lending company, or payments to directors for loss of office are prohibited—unless shareholders approve of such transactions or the transactions fall under the exceptions provided in law. Second, a company must keep a register to reflect the directors' shareholdings or interests in shareholdings in the company or related corporations.

Having laws in place is just a starting point. ACRA also undertakes to facilitate compliance with these legal obligations through several initiatives to

ensure a high level of awareness. For example, a letter sent to every newly appointed director details the legal obligations of directors. Talks and seminars are also regularly conducted by ACRA to raise awareness of these and other compliance issues.

The Companies Act and corporate transparency

Transparency is an enemy of corruption. Various laws are in place to achieve transparency of company affairs. The Companies Act requires that companies maintain accounting records for 5 years (Companies Act, section 199). Directors must ensure that true and fair accounts compliant with Financial Reporting Standards are presented to shareholders (section 201). Failure to do so is an offense punishable with up to 2 years in prison (section 204). Companies are required to file their accounts with ACRA, and these can be viewed by the public (section 197). Public companies are legally obliged to have adequate internal controls (section 199(2A)).

Adding to the transparency of corporate affairs is the legal obligation to maintain various registers, some of which the public may inspect, including:

- Register of members;
- Register of directors, managers, secretaries and auditors;
- Register of directors' shareholdings;
- Register of substantial shareholders;
- Register of debenture holders; and
- Register of charges.

Minute books must be kept with records of all general meetings and directors' meetings. Failure to do so is an offense (Companies Act, section 188). The minute books are open to inspection by members (section 189). Other information filed with ACRA, and therefore available to the public, includes

- basic company information such as the constitution of the company and the particulars of its shareholders and directors;
- charges created by the company and changes in status;
- financial data on the company; and
- application to winding up or deletion from the corporate registry.

Auditing: Companies' obligations

Quality auditing and corporate financial reporting form the foundation of market confidence, which leads to a climate that promotes international investment and growth. Singaporean law therefore requires all companies to

maintain accounting records, and conduct annual audits. Private companies with a turnover below SGD 5 million and dormant companies are exempt from these obligations. These audits provide independent assurance that the accounts present a true and fair view, and that internal controls are adequate.

The integrity of accounts of listed companies is particularly important. As such, the audit of their accounts also is more significant. Since 2004, listed companies are required have an Audit Committee to facilitate audits and ensure their effectiveness.

Auditing: Auditors' obligations

Auditors may uncover wrongdoings such as corrupt acts. The law requires that auditors report any breach of law or offense of fraud or dishonesty (Companies Act, section 207(9A)). Obstructing an auditor from doing so is a crime (Companies Act, section 207(10)).

Auditing: Maintaining professional standards

ACRA plays a role in the maintenance of high standards for professionals qualified to conduct audits. The standard is maintained through registration requirements consisting of a mixture of technical knowledge and experience.

Audit quality is the cornerstone of market confidence, ensuring reliability of the financial information upon which the market makes capital allocation decisions. ACRA regards the Practice Monitoring Program as an important regulatory instrument that promotes audit quality.

Essentially, the Practice Monitoring Program is a mechanism for ACRA to assess the quality of the work of Singapore auditors. The program also serves to provide quality assurance to the market by ascertaining whether public accountants have complied with internationally recognized standards, methods, procedures and other requirements prescribed under Singaporean law. It also aims to determine the tone at the top of the audit firm. This assurance gives users of financial reports increased confidence in audit opinions.

Financial Reporting: Maintaining confidence in Singapore's financial reports

ACRA believes that compliance with accounting standards promotes confidence in Singapore's corporate financial reports and facilitates a transparent and informed market. High-quality corporate financial reporting by directors is vital to maintaining a trusted business environment.

ACRA conducts the financial surveillance program to monitor and take necessary enforcement action on compliance of Singapore incorporated companies' financial statements with requirements as specified in the Companies Act and the Financial Reporting standards.

ACRA carries out its financial surveillance program with a risk-based approach targeted at listed companies. It emphasizes the importance of directors taking ownership of the quality of corporate financial reporting.

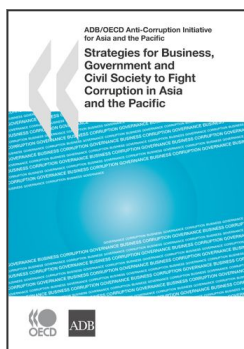
Dealing with noncompliance

Inevitably, there will be instances of noncompliance. What is important is that such instances are dealt with in a swift and just manner. Typically, noncompliance might lead to:

- belated compliance where defaulters approach ACRA voluntarily;
- complaints, which ACRA will act upon;
- discovery and enforcement action by ACRA financial surveillance.

Conclusion

Trust is essential for the wheels of business to turn smoothly. Hence, the integrity of corporate officers and of the information they provide to investors cannot be overstated. ACRA recognizes this and will continue to work toward maintaining a trusted environment for business.



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