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to Combating Bribery: A  
Study of Codes of Conduct**

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A Study of Codes of Conduct**

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### *Abstract*

Bribery is becoming a high priority public concern and the legal framework and enforcement apparatus used in the fight against it are being developed in the OECD and elsewhere. Reflecting these civic and legal pressures, firms now often deal with bribery in their codes of corporate conduct -- public statements of commitment to abide by a certain standard of business conduct. The question of what firms do internally in the fight against bribery is probably as important to the successful outcome of that fight as formal anti-bribery law and as the attitudes of the public. This paper looks at corporate approaches to anti-bribery commitment and at managerial approaches to implementing these commitments in an inventory of 246 codes of conduct.

The paper shows that, while bribery is often mentioned in the codes of conduct, there is considerable diversity in the language and concepts adopted in anti-bribery commitments. This diversity is a feature of the language used in describing parties to bribery and in defining which activities are prohibited (e.g. promising bribes versus actually giving them, gift and entertainment, and solicitation). This diversity of language and concepts suggests that it might be useful to extend and deepen efforts in business associations and international organisations to build consensus on the meaning of bribery and corruption.

In contrast, the bribery codes show evidence of an emerging consensus on managerial approaches to combating bribery. This involves the deployment of a mix of tools, including financial record keeping, statements by executive officers, internal monitoring, whistle-blowing facilities, creation of compliance offices and threats of disciplinary action. The apparent agreement on managerial approaches may reflect the fact that firms already have readily transferable expertise relevant to the fight against bribery since it uses the same management tools as other problems of financial control and asset protection.

## **Business Approaches to Combating Bribery: A Study of Codes of Conduct**

### ***Introduction***

Bribery and corruption are now a major public concern in many countries, partly as a result of press coverage of corruption involving public officials. Many OECD countries (and others adhering to the OECD Bribery Convention) have enacted legislation prohibiting bribery of foreign public officials. Mainstream economists have also, somewhat belatedly, begun to focus on the issue. Bribery and corruption are now recognised by economists to be a major impediment to development and a subject worthy of both academic scrutiny and policy redress<sup>1</sup>. Both the World Bank and the International Monetary Fund have made high-profile commitments to rooting out corrupt practices in their lending operations and in the transactions that follow from these operations. This paper looks at another group of actors -- international businesses -- to ascertain how they have formulated anti-bribery commitments and compliance programmes in response to these "broad shifts in moral consensus" (Donaldson and Dunfee 1999).

Although the international business community cannot fight bribery and corruption on its own, it nevertheless has a crucial role to play. Indeed, some would argue that the management tools that businesses use in the fight against bribery are as important to the successful outcome of that fight as formal law and public enforcement. Many firms have responded to the challenges of legal and ethical compliance in this area by using management control techniques that have emerged over the last twenty years. These compliance efforts often begin with a written expression of areas of business ethics that are relevant to the firm's activities — this is sometimes called a "code of corporate conduct". Such codes are voluntary expressions of commitment, made to influence or control business behaviour for the benefit of the firm itself (*e.g.* to enhance company reputation or to minimise risk of criminal or civil sanctions) and of the communities in which it operates. Often the codes describe how the firm intends to implement its commitments. Issuance of these codes is usually accompanied by the adoption of special management systems designed to help firms honour their commitments in their day-to-day operations. The codes are often addressed to employees, as much as to the general public. They seek to heighten employees' awareness of corporate policy and enlist their support in the fight against bribery. This paper looks at a large set of corporate codes and analyses how companies frame their anti-bribery commitments and how they implement them.

Two factors have complicated firms' efforts to clarify and communicate corporate policy in this area. First, it is not easy to define exactly what constitutes bribery and other corrupt practices. Clear-cut cases do exist, but greyer areas arise in connection with facilitation payments, gifts and hospitality, conflicts of interest and use of intermediaries. The assessment of what constitutes acceptable practice may also be coloured by local circumstances; but cultural diversity and varying local conditions can also be used as excuses for inappropriate business conduct. Furthermore, some members of the international business community may be justified in claiming they often are victims of the crime of extortion and not perpetrators of the crime of bribery. Trying to formulate reasonable guidelines for business behaviour in these contexts can present problems.

The second factor is the relative scarcity of widely accepted international principles upon which firms might draw in formulating their commitments. The international policy framework for bribery is less developed than in other areas such as labour, human rights and environment. Corporate commitments in human rights and labour relations can take inspiration from an extensive body of international declarations

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1. See Bardhan (1997) for an extensive review of the economics literature on corruption.

(e.g. the UN Universal Declaration of Human Rights and various ILO declarations) and institutional expertise (like that in the ILO). More recently, the Rio Declaration and Agenda 21 have contributed to clarifying corporate environmental responsibilities. Even if companies do not explicitly acknowledge such sources, the concepts and definitions used in the codes reflect their influence. Although several prominent NGOs, business groups, the OECD and other inter-governmental organisations work to strengthen the international framework for bribery, no equivalent, formal expressions of international consensus on business rights and responsibilities exist for bribery and corruption. This is reflected in the heterogeneity of the language and concepts the codes use to describe their anti-bribery commitments.

This paper looks at business approaches to commitment and implementation in the fight against bribery by examining the texts of 246 codes of corporate conduct issued by individual firms, business associations, non-governmental organisations and international organisations. The codes emanate mainly from businesses and business associations<sup>2</sup> from 24 OECD countries and cover the entire range of economic activity (primary production, manufacturing and industry, services)<sup>3</sup>. Annex 1 describes how this inventory was accumulated and the limitations of the analysis.

The first section of the paper looks at how the 246 codes treat bribery and corruption, particularly the scope of commitments and the definitions used. It shows that bribery and corruption are among the most commonly cited issues, and that the definitions used and scope of commitments vary among the codes. The second section, on implementation, shows that bribery codes are much more likely to deal with implementation than non-bribery codes. This section is based on the 118 codes in the 246-code inventory that have been issued by individual firms.

The results of this research can be summarised as follows. The texts of the bribery codes give little evidence of agreement or convergence in the scope of or definitions used in firms' anti-bribery commitments. Diversity of definitions and concepts is a key feature of the anti-bribery commitments in the inventory. This suggests that the international business community is still struggling to come to grips with the complex ethical questions that arise in defining appropriate business conduct in this area. In contrast, the evidence from the codes suggests that firms broadly agree on implementation procedures. The codes that mention bribery are much more likely to deal with implementation issues than those that do not. The bribery codes also contain more elaborate language on implementation procedures than the non-bribery codes. The procedures noted in the bribery codes cluster heavily around record-keeping/reporting and a number of internal mechanisms, such as signing by executive officers, creation of compliance committees, internal auditing and whistle-blowing facilities.

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2 Businesses and business groups issued the majority of codes in the inventory. A few were issued by NGOs, alliances of labour and business, and inter-governmental organisations.

3 See GORDON, KATHRYN and MIYAKE, MAIKO (1999), *Deciphering Codes of Corporate Conduct: A Review of Their Contents*, OECD Directorate for Financial, Fiscal and Enterprise Affairs Working Papers on International Investment, Number 99/2, October, for a more detailed description of the inventory.

## *Anti-Bribery Commitments*

The difficulty of framing anti-bribery commitments resides mainly in identifying and describing the transactions that should be proscribed. It is clear from the words -- bribery and corruption -- that they refer to transfers of resources that are in some sense “bad”. However, this section will show that organisations are having difficulty moving from this general characterisation to a more operational description of bribery and corruption. The economics literature is just beginning to grapple with the problem of definition. Three particular difficulties -- visible in this study of codes, in public debate and in the economics literature -- are:

- *Drawing the line between acceptable relationship-building and corrupt practices or bribery.* Some analysts point out that social attributes of an economic transaction -- for example, the existence of such intangible assets as trust and reputation among the parties to the transaction -- can be important determinants of transactions costs in any type of economic system, be it an advanced capitalist economy or a group of hunter gatherers (North 1990, Rose-Ackerman 1998). The codes themselves show an acute awareness of this need to draw a distinction between the acceptable *quid quo pro* and networking that are necessary to develop business relationships and undue influence or corrupt practices.
- *Extortion and facilitation payments.* The business community has pointed out on numerous occasions that many payments that might fall under the heading of corruption are actually payments made in response to extortion by private or public actors. The problem of “facilitation payments” -- that is payments to civil servants for routine administrative services to which the enterprise is clearly entitled -- also poses certain difficulties, both for the private companies trying to formulate guidelines for employees and for law makers. For both, the problem lies in finding a formulation that recognises the difficult situations that enterprises may face in certain business environments without creating a huge loophole in the anti-corruption guidelines.
- *Tolerance of different practices in different cultures as an excuse for bribery and corrupt practices.* The codes deal, explicitly or implicitly, with culturally- and politically based divergences of view -- people are often confident that they will know bribery when they see it, but they do not agree on what the term means when faced with concrete situations. This divergence of view, some of which is grounded in cultural differences, is often discussed in the bribery literature (e.g. Elliot 1997). Gift giving and entertainment are culturally specific forms of economic transaction and the codes show little evidence of consensus on how to deal with this diversity of acceptable practice. In addition, the problems posed by what might be called the “endemic bribery” that exists in many countries are also mentioned in many codes. Many of the codes mention different cultural perceptions of corruption and the problem of endemic bribery.

Despite the definitional problems, a large number of businesses have made public commitments in this area and other organisations such as NGOs and business associations have issued codes of conduct that mention bribery. In analysis of the texts, a code is scored as a bribery code if it mentions money transactions, political contributions, gift giving, or entertainment. Twenty-three per cent of the codes in the OECD inventory of codes — 56 of them — deal with bribery and corruption (Table 1). This makes bribery the fourth most commonly cited issue area in the code inventory. The three other commonly

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4. For example, one US code states that federal regulators may be offered complimentary donuts and coffee, but that they must pay for their own sandwiches.

Table 1. **The Attributes of 56 Bribery Codes**

Attributes	Percentage of bribery codes*
Parties to bribery:	
- Bribery of public officials	63
- Bribery of private actors	64
- Both	38
Proscribed activities:	
<i>Vis-à-vis public officials:</i>	
- Giving bribes only	18
- Employees offering bribes	41
- Political contributions	32
<i>Vis-à-vis private actors:</i>	
- Giving bribes only	23
- Employees offering bribes	59
- Receiving bribes by firm's employees	23
- Solicitation of bribes by employees	54
<i>Conditions under which entertainment and gift giving is prohibited:</i>	
- Excessive entertainment and gift giving	39
- Seen as inducement to business	39
- Exceeds business practices	30
- Violation of laws	20
- Damaging corporate image	18
- Requirements for internal reporting of gifts	34

\* These are calculated as:  
 $100 * [\text{the number of codes mentioning attribute}] \div [\text{the number of codes citing bribery}]$

Source: OECD

mentioned issue areas are labour relations (60 per cent), environment (60 per cent) and consumer protection (48 per cent).

The 56 codes vary widely in their definitions and approaches to commitment. Because of fundamental differences in firms' circumstances, complete homogeneity of the codes' coverage and commitments is neither expected nor desirable. Taken as a whole, however, the bribery codes attest to a lack of consensus on the scope of bribery commitments and on the basic vocabulary and concepts used in making these commitments<sup>5</sup>. The codes encompass a broad range of approaches to bribery, corruption, political contributions and gift giving. Thirty-six per cent of the bribery codes contain only general statements (*e.g.* "to reject bribery in all its forms"). Others offer detailed texts on bribery, corruption and influence. Codes address corrupt practices *vis-à-vis* both private and public persons, sometimes dealing with one or the other and sometimes with both. In relation to private bribery, the texts deal variously with customers, suppliers, employees and competitors. Many of the codes contain language prohibiting employees (and sometimes their friends and families as well) from accepting gifts or bribes.

Thus, the codes show a variety of approaches to prohibition: many do not attempt to define "bribery" and "corruption" while others give detailed guidance on the activities that could constitute them. Three dimensions along which the codes differ are:

- *Parties to bribery.* The codes focus on private bribery and corruption (64 per cent of the bribery codes) about as often as corruption of public officials (63 per cent). Thirty eight per cent mention both.
- *Active versus passive.* The codes deal with both active bribery (giving bribes) and the passive version (receiving them). For private bribery, 59 per cent of the codes prohibit offering or giving bribes, while 54 per cent prohibit attempts at solicitation.
- *Promising bribes versus actual bribery.* Most bribery codes go beyond prohibition of actual bribery to banning even the promise of a bribe (regardless of whether a briber is actually paid). For bribery involving public officials, 41 per cent of the codes proscribe offering bribes while only 19 per cent limit the definition to completed ones, and 23 per cent prohibit employees from receiving bribes, while 54 per cent prohibit solicitation.

It is somewhat surprising, given the attention paid to the issue by the business community, that extortion is mentioned only rarely in the bribery codes. None of the individual business codes mention the word "extortion" explicitly. Very occasionally, texts that might be interpreted as an oblique reference can be found; for example, "[group companies] insist on honesty, integrity and fairness in all aspects of their business and expect the same in their relationships with all those with whom they do business." Rather than establishing general principles for behaviour in relation to extortion, companies may prefer to deal with it on a case-by-case basis. For example, texts of the following type (in this case from the Chairman's letter endorsing the code) are common: "The Statement [i.e. code of conduct] gives guidance on how certain situations should be dealt with. However, it cannot possibly anticipate every situation concerning business ethics. There may also be times when you are faced with difficult decisions on aspects which are not covered specifically in the Statement. Should such a situation arise, I recommend that you discuss the matter with your Business Stream Director or Corporate Director." In other codes, employees are directed

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5. A number of other analysts have noted that there is little consensus on what constitutes bribery and corruption. Kaufmann (1999) positions the search for a taxonomy of corruption as a question for further "operationally-oriented" research. Gardiner (1993) also emphasises the need to make progress on building agreement on how to define corruption as the basis for a more concerted and effective anti-corruption effort.



to seek advice, when needed, from Legal Counsel or from the Compliance Officer. ” This presumably covers situations where employees must confront extortion attempts. In addition, it is expected that companies deal with the issue of extortion in any training that they might provide in relation to anti-corruption efforts. Of course, in more collective expressions of anti-bribery commitments by the business community, extortion can figure prominently. For example, the International Chamber of Commerce not only discusses “extortion”, but includes it in the title.

Another prominent issue -- facilitation payments (defined as paying for routine services that the company normally is entitled to receive)-- is mentioned in seven codes of conduct (that is, in 13 per cent of the bribery codes). A typical text from the code inventory is: “in some instances small ‘facilitation payments’ or tips are permissible if they are intended to secure a routine business service such as having a telephone installed or expediting a shipment through customs.” Another sample text from a financial services company is: “Although such payments are not always illegal [referring to “grease” payments], the company strongly discourages them and permits them only as a measure of last resort.” As with extortion, the relative scarcity of discussion of this issue in the codes contrasts sharply with the high profile given to this issue in public debate and in efforts to formulate appropriate legislation.

Nearly half of the bribery codes include text on “gifts and entertainment”. Most of these codes do not completely prohibit reception or giving of gifts or entertainment from business partners. Here, the border between acceptable business practice and bribery is, perhaps unavoidably, fuzzy. The codes use a variety of terms and concepts to provide guidance to employees on what is allowed and what is not. Concepts mentioned include: gifts or entertainment “not excessive in value” (appearing in 39 per cent of the bribery codes); “within the business norm” (30 per cent); “not seen as an inducement of business” (39 per cent); “does not violate the law” (20 per cent), and “does not damage corporate image”(18 per cent). Five per cent define monetary limits. Five per cent distinguish between cash and other items, making gifts and entertainment acceptable under certain conditions but prohibiting any transaction involving cash.

Thirty-two per cent of the bribery codes state that the firms do not make political contributions to persons holding office, candidates or political parties. A number of other issues also appear in some of the codes. Fourteen per cent treat employees and immediate relatives of employees in the same manner. Nine per cent acknowledge cultural differences among countries as a factor in determining appropriate gift giving. Among these codes, only one insists on strict guidelines; the others allow judgements of what is acceptable to be influenced by cultural considerations.

### ***Implementing the Bribery Codes***

The codes examined above reflect responses to two types of pressure. First, they respond to civic and market pressures coming from the public, from employees and from shareholders. Second, they reflect growing compliance pressures emanating from a legal environment that is evolving rapidly, as many countries enact or to extend their anti-bribery laws. The success of any attempt to control firms’ behaviour through law, regulation or any other system of social control inevitably depends on what firms do internally to comply. In many respects, the effectiveness of the organisational arrangements made by firms -- e.g. training, hierarchical controls, internal and external audits, record keeping -- are as important as laws, enforcement arrangements and societal pressures in determining the effectiveness of a system of control of corporate wrongdoing. Firms often have to invest heavily in the acquisition of expertise in order to learn how to deploy the different control instruments in response to different ethical and legal compliance challenges (controlling bribery poses different implementation than eliminating child labour). In this sense, getting the legal and civic environment right is only half the challenge when trying to create a

workable system of controlling various types of corporate wrongdoing -- the other half concerns managerial, operational and cultural processes within firms<sup>6</sup>.

This section describes what firms say about how they implement their anti-bribery commitments. The codes often contain implementation language; 45 per cent of the 118 corporate codes in the inventory discuss compliance.<sup>7</sup> Businesses face the challenge of implementing their commitments in often large, complex, geographically dispersed operations. Ultimately, whether and how they do so determine whether the commitments have meaning — and these factors, plus the effectiveness of implementation, become central to public perceptions of the significance of the codes.

The analysis below examines the texts of the 118 company codes<sup>8</sup> for their implementation content. Of these 118 company codes, 96 are addressed to the company itself, while 22 are addressed to the company's suppliers (only 2 of the supplier codes mention bribery). The analysis separates out the supplier codes from the others. It also looks at two broad types of implementation tools. First, it keeps track of the codes' treatment of record keeping and reporting (first set of bars in Figure 1.a). These implementation tools are relevant not only to anti-bribery compliance but also to such issues as protection of shareholders, asset security and protection against fraud. Second, the analysis keeps track of mentions of other general management tools (second set of bars in Figure 1.a). Detail is then provided as to the specific management tools mentioned. The more detailed analysis keeps track of 13 other attributes relating to standard management tools -- internal monitoring, monitoring suppliers, reports to Boards of Directors, use of compliance manuals, whistle-blowing facilities, signatures of directors, training, periodic compliance reviews by managers, employee signatures, internal auditing, disciplinary action and active communication. These attributes are defined and sample texts are given in Annex 2.

The bribery codes are much more likely to deal with implementation issues than the non-bribery codes. The first set of bars in Figure 1a makes it clear that bribery codes are twice as likely than non-bribery codes to make commitments relating to the quality of record keeping and reporting (63 per cent versus 33 per cent for the environmental codes). The second set of bars in Figure 1a, labelled "compliance discussed", includes any code that mentions any of the other compliance measures shown in the figure (that is, those not related to financial record keeping). Again, the bribery codes are almost twice as likely to discuss implementation as other codes (61 per cent of the bribery codes do so, versus just over 30 per cent of the environmental codes).

The bribery codes also show a distinctive approach to implementation. This approach attests to the strong relationship that exists between the problem of combating bribery and the more general financial

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6. Punch (1996) provides an extensive sociological and managerial analysis of the internal workings of corporate misbehaviour, with particular attention on a number of well-known cases. See also Conley and O'Barr (1997) for a discussion of the cultural and managerial basis of corporate misconduct and Scholz (1997) for a discussion of how firms' internal efforts can be integrated broader enforcement strategies.

7. Unlike the previous section (which was based on the full inventory of 246 codes), this one looks only at the 118 codes in the inventory that are issued by individual firms. The other main issuers — non-governmental organisations and business associations — may not have the same perspective on implementation as individual firms.

8. The firms issuing bribery codes tend to be very large, extractive-industry firms or capital-intensive manufacturers (often of branded durables or products with an important public-sector clientele). Some financial services and telecommunications firms and very large conglomerates are also represented. The issuers of the non-bribery codes tend to be much smaller. Their activities are more likely to be in branded apparel, toy or sporting goods manufacturing or mass retailing. For many of these firms, the codes tend to concentrate on other sets of commitments, especially those relating to core labour standards in the supply chain.

control problems that firms routinely face.<sup>9</sup> “Financial record keeping and reporting” is the single most important implementation measure in the bribery codes, while the non-bribery codes hardly mention it. The bribery codes are much more likely to mention a range of more specific internal measures — signing of codes by executive officers (57 per cent of them), internal monitoring (57 per cent), whistle-blowing (44 per cent), compliance officers or committees (35 per cent), use of compliance manuals (33 per cent) and reference to punitive action and reports to the Board of Directors (26 per cent). Differences in implementation strategy between bribery and non-bribery codes are less marked for other management tools (e.g. training, signatures by employees, managerial review and external monitoring; see Figure 1b).

Figure 2 shows the implementation procedures mentioned in the 22 supplier codes. Here the style of implementation is very different from that in evidence among the 96 company-addressed codes. Nearly two-thirds of the supplier codes make use of overt threat -- reference to punitive action. This almost always consists of the threat of terminating the business relationship. Another interesting difference is that external monitoring (third bar in Figure 2) is mentioned in nearly a quarter of these codes, whereas it is the least commonly mentioned tool among the company-addressed codes. This refers to monitoring that is undertaken by an organisation that is “independent” of both the issuing firm and of the supplier. Generally, the codes do not state that such monitoring will be done, rather they reserve the right to do so.

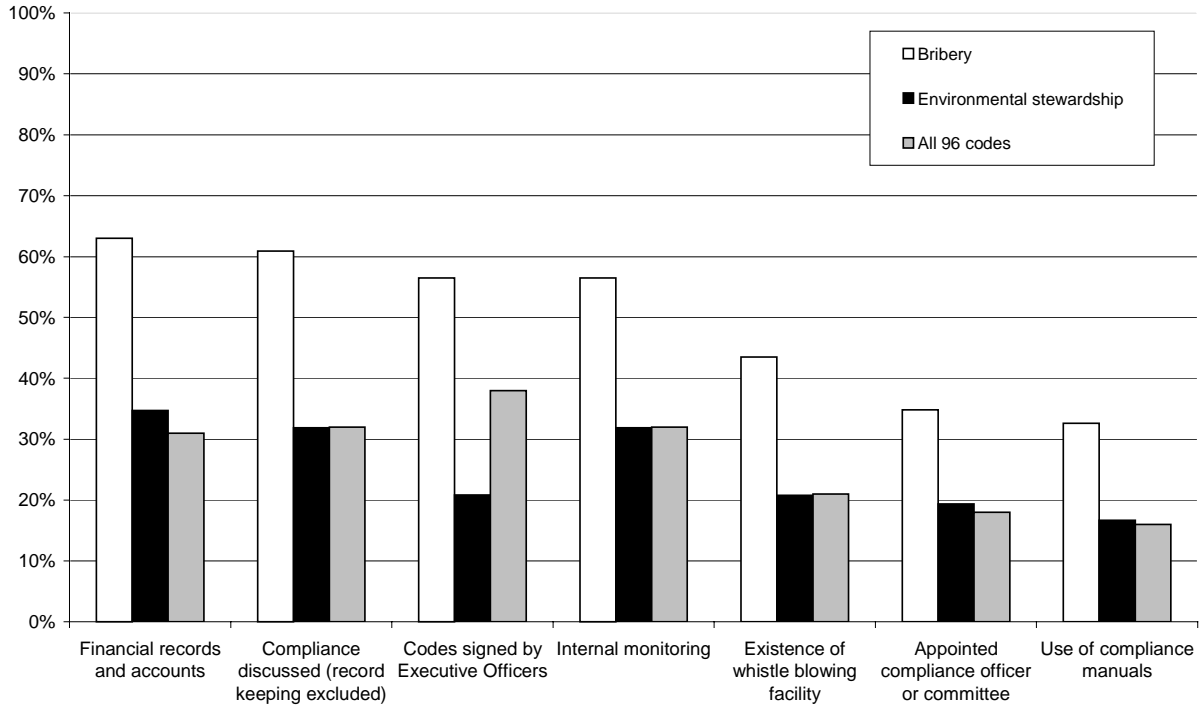
This section has shown that firms use different approaches to implementation, depending on the ethical issues they address -- there is no “one size fits all” for corporate compliance systems. However, firms show considerable agreement as to the “choice of weapons” in the fight against bribery. This emerging consensus may facilitate the growth of standardised management systems for dealing with bribery and corruption issues.<sup>10</sup> If so, developments in this area will parallel trends in environmental management, where standardised management systems (especially ISO 14001) have gained widespread acceptance.

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9 As noted in the text, the non-bribery codes’ coverage of implementation issues is relatively cursory. Their distinctive implementation feature (*i.e.* the feature stronger in them than in the bribery codes) seems to be a comparatively strong orientation to supply-chain issues (see second to last pair of bars in the graph).

10. A number of standardised management systems already have been proposed in this area (*e.g.* ECS 2000 in Japan, AA 1000 in the United Kingdom and AS 3806 in Australia).

**Figure 1.a. Implementation in the 96 codes of conduct addressed to the firm itself (percentage of codes mentioning a particular implementation measure)**



**Figure 1.b. Implementation in the 96 codes of conduct addressed to the firm itself (percentage of codes mentioning a particular implementation measure)**

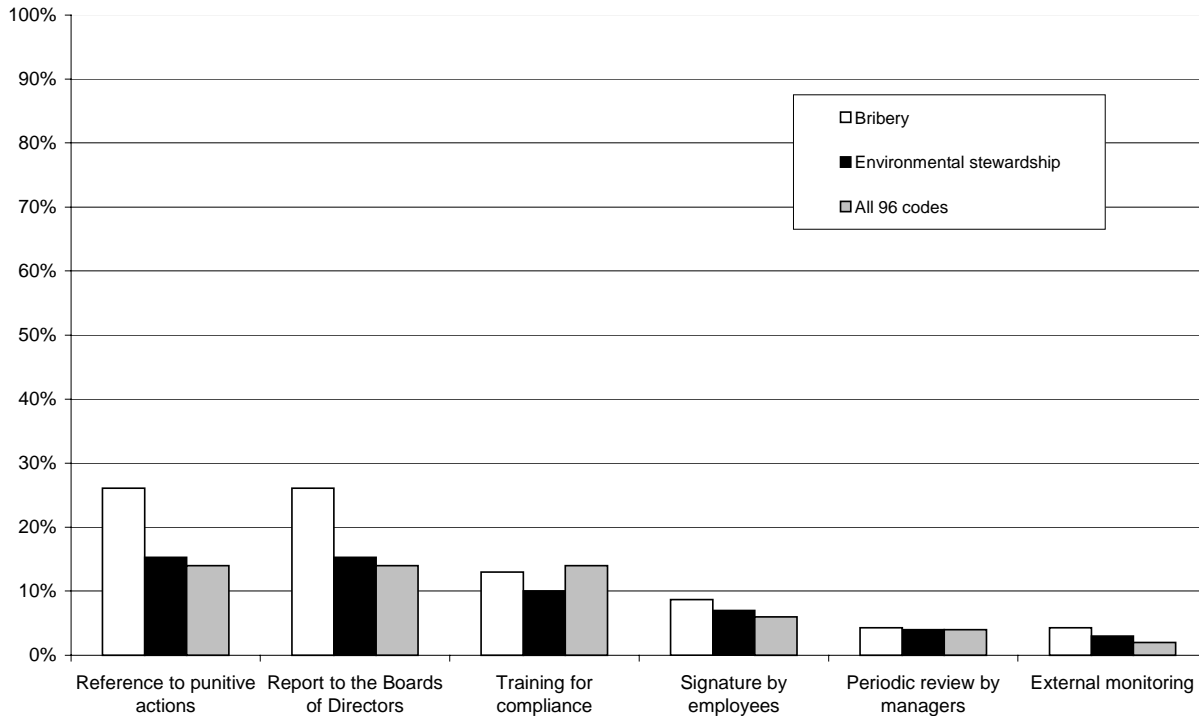
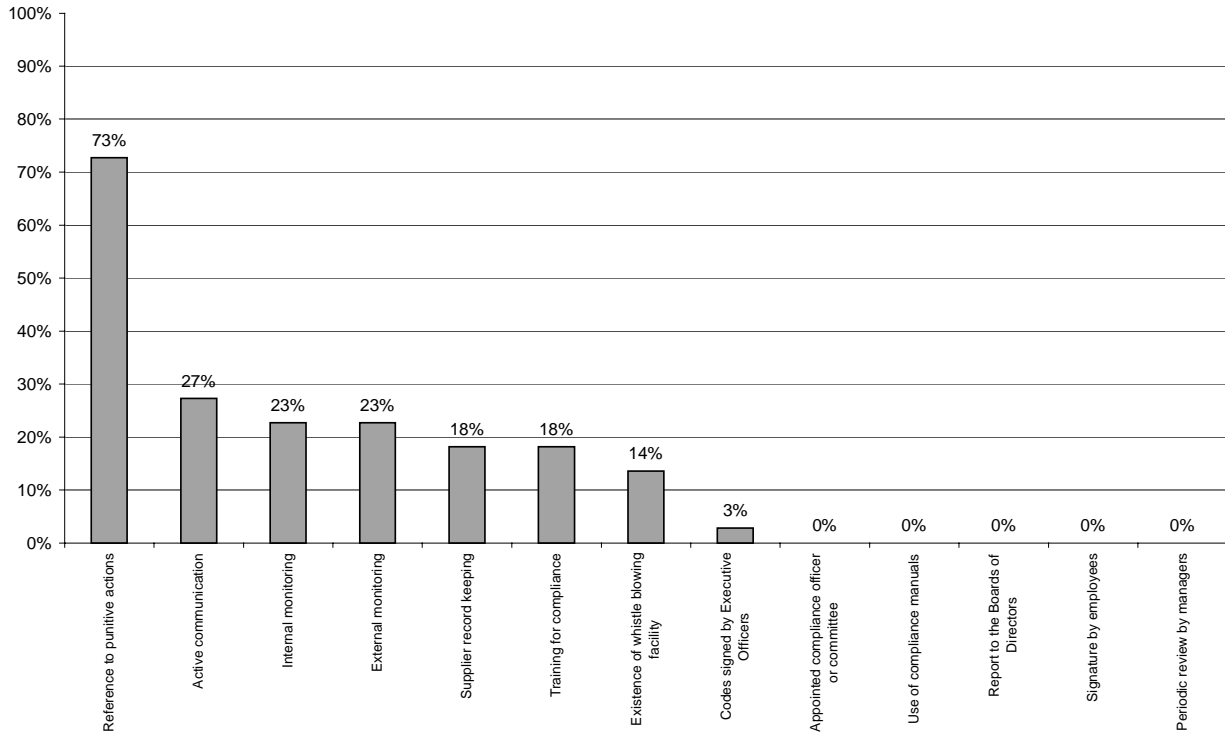


Figure 2. Implementation and Supplier Codes



### *Implications for Anti-bribery Practitioners*

The fight against bribery needs to be conducted on a broad front and to draw on support from a wide variety of actors on a wide variety of issues (public and private governance, public sector management, freeing up other conduits of public accountability and transparency such as the press). With regard to management processes, the management and control techniques used in this fight are still under development in both the private and the public sectors. The paper suggests that firms deploy a fairly homogeneous set of practices in the fight against bribery and that a *de facto* standard of practice appears to be emerging. This growing consensus on management practice may reflect the fact that the fight against bribery draws on the same expertise and uses the same management practices as many other areas of financial control and asset protection. Thus, implementation of compliance programmes in bribery might well have stronger, more direct synergies with existing control processes. This differentiates anti-bribery compliance efforts from those in other areas. For example, the most influential environmental management standard -- ISO 14001 -- had to be painstakingly negotiated over several years, a process that does not appear to have been necessary for bribery.

Despite this *de facto* consensus on management control issues in relation to bribery, this analysis here suggests that a need persists for international dialogue and consensus building on exactly what kinds of behaviour — especially corporate behaviour — should be proscribed. In this sense, this article strengthens the contention of numerous analysts (e.g. Gardiner 1993, Elliot 1997 and Kaufmann 1999) that there is a need to delineate more sharply the frontier between bribery and acceptable behaviours.

A number of private and inter-governmental organisations have made contributed to developing consensus on the definition of bribery. Particularly noteworthy are the activities of Transparency International, the International Chamber of Commerce and the OECD's Working Group on Bribery. The

revision of the OECD Guidelines for Multinational Enterprises is expected, when finalised, to contain a broad definition of bribery and corruption, covering public officials, private-to-private bribery, gift giving and political contributions. This research suggests that further focused work would be useful in clarifying what constitutes appropriate and inappropriate behaviours in this area.

Finally, anti-bribery practitioners might draw useful lessons from recent developments in enforcement of law and regulation in other areas. Many OECD governments have been actively incorporating private corporate compliance efforts into the public enforcement strategy. Examples of this can be found in the European Union (in environmental policy), the United States (in occupational safety and in the Federal Sentencing Guidelines), in Switzerland (anti-money laundering) and Australia (in competition policy). Under these initiatives, a *de facto* co-operative arrangement with firms is formed. This arrangement assigns to firms the bulk of the responsibility for enforcement (via their compliance programmes), which they undertake by implementing agreed management practices designed to show “due diligence” in the fight against bribery -- that is, that the company has taken adequate care in formulating and implementing its anti-bribery efforts.

This kind of co-operative arrangement between anti-bribery authorities and corporate anti-bribery compliance efforts would be in the best interest of the business community. By participating in the debate about which management approaches constitute “due diligence,” the business community can protect itself from arbitrary, rigid or poorly designed demands. In addition since the anti-bribery legal environment has become harsher (including stronger criminal sanctions, due in part to the OECD Convention) and since the prominence of the issue in civil society has been raised, firms now run higher legal and reputation risks if they engage in misconduct in this area. A co-operative approach, based on “due diligence” guidelines agreed by enforcement officials and the business community will allow firms to manage these risks more effectively.

## **METHODOLOGY AND LIMITATIONS**

### **Definition of Codes of Corporate Conduct**

The definition of code of corporate conduct used in this study is: The codes of corporate conduct are broadly defined as commitments voluntarily made by companies, associations or other entities, which put forth standards and principles for the conduct of business activities in the marketplace. This definition includes self-obligations and negotiated instruments. It excludes codes of corporate governance.

### **Collection of Codes**

The OECD Secretariat (Trade Directorate) contacted OECD Member countries, BIAC and TUAC for the identification of codes to be included in the inventory. A number of OECD Member countries provided contact names and in some cases also code titles and texts. Following the initial communication, the Secretariat sent letters to 77 prospective respondents across the OECD between April and October 1998. The letters asked recipients to identify up to 20 codes that they thought were significant in their country or elsewhere in the OECD area.

The process resulted in an initial collection of over 200 codes of corporate conduct. Some were excluded from the inventory because they were codes of corporate governance, company credos or incomplete documents. 246 codes were eventually collected. The items in the inventory are coded as individual codes. Hence if a firm has several codes of conduct — *e.g.* a code on outsourcing and another on the general behaviour of employees — the codes were counted separately.

### **Limitations**

This study has several methodological limitations:

- Because of the way the codes were collected, the set of codes is neither a random nor a representative sample of the codes issued by the business communities in various countries.
- There was little consensus on the definition of codes of corporate conduct when the request was communicated. As a result, the nature of codes included in the inventory varies widely, from codes designed to influence employees' conduct to sourcing principles. For some firms, several codes are in the inventory. In other cases, the inventory contains only one code, though the firm may have other codes as well. Some of the texts in the inventory also contain training material. Scoring was based on this entire information set and therefore may not be fully comparable across code issuers.
- Non-comparability of information available about firms in the inventory. Another drawback arises because the study looks at what may be only the "tip of the iceberg", in terms of the range of ways in which firms try to control and communicate its standards for business conduct. In addition to codes and closely associated material, which the analysis does capture, firms often produce other written materials and rely on unwritten procedures and practices that affect the codes' implementation. Training, production or operations manuals, record-keeping procedures, disciplinary practices and so on may all touch on code

compliance. Individual companies decide what appears in their codes and what appears elsewhere. They do not all draw these lines in the same place. Some of the codes are long, detailed documents while others are brief expressions of commitment that may have ancillary support by materials and practices not included in this code analysis. This introduces a certain non-comparability in the treatment of the enterprises included in the inventory. Nevertheless, the significance of this problem is likely to be moderated because firms have an incentive to publish the key components of their implementation strategy to reinforce the credibility of their codes. If an important implementation measure has been adopted, a firm is likely to mention it in its code.

- Aggregation problems. The overall code analysis aggregates over a number of important sectoral and geographical factors. This makes it hard to use the overall aggregates to make inferences about key concerns that the economics literature on self-regulation has raised. For example, the overall inventory cannot be used to determine the extent to which the social and economic processes driving the corporate-codes movement have led to uniformity in firms' commitments.



## Annex 2

### Definition of Attributes Used in Analysis of Bribery Texts

*Record keeping and financial reporting:* Codes mention attempts to set forth quality standards for record keeping and reporting. Example:

“...employees shall ...comply with all accepted accounting standards, practices rules, regulation and controls .... Ensure that all entries are promptly and accurately recorded and properly documented --- no entry will intentionally distort or disguise the true nature of any transaction.”

*Compliance discussed:* Codes mention implementation of or compliance with codes of conduct, other than record keeping and financial reporting. Examples:

“[Company’s name] “Ethical Business Conduct” and related procedures constitute company wide standards of conduct. This procedure provides an overview of the [Company’s name] ethics and business conduct program and employees’ responsibilities.”

“As a condition of doing business with [Company’s name], each and every factory must comply with this Code of Vendor Conduct.”

A code of conduct has a section titled “Maintaining Compliance”.

*Codes signed by Executive Officers:* A code is signed by the board of directors, the chairman of the board, the president or other top officers. This often takes the form of a signed message to employees as a foreword to the code text, or it can be a signature on the code document itself. Codes are not scored for this attribute when the code text merely says that the chairman or board of directors adopted the code.

*Internal monitoring mentioned:* Codes mention that the company monitors or has a compliance/implementation system for its own company codes of conduct. Codes addressed to suppliers or other business partners are not scored for this attribute. Example:

“The structure includes the Corporate Responsibility Committee of the Board of Directors and the Leadership Committee, which have oversight responsibility; the Compliance Council, whose duties include education, monitoring and response; and all employees of the Company.”

*Existence of whistle blowing facility:* Codes mention the company ombudsman, with clear indication of where to contact this person, e.g. address, telephone number and EM address. Example:

“Call the [company’s] Human Resources hotlines at 1-800-xxx-xxxx to report any possible violations of law or other violations of the Code of Business Conduct.”

*Appointed compliance officer or committee:* Codes mention company appointment of compliance officers or committees to execute compliance programmes. Example:

“... we have established a “Corporate Compliance Committee” to oversee our compliance efforts and ensure that the Company has necessary policies and systems in place to train employees in their legal responsibilities, monitor compliance and correct any deficiencies in compliance programs.”

*Use of compliance manuals:* Codes mention the existence of compliance manuals, or themselves look like manuals (give thorough guidance on what to do under certain circumstances, or have Questions and Answers). Examples:

“Many of the statements made here are backed up by detailed policies and procedures. These are available on the internal policy and procedure web-site at: [internet address given]”

“‘Handle a Concern’ explains the many ways you can get a policy question answered, or report a concern or possible violation”. ‘What to Watch Out For’ lists some of the things that may indicate a policy problem.”

*Reference to disciplinary actions:* Codes mention that the companies will take disciplinary actions in the case of non-compliance with the codes. Example:

“Failure to act in compliance with the Code is likely to result in disciplinary action against both the employee committing the breach and others who condone it.”

*Report to the Boards of Directors:* Codes mention that the Boards of Directors receive reports on compliance activities. Example:

“The Committee will report annually through the Managing Director to the Board of Directors.”

*Training for compliance mentioned:* Codes state explicitly that employees will be trained in code implementation or monitoring. Examples:

“Each operating group and division will establish a training program. The program will be designed to ensure that all employees have an awareness of the [Company’s name] Integrity Statement and the standards of conduct and legal requirements that are relevant to their work at a level of detail appropriate to their job functions.”

*Signature by employees:* Codes have a section in which employees are requested to sign that they have read the codes and will comply with them. Example:

“This booklet contains an acknowledgement to sign as a statement of your personal commitment to integrity. It’s a way for each of us to pledge to uphold the principles of high ethical standards and to comply with all company policies.”

*Monitoring suppliers:* Codes mention that the companies monitor activities of their suppliers and business partners, as opposed to monitoring their own activities (internal monitoring). Example:

“[Company’s name] intends to monitor compliance with our Partnership Guidelines and to undertake on-site inspection of partners’ facilities.”

*Periodic review by managers:* Codes mention that it is the task of managers to monitor compliance and conduct periodic reviews. Example:

“Management is responsible for instituting regular reviews of compliance....”

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