



ICGN

International Corporate Governance Network

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ICGN Guidance on Anti-Corruption Practices

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ICGN Statement and Guidance on Anti-Corruption Practices

About ICGN

An investor-led organization of governance professionals, ICGN's mission is to inspire and promote effective standards of corporate governance to advance efficient markets and economies world-wide. Established in 1995 and present in over 50 countries, the ICGN membership includes global investors with assets under management in excess of US\$18 trillion. For more information, contact the ICGN Secretariat by telephone: +44 (0) 207 612 7098, email: secretariat@icgn.org or visit www.icgn.org.

Preamble

The ICGN Statement and Guidance on Anti-Corruption Practices establishes the importance of combating bribery and corruption as part of the corporate governance agenda, and will be referenced as part of the ICGN's Global Corporate Governance Principles in its next revision. This document presents a policy statement on why anti-corruption is an issue of concern for shareowners, and explains how corruption is ultimately detrimental to shareowner value. It provides a series of questions for investors to assist in their engagement with companies on the theme of anti-bribery and corruption. It concludes with a set of references to relevant organisations active in promoting the anti-corruption agenda that can serve as a resource to investors.

The Guidance follows workshop discussions and recommendations at the 2007 ICGN Annual Conference and Annual General Meeting (AGM) in Cape Town, which resulted in the formation of the ICGN Anti-Corruption Practices Working Group. The first draft was published in March 2008 and a consultation paper on the subject was sent to ICGN members for comment. The document

has been developed from its original draft to incorporate comments made by ICGN members during both the consultation process and during the members' meeting held at the 2008 ICGN Annual Conference in Seoul. At the AGM which followed, ICGN members approved the Statement and Guidance subject to member ratification by email in February 2009.

Contents

	Page
1.0. ICGN Statement on Anti-Corruption Practices	4
1.1. Introduction	4
1.2. Policy statement on anti-corruption practices	4
1.3. Rationale and definitions	4
1.4. Why corruption matters to investors	5
1.5. Corporate reporting on anti-corruption practices	6
2.0. ICGN Guidance on Anti-corruption Practices	6
2.1. Link to corporate governance	6
2.2. Areas to consider	6
2.3. Initial guidance on anti-corruption practices	7
Annex 1: Resources	9
Annex 2: Acknowledgements	10
Annex 3: Contact	11
Annex 4: ICGN Guidance	12

1.0. ICGN Statement on Anti-Corruption Practices

1.1. Introduction

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

1.2. Policy statement on anti-corruption practices

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

policies and internal systems to avoid bribery and corruption.

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

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

1.3. Rationale and definitions

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

1.4. Why corruption matters to investors

While making a corrupt payment can enable a company to win profitable business in the near term, it ultimately destroys value, both at a macroeconomic level and at an individual company level.

At a macroeconomic level, corruption greatly reduces efficiency by distorting competition and depriving buyers of economically superior products at the most competitive prices. Examples abound of deficient, unsafe or poorly-specified products being delivered at vastly-inflated prices to governments that can ill-afford such waste.

Corruption destabilises the political process and promotes conflict. It also raises the cost of doing business and deters investment. For investors with exposure across the market, this reduces overall returns by interfering with the allocation of capital to its “highest and best use”.

For investors in individual companies that have been disadvantaged by the corrupt actions of competitors, this directly reduces returns, even in some cases threatening commercial survival. For investors in bribe-paying companies, the damage is more insidious, and is felt over the longer term. Although corrupt actions

can go undetected and unpunished, when they do come to light they can trigger extremely costly and disruptive corrective actions, including legal and forensic investigations, fines, disgorgement of ill-gotten profits, corporate restructuring, dismissal of executive teams, imprisonment, debarment from client procurement lists, employee morale problems, staff defections, recruitment difficulties and reputational damage.

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

Finally, whether or not corruption is detected and punished, a corporate culture that tolerates corrupt payments is also one that is much more likely to tolerate, or fail to prevent, financial fraud, theft of company assets and other actions that will directly harm shareholders. Corruption corrodes corporate culture and undermines the quality of management.

Therefore, shareholders are particularly concerned that it reflects more broadly on the integrity and trustworthiness of management.

1.5. Corporate reporting on anti-corruption practices

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

In the absence of effective law, regulation and enforcement, companies are often called upon to engage voluntarily in collaborative transparency agreements. This requires a willingness on the part of companies to engage on a subject that some may prefer not to acknowledge. The ICGN encourages companies in these initiatives and believes that such reporting is positive and important. Investors can play an important role in developing market wide voluntary initiatives. The ICGN encourages companies to ensure that their financial and non-financial reporting is integrated, so that information

prepared for investors is readily accessible. Supplemental reporting may be helpful, but it is important to have this cross-referred to in annual reports.

2.0. ICGN Guidance on Anti-Corruption Practices

2.1. Link to corporate governance

One aim of this paper is to provide guidance to investors and their representatives when engaging with companies on matters relating to anti-corruption practices. The ICGN wishes to encourage members to consider anti-corruption practices as part of their standard review of corporate governance of the companies in which they invest.

2.2. Areas to consider

The ICGN Anti-Corruption Practices Working Group has identified four areas for investors to consider when raising the subject of anti-corruption with companies:

- policy
 - procedures and enforcement
 - transparency
 - voluntary initiatives
-

2.3. Initial guidance on anti-corruption practices

The following questions provide initial guidance for investors relating to each of the areas described above. This initial guidance may help investors to make better informed decisions regarding the anti-corruption practices of the companies in which they invest. The guidance also aims to provide clear good practice standards which companies may feel it appropriate to adopt and report against.

Policy

1. Does the company consider corruption to be a risk? How material is this risk, and in what areas of the company's operations is it likely to arise?
2. Does the company have a formal published policy, approved by the Board, on managing the risks posed to the business by bribery and corruption?
3. If so, does this policy:
 - commit the company to eliminating bribery and corruption within the business?
 - come under the oversight of the board of directors, or an appropriate board sub-committee, such as the audit or governance committee?
 - define corruption broadly to include any gifts or services which might result in improper influence including, but not limited to, cash?
4. Does the policy cover payments of gifts or services to public officials as well as commercial counterparties?
5. Does the policy address facilitation payments and detail the safeguards the company has taken to avoid abuses in this area?
6. Does the policy address potential associated conflicts of interest?
7. Does the policy extend to third parties, such as agents of the company?
8. Does it extend to the supply chain of the company?
9. To what extent is "anti-corruption" embedded within the culture of the company? What sort of actions will prove "counter cultural"?
10. Is the anti-corruption policy part of the selection process for new contractors?

Procedures

11. Does the company have comprehensive systems and procedures to ensure the effective implementation of the policy?
12. If so, do these procedures include: outreach to staff, suppliers, contractors, clients and other business partners, such as intermediaries, agents and consultants? What is the role of the Board in setting, promoting and observing these procedures?
13. Is there formal regular training, particularly for at-risk personnel and other key individuals inside and outside the company? Is company policy made clear to all staff?
14. Is there regular internal audit or external assurance of the effectiveness of these systems? Has the company ever sought external audit of its policies and their effectiveness and if so, to what effect?
15. Is there prompt reporting of information for the attention of the board?
16. Are there appropriate links to remuneration systems (in particular, to avoid inadvertently incentivising revenue generation that includes corrupt payments)?
17. Are there appropriate sanctions for individuals found to have breached the policy, including dismissal? Is there a zero-tolerance regime in place?
18. Is there a confidential internal reporting programme, such as an “employee reporting hotline”, to ensure that information about potential breaches of the policy is reported upwards as appropriate? To whom is the report, made, for example, to a third party? What enforcement action is taken following such reporting?
19. Does the board take responsibility for regular monitoring of the effectiveness of this system?
20. Does the company review a target company’s anti-corruption systems and track record as part of any pre- and post merger and acquisitions due diligence process?
21. Does the company review joint venture partners’ anti-corruption systems?
22. Do senior management encourage a culture of transparency and integrity through their own behaviour?

Transparency

23. Does the company communicate its policies and procedures to shareowners and other interested parties? Is the nature of board oversight explained?
24. Does the company have internal reporting processes to the board or appropriate board committee on the number and types of relevant incidents that have been detected and remedial actions taken?
25. Does the company disclose its position on matters of public policy, political lobbying activities (including those undertaken through trade organisations and other intermediaries), political contributions and any charitable or social payments that may have enabled the company to obtain improper business benefits?

Voluntary initiatives

26. Where appropriate, does the company participate actively in collaborative efforts with external parties, including other businesses, governments and civil society groups or non-governmental organisations to promote a corruption-free business environment?

Annex 1: Resources

Transparency International has developed the 'TI Business Principles for Countering Bribery', which are a comprehensive repository of good practice¹, and contain a practical implementation guide for large, small and medium sized companies. They have been developed by a multi-stakeholder group that includes large companies and investors.

The Organisation for Economic Cooperation and Development (OECD) produced the 'OECD Convention on Combating Bribery of Foreign Public Officials' in 1997, its response to the US's Foreign Corrupt Practices Act of 1977. The Convention has been ratified by 37 OECD and non-OECD countries², and its enforcement is monitored through a country oversight mechanism.

The World Bank and IMF also conduct highly authoritative studies at the macroeconomic level, which are useful for determining overall risk levels by country. The World Bank has updated aggregate governance research indicators for 212 countries for 1996–2006, for six dimensions of governance, including the 'control of corruption'³, voice and accountability; political stability and absence of violence; government effectiveness; regulatory quality; rule of law.

Footnotes

¹ http://www.transparency.org/tools/business_principles

² <http://www.oecd.org>

³ <http://www.govindicators.org>

The Global Corporate Governance Forum (GCGF) and the Center for International Private Enterprise (CIPE) has produced a guide to anti-corruption based on the experience of investors and businesses working in emerging markets. The guide is entitled 'Role of the Private Sector in Ethics and Corporate Governance in the Fight Against Corruption', (March 2008). This followed an international consultation on business ethics, anti-corruption and corporate governance which was discussed at a forum hosted by the GCGF and the CIPE in March 2008 in Paris. A follow up paper entitled 'The Moral Compass of Companies: Business Ethics and Corporate Governance as Anti-Corruption Tools' (March 2009) has also been published.

The World Economic Forum's 'Partnering Against Corruption Initiative' (PACI) is another project aimed at combating global corruption. It is business driven and was formally launched by CEOs from the Engineering & Construction, Energy and Metals and Mining industries in January 2004.⁴

The Extractive Industries Transparency Initiative (EITI) is a multi-stakeholder initiative involving oil and mining companies (state-owned and commercial); G8 and other industrialised country governments; resource-rich developing country governments; civil society organisations; and institutional investors. It seeks to

promote fiscal transparency and good public governance in countries that have a history of misuse of extractive revenues, corruption and conflict, by enlisting both the extractive companies that operate there to declare their tax, bonus and royalty payments, and the recipient governments to declare what payments they receive. At the time of writing, 76 investors with some \$13 trillion of assets under management back the EITI and are represented on its Board, making this the most prominent initiative in the area of anti-corruption with active investor involvement

Other organisations active in the field include TRACE⁵, which is a not-for-profit legal consultancy that advises companies on how to improve due diligence and strengthen internal systems. The International Chamber of Commerce (ICC) also produces the 'ICC Rules of Conduct and the ICC Handbook'⁶. It is also of note that the 10th Principle of the United Nations Global Compact deals specifically with the issue of transparency and anti-corruption.⁷

Annex 2:

Acknowledgements

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Grant Thornton International (USA), Robert Fowler, HESTA Super Fund (Australia), Keith Johnson, Reinhart Institutional Investor Services (USA), and Christian Strenger, DWS Investments (Germany).

Annex 3:

Contact

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Footnotes

⁴ <http://www.weforum.org/en/initiatives/paci/index.htm>

⁵ www.TRACEinternational.org

⁶ <http://www.iccwbo.org/policy/anticorruption/iccehch/index.html>

⁷ <http://www.unglobalcompact.org/>

Annex 4: ICGN Guidance

ICGN Statement and Guidance on Gender Diversity on Boards (2013)

ICGN Statement of Principles for Institutional Investor Responsibilities (2013)

ICGN Executive Remuneration Principles and Policy Disclosure Guidance (2012)

ICGN Guidance on Political Lobbying and Donations (2012)

ICGN Model Contract Terms Between Asset Owners and Managers (2012)

ICGN Corporate Risk Oversight Guidelines (2010)

ICGN Non-executive Director Remuneration Guidelines (2010)

ICGN Position paper: What Investors Want from Financial Reporting (2010)

ICGN Global Corporate Governance Principles (2009)

ICGN Guidance on Anti-Corruption Practices (2009)

ICGN Statement and Guidance on Non-financial Business Reporting (2008)

ICGN Securities Lending Code of Best Practice (2007)

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