

Anti-Bribery Risk Assessment

A Systematic Overview of 151 countries

edited by

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Introduction by the Editors

The fight against corruption has become a global effort on a national and international level.

As a landmark, the Convention of the Organization for Economic and Cooperative Development (OECD) on Combating Bribery of Foreign Public Officials in International Business Transactions¹ was signed on December 17, 1997, entered into force in February 1999 and now has 38 member states. The OECD Convention solely addresses bribery of foreign public officials and covers only liability of bribers but not foreign officials soliciting or receiving bribes. Despite its limited scope, the OECD Convention is of significant importance due to the review system which monitors its implementation in the member states. Furthermore, the OECD Convention had a triggering effect regarding other multilateral Anti-Bribery Conventions in the following years.

On December 14, 2005, the United Nations Convention against Corruption (UNCAC)² entered into force and currently has 143 member states. UNCAC has the broadest scope of all existing multilateral anti-corruption agreements. The Convention includes commercial bribery and offences like obstruction of justice, books and records violations, illicit enrichment and embezzlement which are often closely connected with corrupt activities. UNCAC further contains important procedural instruments for the global fight against corruption in the fields of international co-operation and assistance. However, many of its provisions are only optional and the Convention still lacks sustainable implementation and execution within its signatories.

Besides the OECD Convention and UNCAC, several regional anti-bribery conventions have had significant influence on national legislation. The Inter-American Convention against Corruption (IACAC)³ of the Organization of American States which entered into force on March 6, 1997- and signed in the meantime by 28 countries- was the first regional multilateral convention addressing the fight against corruption. Clearly influenced by the US Foreign Corrupt Practices Act, IACAC focuses on the bribery of foreign officials but additionally requires including this offence explicitly as an extraditable offence in every extradition treaty concluded between the parties to the convention. In Europe, the Criminal Law Convention on Corruption of the Council of Europe⁴ entered into force July 1, 2002 and criminalizes a wide range of offences, including active and passive bribery in the public and private sector. The implementation of the Convention in its current 45 member states is monitored by a peer review process. Last but not least, the African Union

¹ www.oecd.org/daf/nocorruption/convention

² <http://www.unodc.org/unodc/en/treaties/CAC/index.html>

³ <http://www.oas.org/juridico/english/Treaties/b-58.html>

⁴ http://www.coe.int/t/dghl/monitoring/greco/documents/instruments_en.asp

Convention on Preventing and Combating Corruption⁵ was adopted on July 11, 2003, entered into force August 5, 2006 and has been ratified by 31 countries so far.⁶

These conventions have influenced domestic anti-bribery-legislation worldwide, not only with regard to the drafting of the specific offences but also with regard to an enhanced multilateral cooperation of national authorities in the course of bribery investigations. This is not only true for individuals but increasingly also for companies doing business internationally. With the exception of the Africa Union Convention, all of the aforementioned treaties contain specific provisions requesting signatory states to implement in their domestic legislation, criminal or at least administrative standards of liability for corporations. This concept has been adopted by more and more states worldwide.

Bribery-investigations against corporations can lead to tremendous financial and reputational damage, including the risk of losing a license to do business in the relevant countries (debarment) or blacklisting by Multilateral Development Banks in case projects tainted by corrupt activities have been financed by them. Therefore, it is imperative for management and legal and compliance personnel of corporations to provide their employees with clear directives in order to fully comply with the domestic anti-bribery laws of the states where the corporations are doing business.

This compilation of more than 150 domestic anti-bribery laws originates from a project which was part of Siemens AG efforts to build up its new Compliance Program in the course of the last three years. Due to the fact that the company does business in nearly every country around the world, it was decided to globally collect from nearly every jurisdiction, answers to the most relevant questions Siemens and its employees may have when doing business abroad. Anti-bribery legislation and case law is still in progress nearly all over the world. This project was coordinated during the years 2008 and 2009 by the international law firm Baker & McKenzie and the national chapters were provided with great diligence by experienced legal experts from local Baker & McKenzie offices, associated law firms or communicating law firms. We do however ask for your understanding that we can not assume liability for the completeness and correctness of the information provided in the national chapters. Furthermore, the information given in the national chapters is not intended to serve as a substitute for competent legal advice in specific cases. In fact, the compilation is intended to be a practical resource for other corporations, their management, legal and compliance personnel and employees in order to identify early possible bribery-risks in foreign jurisdictions and thereby contribute to the fight against corruption worldwide.

In order to prevent this book from becoming too bulky, the fifty most important countries have been selected for the printed version. The remaining approximately 100 countries are included in a CD, inserted in the rear jacket of this book.

We would like to thank Ms. Cigdem Sevinc for her ongoing assistance in collecting the relevant documents. Without her diligent work this book would never have existed.

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⁵ <http://www.africa-union.org/root/au/Documents/Treaties/Text/Convention%20on%20Combat%20Corruption.pdf>

⁶ For further information regarding the international conventions and related legal issues see *United Nations, Corruption – Compendium of International Legal Instruments on Corruption*, 2nd edition, New York, 2005 and *OECD, Corruption – a Glossary of International standards in Criminal Law*, Paris, 2008.

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