

Center for International Private Enterprise

# ECONOMIC REFORM

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## A Decade of Change in the Global Fight against Corruption

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### Article at a glance

- The first decade of the 21<sup>st</sup> century witnessed significant developments and shifting trends in the global fight against corruption.
- Due in part to the efforts of non-governmental organizations (NGOs) dedicated to improving integrity, the last five years have brought meaningful advances that merit continuing focus, effort, and support.
- The International Anti-Corruption Academy will provide much needed continuity and institutionalization for anti-corruption education and practice.

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## 2000-2005: A Slow Start With Promising Trends

In the early part of the last decade, reformers had hoped that the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention would be uniformly enforced and that corporations headquartered outside the United States would begin to implement compliance and governance programs similar to those within U.S. firms. Those of us waging the battle against corruption also anticipated that the enactment of the United Nations Convention Against Corruption (UNCAC) would keep the topic of corruption on the agenda in most international economic and trade forums, and particularly in the G-8 and G-20 meetings. There was also some expectation that the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) would more aggressively enforce the Foreign Corrupt Practices Act (FCPA). None of those outcomes would be realized until later in the decade.

The rising number of independent anti-corruption agencies in countries such as Kenya and Nigeria also gave hope that there would be reasonable oversight and efforts to combat the growing corruption problems in developing countries. That hope faded as many independent corruption agencies were either abandoned or faced diminished authority.

Yet, optimism prevailed predicated in large part on the growing strength and numbers of non-governmental organizations (NGOs) dedicated to improving corporate integrity, and to the courage of the many journalists diligently investigating and reporting on global corruption. Hope and promise also derived from the trend toward greater global cooperation on anti-corruption case jurisdiction among law enforcement and regulatory and prosecutorial agencies. Further, many financial institutions also implemented more effective and punitive anti-money laundering and “know your customer” procedures.

This five-year period experienced an unprecedented stream of conferences and workshops focused on compliance with the FCPA as well as with regional treaties like the OECD Anti-Bribery Convention, the Inter-American Convention against Corruption, the African Union Convention on Preventing and Combating Corruption, and the Council of Europe Criminal and Civil Law Conventions on Corruption.

While the anti-corruption agenda through the first half of the decade was quite active, real progress remained hard to define and measure. The trends, however, were promising and provided the momentum necessary for the more tangible developments that followed.

## 2005-2010: Increased Enforcement and Heightened Priority

Over the past five years the battle against corruption has been more effective. The Department of Justice and the Securities and Exchange Commission began to more aggressively enforce the FCPA, resulting in charges against major domestic and European-based companies. Between 2007 and 2010, the DOJ and SEC imposed more than \$2.8 billion in fines against corporations. These prosecutions included U.S. and non-U.S.-based companies involved in a wide variety of industries. For example:

- In March 2005, Titan Corporation of San Diego, California admitted to violations of the FCPA in making improper payments to the campaign of the then-incumbent president of Benin. The company agreed to pay a criminal fine of \$13 million.<sup>1</sup>
- In October 2006, Statoil ASA, headquartered in Norway, admitted to bribing an Iranian official in order to secure oil and gas rights in Iran. Statoil entered into a three-year deferred prosecution agreement and paid a \$10.5 million fine.<sup>2</sup>

- In December of 2007, Lucent Technologies, Inc. agreed to pay a \$1 million fine to resolve allegations that it violated the FCPA by providing travel and other things of value to Chinese government officials in order to promote the company's business interests.<sup>3</sup>
- In March 2010, BAE Systems PLC pled guilty to conspiring to defraud the United States by impairing and impeding its lawful functions, to make false statements about its compliance program, and to violate the Arms Export Control Act. The fine for this criminal conduct was \$400 million.<sup>4</sup>
- In September 2010, ABB Ltd. and two of its subsidiaries pleaded guilty to violating the anti-bribery provisions of the FCPA by paying bribes to Mexican officials for contracts relating to power generation. ABB Ltd. and its subsidiaries agreed to pay \$19 million in criminal penalties.<sup>5</sup>

While these cases evidence the breadth of efforts to combat corruption, the penalties and related coverage pale in comparison to the decade's most notable prosecutions, including Siemens AG. That company and its three subsidiaries pled guilty to criminal violations of the FCPA's bookkeeping standards. The improper payments were in the range of \$1.3 billion; Siemens paid more than \$800 million in fines, penalties, and disgorgement of profits to U.S. authorities.<sup>6</sup>

### **Cooperation through International Organizations and Development Assistance**

The OECD Convention, which had gone virtually ignored in the first seven years of its existence, experienced a slight resurgence, with a few countries — France, Germany, Norway, and Switzerland — actively pursuing enforcement. Although, 21 countries including Argentina, Australia, Brazil, Canada, and Turkey continued to have little or no anti-bribery enforcement, these omissions should not obscure progress that has been realized. Notable but still on the “pending” list

There is also a welcomed call for higher standards and increased accountability coming from stakeholders in public corporations. As corporations suffered severe penalties, including loss of share value as a result of scandal, shareholders are now demanding pertinent policy reforms and changes in leadership when necessary.

for applying the OECD Convention, the United Kingdom recently passed the UK Bribery Act.

Multilateral development banks have put forward another key positive development in anti-corruption enforcement by refining their suspension and debarment policies. As of July 19, 2010, the World Bank, Asian Development Bank, and European Bank for Reconstruction and Development actively promote cross-debarment in accordance with the Agreement for Mutual Enforcement of Debarment Decisions. The World Bank also publishes lists of those individuals and companies who have been suspended or debarred. By 2010, the World Bank had listed more than 175 companies and individuals.

Further, the World Bank put in place punitive programs to encourage countries to improve transparency and accountability. For example, in June of 2006, it suspended \$11.9 million for seven Cambodian projects due to corruption charges. This marked the beginning of the Bank's harsher attitude toward countries with severe corruption problems.

Then, in a precedent-setting move, in July 2009 the World Bank reached a settlement agreement

with Siemens AG which, in part, required Siemens to contribute \$100 million to non-profit organizations that promote business integrity and fight corruption. By the end of the first round of funding in 2010, Siemens had funded over 30 projects worth a total of \$40 million.

The United States Millennium Challenge Corporation (MCC) is another development program that fights corruption. This innovative approach provides high-performing countries with large scale grants to fund country-led solutions for reducing poverty through sustainable economic growth. Before a country can qualify for a MCC grant, they must meet criteria which, in part, include control of corruption. To date more than 20 countries have received grants. If there is a policy reversal within a country whereby the criteria is no longer met, the country can be suspended or its status revoked.

### Effects on Corporate Responsibility and Behavior

Increased enforcement by the DOJ, SEC, several European-based prosecutors, and international financial institutions has led to significant improvements in corporate responsibility in transactions. As early as mid-year 2000,

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multinational corporations began re-examining their internal compliance programs. There was also a concerted effort to define and recognize best practices in areas including “know your customer” vendor due diligence, employee training and hotlines, and improved enterprise risk management programs.

Many companies hired chief compliance officers and provided them with substantial resources, including budgets to hire outside experts. That represented a significant positive shift and showed that anti-corruption efforts will persist into the future. Equally important is the recognition that compliance personnel must have a degree of independence and a reporting structure that ensures access to chief executive officers and the audit committees of the boards of directors.

Officers and directors, particularly audit committee members, have become subject to an expanded scope of personal liability, obligating them to become more knowledgeable and active in corporate compliance and governance. The term “tone from the top” has become the standard rallying cry for corporate executives desiring to communicate company values and ethics.

Stakeholders in public corporation are calling for higher standards and increased accountability. After corporations suffered severe penalties, including loss of value as a result of scandal, shareholders are now demanding pertinent policy reforms and changes in leadership when necessary.

The increased drive for corporate compliance and governance did present multinational firms with a dilemma. While multinational companies engaged in international trade understand the importance of developing state-of-the-art compliance programs, corporate leaders struggle with competitive challenges and leveling the playing field with firms that do not comply with anti-corruption regulations. There is general recognition that saying “no” to corruption is the right thing to do but there is no simple way to lessen the risk of

doing business in high-risk countries. How do the good guys compete in this environment?

### Integrity Pacts

One possible solution to this problem found new life in the later part of the last decade with the advent of integrity pacts — vehicles that enable companies, even competitors, to collaborate on ways to improve transparency and accountability in public procurement. Transparency International designed this approach more than 10 years ago and it has gained increasing attention in the last three years for enabling government agencies and the bidder community to jointly establish and adhere to defined “field-leveling” standards and principles.

Integrity pacts ensure that companies abstain from bribery by committing all participating bidders to a binding agreement pledging compliance. Enforcement resides with the soliciting agency or authority, which installs checks, balances, systems, and controls, thereby heightening the barriers to bribery and extortion. Further, integrity pacts help build transparency into the overall procurement process. The covenants include other elements such as requirements to report all allegations of bribery, denial or loss of a contract, audit rights, and liability for damages. Properly crafted and effectively enforced, integrity pacts will, at minimum, aid the overall enforcement of other anti-corruption regulations.

The results of integrity pacts are very encouraging. For example, in 2006 the government of India announced that integrity pacts would be required in major national procurement contracts, including the sensitive, heavily funded defense sector. Immediately, integrity pacts gained recognition in other countries and industries as a viable tool. At the close of 2010, Sutlej Jal Vidyut Nigam (SJVN), a major player in the Hydro-Electric Power field, signed an integrity pact with Transparency International India to create an independent external monitor mechanism. SJVN is a joint venture between the state of Himachal Pradesh and the central government. This endeavor

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will help promote transparency and accountability in the power generation sector and represents the first such pact between a state and the central government. This is now the 40<sup>th</sup> major company in India to use an integrity pact as an anti-corruption tool.

In 2007, a broad effort was also undertaken when the World Bank Institute, the United Nations Global Compact, the Center for International Private Enterprise, Transparency International, Siemens, Grant Thornton, and other industry experts gathered to discuss ways to assist private enterprise in collective action against corruption. The business case envisioned by this group not only refines and better markets the “integrity pact” approach but also introduces other effective tools – including certifying business coalitions against corruption and endorsing and supporting principles-based initiatives.<sup>7</sup>

Integrity pacts are not a panacea. They do, however, represent real progress by defining

clear rules of engagement, making a potential perpetrator's illicit activities more difficult, and by facilitating the discovery and prosecution of violations.

### Public Perception

Despite advances in the battle against corruption over the past five years, bribery remains a difficult and growing problem. The recently released Transparency International Global Corruption Barometer showed that six out of 10 respondents to its worldwide questionnaire believe corruption has increased.<sup>8</sup> According to the Barometer, one in four respondents admitted paying bribes. The majority of European and North American respondents reported that they believe corruption is trending upward in Europe and North America. These polling results are not surprising: ironically, they result from increased attention from the enforcement community, an increasing number of prosecutions, and a more diligent international press.

## Filling the Leadership Vacuum: The Anti-Corruption Academy

Many anti-corruption accords and initiatives recognize the importance of training, education, technical assistance, and international cooperation in the effort to prevent, detect, and prosecute corruption. A noteworthy provision within the OECD Convention calls for technical assistance, including training, human resources, research, and information sharing.<sup>9</sup> Furthermore, Annex II of the Recommendations for Further Combating Foreign Bribery of the OECD Convention advocates that business organizations and professional associations play a role in assisting companies in the development of effective internal controls, ethics, and compliance programs. More specifically, the recommendation suggests that training, prevention, due diligence, and other compliance tools be made available.

Some enforcement and prosecutorial agencies offer instruction on how to detect, investigate, and prosecute corruption offenses. There are also courses

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on associated topics like forensic accounting, money laundering, and asset forfeiture.

Though there are hundreds of short programs and workshops offering compliance and enforcement-related training, continuity and institutionalization is lacking. Universities and colleges, while offering courses in criminal justice, law, and police science, do not generally offer comprehensive instruction in anti-corruption disciplines. Simply put, there is a woeful lack of professional anti-corruption education, particularly in countries most prone to corruption. Since that is the case, where will the next leaders of the anti-corruption efforts come from?

### From Idea to Reality

In 2005, I placed before members of the Interpol Group of Experts on Corruption (IGEC) a proposal to create an International Anti-Corruption Academy that would bring about change by providing sustained anti-corruption education.

The Academy gained the support of several international groups including Interpol, United Nations Office on Drugs and Crime (UNODC), and the European Fraud Office (OLAF). Following

an event in Vienna titled “From Vision to Reality; A New and Holistic Approach to Fighting Corruption” in September 2010, 25 nations signed an agreement to establish the Academy as an international organization. Since that time, another 18 nations have joined as signatories to the agreement. The Academy, headquartered in Laxenburg near Vienna, Austria – offered its first training and research activities in the beginning of September 2010. Its full program will commence in the 2011/2012 academic year, including the first academic degree in the field, a Master in Anti-Corruption Studies. The longer-term plan is to form regional Academy branches.<sup>10</sup>

The Academy includes more than traditional teaching — it includes a center for cutting edge research on issues such as ever-changing corruption patterns and tactics, trends in corporate compliance and governance, and the timely recovery of stolen assets. It also serves as a safe haven for anti-corruption professionals who can voice their opinions and concerns in a non-partisan arena.

Those who carry out the battle against corruption know it can be a very lonely and stressful job. At the Academy these advocates will find moral support from others confronting similar challenges. Finally, the Academy intends to promote a network of professional corruption investigators and prosecutors to expand and expedite international cooperation through formal and informal channels.

The Academy plans to hire full-time professors, associates, and visiting professors, along with an experienced, highly qualified in-house research staff. Most importantly, the instructors will combine academic theory with practical experience, thus being able to craft achievable objectives and effective, targeted methods and programs.

Students will come from the public, private, and NGO sectors. They will be screened and selected based upon their qualifications,

experience, professional goals and responsibilities, the requirements of their respective agencies or corporations and, importantly, country requirements meant to promote geographical and cultural diversity. Access to the Academy will be highly inclusive. Anti-corruption staff from international financial institutions, bilateral and multilateral development agencies, corporations, law enforcement, regulatory, and prosecutorial agencies, and NGOs will benefit from sharing, evolving, implementing, and memorializing true subject matter expertise, innovation, and experience.

The Academy will also establish a robust e-learning offering to complement the regional academies. Education at the Academy will require a high degree of legal and cultural understanding. What might be acceptable or practical in one country or agency may not be applicable in another. E-learning and regional teaching facilities will not only be cost effective but will also encourage educational opportunities and better understanding of local challenges.

## The Way Forward

While the Academy will fill the missing void in anti-corruption education, the fight against corruption must continue to be multi-dimensional. Enforcement of international conventions must continue as must the trend of increased prosecution. Civil society, through associations and NGOs, must be empowered with expertise and resources to help guide countries and corporations. Corporations will also have to show from their tangible actions that reform is sustainable.

Media will have to keep up the heat, and vulnerable countries such as India, Nigeria, and Russia will have to show that they mean business in fighting corruption. Throughout the last five years, we have had many debates, discussions, and ideas. Let us ensure that the positive trends for progress do not lag in this new decade.

## Endnotes

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- <sup>9</sup> OECD Anti-Bribery Convention, Chapter VI Articles 60-62.
- <sup>10</sup> International Anti-Corruption Academy, <http://www.iaca-info.org/>.

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