



**UNODC**

United Nations Office on Drugs and Crime

# Private Sector Corruption

University Module Series  
Anti-Corruption

**KENYA**



Global Integrity Education (GIE) project  
University Module on

## **Private Sector Corruption\***

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**Localized version of [Module 5](#) of the Education for Justice (E4J)  
University Module Series on Anti-Corruption**

This module was adapted to the Kenyan context under  
the Global Integrity Education project.

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# Introduction

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The study of corruption has in the past focused on the public sphere, where violations such as public officials misusing public funds or accepting bribes typically came under scrutiny. Private sector actors in this scenario were generally understood to be the bribe givers, and thus corruption that occurred entirely within the private sector was not addressed or regulated. However, private sector corruption has come to the forefront of attention in recent decades, because it poses somewhat different challenges, and also contributes considerably to the problems created by corruption. Private sector corruption is therefore the focus of the present Module. In particular, the Module addresses some of the most common forms of private sector corruption, and discusses their causes and consequences, as well as possible responses and measures to prevent corruption in the private sector. It explains how corruption adversely affects all businesses, from small and medium-sized enterprises (SMEs) to multinational corporations, from domestic to foreign companies, and from recently founded to long-established companies. The Module also discusses the role of the private sector in fighting corruption more broadly in society, particularly in collaborative efforts such as public-private partnerships. The Module builds upon the discussions on public sector corruption in [Module 4](#) of the [E4J University Module Series on Anti-Corruption](#) and the discussions on business integrity in [Module 11](#) of the [E4J University Module Series on Integrity and Ethics](#).

## Learning outcomes

- Describe the forms and manifestations of private sector corruption
- Understand the causes and consequences of private sector corruption, and the role of a culture of corruption in Kenya
- Critique different responses and measures to address and prevent private sector corruption in Kenya
- Explain the differences between public and private sector corruption
- Describe and assess the role of the private sector in the fight against corruption, including through public-private partnerships



## Key issues

Corruption is a complex phenomenon, without a uniform definition. An overview of the different forms and definitions of corruption, as well as its harmful effects across the globe, is available in [Module 1](#) of the E4J University Module Series on Anti-Corruption. For present purposes, it should be noted that the [United Nations Convention against Corruption](#) (UNCAC) refrains from providing one overarching definition of “corruption”. Rather, it defines and classifies various forms of corruption as criminal offences, such as bribery and embezzlement (in both the public and private sectors); abuse of functions (i.e. when those performing public functions misuse their power to obtain a benefit); trading in influence; illicit enrichment; and money-laundering. With 186 States parties (as of September 2019), UNCAC is approaching universal adherence, and the different forms of corruption as defined by the Convention can be considered internationally accepted.

This Module discusses two related topics: the phenomenon of corruption in the private sector, including its forms, causes, consequences, responses and prevention measures, and the ways in which the private sector can contribute to the fight against corruption in Kenya. These two aspects of the Module are intertwined because some of the means of fighting corruption in the private sector can also help to reduce and prevent corruption in society more broadly. Thus, the Module focuses on different measures that businesses can take to fight and prevent corruption internally, such as risk assessments, anti-corruption ethics and compliance programmes, and codes of ethics, but it also addresses collaborative approaches that prevent corruption both in the private sector and in society more broadly. The Module does not discuss anti-corruption measures such as law enforcement and whistle-blowing regulations – these are discussed in [Module 6](#) and Module 13 of the E4J University Module Series on Anti-Corruption.

### > Public sector corruption versus private sector corruption

When learning about private sector corruption, it is helpful to keep in mind the differences between private sector corruption and public sector corruption. For present purposes, public sector corruption primarily abuses government resources whereas private sector corruption primarily abuses private or commercial resources.

While [UNCAC](#) defines a number of different corruption offences, corruption is sometimes understood in general terms as “the abuse of entrusted power for private gain”, in accordance with the definition proposed by the non-governmental organization [Transparency International](#) (TI). It is clear from both the TI definition of corruption, as well as the corruption offences defined in UNCAC, that corruption occurs in both the public and private sectors. Public officials are entrusted with power to serve the public interest, whereas employees in the private sector are entrusted with power to serve legitimate company interests. In both contexts, corruption occurs when individuals or organizations promote interests that differ from the interests they were entrusted to serve. Identifying what interest should be served, and who or what is being served instead, can help us distinguish between public sector corruption and private sector corruption.

However, it is important to note that in Kenya most public sector corruption cases have the hand of the private sector<sup>1</sup> for instance the Kenya Power and Lighting Company case<sup>2</sup> where the private sector itself was involved in unethical behaviour of supplying transformers that were defective and malfunctional. Public sector corruption is addressed in Module 4 of the E4J University Module Series on Anti-Corruption.

## > Forms and manifestations of private sector corruption

Corruption in business is a universal problem, affecting companies of all sizes in all countries. Companies could be both victims and perpetrators of corruption. In a business context, corruption can include false or misleading financial reporting, procurement fraud, embezzlement, bribery, and a range of other acts. Below are some examples of common schemes and manifestations of corruption in business (see Martini, 2014, and this [U4 paper](#) by Rose-Ackerman, 2007):

- **Commercial bribery and kickbacks:** These involve employees of one company giving payments, undue advantage or expensive gifts to employees of another company to secure an advantage. Examples include paying procurement staff to sway their decision in favour of the paying company, giving an expensive gift to a bank manager to secure a loan, and various forms of kickbacks.
- **Extortion and solicitation:** This occurs when an employee of a company requests a payment, undue advantage, expensive gifts, or sexual favours in return for conducting specific business-related tasks or making particular decisions.
- **Gifts and hospitality:** Excessive gifts and hospitality are given to employees to influence business decisions or tasks. This kind of gift might be travel, luxury items or tickets to sporting events.
- **Fees and commissions:** Agents and intermediaries are paid fees and commissions beyond what is considered the industry standard, for the purpose of altering business decisions or tasks. Characterizing a payment as a fee or commission might be a way of disguising the payment of a bribe.
- **Collusion:** This occurs when, for instance, a labour union employee and a member of the company's management team exchange favours that result in employees' interests not being accurately represented.
- **Trading of information:** This happens when a business employee offers or receives a bribe in exchange for confidential information, where the bribe could take a number of different forms. When confidential information is the basis for trading in a company's stock, bonds or other securities, this constitutes an offence called "insider trading".
- **Trading in influence:** Sometimes referred to as influence peddling, this activity occurs when a business employee gives payments, undue advantage or expensive gifts to a public official, expecting to receive an undue advantage from the public authority in return. An example is when business people make political donations with the intent of influencing political decisions, policies or laws.

<sup>1</sup> <https://www.businessdailyafrica.com/economy/Haji-now-shifts-to-private-sector-in-corruption-war/3946234-4812430-fc823l/index.html>

<sup>2</sup> <https://www.the-star.co.ke/news/2018-12-18-state-lost-sh201m-in-kenya-power-scandal/>



- **Embezzlement:** This happens when employees misappropriate anything of value that was entrusted to them because of their position.
- **Favouritism, nepotism, cronyism, clientelism:** These forms of corruption occur when a person or group of persons are given unfair preferential treatment at the expense of others.

While these examples of private sector corruption are non-exhaustive, they illustrate that corruption in business is much more than just bribery. Contrary to a popular sentiment, private sector corruption does not usually involve a suitcase or envelope full of money. The examples listed above demonstrate that there are many grey areas, where business practices may be legal but are at risk of being misused, such as gifts and hospitality. Political donations and sponsorships can also be misused for private gain. Some illegal business practices, such as kickbacks or small bribes, may be so common in some countries that they are perceived as normal and are no longer questioned.

Corruption in business takes different forms, but it can also occur at different levels of corporate activity or spheres of influence: within the company, within the supply chain, within the wider business operation, and within the societal surroundings. An image that illustrates how corruption manifests at these different levels is featured in the PowerPoint slides provided in the Additional teaching tools section.

## ➤ Consequences of private sector corruption

A vast body of literature focuses on public sector corruption, but there is very little systematic analysis of private sector corruption (Argandoña, 2003; Gopinath, 2008). International anti-corruption efforts have also mostly focused on public sector corruption (Sööt and others, 2016). This makes it difficult to estimate the exact cost of private sector corruption, although it is clear that private sector corruption has serious and lasting impacts on the economy and wider society.

The occurrence of private sector corruption is reportedly high. According to the [Global Economic Crime and Fraud Survey 2018](#) by PricewaterhouseCoopers, 28 per cent of the companies that reported internal corruption in the last two years noted that they had suffered from business misconduct, and 45 per cent said they had suffered from asset misappropriation. A World Bank's [Enterprise survey](#), which measures the incidence of bribery in companies, shows that in some countries up to 51 per cent of all firms experience at least one bribe payment request per year. Private corruption affects the entire supply chain, as it distorts markets, undermines competition, and increases costs to firms. It prevents a fair and efficient private sector, reduces the quality of products and services, and leads to missed business opportunities (UNODC, 2013b).

The primary goal of business is to offer a product or service to increase wealth or profits, so companies need to recognize that when a company or its employees engage in corruption, there are also negative effects for that firm, such as reduced employee morale, reduced productivity, loss of shareholder and investor confidence, and damaged reputation and business relations. Companies also have to bear the costs associated with investigation and remedial action (Lee-Jones, 2018). A few of these impacts are explored below. Conversely, in many contexts, **“higher levels of firm integrity correspond with stronger commercial performance”** (U4, 2017).

Private sector corruption erodes economic development and investment with the effect of:

- **Unfair competition:** The company offering the bribe gains an unfair advantage over its competitors, whose products and services will not even be considered (Boles, 2014). While some companies pay bribes to gain advantages, others may be unwilling or unable to do so. Thus, corruption undermines competition because companies that refuse to pay bribes are likely excluded from the market.
- **Inflated costs:** The lack of competition caused by corruption can result in higher prices and poorer quality of goods and services, ultimately harming the consumers (Lee-Jones, 2018). For example, a company already paying bribes to sell its products may consider it unnecessary to invest in innovations, new technologies, training of personnel and other activities that could improve its productivity and quality of services or products.
- **Societal impact:** Business corruption can have devastating impacts on the environment and human rights (Martini, 2014). For a detailed discussion on how corruption affects human rights, see [Module 7](#) of the E4J University Module Series on Anti-Corruption.

For a more comprehensive discussion on the diverse effects of corruption, see [Module 1](#) of the E4J University Module Series on Anti-Corruption.

## ➤ Causes of private sector corruption

### Sector- or industry-related causes

While corruption in a business context affects companies of all sizes, some sectors or industries are more vulnerable to corruption than others. For example, given the secrecy and large orders involved, military procurement is particularly vulnerable to malfeasance and the defence industry is therefore exposed to high corruption risks (for a more detailed discussion of this issue, see Module 11 of the E4J University Module Series on Anti-Corruption). A report from [Risk Advisory \(2019\)](#) suggests that, on a global level, the industries most plagued by corruption are oil and gas, construction and development, and infrastructure. There are some variations on the regional level, also reflected in this report for example in Kenya the most affected are hospitality sector, professional services, finance and insurance sectors ([Kenya Private Sector Alliance \(Kepsa\) report, 2019](#)). Corruption Risk Mapping in Kenya's Private Sector survey, 2019 also found that the health, education, real estate, wholesale and retail, manufacturing and transport sectors are no better, with corruption levels standing at above 50 per cent. In general, contract-dependent sectors are more vulnerable to corruption; they also have a lower quality of management and lower levels of performance. For example, high-tech industries, which acquire components of their products through a large number of contracts with suppliers, are more vulnerable to corruption and institutional inefficiencies compared to the food industry, where fewer contracts are required and components are available in the retail market (Athanasouli and Goujard, 2015).

## Economic causes

While personal gain is often the most frequent cause of public sector corruption, it is only one of the causes of private sector corruption. Where they have occurred, liberalization and deregulation have fostered a market driven by intense competition, leading companies to engage in corruption to maximize operational efficiency, safeguard development and conquer new markets (Pakstaitis, 2019). As companies use corrupt practices to gain a competitive advantage, they create a snowball effect throughout their industries, prompting other companies to engage in similar practices to remain competitive in the market. As noted earlier, corruption undermines competition, because companies that refuse to pay bribes can be excluded from the market. Reduced competition leads to higher prices and poorer quality of goods and services, ultimately harming the consumers (Lee-Jones, 2018).

Unfortunately, corruption can appear to be a workable and effective business practice for survival and growth. If maximizing profit by any means is seen as the sole company objective, then evaluating the potential costs versus benefits of corruption can seem like a legitimate exercise – which may justify corruption. Corrupt practices can become institutionalized to achieve strategic objectives, particularly in periods of economic hardship.

However, evidence shows that corruption can lead to such benefits only in the short term, if at all, and only for a limited number of companies (Hanousek and Kochanova, 2015). Over the long term, corruption is rather a constraint on development and a restricting force on market entry and growth for all firms (Bai and others, 2019; Forgues-Puccio, 2013). A company with a culture of corruption is unlikely to be sustainable as it will be unattractive to principled employees, investors, clients, and other stakeholders. The U4 Anti-Corruption Resource Centre goes even further by stressing “that higher corruption at firm level is strongly correlated with lower firm growth, even in the short term” (U4, 2017 referring to findings of Fisman and Svensson, 2007).

## Individual causes and rationalizations

In the private sector, as elsewhere, individuals engage in a series of rationalization strategies to justify their unethical behaviour. According to behavioural science, some people will cheat to gain an advantage if they are able to rationalize their behaviour and still feel good about themselves (Ariely, 2013). Johannsen and others (2016) found that national context, company size, the nature of the company as domestic or foreign, workplace diversity, individuals’ gender identity, age, and length of tenure are the key factors that influence rationalizations of individuals in the private sector.

Rationalizations for unethical behaviour are discussed at length in [Module 6](#) and [Module 7](#) of the E4J University Module Series on Integrity and Ethics. For present purposes, the following three common rationalizations and their relevance to the private sector are elaborated upon: “Everyone else is doing it”, “It’s not my responsibility” and “The end justifies the means”. responsibility” and “The end justifies the means”.

- **“Everyone else is doing it.”** This rationalization can manifest itself in different situations. First, when unethical behaviour is normalized across a group within a company or in the entire company (or industry), there is no sanction for engaging in the behaviour. Second, the rationale that everyone else (i.e. competitors) is doing it justifies the corrupt conduct. [The Alliance for Integrity \(2016\)](#), a business-driven, multi-stakeholder initiative aiming to promote transparency and integrity in the private sector, points out that among the top ten reasons or justifications that employees give for engaging in corrupt behaviour are: “You don’t understand how business is done here” or “If we don’t do it, someone else will”. When individuals perceive that their competitors are engaging in corrupt practices, they can justify undertaking comparable actions with the rationale of securing the company’s well-being as well as their personal well-being, while still feeling that they are a “good” person (Johannsen and others, 2016). This rationalization is also referred to as a “collective action problem” (Persson, Rothstein and Teorell, 2013). The understanding of corruption as a collective action problem is explained in [Module 4](#) of the E4J University Module Series on Anti-Corruption.
- **“It’s not my responsibility.”** This statement reflects a denial of responsibility. Individuals rationalize engagement in corruption as being beyond their control. Typically cited reasons for employees trying to deny responsibility are: “I didn’t know that was corruption”; “I didn’t do it for me; I did it for my organization”; “I don’t know how to respond to corruption” (Alliance for Integrity, 2016).
- **“The end justifies the means.”** Corruption can be perceived as generating positive collective effects, because it – however incorrectly – appears to be in the company’s best interests. Corruption can also be rationalized because it has positive effects for individuals, such as enabling them to keep their jobs. Business people on occasion also justify corruption as a win-win situation where no one gets hurt (Alliance for Integrity, 2016). This is a particularly prevalent rationalization in smaller businesses (Johannsen and others, 2016).

## Corporate culture

Economic and individual causes of corruption can lead to the development of (and be supported by) a corporate culture of corruption. Thus, a culture of corruption is both an outcome and a further cause of corruption. Taylor (2016) explains that a culture normalizes corruption through three processes:

- **Institutionalization:** the embedding of corrupt practices in company structures and processes;
- **Rationalization:** self-serving ideologies that justify corrupt practices; and
- **Socialization:** new employees being socialized into systems and norms that tolerate or permit corruption. Peer pressure can socialize employees into corrupt practices. In the context of private sector corruption, peer pressure refers to actions undertaken by way of an executive or management order (Johannsen and others, 2016).

A corporate culture of corruption is brought about by a multiplicity of factors such as competition and growth orientation, complicated leadership structures, and high levels of autonomy and discretion, with a lack of transparency, accountability and ethics. In such an environment, even “rules and processes put in place to promote integrity may be selectively enforced and easily evaded, as shown in many recent cases under anti-bribery statutes” (Taylor, 2016). For a related discussion on the ways in which psychology, environment and behaviour can influence “moral blindness” and unintended unethicality, see [Module 6](#), [Module 7](#) and [Module 8](#) of the E4J University Module Series on Integrity and Ethics.

To combat and replace cultures that support corruption, increased attention in practice and scholarship has been devoted to the need to foster a corporate culture of integrity. As explained in further detail in [Module 11](#) of the E4J University Module Series on Integrity and Ethics, when a corporation acts ethically, it fosters a culture of integrity that motivates employees individually to act ethically. This contributes to meaningful and purposeful lives for the employees and ultimately to a better society. To achieve such a culture, the business can make use of modelling, mentoring and other activities that promote integrity, as well as the application of values, ethical codes, rules and regulations. In particular, to enable a culture of integrity and demonstrate to employees that the business is willing to “walk the talk”, the business should ensure that its performance management and reward systems do not contradict or undermine its positive core values. While there is no one-size-fits-all model, every business should implement an approach that goes beyond a tick-the-box exercise, i.e. beyond compliance with rules and regulations, and towards fostering a positive culture of integrity. Strong ethical values must be at the core of such a programme, and those values must be identified and developed carefully (ideally co-created with various stakeholders). Ethical behaviour should be embedded in all day-to-day operations and communicated in interactions with stakeholders (Hodges and Steinholtz, 2017).

## ➤ Responses to private sector corruption

Owing to its serious societal impact, the fight against private sector corruption has gained traction in international law and policy in recent decades. One of the most significant shifts in anti-corruption legislation affecting the private sector was the enactment, in 1977, of the Foreign Corrupt Practices Act (FCPA) of the United States. Given its extraterritorial reach, the FCPA affects companies globally (for more information about the FCPA see Module 12 of the E4J University Module Series on Anti-Corruption). The impact that FCPA had on companies’ overseas activities pushed other countries to create similar anti-bribery laws, for instance, in 2013 the United Kingdom adopted the UK Bribery Act which has extraterritorial application (both FCPA and the UK Bribery Act are further discussed in Module 12 and Module 13 of the E4J University Module Series on Anti-Corruption). In the international context, by the late 1990s, an international consensus had emerged regarding the liability of legal persons (i.e. corporations) for acts of corruption. It is worth mentioning two important events, which had significant impact to that end. First, in 1994, the Organisation for Economic-cooperation and Development (OECD) established [Working Group on Bribery in International Business Transactions](#), which led to the adoption of the [OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) was adopted three years later, 1997. Second, in 2003, the [United Nations Convention against Corruption](#) (UNCAC) established the liability of legal persons as a mandatory provision through its article 26.

UNCAC also defines certain anti-corruption norms as specifically applicable to the private sector. At the regional level Kenya has ratified the **African Union Convention on Preventing and Combating Corruption**, which addresses corruption in the public and private sectors. It represents a consensus on what African countries should do in the areas of prevention, criminalization, international cooperation and asset recovery. Again locally Kenya has made significant strides by instituting legislation criminalizing corruption; **Bribery Act of 2016** criminalizes primarily private sector bribery, broadly defined as “offering, promising, or giving a financial or other advantages to another person”, which may include facilitation payments.

The Act imposes a duty on public and private entities to have appropriate anti-bribery procedures in place; **Finance Act 2006** provides for measures against tax fraud and guidelines on tax administration; it also provides sanctions on corrupt practices; **Access to Information Act 2016** provides a framework to facilitate access to information held by private bodies and promote routine and systematic information disclosure by both public service and private service.

Criminalizing private sector corruption and ensuring that companies can in fact be held liable for corruption and be effectively sanctioned – under criminal or civil law – serve both retributive and deterrence goals, because corporate misconduct is punished and justice is done, which sends a message that deters companies from engaging in misconduct. Moreover, these responses to business corruption also incentivize companies to develop preventive anti-corruption measures, such as ethics and compliance programmes, codes of ethics, risk assessments, and due diligence procedures for business partner scrutiny. These measures are discussed in the next segment. Following a discussion on criminalization, liability and sanctions in relation to business corruption, the Module goes on to discuss preventive anti-corruption measures in companies.

### **Criminalizing private sector corruption**

A major response to private sector corruption is the application of criminal anti-corruption norms to corporations, and their enforcement through effective sanctions and incentives. For example, UNCAC defines the crimes of bribery and embezzlement in the private sector, as well as the related offences of concealing these crimes, laundering their proceeds, and obstructing justice. The OECD Anti-Bribery Convention, on the other hand, focuses on the offence of bribery in overseas business activities and establishes the responsibilities of legal persons in this regard. The enforcement of these norms – from the detection and reporting of corruption to the investigation, prosecution and trial stages – is discussed in [Module 6](#) and Module 13 of the E4J University Module Series on Anti-Corruption. While those Modules discuss enforcement measures in general, the present Module clarifies the particularities of applying them to corporations.

Criminal law is mainly associated with individual criminal responsibility, and criminal norms and sanctions, and therefore usually applies to natural persons (individuals) and not to legal persons (corporate entities). To effectively enforce anti-corruption norms on corporations, States need to incorporate the notion of “corporate liability” (or liability of legal persons) into their law. Corporate liability, a concept discussed in more detail below, opens the door to imposing various sanctions on companies that violate anti-corruption norms. Such sanctions can include fines, confiscation, contract remedies, suspension and debarment, loss of benefits, and liability for damages.

A discussion of the range of sanctions and incentives that have been developed to prevent and address corruption in the private sector is available in the United Nations Office on Drugs and Crime (UNODC) publication entitled [A Resource Guide on State Measures for Strengthening Corporate Integrity](#). Given the limited scope of this Module, the discussion here focuses on only one of these sanctions, that of suspension and debarment, which States and international organizations are increasingly using in the fight against corruption. When natural persons break the law in a serious criminal manner, they can be imprisoned. As the threat of imprisonment is limited to individuals, suspension and debarment can be a comparable deterrent for companies, especially if the company relies on government contracts.



In Kenya we have [the Bribery Act, 2016](#) which was enacted by the Kenyan Parliament to provide for the prevention, investigation and punishment of bribery, amongst other things. Prior to the coming into force of the Act, the legislative framework that governed corruption and bribery was the Anti-Corruption and [Economic Crimes Act, 2003](#) and the [Public Officer Ethics Act, 2003](#), which largely dealt with corruption offences in the public sector. The Act, however, has a wide scope of application as it applies to the general public, public officers and private entities in Kenya. The Act also has extraterritorial application in respect of conduct by a Kenyan citizen or a private or public entity outside of Kenya, which would constitute an offence under the Act if such conduct took place within Kenya.

### Corporate liability

Historically, corporations were outside the scope of the criminal law, which focused on personal guilt and notions of culpability and blame. Anti-corruption enforcement, accordingly, was aimed at individuals and primarily targeted public officials engaging in bribe-taking and embezzlement of public funds and individuals offering bribes – although the latter were targeted to a much lesser degree. Recently, however, the debate on how to get companies to comply with domestic and international anti-corruption laws and regulations has intensified. Many of the biggest corruption investigations concern legal persons rather than natural persons. The liability of legal persons such as corporations, also known as corporate liability, is a key feature of the global fight against corruption (Lee-Jones, 2018).

Corporate liability was introduced partly because traditional legal tools, such as individual criminal accountability, have proved insufficient to curb crime. Decentralized corporate structures and complex decision-making processes make it difficult to identify individual wrongdoers. In most cases of corporate corruption, senior management might not directly participate in the behaviour constituting the actual offence but nonetheless play an important role by failing to supervise employees effectively or by incentivizing the behaviour that leads to the offence. Case studies of large corporations reveal that senior management may have created or cultivated a corporate culture that incentivizes wrongdoing by more junior employees. In that situation, senior management may have moral responsibility. It is, however, difficult to pursue charges against individual managers owing to the very nature of corporations and their extensive systems of delegation. For an analysis of contemporary case studies that illustrate how delegation and responsibility are approached in corporations such as General Motors, BP and Wells Fargo, see Buell (2018).

Standards of corporate liability may be objective or subjective. Objective liability, also known as strict liability or vicarious liability, attributes to the corporation any wrongdoing committed by its employees within the scope of their duties. Once an employee has committed an offence, the corporation is also liable. Therefore, pure objective liability systems encourage the implementation of preventive policies, but discourage self-reporting of wrongdoing and cooperating with the authorities during investigations.

Subjective liability, also known as fault-based liability, imposes a duty on companies to prevent wrongdoing by educating employees and implementing internal controls on company activities. Pure subjective liability systems excuse companies that have otherwise complied with their duties, which are usually defined by the law as implementing an effective compliance programme.

Subjective liability systems also have risks: since the companies concentrate on ticking boxes with respect to the elements listed in the law that define effective compliance systems, measures may exist on paper but not in practice. Furthermore, there are no incentives for aligning crucial policies with the compliance system, e.g. compensation, promotion, and bonuses. For a related discussion on the relationship between duty, ethics and integrity, see [Module 1](#) of the E4J University Module Series on Integrity and Ethics.

Global frameworks such as UNCAC do not prescribe a specific type of liability, but there is a trend towards hybrid liability systems. In an increasing number of jurisdictions, companies may receive reduced fines if they can prove they have made a significant effort to prevent corruption, for example by implementing effective internal controls and procedures, educating employees, and preventing misconduct by third parties acting on behalf of the company. In some jurisdictions such as Australia, Hungary and Slovenia, self-reporting wrongdoing and cooperating with authorities during the investigation may also reduce penalties. For an analysis of how each OECD jurisdiction regulates corporate liability for corruption, see OECD (2016).

### **Suspension and debarment**

Debarment from procurement is an important regulatory mechanism against corruption. Debarment policies can exclude certain suppliers and contractors from profitable contracts owing to their engagement in corrupt and unethical practices (Acorn, 2016). Debarment determinations take a variety of pathways. In Canada, for example, there is a “rules based and automatic” debarment system. In the United States, the approach is much more discretionary, focusing on “present responsibility” (Acorn, 2016, p. 1).

On an international level, the World Bank’s suspension and debarment system, overseen by the Office of Suspension and Debarment, is a comprehensive defence against wrongdoers (World Bank, 2015). The system sanctions corrupt, fraudulent, collusive, coercive and obstructive practices (see World Bank, 2015, for full definitions). There are five different sanctions that could be imposed: debarment with conditional release, fixed period debarment without conditional release, conditional non-debarment, public letter of reprimand and restitution. The World Bank assesses aggravating and mitigating factors when determining which one of these five possible sanctions to apply (World Bank, 2015).

While the threat of imprisonment is limited to individuals, suspension and debarment can be a comparable deterrent for companies that rely on government contracts. Companies may also be required to dismiss employees as a condition of settlement. Although technically not a State sanction, this can be an effective deterrent for individuals, particularly managers or other senior personnel who may have difficulty finding comparable alternative employment. An organization’s managers and employees should understand, as part of their anti-corruption training, that bribery is not only detrimental to all stakeholders, but an offence that would lead to the termination of their employment (a “zero-tolerance policy”).



## ➤ Preventing private sector corruption

Stricter and more nuanced regulation requires and incentivizes companies to strengthen compliance with rules, but also to focus on their values to develop an ethical culture. Stakeholders such as employees, customers, shareholders, business partners and civil society expect even higher standards of integrity and ethical business conduct than the imposition of mere rules can enforce. Focusing on rules and regulations alone will often fall short of meeting these higher expectations of ethical business practices. Therefore, an effective ethics and compliance programme, which goes beyond pure compliance and aims to foster a culture of integrity, should include internal, external and collective measures.

### From legal to behavioural approaches

The global application of legal anti-corruption norms for companies creates incentives for businesses to adopt ethics and compliance programmes that can detect and prevent corruption in organizations to avoid sanctions and reputational damage. Besides, for companies, engaging in efforts to prevent corruption makes good business sense given the negative impact corruption can have on individual businesses and the market as a whole. This also involves altering both organizational behaviour and corporate culture (Sullivan and others, 2013; UNODC, 2013a).

Legal compliance approaches that merely rely on rules to be enforced by the company itself, with threats of criminal or civil punishment to back them, have historically been the primary mechanism to address corruption in the private sector. Several governments and international organizations have issued guidelines to help companies map their anti-corruption ethics and compliance programmes. UNODC, for example, have published [An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide](#) and an [Anti-Corruption Ethics and Compliance Handbook for Business](#) (in cooperation with OECD and the World Bank). The International Standardization Organization has even approved a standardized anti-bribery management process, the [ISO 37001](#). Kenya Association of Manufacturers and The Global Compact Network Kenya with support from Center for International Private Enterprise have an [Anti-Corruption Compliance training program](#) aimed at instilling ethics and integrity in day-to-day business activities for local companies.

However, early compliance programmes were problematic, because companies tended to focus on processes such as enacting codes of conduct and implementing internal rules and procedures without assessing the outcomes of these processes and the impact they had on ethical and behavioural issues within the companies (Hodges and Steinholtz, 2017). Therefore, such processes did not disrupt companies' problematic business models. Compliance programmes were seen as separate from core business operations, and programmes were therefore unable to change the values and working methods of the organization. As a result, corporate cultures of wrongdoing remained largely intact. When large-scale cases of corruption emerged, demonstrating that often corporate wrongdoing was not caused by rogue employees but by a specific corporate culture, the focus began to shift to aligning organizational culture with anti-corruption goals (Torsello, 2018).

Legal approaches to corporate liability addressed this shift through the lens of orthodox economics and rational choice theory (See, e.g., Becker, 1968). In a nutshell, the assumption was that the right mix of detection and sanction was the key to deterring misbehaviour.

Relying exclusively on deterrence in practice is, however, too costly and ineffective, both economically and socially (Hodges and Steinholtz, 2017). Psychological and behavioural science research shows that changes in behaviour motivated by incentives and sanctions come at a high cost. These changes require the provision of financial and personnel resources, for example surveillance systems and systems of incentives and related tracking. Moreover, anti-corruption ethics and compliance programmes strongly based on detection and sanctions send a message of distrust within an organization. Surveillance can have a particularly negative impact on corporate culture. In an environment of distrust, employees may be reluctant to voluntarily observe and disclose breaches of internal policies and may feel disengaged and under continual suspicion.

To overcome a corporate culture of wrongdoing, top management needs to make clear that it does not advocate or condone wrongdoing, and that after a proper root cause analysis and investigation, intentional corruption will be punished. In technical jargon, this is often referred to as “tone from the top”. Such a policy of zero-tolerance of corruption should be communicated within a framework that couples the stick of punishment with the carrot of a positive message about the type of behaviour that the company expects from its employees.

Conducting root cause analysis and investigations before determining whether punishment is required also contributes towards building a “just culture” where fairness is perceived and where people can learn from their mistakes. In such an environment, it will be possible to determine the true cause of the problem (which might be, e.g., that targets set by senior management are impossible to meet any other way) and to learn from the exercise and fix the underlying problem, rather than just blaming and punishing a scapegoat.

It is increasingly accepted that, compared to legal compliance approaches, behavioural change approaches premised on value-based programmes lead to higher levels of ethical awareness, more employees seeking advice on ethical issues, and a greater likelihood of employees reporting violations, thus minimizing damage. Value-based programmes are premised on the assumption that employees engage with whichever values are present in the company, pro-social or anti-social, and adopt them as their own. When these values are oriented towards pro-social engagement, employees are more likely to comply with rules, even when they are not monitored.

Key elements in value-based programmes are treating employees fairly, rewarding ethical behaviour, remedying unintentional unethical behaviour, and punishing criminal behaviour (Treviño and others, 2006). A step further in this direction is to develop a Values Pledge. This is a collective commitment of organizations to become a truly values-driven organizations and to support the creation of value-based business environment. [The UK Values Alliance](#) is a good example of an initiative which brings together individuals and companies aiming to develop Values Pledge in UK.

Research findings and practical experience suggest that value-based models are not only as or more effective than traditional coercion-based models, but they are also much better at encouraging voluntary compliance with the rules and lessening the difficulties and costs associated with creating and maintaining effective surveillance mechanisms needed for sanction-based models. For a broader discussion on values and value-based programmes for businesses, see [Module 11](#) of the E4J University Module Series on Integrity and Ethics.

The work of Langevoort (2017) is especially helpful to understand how to apply behavioural ethics findings to the implementation of anti-corruption ethics and compliance programmes. Beyond the obvious need to align compensation schemes and promotion practices with ethical values, Langevoort's work shows how widely accepted ideas about what makes a business successful, for example group loyalty, competitiveness and risk appetite, may work as hidden pathways for unethical behaviour.

### **Effective anti-corruption ethics and compliance programmes**

There are different management models for internal measures that ensure business integrity and ethics, but they all share similar characteristics:

- Business leaders and managers actively voice support for doing the right thing, and are personally committed and willing to act on the values they espouse. However, the tone should also come from the middle managers, who are the team leaders and backbone of companies. It can be said that ethics is everyone's responsibility, even though it must start at the top.
- The guiding values and commitments make sense and are clearly communicated at every appropriate opportunity, including in a well-balanced code of ethics and guidelines.
- Internal measures are based on a risk assessment to spend limited resources as effectively as possible.
- The values are integrated into day-to-day business, and practical resources and training are provided to guide employees even in difficult situations and grey areas.
- An internal control system is established and there are various channels for reporting, such as whistle-blowing for example.
- The anti-corruption ethics and compliance programme is understood as a continuous process of learning, and measures are monitored and reviewed on a regular basis. Freely available resources can be used for continuous education purposes, such as the [video-based e-learning tool](#) developed jointly by UNODC and the United Nations Global Compact (which is the focus of the pre-class exercise of this Module).

The first and most important step in creating a culture that is driven by ethical values and implementing an effective anti-corruption ethics and compliance programme is to have the full support and commitment from all levels of management (UNODC, 2013b). When developing the programme, consideration needs to be given to oversight mechanisms with internal controls and record-keeping. Effective programmes also have clear, visible and accessible policies prohibiting corruption and how to detect, report and address violations, as well as detailed and clear policies for particular risks. For larger companies, the programme should engage with business partners, subsidiaries and intermediaries. Employee training and the promotion and incentivizing of ethical behaviour and compliance are essential for effective implementation.

The programme as a whole should be reviewed and evaluated periodically (OECD, UNODC and World Bank, 2013). The effectiveness of measures in place also needs to be improved from time to time. Larger companies are encouraged to expand measures to third parties and to share good practices, for example by participating in anti-corruption collective action projects, which are discussed further below.

Companies should not only focus on their own culture for ethics but also engage with business partners and their supply chains. Intermediaries are very often the weak link and the public perception does not only focus on the supplier itself but also on the companies that contracted them (UNODC, 2013b). In addition to ensuring compliance with national and international regulations, companies should thus adopt a proactive approach to strengthen business integrity and ethics in their supply chains, regarding their corporate responsibility and sustainable business practices.

Finally, companies can also engage in collective action such as sharing experiences in working groups or joining initiatives such as the United Nations Global Compact. In environments in which unethical practices are prevalent, companies could resort to collective action to try to change the status quo. For example, they could get regulators to intervene or set standards in areas such as supply chains. Such collective action is addressed below in further detail.

Businesses may require different approaches to create an effective ethical culture owing to their characteristics, for example, in terms of size, legal status and/or complexity. There is no one-size-fits-all model, but the underlying principles apply to both large and small companies, including start-ups (OECD, UNODC and World Bank, 2013). For example, in a large business, one manifestation of the tone from the top may be a video statement on the website or a postcard with a quote from a management representative sent to the employees, since it is not possible for the CEO to meet in person all employees. In an owner-led smaller business, one-on-one talks with the employees raising the importance of integrity as a core value of the company would be appropriate.

While a small company or start-up may not need to draft an elaborate code of ethics (although that will change as the business grows), a multinational may need to consider the best way to express its values in different contexts and pay attention to different country regulations to which its staff will be held accountable/liable. The multinational will also need to assess the risks of unethical behaviour in the different environments in which it operates to select the appropriate controls that it needs to institute. A multinational corporation is also often faced with the problem of cultural or regional relevance. Should there be one code that applies throughout all the countries where it operates, or should there be a multiplicity of codes to make provision for different contexts? The most elegant solution is to have a global code that provides high-level guidance on the values of the company, supported by country guidelines that provide a level of flexibility, but never in contradiction with the global values or applicable law, which may be that of another jurisdiction, such as the UK Bribery Act or the US FCPA, since a multinational company may be subject to those statutes wherever it does business.

UNODC's [An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide](#) provides advice to businesses on how to put enhanced integrity standards into practice. This Guide focuses on basic common elements that businesses should address, with a particular emphasis on the challenges and opportunities for small and medium-sized enterprises. It draws on the United Nations Convention against Corruption as well as other international and regional instruments that provide businesses with guidance on how to uphold enhanced integrity standards and be good corporate citizens.

Additional international initiatives that provide business ethics guidance include the World Economic Forum's [Partnering Against Corruption Initiative](#) (PACI), the [United Nations Global Compact](#), the [Alliance for Integrity](#), Transparency International's [Business Principles on Countering Bribery](#), G20/OECD [Principles of Corporate Governance](#), G20's [Business 20 \(B20\)](#) and the OECD [CleanGovBiz Initiative](#).

Many organizations have developed guidelines to help facilitate good practice. For instance, [Mexicanos contra la Corrupción y la Impunidad](#) (Mexicans against Corruption and Impunity), a Mexican non-profit that focuses on protecting the rule of law and denouncing, punishing and eradicating systemic corruption and impunity in both the public and private sector, has published its [code of conduct](#). This code of conduct serves as a gold standard and, therefore, supports businesses in drafting and implementing a code of conduct (Mexicanos contra la Corrupción y la Impunidad, 2019). For more discussion on codes of conduct and codes of ethics in business, see [Module 11](#) and [Module 14](#) of the E4J University Module Series on Integrity and Ethics.

### **Risk management approaches to fighting corruption in the private sector**

Even when they adopt anti-corruption measures, all organizations are still subject to corruption risks. Ethics and compliance programmes should therefore include procedures for the identification and treatment of corruption-related risks that could affect the performance of the organization (COSO, 2016). Risk management approaches have become an essential part of the corporate compliance field. Overall, the corruption risk management is seen as a process of identifying and prioritizing (assessing) the risks, in order to design a meaningful plan to address them, and then to implement the plan, while monitoring the changing environment and being ready to have a flexible response to new challenges.

Corruption risks vary. While there are external risk factors related, for example, to the country, industry sector and type of operation, there are also internal risks that are organization-specific, such as insufficient reporting channels, conflicting incentives, and a lack of policies and procedures. Corruption risks differ from company to company according to their distinctive characteristics, such as size, structure, geographical factors, business model or internal operations. The size of the company matters particularly as it dictates how measures and strategies can be applied. Size is correlated to resources, such as staff, time and money, that influence what kinds of anti-corruption ethics and compliance programmes can be implemented (Sullivan and others, 2013). The limited availability of resources, for example, makes risk assessments particularly difficult for small and medium-sized enterprises (SMEs), which must strike a balance between cost-effectiveness and efficiently reducing corruption risks. However, a lack of resources should not be a barrier to developing an ethical culture.

Corruption risk assessments are essential to ensure that resources are being applied where they most matter and to reinforce transparency, build trust and reduce corruption. To prevent and fight corruption effectively, the company needs to know how and where the crime happens. Such knowledge enables the targeting of real and not just perceived problems within a given organization's processes and structures and, eventually, the identification and application of relevant measures aimed at resolving these problems. Corruption risk assessments can be crucial because, while managers might acknowledge the risk of corruption on a more general level, they might not know or realize the exact mechanisms through which their company is exposed to corruption.

In recent years, several international organizations have developed tools and mechanisms to support the private sector's need to identify and respond to corruption risks. Such risk assessment tools have been developed, for example, by the [UN Global Compact](#), the [Committee of Sponsoring Organizations of the Treadway Commission](#) (COSO), the [Regional Anti-Corruption Initiative](#) (RAI) and [Transparency International](#).

While the above-mentioned guides differ in some aspects, such as terminology, steps of the process and techniques for collecting and analysing data, most of them follow the standardized framework for designing, implementing, and maintaining corruption risk management systems offered by the International Standards Organization (ISO) in their ISO 31000 – Risk Management – Principles and Guidelines.

This framework suggests a standard approach to risk management, consisting of three main phases: risk identification; risk analysis; and risk evaluation (ISO 31000, 2018). This approach is illustrated in the PowerPoint slides available in the Additional teaching tools section of this Module.

Corruption risk assessments in companies should focus on both internal and external risks, including organizational culture risk. Once specific corruption pathways are identified, it then becomes possible to put in place additional controls and checks to prevent these acts from being perpetrated. To ensure an effective and affordable compliance system, risk assessments must be conducted on a regular basis, as well as when there is a significant change in the business of the company.

### **Business partner's due diligence**

To externalize business risks and for other operational reasons, sometimes companies outsource operations to third parties such as agents, consultants, distributors, subcontractors, re-sellers, foreign subsidiaries, business partners in joint ventures and, in general, anyone with the capacity to act on behalf of the company or whose conduct can end up benefiting the company. However, working with third parties presents significant corruption risks. For example, research from the OECD (2014) indicated that 75 per cent of all transnational bribery enforcement actions conducted between 1999 and 2014 involved payments through intermediaries. The practice of using intermediaries to channel bribes is so extensive that the international community responded by tightening company responsibility by requiring due diligence to be performed when dealing with third parties.

The duty to supervise the behaviour of third parties emerges from the principle that anyone who creates a situation of risk or danger is obliged to adopt appropriate precautionary measures to serve as protection against the occurrence of the harm.

To address third party risks, companies first need to map their third parties globally and understand the purpose of each commercial relationship. This information allows companies to classify their third parties into a risk matrix and adopt appropriately proportioned measures to mitigate the identified risks. In many cases, due diligence processes result in a reduction in the number of business partners and in the rationalization of operations, often to the benefit of the corporation.



Risk mitigation measures range from getting the business partners' acknowledgment and commitment to abide by the law and by the company's code of conduct to establishing contractual safeguards, including audit and termination rights, and carrying out third parties' anti-bribery training. Part of the due diligence process involves checking the reputation of potential business partners against different databases, for example those containing sanctioned persons, blacklisted persons, politically exposed persons (PEPs), and adverse media reports in local language. If the third party shows up in these lists, then the company can undertake a more thorough investigation. For a discussion of the evolution of third party due diligence, see [Transparency International UK \(2016\)](#).

As with employees, measures aimed at mitigating third party risks can take different shapes. Companies may concentrate on avoiding working with business partners suspected of corruption. An approach based on surveillance and sanctions will focus on the selection process of business partners and on legal measures to protect the company if the third party subsequently violates the rules. By contrast, a value-based approach aims at working with partners who share common values and at helping them to create the right corporate culture to avoid corruption. This distinction is especially important in contexts of systemic corruption, where local business partners are hired for a specific process, such as customs clearance, and obtaining licences or permits, and may have little choice but to pay bribes to deliver the goods and services to their clients. In a more coercive compliance relationship with large companies, local agents might be inclined to hide their activities. In a more open relationship, local agents can engage with large companies in a collective strategy to reduce corruption in that specific business process.

## ➤ **Collective action and public-private partnerships against corruption**

This Module has reviewed so far the implementation of a global regime based on the application of a principal–agent relationship. In other words, the parent company (the principal) is responsible for the acts of its subsidiaries, intermediaries and third parties (the agents). This strategy is useful in reducing bribes in international business and in global supply chains. It considerably increases the likelihood that multinational companies sanctioned for corruption in one country will forfeit business opportunities in other countries, owing to blacklisting or ineligibility for public tenders.

However, this strategy may be insufficient when corruption is systemic, for example, because it has spread and is deeply embedded in public–private networks, or because it is supported or even organized by the government. Facing systemic corruption, companies may be left with no choice but to withdraw from the specific market, with the unintended policy consequence of leaving the market in the hands of less scrupulous players. Moreover, when corruption is widespread, a legal intervention based on corporate liability may generate costly transitions. In Latin America, for example, the [Odebrecht case](#) involved hundreds of companies, many of which went bankrupt or are on the verge of bankruptcy. In Brazil alone, over [100,000 workers](#) lost their jobs. Avoiding these abrupt transitions – which often promote setbacks that perpetuate corruption – requires a different strategy.

In markets with systemic corruption, companies face a “[prisoner's dilemma](#)” in which they fear a competitive disadvantage if they refuse to engage in corrupt practices, such as loss of contracts. This has also been described as the “collective action problem”, discussed in further detail in [Module 4](#) of the E4J University Module Series on Anti-Corruption. The prevailing sentiment is that if one company does not bribe, the competitors will.

In other situations, distrust is minimized through the formation of cartels – sometimes even encouraged by the State. In both cases, the result is an exponential increase in collective costs.

The answer to these problems requires an agreement, similar to a multiparty contract: an agreement in which different stakeholders commit themselves to a new normative balance. For this approach to work, most stakeholders must have the expectation that their peers will abide by and make others comply with these new rules.

These collective and coordinated approaches are often called “collective action” initiatives, and have been defined as follows (World Bank, 2008, p. 4):

“Collective action” is a collaborative and sustained process of cooperation between stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors. Collective action can complement or temporarily substitute for and strengthen weak local laws and anti-corruption practices.

Collective action initiatives can take on various forms, ranging from short-term agreements to long-term initiatives with external enforcement. Companies that participate in such initiatives can pursue their common objectives much more effectively in a joint and concentrated effort than they can individually. Collective action initiatives can be formed either in the private sector alone (e.g. SMEs requesting harmonized supplier standards from larger companies) or involve public–private partnerships (e.g. collectively addressing single challenges such as facilitation payments, or advocating for an improved regulatory and business environment). An example of the former type of collective action approach is the [Jornada Integra](#) initiative, which was launched in 2019 in Brazil by the international business platform [Alliance for Integrity](#). This initiative aims to support Brazilian small and medium-sized enterprises (SMEs) in creating more ethical and sustainable business environment.

Nowadays, companies are increasingly adopting anti-corruption approaches in collaboration with the public sector and civil society as well as academia. These collective approaches have great potential to reduce corruption in society in the broadest sense, for several reasons. First, corruption is so complex that it cannot be solved by either governments or companies acting alone. Thus, while the private sector is part of the problem, it is also part of the solution to fighting corruption in society. Secondly, companies are a common source of corrupt funds, but they are also victims of corruption and thus have a shared stake in reform. Thirdly, governments can benefit from the expertise and resources that ethical businesses are able to bring to the fight against corruption. With collective action, companies of all sizes can become meaningful agents of change in relation to anti-corruption policies and procedures, stimulating efforts in the private and public sector to decrease corruption and engage in effective reform.

Collective action can involve private as well as government actors – a collaboration referred to as a public-private partnership. A recent example of collective action based on a public-private partnership is the intervention led by the [Maritime Anti-Corruption Network \(MACN\) in Argentina](#) along with several business associations that operate in the maritime transport sector. The intervention aimed to reduce corruption during inspections of the holds and tanks of the bulk carriers conducted by the National Service of Health and Agri-Food Quality in Argentina.



The inspections were supposed to ensure that the means of transport were in adequate condition to avoid contamination of agricultural products. However, an illicit business worth about \$30 million per year developed because of a combination of factors, namely: the unsupervised discretion enjoyed by the inspectors, the costs derived from the delays caused by the disapproval of the warehouse, and the lack of transparency and regulation of the entire inspection process.

These conditions facilitated bribery, paid by ships in poor condition to obtain the undue benefit of approval, and commercial extortion of vessels in good condition that paid to avoid costly and unjustified delays. Over time, the extent of systemic corruption in these inspections affected not only individual companies who had to add bribery to their business costs, but international trade in Argentinian agricultural products more broadly, to the extent that the higher costs and legal risks discouraged foreign companies from trading in the country.

To address this case of corruption, MACN members engaged with all stakeholders, including the government, in a process that took more than three years to re-design the investigation process. The discussions evaluated the commercial, legal and financial advantages and disadvantages faced by each stakeholder and how a level-playing field would affect them. In agreement with all stakeholders, the Government reformed the regulatory framework in November 2017. The collective action continued during the implementation of the reform, through meetings with all stakeholders and training of operative personnel, both in the public and private sector. Bribes decreased to almost zero, and in the few instances where corruption occurred, the incidents were reported and sanctioned.

Interesting discussions and examples of collective action approaches are included in this [B20 paper](#) from 2014. The paper proposes ways to enhance the private sector's role in the fight against corruption, including by improving its collaboration with governments and international institutions. The paper contains many useful case-studies that illustrate different approaches to achieving such collaboration.

Further information on collective action and public-private partnerships is available in the UNODC's [An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide](#). The Basel Institute of Governance maintains a [database](#) of collective action initiatives against corruption. The above mentioned [United Nations Global Compact](#), [Alliance for Integrity](#), [PACI](#) and [B20](#) are other well-known examples of global collective actions initiatives.

## > Conclusion

This Module has discussed the various forms and manifestations of corruption within the private sector in order to help the students better understand the differences between public and private sector corruption, the causes and consequences of private sector corruption as well as the role of the private sector in the fight against corruption. The Module has also introduced different measures and tools to prevent and respond to private sector corruption, particularly emphasizing collective action projects, compliance programmes and value-based approaches to change companies' ethics and behaviour. Through the different examples and class exercises, the Module will help students develop an understanding of the importance of ethical and fair business environment.

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Sööt, Mari-Liis, and others (2016). [Private-to-private corruption: Taking business managers' risk assessment seriously when choosing anti-corruption measures](#). Paper presented at the 2016 OECD Integrity Forum. Paris, March.

Sullivan, John D., Andrew Wilson, and Anna Nadgrodkiewicz (2013). [The role of corporate governance in fighting corruption](#). Deloitte.

Taylor, Alison (2016). [What Do Corrupt Firms Have in Common? Red Flags of Corruption in Organizational Culture](#). Center for the Advancement of Public Integrity, Columbia Law School.

The World Bank Office of Suspension and Debarment (2015). [Report on Functions, Data and Lessons Learned](#). Washington, DC: The World Bank.

Torsello, Davide (2018). Organizational Culture and Corruption. In Encyclopedia of Business and Professional Ethics, Deborah Poff and Alex Michalos, eds. Springer.

Transparency International (2013). [Business Principles for Countering Bribery](#). Berlin.

Transparency International UK (2016). [Managing Third Party Risk: Only as Strong as Your Weakest Link](#). London.

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United Nations Office on Drugs and Crime (UNODC) (2013a). [The United Nations Convention against Corruption: A Resource Guide on State Measures for Strengthening Corporate Integrity](#). Vienna.

United Nations Office on Drugs and Crime (UNODC) (2013b). [An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide](#). Vienna.

Wambulwa, A. (2018, December 18). [State lost Sh201m in Kenya Power scandal](#). The Star.

World Bank Institute (2008). [Fighting Corruption through Collective Action: A Guide for Business](#). Washington, DC.



## Exercises

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This section contains suggestions for pre-class and in-class educational exercises, while a post-class assignment for assessing student understanding of the Module is suggested in a separate section.

The in-class exercises in this section are most appropriate for classes of up to 50 students, where students can easily be organized into small groups in which they discuss cases or conduct activities, after which group representatives provide feedback to the entire class. Although it is possible to create the same small group structure in large classes comprising a few hundred students, it will be more challenging, and the lecturer may need to adapt facilitation techniques to ensure sufficient time for group discussions and for providing feedback to the entire class. The easiest way to deal with the requirement for small group discussions in a large class is to ask students to discuss the issues with the four or five students sitting closest to them. Given the time limitations, not all groups will be able to provide feedback during each exercise. It is recommended that the lecturer makes random selections and tries to ensure that all groups have the opportunity to provide feedback at least once during the session. If time permits, the lecturer can facilitate a discussion in plenary after each group has provided feedback.

All exercises in this section are appropriate for both graduate and undergraduate students. However, as students' prior knowledge and exposure to these issues vary widely, decisions about appropriateness of exercises should be based on their educational and social context. The lecturer is encouraged to relate and connect each exercise to the [Key issues](#) of the Module.

It is recommended that lecturers begin building a conducive and friendly environment at the start of class and before conducting the very first exercise

This can be done by breaking the ice in a supportive way, by respectfully examining students' starting orientations to corruption, and by demonstrating genuine interest in their perspectives. Once students come to see the lecturer as respectful, genuinely interested in their orientation to the material, and consistent in policing any snide or unsupportive comments by class members, that safe space will enable effective learning and development.

## > Pre-class exercise 1: What do we know about business integrity?

This pre-class exercise could be completed as part of the class preparation process. Before attending the class, ask students to complete one or more of the six interactive learning modules from the e-learning tool [“The Fight against Corruption”](#).

The modules, which are freely available online in over 30 languages, explore some of the ethical dilemmas that are typical in the business world. Some of the issues raised therein are also covered in the present Module 5, such as a company’s gift policy. During the class, the lecturer could refer to the videos when discussing certain issues. In addition, the lecturer could start the class by raising questions about the ethical dilemmas reflected in the videos.

### Lecturer guidelines

This e-learning tool is a joint product of UNODC and the UNGC. It uses six interactive learning modules to further the audience’s understanding of the [UNGC 10th principle](#) against corruption and the [United Nations Convention against Corruption](#) as they apply to the private sector. The tool targets private sector actors and can also be useful for students taking the present Module. Each video only lasts about five minutes, providing a quick and effective way of learning about business integrity. Students who complete all six modules will receive a computer-generated certificate, which could be an incentive that increases their interest in the learning tool.

## > Pre-class exercise 2: Case studies

Ask the students to spend one to three hours (depending on the reading assignment) doing research about corruption cases in a specific industry sector (e.g. pharmaceutical, shipping, construction). The lecturer should provide questions to guide students’ thinking while reading, such as: Who were the victims in these cases? Which factors do you think led to corruption? What are the negative impacts on the company and on society?

Examples of useful materials are:

Pharmaceutical industry:

- [GlaxoSmithKline case](#)
- [Optimer Pharmaceuticals case](#)
- [China fines local pharma for bribing former hospital president](#)

Construction industry:

- [Why is the corruption industry so vulnerable to corruption?](#)
- [Corruption in the construction of public infrastructure: Critical issues in project preparation](#)
- [OECD Integrity Framework for Public Infrastructure](#)

### Lecturer guidelines:

The research by the students will reveal resources that will be useful as background materials for the in-class exercises and discussions, as well as for the post-class assessment assignments. The lecturer could also provide information regarding corruption scandals that have taken place in the students’ country or region.

## ➤ **Exercise 1: Is there a difference between public and private corruption?**

The lecturer asks students to compare the following case scenarios:

**Scenario 1:** A Congressman serves on a legislative committee that is choosing the site of a new public building. A company owns property adjacent to one of the sites that the committee is considering. The CEO of the company offers US\$20,000 to the Congressman in return for a favourable vote for the site. The Congressman accepts the offer.

**Scenario 2:** A board member of a private corporation currently serves on a committee that will choose the site of a new office building. Another company owns property adjacent to one of the sites that the committee is considering. The CEO of the other company offers the board member US\$20,000 for a favourable vote. The board member of the private corporation accepts.

### Lecturer guidelines:

The lecturer can facilitate a discussion on, and a comparison between, these two scenarios. The lecturer may, for example, ask: Who are the persons negatively affected in each case? Is one scenario worse than the other? If so, why? Should the conduct in both cases be treated as a crime? How severely, if at all, should the wrongdoers be punished? Does the law in your country criminalize both behaviours? If so, how?

## ➤ **Exercise 2: Assessing risks and developing mitigating measures**

Divide the class into small groups - a maximum of five students per group encourages participation. Based on the scenarios below, provide each group with a different business setting, for example the biggest local construction group; a multinational pharmaceutical; or a regional shipping company. Ask each group to identify the specific risks in that sector and to discuss appropriate measures to mitigate the risks. The aim of this exercise is to assess the risks to which various business models are exposed, and to think about mitigating measures for each one.

### Lecturer guidelines:

The lecturer prints out the information provided below about four case scenarios and assigns one scenario to each group. If possible, allow students to briefly review and choose the scenario to be analysed, explaining why that scenario is the most interesting. After each group presents its conclusions, the lecturer facilitates a discussion and integrates contributions by all groups. Students are then given 30 minutes to:

- a) identify the risks; and
- b) come up with mitigating measures. A member of each group is given the opportunity to share the conclusions with the whole class. Thereafter the lecturer emphasizes how different business models and corporate culture traits lead to different compliance solutions.

The case scenarios provided below may be printed out for the students. The lecturer may wish to consider or develop alternative scenarios that are more relevant to students' regional, local and cultural contexts.

**Case scenario for Group 1: XAQUIRI LTD**

XAQUIRI LTD is a publicly traded multinational pharmaceutical company. With more than 1,000 employees, XAQUIRI has developed a successful business model in the last 20 years, becoming a leading company in four countries. The board of directors is now discussing the possibility of extending its operations to other countries. A market study prepared by a consultant revealed that multinational pharmaceutical companies do not sell their products directly. Instead, they contract local distributors, which interact with local doctors. All professionals working in the public and private health system prescribe medication based on their professional knowledge and guided by ethical principles. Distributors often offer incentives to those who prescribe their products. Incentives vary from training courses, invitations to conferences, hiring health professionals as consultants and, in some countries, cash payments. Even though distributors are not company employees, corporate liability rules make companies liable for the conduct of all its business partners, locally and overseas.

Imagine that you are a member of XAQUIRI's compliance team. Identify the potential corruption risks and develop measures to mitigate them.

**Case scenario for Group 2: KABAKA INC.**

KABAKA INC. is a leading construction company with more than 50,000 employees. In the last 30 years, KABAKA INC. was involved in the most important public construction projects in country A. The commercial success was achieved by the business skills of the Kabaka family, whose members founded the company and are the only shareholders and members of the board.

KABAKA INC. has, however, grown in an environment of systemic corruption. A huge and complex cartelization system has ruled the public construction projects in the country for some decades, which has been tolerated and, in some cases, encouraged by the different political parties, in exchange for money and favours. Furthermore, improper payments to labour union leaders represent an important cost in the construction industry. It is publicly known that companies pay up to ten per cent of the cost of each project to the leader of the construction workers' labour union to avoid strikes and meet deadlines.

Encouraged by international conventions and following a regional trend, the recently elected Government of country A has tabled a bill establishing criminal corporate liability for public and commercial bribery. The bill requires companies to have an effective anti-corruption ethics and compliance programme as a requisite to sign public contracts. As a result, KABAKA INC. can only apply for new public tenders once its anti-corruption ethics and compliance programme is up and running.

KABAKA INC. decides to hire you as a consultant to identify the risks and develop measures to mitigate them. Draw up a report for your employer.



**Case scenario for Group 3: DIOGENES LTD**

DIOGENES LTD is a maritime shipping company based in country B. The recently designated CEO is an experienced businesswoman who has worked in the shipping sector for 20 years. She wants the company to expand to new markets, but also to tackle some longstanding problems.

According to the CEO, it is common practice in many ports of the world for local inspectors to demand favours in return for speeding up the loading and unloading of cargo. This is not a minor issue because time spent by ships in port is expensive for DIOGENES LTD. Local inspectors usually demand all kinds of favours from the captains of ships, which in many cases include small facilitation payments like imported cigarettes, bottles of whisky or cash payments, to speed up the procedures. Different actors take part in the port inspections, such as ship captains, local inspectors and public officials.

DIOGENES LTD also interacts with state-owned and private companies, for example, when buying new ships or contracting maintenance work.

In this scenario, the board agrees with the CEO's plan to try and expand into new markets, but also to try to reduce corruption risks, avoid unnecessary costs for bribes, and adhere to legislation by implementing an effective anti-corruption ethics and compliance programme. Imagine that you are a member of the board of directors during a board meeting. Share your evaluation of the situation and your suggestions about how to proceed.

**Case scenario for Group 4:**

Mjuaji Marco is a Town Clerk of Tuendelee Municipal Council. He recently started a business in town known as Bidhaa za Kushangaza Suppliers. The business deals in the supply of stationery.

Tuendelee Municipal Council has floated a tender worth KSh. 300,000/- for the supply of stationery. Bidhaa za Kushangaza Suppliers, among others, puts in a bid. Using his office as town clerk, Mjuaji orders Mtiifu Paulo, an employee of the Council who knew where the key to the Tender Box was kept, to open the tender box at night and tell him what the other suppliers have quoted. When the Tender Box is opened, he soon realizes that Bidhaa za Kushangaza Suppliers have quoted the highest price and are therefore unlikely to win the tender. Mjuaji removes Bidhaa za Kushangaza Suppliers' bid, and replaces it with another from them quoting the lowest price.

At a meeting of the Committee dealing with the tender, Mjuaji does not disclose that he has an interest in Bidhaa za Kushangaza Suppliers. He participates in the discussions of the Committee and contributes to the Committee's decision to award the tender to Bidhaa za Kushangaza Suppliers.

Mlanawe Yohana, a Public Officer in charge of procurement in Tuendelee Municipal Council, receives stationery from Bidhaa za Kushangaza Suppliers pursuant to the tender. Upon inspection, he discovers that not only are the goods defective, but that they are also far less than those ordered. He threatens to reject the entire consignment.

Mporaji Maarufu, a sales person from Bidhaa za Kushangaza Suppliers, implores Mlanawe not to reject the consignment. He informs Mlanawe that Bidhaa za Kushangaza Suppliers belongs to the Town Clerk and promises that Mlanawe will be “handsomely rewarded” if he receives the goods as they are. To prove his point, Mporaji produces a wad of one thousand shilling notes which he places in Mlanawe’s hands. Mlanawe puts the money in his pocket, acknowledges delivery and receives the goods. Mjuaji thereafter arranges for Bidhaa za Kushangaza Suppliers to be paid very quickly without due regard to procedure.

#### Questions:

1. In your opinion, have any offences been committed? If so, which ones?
2. Have any ethical breaches been committed? If yes, which are these?
3. If you were in Mlanawe’s position what would you have done?
4. If you were in Mtiifu Paulo’s position, what would you have done?
5. If you were a colleague to Mlanawe and you subsequently come to learn of what happened, what would you do?
6. If you were Mlanawe’s supervisor and this matter is reported to you, what action would you take?
7. If you were a member of the public who was aware of this transaction, what action would you take?

### > Exercise 3: The consultant

This exercise involves role playing in an imaginary board meeting setting. In small groups, students set about working on a dilemma where they analyse and decide on a risky business opportunity after detecting several red flags. During these discussions, students will be able to experience the inherent tension between risky business opportunities, and ethics and legal compliance. Students will also have to take into account the complexity of transnational business transactions and the implications of third-party due diligence.

#### Lecturer guidelines:

The lecturer should print out the exercise before class and hand a copy to each group of students. Remember: A maximum of five students per group encourages participation. Each group is given 30 minutes to read and discuss the case. After the discussion, the lecturer asks each group to upload or share a brief, written summary of their analysis and decisions, and then invites a representative from each group to present the group’s conclusions to the whole class. Before the full-group discussion, the lecturer can ask students to do a confidential vote on whether they would hire the consultant or not. The lecturer, or a separate group of students, can devise a chart, shared on the board or online, to track the points observed by the groups. After the full-group discussion, the students return to their small groups and discuss their original position and whether and why it has changed. The lecturer may conclude this exercise with discussions about what students think the stronger decision is and why. The following text should be printed and handed out:

**Case Scenario: The consultant**

You are members of the board of a multinational construction company headquartered in country C. The company trades its shares at the New York Stock Exchange and is therefore subject to the Foreign Corrupt Practices Act of 1977 (FCPA). Your company was sanctioned for FCPA violations in 2015, but has since implemented strict ethics and compliance measures. Your company is active in many countries. The subsidiary in country D is about to bid for what may be the biggest contract in the region since 2010. The local CEO requests approval from the board to hire a consultant who seems key to winning the contract. The board has just received the following email from the compliance officer responsible for the region:

Dear Board Members

As you know, our local subsidiary is about to bid for the tender of the Ministry of Transport for the construction of a highway in country D. In addition to the construction contract, the winner will operate the highway tolls for ten years. According to a market study, this appears to be a profitable business opportunity extending over many years. At this stage of the bidding process, our company and a joint venture that includes another local company are shortlisted. This morning, our local CEO requested my authorization to hire a consultant that can help us obtain the contract. The consultant is a qualified engineer with significant expertise in the field. The consultant requests a fee of three per cent of the first gross instalment of the contract, on a contingency basis, amounting to about US\$1.5 million. The price is at the higher end for global consulting fees and certainly above the average of local fees. The consultant's services consist of representing us at the scheduled public hearing, which will take place this coming Friday. The hearing will be closely covered by the press and we expect the attendance of important stakeholders. The local CEO believes that the consultant can be key to our success. Our local compliance officer has checked the consultant's background against standard databases and found nothing suspicious. There are no pending court cases and, while there were some media articles about the consultant's influence over decision makers in infrastructure contracts, our local CEO explained that all of them come from a newspaper controlled by the opposition party that takes every opportunity available to create suspicions of corruption within the current administration. No concrete evidence has been published.

After the conversation with the local CEO, we are inclined to give approval to hire the consultant. The local CEO shares our view but has also suggested that the consultant might be offering services to the competing joint venture as well. Our company policy requires the approval of the Board for this decision. How should we proceed? We would appreciate your reply as soon as possible.

Best regards,

Compliance Officer X

## > Exercise 4: Anti-corruption ethics and compliance programmes

The following model from the United Nations Global Compact shows six steps to an effective anti-corruption ethics and compliance programme:

<b>Step 1: Commit</b>	Leadership commits to prioritizing the Global Compact principles in strategies and operations and to taking action in support of broader United Nations goals, in a transparent way.	During this step, company leadership publicly signals its commitment to stakeholders. Leadership specifically commits to supporting the Global Compact and making its 10 principles part of the strategy, culture and day-to-day operations of the company, with oversight provided by transparent governance structures.
<b>Step 2: Assess</b>	Leadership undertakes to assess risks, opportunities and impacts across Global Compact issue areas.	Equipped with a commitment to the Global Compact and in support of United Nations goals, the company assesses its risks and opportunities – in financial and extra-financial terms – as well as the impact of its operations and activities, on an ongoing basis in order to develop and refine its goals, strategies and policies.
<b>Step 3: Define</b>	Leadership aims to define goals, strategies and policies.	Based on its assessment of risks, opportunities and impacts, the company develops and refines goals and metrics specific to its operating context, and creates a roadmap to carry out its programme.
<b>Step 4: Implement</b>	Leadership undertakes to implement strategies and policies throughout the company and across the company's value chain.	The company establishes and ensures ongoing adjustments to core processes, engages and educates employees, builds capacity and resources, and works with supply chain partners to address and implement its strategy.
<b>Step 5: Measure</b>	Leadership plans to measure and monitor impacts and progress toward goals.	The company adjusts its performance management systems to capture, analyse, and monitor the performance metrics established in the Assess and Define steps. Progress is monitored against goals, and adjustments are made to improve performance.

<b>Step 6: Communicate</b>	Leadership pledges to communicate progress and strategies, and to engage with stakeholders to strive for continuous improvement.	The company communicates its progress and forward-looking strategies for implementing its commitment by developing a communication on progress, and engages with stakeholders to identify ways to improve performance continuously.
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(Source: United Nations Global Compact)

Ask your students to reflect critically on this model and explain its strengths and weaknesses.

#### Lecturer guidelines:

If the time allows it, the lecturer may split the class into groups and ask each group to identify existing national and international guidelines on anti-corruption ethics and compliance programmes or to assign some of the following examples from [Argentina](#), [Brazil](#), [Japan](#), [New Zealand](#), Spain, [United Kingdom](#), [USA](#) or [the International Chamber of Commerce](#). Then, each group should analyse whether these guidelines follow the steps, described by UNGC, and discuss their findings with the rest of the class.

### > Exercise 5: Collective action

This exercise is designed so that students express themselves through role playing. The students should be given time to research and understand their roles, before they begin to develop the requested documents.

#### Lecturer guidelines:

The lecturer should print out the case study before class and hand a copy to each group of students. Remember: A maximum of five students per group encourages participation. Provide each group with a different role, for instance maritime inspectors, company executives accused of criminal practices, members of a competitor company, customers, government officials. Each group will have 15 minutes to read and prepare the case. After that, the lecturer will ask each group to play a role in the negotiations. The discussions should consider the commercial, legal and financial advantages and disadvantages faced by each stakeholder; how to create a level playing field; and how this would affect different actors. Participants should try hard to reach an agreement, because if all stakeholders agree, the government will reform the regulatory framework.

The lecturer may use the case study described below, which concerns an intervention led by the [Maritime Anti-Corruption Network \(MACN\) in Argentina](#), and which involved several business associations that operate in the maritime transport sector. The lecturer may wish to use or develop alternative case studies that are more relevant to students' regional, local and cultural contexts.

**Case study: The MACN Intervention in Argentina**

The aim of the intervention led by the [Maritime Anti-Corruption Network \(MACN\) in Argentina](#) was to reduce corruption in inspections of the holds and tanks of the bulk carriers conducted by the National Service of Health and Agri-Food Quality in Argentina. The inspections were supposed to ensure that the means of transport were in a satisfactory condition to avoid contamination of agricultural products. However, an illicit business worth about \$30 million per year developed because of a combination of factors, namely: the unsupervised discretion enjoyed by the inspectors, the costs derived from the delays caused by the disapproval of the warehouse, and the lack of transparency and regulation of the entire inspection process. These conditions facilitated bribery, paid by ships in poor condition to obtain the undue benefits of approval, and commercial extortion of vessels in good condition that paid to avoid costly and unjustified delays. Over time, the extent of systemic corruption in these inspections affected not only individual companies, which had to add bribery to their business costs, but international trade in Argentinian agricultural products more broadly, to the extent that the higher costs and legal risks discouraged foreign companies from trading in the country.

To address this case of corruption, MACN members engaged with all stakeholders, including government, in a process that took more than three years, to re-design the investigation process. During the discussions, the commercial, legal and financial advantages and disadvantages faced by each stakeholder were evaluated and how a level playing field would affect them. In agreement with all stakeholders, the Government reformed the regulatory framework in November 2017. The collective action continued during the implementation of the reform, through meetings with all stakeholders and training of operative personnel, both in the public and private sector. Bribes decreased to almost zero, and in the few instances where corruption resurfaced the incidents were reported and sanctioned.

## Possible class structure

This section contains recommendations for a teaching sequence and timing intended to achieve learning outcomes through a three-hour class. The lecturer may wish to disregard or shorten some of the segments below in order to give more time to other elements, including introduction, icebreakers, conclusion or short breaks. The structure could also be adapted for shorter or longer classes, given that the class durations vary across countries.

### Introduction (10 min)

- Discuss the objectives, learning outcomes and teaching methodology of the class.

### Overview of private sector corruption (60 minutes)

- Describe the differences between public and private sector corruption as well as the forms, manifestations and causes of private sector corruption.
- Discuss with the students why is important to fight private sector corruption and emphasize on its consequences for the business environment. The lecturer is encouraged to use interactive methods such as Q&A and short presentations.
- Conduct [Exercise 1](#).

### How to address private sector corruption? (50 minutes)

- Present the various means to respond to private sector corruption such as corporate liability, suspension and debarment, etc.
- Discuss the shift from legal to behavioural approaches to address private sector corruption and provide an overview of different preventive approaches including ethics and compliance programmes, risk assessment methods and business partners due diligence.
- Conduct [Exercise 2](#), [3](#) or [4](#) (if time allows, the lecturer may wish to conduct more than one exercise during this part of the class).

### Collective action and public-private partnerships (50 minutes)

- Discuss the need of collective actions to fight corruption and provide the students with practical examples of collective action initiatives of companies in different sectors and countries.
- Conduct [Exercise 5](#).

### Conclusion (10 minutes)

- Wrap up the main ideas which emanated from the Module, send the students home with a question to continue thinking about. An example is: What are the most destructive aspects of private sector corruption in your country or region, and what is the best way to deal with them?



## Core reading

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This section provides a list of (mostly) open access materials that the lecturer could ask the students to read before taking a class based on this Module.

Langevoort, Donald C. (2017). [Cultures of Compliance](#). Georgetown Law Faculty Publications and Other Works. Georgetown University.

Pieth, Mark (2012). [Collective Action and Corruption](#). Working Paper Series, No 13. Basel: International Centre for Collective Action, Basel Institute of Governance.

Sartor, Michael, and Paul Beamish (2019). Private Sector Corruption, [Public Sector Corruption and the Organizational Structure of Foreign Subsidiaries](#). Journal of Business Ethics, pp. 1-20.

Taylor, Alison (2016). [What Do Corrupt Firms Have in Common? Red Flags of Corruption in Organizational Culture](#). Center for the Advancement of Public Integrity, Columbia Law School.

United Nations Office on Drugs and Crime (UNODC) (2013). [An Anti-Corruption Ethics and Compliance Programme for Businesses](#). Vienna.

United Nations Office on Drugs and Crime (UNODC) (2013). [Resource Guide on State Measures for Strengthening Corporate Integrity](#). Vienna.





## Advanced reading

The following readings are recommended for students interested in exploring the topics of this Module in more detail, and for lecturers teaching the Module:

Alderman, Richard (2014). [Development of a Preliminary Study on Possible Regulatory Developments to Enhance the Private Sector Role in the Fight against Corruption in a Global Business Context](#). Report of the B20 Task Force on Improving Transparency and Anti-Corruption, 8 January 2014.

Arlen, Jennifer (2012). Corporate Criminal Liability: Theory and Evidence. In Research Handbook on the Economics of Criminal Law, A. Harel and K. Hylton, eds. Edward Elgar.

Arlen, Jennifer, and Reinier Kraakman (2012). Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes. NYU Law Review, vol. 72, no. 1 pp. 687-779.

Ayres, Ian, and John Braithwaite (1992). [Responsive Regulation: Transcending the Deregulation Debate](#). New York: Oxford University Press.

Buell, Samuel W. (2018). The Responsibility Gap in Corporate Crime. Criminal Law and Philosophy, vol. 12, issue 3 (September), pp. 471-91.

Campos, Nauro, Saul Estrin, and Eugenio Proto (2010). [Corruption as a Barrier to Entry: Theory and Evidence](#). IZA Discussion Paper Series, No. 5243. Institute for the Study of Labor.

Field, Alan (2017). ISO 37001: An Introduction to Anti-Bribery Management Systems. IT Governance Publishing.

Green, Stuart P. (2013). Official Bribery and Commercial Bribery: Should They Be Distinguished? In Modern Bribery Law: Comparative Perspectives, Jeremy Horder and Peter Alldridge, eds. Cambridge: Cambridge University Press.

Guiso, Luigi, Paola Sapienza, and Luigi Zingales (2015). [The Value of Corporate Culture](#), *Journal of Financial Economics*, vol. 117, issue 1 (July), pp. 60-76.

Gutmann, Jerg, and Viola Lucas (2018). Private-Sector Corruption: Measurement and Cultural Origins. Social Indicators Research, vol. 138, issue 2 (July), pp. 747-770.

Institute of Business Ethics (2010). Business Ethics for SMEs.

International Monetary Fund (2016). [Corruption: Costs and Mitigating Strategies](#). Washington, DC.

International Monetary Fund (2019). [Fiscal Monitor: Curbing Corruption](#). Washington, DC.

Moretti, Diogo (2018). [The Use of Intermediaries in Corrupt Deals- Lessons from the Petrobrás Case for Compliance Officers](#). IACA Research Paper Series, No. 06. Laxenburg, Austria: International Anti-Corruption Academy.

Pinto, Jonathan, Carrie R. Leana, and Frits K. Pil (2008). Corrupt organizations or organizations of corrupt individuals? Two types of organization-level corruption. *Academy of Management Review*, vol. 33, no.3, pp. 685 - 709.

Sööt, M.L. and others (2016). [Private-to-private corruption: Taking business managers' risk assessment seriously when choosing anti-corruption measures](#). Paper presented at the 2016 OECD Integrity Forum. Paris, March.

Tyler, Tom R. (2014). [Reducing Corporate Criminality: The Role of Values](#). Faculty Scholarship Series. Paper 4989. New Haven: Yale University.

Transparency International (2009). [Global Corruption Report 2009: Corruption in the Private Sector](#). Transparency International, Cambridge University Press, and Ernst and Young.

United Nations Industrial Development Organization and United Nations Office on Drugs and Crime (2007). [Corruption prevention to foster small and medium-sized enterprise development: Providing anti-corruption assistance to small businesses in the developing world. UNIDO and UNODC](#). Vienna.

United Nations Office on Drugs and Crime (2013). [India: Incentives for corporate integrity in accordance with the United Nations Convention against Corruption](#).

Wickberg, Sofia (2013). [Corruption risks and mitigation strategies in Small and Medium Size Enterprise lending](#). Bergen, Norway: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute.



## Student assessment

This section provides suggestions for a post-class assignment for the purpose of assessing student understanding of the Module. Suggestions for pre-class or in-class assignments are provided in the Exercises section.

To assess the students' understanding of the Module, the lecturer may choose one of the two post-class assignments listed below. The first one is oriented towards political science and law students, and the second towards business students.

1) Students play the role of government advisors to draft or modify the law on corporate liability for corruption. Two weeks after the class, students will hand in a draft bill. The draft bill will be accompanied by a document that explains the grounds of the legislation and the rationale behind it.

The draft bill and the additional document must take into account the local constitutional and legal framework, and students should decide whether to establish a civil or criminal liability system with objective or subjective liability. The draft bill may include leniency provisions, i.e. conditions or cases that allow companies to reduce sanctions in case of violations. In addition, the bill and the additional document must establish in which cases third parties may trigger corporate liability. Finally, the draft bill or the additional document must describe which measures companies may take to establish an effective anti-corruption ethics and compliance programme.

Apart from the core reading on the subject, the lecturer may suggest to students that they check legislation on this subject, such as the Foreign Corrupt Practices Act (FCPA), the UK Bribery Act 2010, the United Nations Convention against Corruption (UNCAC) and the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention (officially Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

2) Students choose an existing company and do a critical review of the existing code of conduct or ethics, taking into account the economic sector in which the company has developed, its size, whether it trades its shares or not, whether it operates globally or just locally, etc.

A short essay must be submitted in which students explain the difference between a compliance approach to a code and a values approach to a code,

The lecturer may recommend students to do a prior check of some already existing codes of conduct, for instance:

- [Johnson & Johnson's Code of Business Conduct](#)
- [TGLT's Code of Ethics](#)
- [General Electric's Code of Conduct](#)



## Additional teaching tools

This section includes links to relevant teaching aides such as PowerPoint slides and video material, which could help the lecturer teach the issues covered by the Module. Lecturers can adapt the slides and other resources to their needs.

### > PowerPoint presentation Slides

- » Presentation on Module 5 (TBI)
- » [Corporate Criminal Enforcement Using Corporate Liability to Induce Corporate Policing](#) (Jennifer Arlen, 2016).

### > Video material

- » [A series of videos on collective action initiatives](#), developed by the Center of Collective Action at the Basel Institute of Governance, offers interviews with some of the leading anti-corruption and collective action experts who explain what is collective action, what benefits they bring to markets and society, who is involved in them and success strategies for Collective Action Initiatives.
- » [Ethics Illustrated: How to Avoid Conflicts of Interest](#) (2018). United States Department of Agriculture Office of Ethics (4:43 mins). This video provides practical advice that employees can use right away to identify and avoid conflicts of interest, properly respond to gifts offered from vendors, and ensure the highest standards of impartiality are upheld.
- » [Corporate Culture](#) (2016). Duke University – The Fuqua School of Business (14:34 mins). This video provides an overview of a research project that involves nearly 2,000 executives to learn their views on corporate culture.
- » [Corruption Risk in Pharma and Medical Device Markets](#) (2016). Richard Bistrong (15:35 mins). In this video from the 17th Annual Pharma and Medical Device Compliance Congress, anti-corruption and compliance experts discuss during a panel on “Behind the Bribe: Multiple Real World Perspectives on How Foreign Bribery Occurs, Is Investigated, and Could Be Prevented.”
- » [Corruption in Brazil: the scam that put politicians behind bars](#) (2017). The Economist (4:49 mins). In this short video, The Economist’s journalists present one of the world’s biggest corruption scandals, which has started with investigation in a Brazilian car was and has spread to 16 countries, embroiled more than 100 politicians and business leaders and put billionaires behind bars.
- » [MACN: Tackling Maritime Corruption in Argentina](#) (2019). BSR (5:14 mins). This video presents the [Maritime Anti-Corruption Network](#) (MACN) in Argentina and its anti-corruption efforts including a comprehensive Collective Action programme.

## > Websites

- » [FCPA Blog](#) offers more than 7 000 posts by 600 different authors including news and commentary about white-collar crime, enforcement actions and compliance with anti-corruption legislation, in particular with the Foreign Corrupt Practices Act (FCPA).
- » [FCPA Clearinghouse](#) is an online platform developed by the Stanford Law School that includes various FCPA-related materials such as reports, articles and statistics.
- » The Basel Institute of Governance's [website](#) offers a rich collection of open access materials on Private Sector Corruption, Collective Action and Compliance.

## > Case studies, news articles and blogs

- » Cassin, Richard L. (2010). [Prison for Ex-Willbros Execs](#). The FCPA Blog, 28 January.
- » Phys.org (2019) [Corruption contagion: How legal and finance firms are at greater risk of corruption](#), 24 April.
- » Sun, Andrew (2019). [Why it makes good business sense to focus on environmental, social and corporate governance practices](#). South China Morning Post, 25 April.
- » The Maritime Executive (2019). [IMO Sets New Anti-Corruption Agenda](#), 15 April.
- » United States of America before the Securities and Exchange Commission (2007). [In the Matter of the Dow Chemical Company, Respondent. Administrative Proceeding](#), File No. 3-12567 (Case study).
- » [United States of America v. AGA Medical Corporation Information](#) (2008). U.S. District Court Minneapolis, Minnesota, Case 0:08-cr-00172 (Case study).

## > Other tools

- » [The Fight Against Corruption](#) - This e-learning tool is a joint product of the UN Global Compact and the UN Office on Drugs and Crime. It uses six interactive learning modules to further the audience's understanding of the UN Global Compact's 10th principle against corruption and the UN Convention against Corruption as it applies to the private sector. The tool is targeted at everyone who acts on behalf of a company. Each module only lasts about five minutes, providing a quick and effective way of learning. And it is fun too!



## Guidelines to develop a stand-alone course

This Module provides an outline for a three-hour class, but there is potential to develop its topics further into a stand-alone course. The scope and structure of such a course will be determined by the specific needs of each context, and a theoretical and practical part should be included within each course. A possible structure is presented here as a suggestion:

Session	Topic	Brief description
1	Introduction: The international anti-corruption regime and the role of the private sector in the fight against corruption	The private sector in UNCAC and the OECD Anti-Bribery Convention. Exercise: After reading the Conventions, students can discuss the role the Conventions assign to the private sector in the fight against corruption. The pre-class exercise may be used in class.
2	Corporate liability for corruption	Historical analysis and evolution of corporate criminal liability in general and for corruption offences specifically. From individual to corporate liability in civil law countries. Paradigm shift with UNCAC and the OECD Anti-Bribery Convention.
3	Models of corporate liability: Vicarious liability versus organizational failure	Differences between and critical analysis of both models of corporate liability. Models adopted in specific jurisdictions: the US FCPA, UK Bribery Act, Germany, France and models in the country or region where the course is developed/given. Discussions about how to improve the model in force in the respective jurisdiction(s).
4	Corporate liability and corporate culture	What is corporate culture? Discuss the findings of Graham, Grennan, Harvey, Campbell and Rajgopal (2019), as well as how these findings apply to big corporate scandals (Walmart, Siemens, Odebrecht).
5	Preventing corruption within the company: Legal versus values-based compliance programmes	Brief description of Module 11 of the E4J University Module Series on Integrity and Ethics. Risk assessment, policies and procedures. Codes of conduct, tone from the top, and training. The role of the Compliance Officer.

Session	Topic	Brief description
6	Internal investigations and sanctions within the company, and cooperation with the official investigation	Discussions about whistle-blowing (how does it fit in the respective legal culture?); internal investigations and sanctions (rights of employees, labour and privacy issues); and cooperation with the authorities (legal privilege, and leniency agreements).
7	Third-party risk management	Anti-corruption measures for third parties. Red flags, contractual clauses, due diligence. <a href="#">Exercise 1</a> may be presented during this class.
8	Is the “global model” applicable to any company?	Describe and discuss how the model applies to multinational corporations, big local business groups, state-owned enterprises, and small and medium-sized enterprises (SMEs).
9	Anti-corruption measures at industry level	General description of collective action initiatives and public–private partnerships. The MACN case.
10	Public corruption and commercial bribery	Discuss whether bribing public officials should be differentiated from bribing private persons. <a href="#">Exercise 4</a> may be presented in this class.





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