



DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS

**QUESTIONS FOR A MULTI-STAKEHOLDER DIALOGUE ON
RESPONSIBLE INVESTMENT IN WEAK GOVERNANCE ZONES**

Response from Mr. John Devitt - Transparency International (Ireland)

The following comments are made on foot of questions posed by the OECD Investment Committee and arising from the Public Consultation on Conducting Business with Integrity in Weak Governance Zones. They address the position in which OECD member companies, their subsidiaries and agents find themselves in when confronted by bribe solicitation/extortion.

In particular, they answer the following questions:

What should a company do if it obtains information about wrongdoing by private actors or public officials? Should companies be encouraged to bear witness to wrongdoing? Under what circumstances should companies consider that they have whistle-blowing responsibilities?

The stock answer to the first and last questions is that a company always has a responsibility to report any illegal wrongdoing, such as a bribe solicitation/extortion, to the relevant authorities. It is not always clear however, even in some developed countries, who the relevant authorities actually are. In weak governance zones this task is made all the more challenging by unpredictable rules and opaque lines of government responsibility.

Where possible therefore, companies should make efforts to find reliable and secure channels through which they can report wrongdoing or illegal activity and which will prompt a proportionate and predictable response from the relevant authorities.

In weak governance zones, secure or neutral channels can include home country law enforcement agencies, OECD National Contact Points (NCPs) and/or embassies/trade missions, trusted civil society organisations and trade or business associations. It will then be the responsibility of that organisation to pass that information on, or take appropriate action.

Again, it is not always easy or possible to locate such secure channels. It has been observed that many NCPs and civil society organisations are reluctant to deal with allegations of bribery involving their nationals since such behaviour is regarded as criminal and entails the exclusive response of law enforcement agencies. In many cases, MNEs and small operators in weak governance zones have no home country diplomatic representation on the ground. Where there is such a presence, many companies appear to be afraid of reporting bribe solicitation/extortion due to the risk of counter allegations and other reprisals.

This as the Business Industry Advisory Council (BIAC) has pointed out, and the Chair of the NCP committee observed in 2004, poses a serious challenge to companies operating in weak governance zones. If for instance a company admits to having paid a bribe to a foreign public official, it and its agents concerned may be subject to criminal and commercial sanction (such as blacklisting) through local and domestic courts and international financial institutions. On the other hand, if a company reports a bribe solicitation/extortion or a series of such, by a foreign public official/s in a weak governance zone, there is little at present that home state agencies can do (assuming that reliable channels are absent in-country) to support that company. In other words, the company or its agents must pay a bribe for home state agencies to take action.

The fear of unpredictable response such as local economic or criminal reprisals is further compounded by the disappointing effort of most OECD member governments to publicise domestic law on foreign bribery. This has led to a great deal of confusion as to the legal nature of bribery, how to deal with solicitations, and an overall lack of awareness of the law on bribery within the broad business community. In 2002, Transparency International observed that no more than 7 per cent of respondents in OECD member businesses were familiar with the OECD Bribery Convention.

Equally many OECD members (with some notable exceptions) have betrayed a lack of political will or interest in promoting the role of NCPs to further the OECD Guidelines for Multi-National Enterprises. The Guidelines are widely recognised as an important tool in promoting ethical business practise and in encouraging civil society engagement in the process of globalisation. Few NCPs or other national government agencies offer accessible channels to report corporate malfeasance overseas. At the same time, NCPs do not provide confidential facilities through which businesses can report instances of bribery solicitation/extortions.

This lack of political support is simultaneously a symptom, and cause of incoherent government policy on the prevention of bribery. There has been very little evidence of any strategic thinking in combating bribery in domestic or foreign public or private sectors. This shortcoming is coupled with a dearth of global information on the prevalence of bribery.

To date, the only bribery measurement initiatives have been conducted by civil society organisations and think tanks. Surveys and indices such as TI's Corruption Perceptions Index are useful awareness raising and diagnostic tools and show a high degree of correlation with other surveys and independent analysis. Similarly TI's Bribe Payers Index has provided us with a clear picture of those sectors most prone to corruption and those industrialised countries that are most likely to pay bribes. Despite these tools' value, they do not provide a global picture of the demand side of bribery.

There is a simple though technical solution to this information gap: one which will encourage companies to 'bear witness to wrong-doing', and provide policy makers and anti-corruption practitioners with a complementary global corruption measurement tool to better inform domestic and international policy design and analysis.

A Corporate Information and Reporting System (CIRS), consisting of a stand-alone website providing information and advice and supported by an expert helpdesk, would serve as a global business information hub and provide a 24-hour secure channel for companies to share information on the size, frequency, sector, and regional nature of bribe solicitation/extortions and payments. As a primarily on-line service, costs would be restricted to design, promotion and technical maintenance, with the option of building research and legal advice capacity later on.

It could develop a global database of national laws and as the leading depository of unspecified data on international bribery and extortion. The question of legitimacy raised by trade union representatives in earlier stakeholder dialogues on this topic would not arise as the service would be global, with information gathered on bribery and extortion worldwide (in OECD and non-OECD countries alike).

User registration by nominated employees or principals, either by post or secure email would deal with any risk of abuse including impersonation or pernicious claims. A "critical mass" of responses would also be reached before any data was processed, both to provide a valid sample and to protect the identities of respondents (a random electronic filing system could prevent the identification of any respondent even by the service's staff and researchers). Periodic updates to the database would be fostered by online and automated email reminders to registered participants (with measures taken to prevent duplication).

The key criteria for success would be high visibility and adequate political and financial support from across the sector spectrum. The service would need to be promoted by national and international business groups such as the International Chambers of Commerce, professional organisations, international organisations, individual government departments including embassies and trade missions (and OECD NCPs), academia and civil society (including trade unions).

The service should be coordinated by a single reputable and well resourced organisation such as the International Chambers of Commerce, United Nations Office on Drugs and Crime, or Transparency International. Irrespective of the location of the coordination centre however, the political momentum for the system's promotion and effective implementation would need to be driven by a coalition of national, regional and international actors.

The ultimate aim of the service would be to provide policy makers in the field of investment, trade, anti-corruption, law enforcement, and development with accurate and up-to-date information on both the demand and supply side of corruption. It should not serve as a substitute for reporting bribery but instead help to better map weak governance zones and in providing impetus and determining priorities for national and donor strategies on corruption.

Finally it should also help to develop a better picture of the global investment environment for business. It could help identify the business risks posed by operating in weak governance zones and equip companies with the information needed to meet their responsibilities under domestic and foreign law.

Demand-side and preventive initiatives such as CIRS must also be complemented by the enforcement of the law on bribery and money laundering. Enforcement should also be supplemented through the adequate training of law enforcement officers, public officials and diplomats and the support of corporate anti-bribery compliance programmes.

Individual companies and business groups must also begin to meet their responsibilities under domestic anti-corruption/anti-bribery law. This can partly be addressed by instilling a corporate culture which does not tolerate bribery at very low labour or capital cost. Through implementing compliance and integrity programmes such as TI's Business Principles for Countering Bribery and engaging with disclosure initiatives such as the Extractive Industries Transparency Initiative (EITI) and the Global Reporting Initiative (GRI), business and professional organisations can reduce the financial, legal and reputational risks involved in operating in weak governance zones and provide the impetus for increased government action and engagement.

The risks to business operating in weak governance zones are well established. The role of corporate bribery and patronage in undermining the rule of law and in perpetuating conflict is increasingly well documented. What is also clear is that a piecemeal approach to tackling this vicious cycle of corruption does not work. International consensus on the supply side of corruption has been embodied through the implementation of regional conventions and national legislation to outlaw bribery. The emergence and growing availability of information technologies now offers an inexpensive means to harness that consensus, providing us with a more rounded picture of global corruption and educating government, business and civil society on their role in enhancing public integrity at home and abroad.

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