

A light gray world map is visible in the background, showing the outlines of continents and oceans. A dark blue rectangular box is centered over the map, containing the title text.

VERIFICATION OF ANTI-CORRUPTION COMPLIANCE PROGRAMS



TRANSPARENCY INTERNATIONAL | USA



Transparency International-USA is a non-profit, non-partisan organization founded in 1993 to combat corruption in government, business, and international development. Transparency International-USA promotes systemic reform in the United States and internationally by working with Transparency International and its worldwide network of nearly 100 Transparency International chapters, governments, the private sector, civil society organizations, and other international organizations. www.transparency-usa.org.

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TABLE OF CONTENTS

FOREWORD	5
EXECUTIVE SUMMARY AND MAJOR RECOMMENDATIONS	6
1. THE EVOLVING ANTI-CORRUPTION LANDSCAPE: LAW, RULES AND GUIDES	8
1.1 Framework of Laws and Treaties	8
1.2 Official Guides to Compliance	9
1.3 Rules of Conduct and Business Principles	10
2. ANTI-CORRUPTION COMPLIANCE	11
3. PROGRAM VERIFICATION	14
3.1 Importance of a Risk-Based Approach	15
3.2 Verification Process	15
3.3 Additional Considerations for Meaningful Verification	19
4. EVALUATION OF VERIFICATION METHODS	20
4.1 Public Reporting	20
4.2 Accounting Firms, Law Firms and Consulting Firms	25
4.3 Compliance Monitors	28
4.4 Certification Programs	29
4.5 Social and Environmental Certifications	31
4.6 Other Standards for Verification of Anti-Corruption Programs	32
5. RECOMMENDATIONS	35
ACKNOWLEDGEMENTS	38

FOREWORD

Corruption has a corrosive effect on society. It impedes economic growth and international development, undermines democratic institutions and the rule of law, and traps millions in poverty. Corruption also damages business: it distorts competition and presents serious legal, financial and reputational risks. Free and fair competition and thriving societies require that governments, companies, and individuals take meaningful actions to combat corruption.

Over the past two decades, there has been substantial progress by companies in developing and implementing anti-corruption programs. Such programs are vital to the success of international efforts to combat corruption. It is widely recognized, however, that the adoption of policies and programs is not enough. Verification – encompassing all efforts, both internal and external, to assess that a company has a risk appropriate and effective program for preventing and detecting corruption in its business operations – is essential. Verification allows companies to determine whether their anti-corruption programs are effective and to make necessary enhancements.

The global financial crisis and the numerous investigations of actual and alleged corporate malfeasance that have followed have seriously damaged public confidence in corporate self-regulation. Investors, potential business partners, and the public at large are seeking assurance that corporate anti-corruption programs are effective in deterring, detecting, and remediating corruption. Public reporting on anti-corruption programs and efforts is also vital to laying the foundation for acceptable standards for the global economy and guiding employees and business partners on compliance and integrity principles and practices.

Although an increasing number of companies are investing resources to assess whether their anti-corruption programs are working effectively, there has not been a detailed review of the most commonly used methods of compliance verification, or a distillation of lessons that can be learned from such an analysis. This report is the project of such an assessment and contains recommendations for companies to use for anti-corruption compliance verification.

The recommendations are designed to strengthen the quality of corporate anti-corruption programs and public credibility regarding their effectiveness. This report is also a call to action to companies to take a leadership role in fighting corruption by getting their own house in order, taking charge of their compliance programs, and dedicating adequate resources to determine the effectiveness of their programs. We hope this report and its recommendations will contribute to a consensus on acceptable practices in an increasingly integrated and growing world economy.

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EXECUTIVE SUMMARY AND MAJOR RECOMMENDATIONS

Verification refers to all efforts, both internal and external, to assess that a company has a risk-appropriate and effective program for preventing and detecting corruption in its business operations. At a time of heightened concern about corporate governance, the business community needs to confront the challenge of restoring confidence in self-regulation to strengthen the standing and reputation of corporations with investors, business partners, and the public at large, and to contribute to combating corruption. This report is designed to address that challenge.

Transparency International-USA (TI-USA) obtained funding from the Siemens Integrity Initiative¹ to undertake a study of verification methods with the goal of producing a practical guide to help companies verify that their anti-corruption programs are well-designed and working effectively. To inform its work, TI-USA conducted extensive research in five areas: (1) public reporting by companies, (2) verification work carried out by accountants, lawyers, and consulting firms, (3) certification of compliance programs, (4) compliance reviews performed by government-mandated monitors, and (5) certification efforts in the social and environmental areas.

As part of its research in developing this report, the TI-USA team consulted with compliance officers in U.S. companies, accounting firms, law firms, consulting firms, government monitors, certification companies, and others. While the recommendations in this report are those of TI-USA, an Advisory Board of recognized international experts reviewed the findings and contributed to the conclusions and recommendations.

The principal audience for this report is companies engaged in international business regardless of their size, as well as law firms, accounting firms, consulting firms, and companies providing anti-corruption certifications. It should also be useful to international organizations, governments, and non-governmental organizations. This report's analysis, findings, and recommendations are relevant for both U.S. and non-U.S. companies.

Our principal findings are:

- Public reporting is a valuable tool for communicating corporate policy and a company's commitment to anti-corruption practices to business partners and external stakeholders, as well as within the organization. Several organizations have recognized the importance of disclosure by issuing reporting frameworks that companies can use to guide their reporting efforts. However, many companies disclose only limited information about their program and policies and rarely describe their implementation efforts. Public reporting by companies needs to be improved to provide meaningful information to stakeholders regarding how companies manage the corruption risks of the businesses in which they are engaged.

¹ Siemens Integrity Initiative, available at <http://www.siemens.com/sustainability/en/core-topics/collective-action/integrity-initiative/index.php>.

- There are important benefits to using accounting firms, law firms, and consulting firms to conduct verification reviews. A review by experienced outside experts enables an organization to see gaps in its compliance program and ultimately can lead to strengthening of its program.
- Certification of compliance is an evolving practice and has yet to gain acceptance from government regulators and other stakeholders largely because there are substantial variations in the underlying reviews conducted by the certification companies which form the basis for certification.
- The existing social and environmental certification systems are based on internationally accepted standards and are widely used and relied upon by consumers, retailers, the press, governments, and investors as indications of good practice. However, there are challenges to applying the approaches used in these social certifications to efforts aimed at curbing corruption as the metrics for anti-corruption verification are more subjective.

Our major recommendations include the following:

- The most critical part of verifying corporate anti-corruption compliance is a company's own internal review. In conducting internal reviews, companies must determine the extent to which they can rely on in-house resources and the extent to which they need to supplement those resources with external resources.
- A risk-based approach is essential in defining both the appropriate scope of compliance programs and of verification. A risk-based approach should include a consideration of risks presented by the company's geographic locations, business sectors, business partners and the nature of its transactions, as well as the extent of its interactions with government officials.
- In addition to internal reviews, companies should undertake independent external reviews on a regularly planned basis. The scope of the engagement and the frequency of review will depend largely on the risk profile of a company. Companies with high risk profiles should consider conducting external reviews of their high risk businesses every three years.
- Companies should make public disclosures about their anti-corruption program, including program implementation and verification, to increase transparency and public trust.
- Certifying organizations, companies, investor groups, and non-governmental organizations should develop broader agreement on the standards for certification to help promote greater transparency of the scope of the review. It is also important to clearly define the scope of review on which a certificate is based.

1. THE EVOLVING ANTI-CORRUPTION LANDSCAPE: LAW, RULES AND GUIDES

1.1 Framework of Laws and Treaties

Verification of compliance must take account of an extensive framework of laws and treaties as well as compliance rules promulgated by international organizations. In recent years, an extensive body of anti-corruption laws and treaties has developed.

- **FCPA.** The U.S. Foreign Corrupt Practices Act prohibits the payment of bribes to foreign officials to assist in obtaining or retaining business. The FCPA's jurisdictional reach is very broad, as the statute applies to U.S. companies and citizens, as well as to companies with securities registered or listed in the U.S., even if incorporated elsewhere. Non U.S. companies and individuals can also run afoul of the FCPA if they or their agents cause an act in furtherance of a bribe to take place in the U.S. The FCPA imposes strict accounting requirements for companies whose securities are listed in the United States. The statute is actively enforced. Over 300 FCPA cases have been brought by the U.S. Department of Justice and Securities and Exchange Commission.² Companies have been fined millions of dollars and many individuals have received prison sentences.
- **The U.K. Bribery Act 2010.** The U.K. Bribery Act prohibits bribes offered or given to foreign officials and also in purely commercial context. The prohibitions under the Act extend to persons who agree to or receive a bribe, as well as to persons who offer or pay a bribe. The Bribery Act also holds companies legally responsible for the improper actions of their employees and the third-parties who act as intermediaries in their business transactions.
- **OECD.** The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions internationalized the FCPA's prohibition of foreign bribery. It has been ratified by 41 governments, including most major exporting countries. Each party is required to enact implementing laws. The OECD conducts a follow-up monitoring program, but the level of country enforcement varies dramatically. In its most recent report on enforcement of the OECD convention, Transparency International (TI) found that only the United States, Germany, the United Kingdom and Switzerland actively enforce their anti-bribery laws.³
- **UNCAC.** The United Nations Convention against Corruption has a much broader scope than the OECD Convention and extends to both foreign and domestic bribery, bribery in the private commercial transactions, extortion, embezzlement and illicit enrichment.

2 Gibson Dunn, "2013 Year End FCPA Update," 6 January 2014, available at <http://www.gibsondunn.com/publications/pages/2013-Year-End-FCPA-Update.aspx>.

3 Transparency International, "Exporting Corruption: Progress Report 2013: Assessing Enforcement of the OECD Convention on Combating Foreign Bribery," 7 October, available at http://www.transparency.org/whatwedo/pub/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd.

In addition, UNCAC contains provisions on a wide range of preventive measures, international cooperation and asset recovery. UNCAC has been ratified by over 170 governments. An Implementation Review Mechanism, which began operations in 2010, seeks to conduct 40 country reviews annually.

- **Regional Conventions.** A number of regional anti-corruption conventions also exist, including the Council of Europe Civil and Criminal Conventions on Corruption, the Inter-American Convention Against Corruption, and the African Union Convention on Preventing and Combating Corruption.

1.2 Official Guides to Compliance

Guides to compliance have been published by several governments and international organizations. These provide official indicators of enforcement policy and descriptions of effective corporate ethics and compliance programs.

- **United States.** The U.S. Government issued Sentencing Guidelines in 1991, which were updated in 2012.⁴ The U.S. Department of Justice and the Securities and Exchange Commission published a detailed Resource Guide to the Foreign Corrupt Practices Act in November 2012.⁵
- **United Kingdom.** In 2011, the U.K. Ministry of Justice also published “The Bribery Act 2010: Guidance” to help companies implement anti-bribery procedures that would constitute “adequate procedures” for purposes of defense against prosecution under the Bribery Act.”⁶
- **OECD Good Practice Guidance 2010.** This Guidance is intended to provide guidance to companies in “establishing effective internal controls, ethics and compliance programs or measures for preventing and detecting foreign bribery.”⁷
- **World Bank Integrity Compliance Guidelines 2011.** These Guidelines include standards, principles, and components recognized by many institutions and entities as good governance and anti-fraud and corruption practices.⁸

4 “Chapter 8—Sentencing of Organizations,” 2012 Federal Sentencing Guidelines Manual, 1 November, available at http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2012/manual-pdf/Chapter_8.pdf.

5 Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, A Resource Guide to the U.S. Foreign Corrupt Practices Act, 14 November 2012, available at <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>.

6 Ministry of Justice, The Bribery Act 2010: Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing, March 2011, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181762/bribery-act-2010-guidance.pdf. In 2012, the U.K. Serious Fraud Office published policy statements on self-reporting, hospitality and facilitation payments, available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/revised-policies.aspx>.

7 OECD Council, “Good Practice Guidance on Internal Controls, Ethics and Compliance,” Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transaction, 18 February 2010, available at <http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf>.

8 The World Bank Group, Summary of World Bank Group Integrity Compliance Guidelines, available at http://siteresources.worldbank.org/INTDOI/Resources/IntegrityComplianceGuidelines_2_1_11web.pdf.

1.3 Rules of Conduct and Business Principles

Rules and standards to promote corporate compliance have been issued by a number of organizations, following processes of multi-stakeholder consultations. In recent years, there has been substantial convergence in their requirements. Some differences remain regarding facilitation payments, with TI urging that they be prohibited, and the International Chamber of Commerce and the World Economic Forum/Partnering Against Corruption Initiative urging that they be discouraged.

- **ICC Rules of Conduct.** The International Chamber of Commerce published *Rules of Conduct to Combat Extortion and Bribery* in 1977, which have been periodically revised, most recently in 2011.⁹ The initial ICC Rules were drafted by a blue-ribbon panel chaired by Lord Shawcross of the UK and Lloyd Cutler of the United States.
- **TI Business Principles.** TI's *Business Principles for Countering Bribery* were first issued in 2002, and most recently updated in October 2013.¹⁰ An edition tailored to the needs of small and medium size companies was issued in 2008.¹¹
- **WEF/PACI Principles.** The World Economic Forum (WEF), partnering with TI and the Basel Institute of Governance, first issued the *Partnering Against Corruption - Principles for Countering Bribery* (PACI Principles) in 2004. The principles were re-issued in 2014.¹²
- **UN Global Compact.** The UN Global Compact has promoted compliance by thousands of companies by encouraging companies to use the *TI Business Principles*, the *PACI Principles*, or the *ICC Rules of Conduct*.

9 International Chamber of Commerce, Rules on Combating Corruption 2011, 17 October, available at <http://www.iccwbo.org/advocacy-codes-and-rules/document-centre/2011/icc-rules-on-combating-corruption/>.

10 Transparency International, Business Principles for Countering Bribery, October 2013, available at http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery.

11 Transparency International, Business Principles for Countering Bribery—Small and Medium Enterprise (SME) Edition, 2008, available at http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery_sme_edition.

12 World Economic Forum, Partnering Against Corruption Initiative Global Principles for Countering Corruption, January 2014, available at http://www3.weforum.org/docs/IP/2014/PACI/WEF_PACI_Principles_MembershipApplication_fillable.pdf.

2. ANTI-CORRUPTION COMPLIANCE

While the principal focus of this report is the verification of anti-corruption programs, it is important to define the key elements of the program being verified.

The only effective way to protect an organization from potential violations of anti-corruption laws is for the organization to adopt a compliance program. If there are violations, regulatory authorities are also likely to consider the adequacy of an organization's compliance program when deciding what, if any, action to take. In 2012, the U.S. Department of Justice and the Securities and Exchange Commission publicly credited an existing compliance program for the first time, when the agencies declined to prosecute Morgan Stanley because of its strong compliance program.¹³

The essential test for any anti-corruption program is whether it is well-designed for the risks facing the company, and whether it is rigorously applied to prevent and detect bribery.¹⁴ The "hallmarks" of an effective anti-corruption program include the following elements.

Executive Leadership, Accountability and Tone at the Top

Meaningful compliance starts at the top with a company's leadership. The board of directors and senior executives are responsible for maintaining the highest ethical standards. They must oversee implementation by management of an effective compliance program, and generally set the proper tone for the rest of the company.

Policy statements are a necessary starting point, but only part of what must be a broader leadership effort. This includes using widespread channels to communicate leadership commitment. Most importantly there must be firm disciplinary action when there are breaches of company policy.

Compliance Management: Autonomy and Resources

Operational responsibility for the compliance program should be assigned to specific senior executives with the right experience and appropriate authority within the organization. The compliance organization must function with autonomy from the company's operating components. Sufficient staff and other resources must be provided to ensure that the compliance program is implemented effectively.

¹³ Department of Justice Press Release, "Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA," 25 April 2012, available at <http://www.justice.gov/opa/pr/2012/April/12-crm-534.html>. Securities and Exchange Commission Press Release, "SEC Charges Former Morgan Stanley Executive with FCPA Violations and Investment Adviser Fraud," 25 April 2012, available at <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171488702#.UzHaX4VFLKM>.

¹⁴ Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, A Resource Guide to the U.S. Foreign Corrupt Practices Act, at 57, November 2012, available at <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>.

Risk assessment

In developing its anti-corruption program, a company should identify and assess the corruption risks it faces, including those presented by the company's geographic locations, business sectors, business partners, and the nature its transactions, as well as the extent of its interactions with governments officials. This "risk assessment" provides an individualized compliance profile that can be used to focus program activities and resources and help identify relevant "red flags." Risks should be assessed in a comprehensive manner and on a recurring basis rather than in an informal or haphazard manner. Risks should also be reviewed when special circumstances occur such as changes in operating environments, new products and markets, corporate restructurings, and business acquisitions.

Anti-corruption policies and procedures

An anti-corruption program should clearly, and in reasonable detail, articulate the values, policies and procedures used to prevent and detect corruption in the company's business operations. It is important to describe the substantive rules and the practices used to implement the rules in enough detail so that the rules and practices can be understood by company personnel and others subject to the policy.

Policies. The company's anti-corruption policy must be clear on its scope of coverage and requirements. It should identify all prohibited conduct, explaining that the prohibition on bribery applies not just to cash payments but also to improper benefits conveyed in other forms (such as gifts, entertainment, and political contributions). The policy applies to bribes whether paid directly or through an agent or business partner.

Procedures. A company should have in place reasonable and effective procedures for implementing the anti-corruption policy. Chief among these are requirements and guidelines for conducting corruption risk assessments and due diligence reviews for agents and other business partners. Policies and procedures should also detail proper internal controls, auditing practices and documentation policies, and set forth confidential reporting, investigative and disciplinary procedures.¹⁵

Written materials. Codes of conduct are a starting point, but need to be supplemented by guidance materials that provide a more detailed explanation of the anti-corruption policy and the controls and procedures used to implement the policy. There should be standard contract clauses to communicate compliance expectations and secure rights and protections in contracts with agents and business partners.

Training and education

For anti-corruption policies and procedures to be effective, they must be communicated to employees and others acting on a company's behalf through training. Companies are expected to establish periodic training for all directors, officers, relevant employees, agents and business

¹⁵ Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, A Resource Guide to the U.S. Foreign Corrupt Practices Act, November 2012, <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>.

partners. The content of the training should be appropriately tailored to the job function and the risks specific to the particular audience.

Channels for advice and reporting

Readily accessible channels for obtaining advice and reporting problems are crucial for two reasons. First, even well drafted compliance policies cannot cover unforeseen problems. Second, employees may be reluctant to raise questions and report irregularities to their managers fearing reprisals. By providing a confidential reporting channel, the company can obtain sensitive information that it would not otherwise receive. Making it safe for an employee to blow the whistle in-house makes it easier for management to address the problem. It also reduces the risk that the employee will blow the whistle outside, which will make it more difficult and more costly for the company to deal with the underlying problem.

Responding to problems

The litmus test for corporate compliance programs is how companies respond when corruption problems arise. That will inevitably happen sooner or later for multinational enterprises doing business in business sectors or in countries where corruption is widespread. Companies must promptly and rigorously investigate suspicious circumstances and other concerns reported by employees or that otherwise come to their attention. Investigations should be timely and thorough, and based on an established protocol that includes guidelines for reporting to senior management and the Audit Committee.

When violations occur, companies must take appropriate disciplinary action against the responsible individuals, potentially including terminating managers for “failing to take reasonable steps” to prevent or detect the conduct. In addition to disciplinary action, the company must act to prevent further similar violations. This includes making necessary modifications to the company’s compliance program to prevent future violations.

Business relationships

The company’s anti-corruption policies and procedures should be made applicable to subsidiaries, as well as to joint ventures under the company’s control or influence, agents and representatives and other business partners. Requirements may vary depending on the type of relationship and the degree of risk. Lesser requirements may apply to other non-controlled business structures, with the proviso that a reasonable and good faith effort be made to prevent third-party conduct that could not be taken directly by the company. As most FCPA enforcement actions in recent years involve improper payments through agents and other intermediaries, due diligence on business partners is essential.

Mergers and acquisitions

A company should have guidelines for managing corruption risk in its merger and acquisition activities to avoid inheriting liability for past corrupt activities or becoming liable for continuing corrupt activities that have not been identified and stopped. The two core requirements are risk-based pre-acquisition due diligence and post-acquisition harmonization of anti-corruption standards, procedures and controls.

Regular monitoring and verification

A robust anti-corruption program must include a process for testing the program for effectiveness and refining the policies and procedures to reflect lessons learned from experience with the existing program as well as changes in the company's business and risk profile. These issues will be covered in detail in the following section.

3. PROGRAM VERIFICATION

Verification as used in this Report refers to all efforts to assess that a company has a risk-appropriate and effective program for preventing and detecting corruption in its business operations. Verification includes internal reviews by companies as well as efforts by independent external reviewers.

The U.S. Sentencing Guidelines recognize the importance of such reviews in the description of an effective compliance and ethics program stating that “the organization shall take reasonable steps—(A) to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct; [and] (B) to evaluate periodically the effectiveness of the organization's compliance and ethics program.”¹⁶

Apart from the law, meaningful verification reviews are an important part of good business practice and increasingly a priority focus for corporate social responsibility. Verification reviews can help prevent misconduct and uncover new risks. Verification reviews are also crucial in supporting a company's efforts to document its good faith efforts. A company needs to be able to demonstrate the credibility of its compliance program if the company finds itself in situations such as – in front of prosecutor, who might be reviewing its compliance program in the event of a voluntary self-disclosure; a whistle-blower event which has led the company to receive a subpoena; or an industry sweep. The company must be able to show that the program exists, what it entails, its past success in preventing FCPA violations, and evidence of enhancements to the compliance program based on continually evolving information. A properly documented verification exercise undertaken in a systematic manner will enable a company to demonstrate its efforts.

Verification reviews should focus on two questions: is the program well-designed and is the program operating effectively? For example, verification that a program provides effective training should consider not only whether training is offered or mandated but also qualitative matters relating to content, methods and frequency, as well as tailoring to particular risks and job functions. Further, to test whether training is effective, organizations need to assess the employees' understanding of the training through interviews or employee surveys. Likewise, verification that a program includes meaningful due diligence and risk assessment procedures should test the quality and effectiveness, as well as existence of these procedures.

16 “Chapter 8—Sentencing of Organizations,” 2012 Federal Sentencing Guidelines Manual, available at http://www.uscourts.gov/Guidelines/2012_Guidelines/Manual_PDF/Chapter_8.pdf.

3.1 Importance of a Risk-Based Approach

As with other aspects of compliance, anti-corruption verification should be risk-based. Reviews are most valuable – and also cost effective – when keyed to a company’s unique circumstances and risk profile. Because there are great variations in risks, it is impossible to develop a one-size-fits-all approach to verification. Risks should be assessed on a comprehensive and recurring basis and also when circumstances change. A risk-based approach should include a consideration of:

- **Industry-sector risk.** There are several industry sectors where corruption has long been deeply embedded. Examples include the extractive industries, aerospace and defense, infrastructure construction, pharmaceuticals, medical devices, and telecommunications. Participation in such sectors requires greater controls than in sectors with lower risks.
- **Country risk.** There are also major differences between countries in the prevalence of corruption. TI’s annual Corruption Perceptions Index provides a useful rule of thumb.¹⁷ For example, working in a country in the bottom quartile of the TI Index requires a much higher level of care than in a country in the top quartile.
- **Corporate history.** A company that has been involved in serious corruption problems in the past must exert a higher level of care than a company with a clean record. This reflects the reality that bad practices are hard to eradicate, and that it will take time to reform a corporate culture that tolerated corruption.
- **Other risks.** These include risks posed by potential business partners, the extent of interactions with government officials, and the nature of the company’s business transactions.

3.2 Verification Process

There is consensus among practitioners and companies that testing for program effectiveness in high risk locations cannot be done solely from the corporate center. Procedures for high risk locations generally should include site visits; data mining (analyzing large sets of data for patterns); targeted testing of sensitive transactions; analysis of interactions with third party agents, consultants, and other intermediaries; and assessment of relevant internal controls.

Based on our consultations with companies and practitioners, we believe the following sets forth best practices for conducting a comprehensive verification review.

Risk Assessment

Every verification review starts with a risk assessment. It is not easy or practical to carry out verification in one company-wide sweep, visit every single location, interview every employee, or test every transaction. Accordingly, it is important that business units and geographic regions with higher risk of corruption are prioritized and that a company uses a staggered approach to program assessment.

17 Transparency International, Corruption Perceptions Index (CPI) 2013, available at <http://cpi.transparency.org/cpi2013/results/>.

A risk assessment is crucial to identify these high risk locations for field visits and allocate resources in an effective and efficient manner.

The risk assessment should be conducted by considering the key elements related to geographic, industry sector, and corporate history described above. In addition some other key questions to consider include:

- » What is the volume of sales to government and state owned enterprises?
- » What sort of interaction with government officials does the company have?
- » Does the company use sales agents or distributors and if so, do they have standard contracts with anti-corruption clauses in them? What are the proportion of sales through agents and distributors?
- » Which other third parties are used? (E.g. custom brokers, third party intermediaries that obtain licenses and permits).
- » Does the company have joint ventures? If yes, what level of control over the joint ventures does the company have?
- » What is the recent mergers and acquisitions activity in the company?

To aid in the risk assessment, the verification team should also review additional information, such as previous internal and external audit reports and whistleblower hotline reports. The team should also consider supplementing the risk assessment by interviewing various management personnel, including those in sales, compliance, legal, finance, operations, marketing, human resources, logistics, and procurement, and personnel at the business unit level.

As a result of the risk assessment, business locations should be divided into high, medium, and low risk so a reviewer can plan how best to use available resources. The next step in the review is to conduct field visits at high risk locations first, followed by the medium risk locations. Many companies also consider whether and how often to audit their distributors, representatives or agents, based on the outcome of the risk assessment. For locations that have a low risk of corruption, the reviewer may consider conducting a limited review.

Document Review

The document review should include an examination of the policies and procedures, as well as documents relating specifically to the location or business units visited as a result of the risk assessment. Document review is also essential to properly plan the review, select the appropriate transactions for testing, and ensure that time in the field is used in an efficient way. The documents that should be reviewed include:

- » Code of conduct and any anti-corruption policies (e.g. gifts, entertainment, charitable donations, political contributions, lobbying)
- » Minutes of Board and Audit Committee meetings and presentations to Board committees
- » Organizational charts and job descriptions
- » Information regarding revenues (generally and with respect to the locations to be visited)

- » Information regarding agents, due diligence process and reports
- » Information regarding sales, commissions and discounts paid
- » Training materials, and proof of training
- » Licenses maintained
- » Information regarding internal audit reports, any reports of problems in the past, whistleblowers reports
- » Information on the accounting systems in place locally and how the systems roll up to corporate
- » Data on compliance sensitive accounts such as travel, gifts, legal and professional fees, consulting fees, licenses, permits, sundry expenses, lobbying fees, facilitation fees, inspection fees, miscellaneous fees, customs, marketing and promotional expenses, penalties, cash, petty cash expenses, charitable and political donations, and third party payments.

Based on the documents reviewed and a judgment of what constitutes high risk, the review team can select transactions to test. The objective is to flag transactions for testing that may appear to have anomalies. Some examples of these transactions include:

- » Transactions that are missing descriptions or that include key words such as “Gifts,” “Miscellaneous,” “Facilitation” or other terms that may require additional follow up
- » Payments made to off-shore bank accounts
- » Repeat round dollar transactions
- » Multiple gifts to the same individual.

Interviews

Key personnel should be interviewed during field visits. Typically those interviewed should include:

- » Local management
- » The local or regional head of legal and compliance
- » Human resources staff
- » Employees from the sales, marketing, accounting and finance departments, operations, legal, compliance, and procurement
- » Employees who manage the government relationships or the relationships with distributors, representatives or agents, employees responsible for hiring third parties and responsible for performing third party due diligence
- » Employees in charge of customs, freight forwarding, and taxes.

During these interviews, some of the things the reviewer is looking for include an understanding of the corporate anti-corruption program at the local management and employee level; an atmosphere that encourages prompt reporting of suspected wrongdoing; and clear channels for processing compliance inquiries and investigating complaints. For example, when interviewing a person who is responsible for government interactions, the reviewer should ask questions about the employee’s role and responsibilities, the major points of interaction with government, and whether the employee entertains government employees. When the reviewer is interviewing an

employee responsible for customs clearance, the questions are different and relate to issues such as the steps of the customs process, any difficulties in importing or exporting goods, any requests for facilitation payments, and the company's policies on such payments.

The manner in which these types of interviews are conducted is critical, which is why experienced interviewers are required for this process. For example, it is generally ineffective to ask employees directly about awareness of bribery; it is far more valuable to ask about payments, gifts and other benefits provided so that a determination can then be made as to whether such transactions may constitute bribery as defined by applicable law. Moreover, interviewers should have some experience with the local cultural norms of the country in which the interviews are taking place. Interviews conducted in the local language are most effective.

Testing

Testing, which includes reviewing the selected sample of transactions is the only way to find out if a company is adequately documenting expenses and whether the controls put in place are actually working. When testing, a reviewer does three things: **1)** test the effectiveness of the controls; **2)** review whether there is appropriate and reliable third party supporting documentation for the selected transactions; and **3)** determine whether the transaction is recorded accurately. Some examples of what a reviewer would test in connection with the sample of transactions include whether:

- » Approvals are reflected on transaction documentation
- » The authorizations limits are appropriate
- » There is appropriate segregation of duties, i.e. the same person is not initiating, approving, and recording the transaction
- » All steps in a bidding process have been complied with
- » Expenses are recorded appropriately in the books
- » Goods/services purchased have been delivered
- » Payments on the invoices match the purchase order and the contract
- » Due diligence was completed for vendors
- » Services were truly provided under a service contract
- » Invoices appear legitimate.

The emphasis is on reviewing the substance of the transaction over the form and understanding the business purpose of the transaction. The review also includes connecting the financial information to the non-financial information. For example, assume that a company has a mining contract that requires it to pay a penalty for late delivery. Following a review of the shipping information, the reviewer finds that the company had not been late in delivering the required goods but had still paid a penalty. This may be a way to disguise a bribe and requires additional review.

3.3 Additional Considerations for Meaningful Verification

Who should conduct the verification review?

An important part of any verification effort is the internal review by corporate staff. Internal reviews are evidence that a company has “ownership” of its anti-corruption program and a commitment to its continued improvement. Internal reviews should be conducted by personnel who are sufficiently independent from the organizational components being reviewed. Depending on the strength of internal resources, these internal reviews are often supplemented by outside expert support, which may include a company’s outside counsel, forensic accountants, or other specialized compliance consultants.

Companies should also supplement internal verification processes with independent external reviews for key systems and controls. External verification services can be obtained from a variety of providers, including accounting firms, lawyers, and consulting firms specializing in corruption compliance. Companies should decide what kind of service to obtain based on the problems that need to be addressed. Accountants are usually the preferred choice for the review of financial controls. Law firms may be required when the protection of the attorney-client privilege is important. Specialized consulting firms may provide expertise in dealing with different regulatory regimes.

There are important reasons to seek external verification. A company that has been involved in serious bribery or other corporate scandals will have to go to greater lengths to earn credibility of its review procedure. There may be highly controversial matters, or matters involving top management, where internal verification may not be enough. A company may not have sufficient expertise or resources to verify its programs and policies. In general, external reviewers help a company take a fresh look at an existing program to learn about weak spots and areas for improvement, benchmark its program against other companies or undertake a more comprehensive risk assessment. In our consultations, some companies told us that using a third party forces a company to look at itself more critically than it might otherwise have done.

In choosing an external provider, companies should consider the skills, expertise, and independence of the provider, define the scope of the review, and understand the review’s limitations.

Meaningful verification requires an appropriate verifier – that is, an individual or team of individuals with the right knowledge, experience and skill set for a particular form of review. It is also important that these experienced professionals speak the local language, understand local culture, and have experience in anti-corruption compliance and in testing local business records. All personnel require a working knowledge of the company and its operations, and the deeper that understanding the better. One of the comments from our consultations was the importance of understanding the company and its culture in order to properly verify its anti-corruption program.

Defining the scope of the review and the review’s limitations are also equally important. In many cases, the reviewer will tailor the review at the request of the company to a specific corporate entity, geographic region, business line, third party supplier or acquisition target. Thus a review may not cover the entire corporate entity.

Reviews are not a guarantee against improper conduct. They generally provide recommendations for improvement and strengthen a company's efforts in creating a sustainable program.

Independence of the reviewer

Independence of the reviewer is an important consideration for the value of the verification exercise and to promote public credibility. If there is a lack of independence, there is a risk that the verification may become a self-congratulatory exercise. For internal reviews, independence requires, for example, established procedures to make sure that there is no managerial interference in a review and no ill consequences from uncovering problems in program implementation.

For external reviews, a lack of independence may exist where the reviewer has a present or past employment contract, directorship, agency or intermediary relationship, significant shareholding or a significant advisory role in the company being reviewed. Other examples of a possible conflict of interest can arise when persons have provided advice on the design (or improvement) of the anti-corruption compliance program of a company or participated in training and education efforts in the company, and are then asked to conduct the verification exercise.

Costs

Cost also must be taken into account. Poorly resourced reviews add little to a company's knowledge about its processes or to public confidence in the company's efforts to prevent and detect corruption. At the same time, cost is a legitimate consideration – just as in the oversight for any other priority business systems and controls – that should guide judgments about the nature, scope and manner of review. Basing the scope of verification on a risk assessment is an effective way to minimize costs.

4. EVALUATION OF VERIFICATION METHODS

In examining verification, it is important to understand the nature of the work performed by various actors in the anti-corruption verification field and the extent to which effective verification efforts can contribute to increasing public confidence by investors, potential business partners, and the public at large.

4.1 Public Reporting

Verification efforts by themselves do not contribute to enhancing public credibility of the company's integrity. A company must communicate its efforts publicly. Public disclosure has become a central tool for communicating corporate engagement on a range of social issues including environmental and labor practices, civic engagement, ethical governance, and legal compliance. Public disclosure is an essential starting point for transparent verification efforts. A company's public communications contribute to its credibility and transparency.

There are two major frameworks for sustainability reporting – the Global Reporting Initiative (GRI),¹⁸ and the UN Global Compact prepared with the assistance of Transparency International (TI/ UN Global Compact).¹⁹ In addition, there are assessments of transparency in corporate information regarding anti-corruption efforts, often based on publicly available corporate reporting and response to questions. These include TI’s Transparency in Reporting on Anti-Corruption (TRAC), Promoting Revenue Transparency (PRT) and the Defence Companies Anti-Corruption Index (Defence Companies Index).²⁰

Frameworks. GRI reporting initially focused on environmental reporting but quickly expanded to include a broader range of sustainability indicators. These indicators were developed by a multi-stakeholder group on a consensus basis and supported by detailed guidelines.²¹ Companies report voluntarily on an annual basis, catalogued in a “Sustainability Disclosure Database,” available on the GRI website.

There are five reporting elements related to anti-corruption and corporate transparency under the third generation of GRI guidelines (G3):

- Percentage and total number of business units analyzed for risks related to corruption;
- Percentage of employees trained in organization’s anti-corruption policies and procedures;
- Actions taken in response to corruption;
- Public policy positions and participation in public policy development and bidding; and
- Total value of financial and in-kind contributions to political parties, politicians and related institutions by country.

18 Global Reporting Initiative, available at <https://www.globalreporting.org/information/about-gri/what-is-GRI/Pages/default.aspx>.

19 TI/UN Global Compact, Reporting Guidance On the 10th Principle Against Corruption, 2009, available at http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf.

20 Transparency International, Transparency in Corporate Reporting: Assessing the World’s Largest Companies, 10 July 2012, available at http://www.transparency.org/whatwedo/pub/transparency_in_corporate_reporting_assessing_the_worlds_largest_companies; Transparency International and Revenue Watch, Promoting Revenue Transparency: 2011 Report on Oil and Gas Companies, 1 March 2011, available at http://www.transparency.org/whatwedo/pub/promoting_revenue_transparency_2011_report_on_oil_and_gas_companies; and Transparency International-UK’s International Defence and Security Programme, Defence Companies Anti-Corruption Index, available at <http://companies.defenceindex.org/>.

21 GRI, Sustainability Reporting Guidelines (V. 3.1), available at <https://www.globalreporting.org/resourcelibrary/G3.1-Sustainability-Reporting-Guidelines.pdf>.

Company reporting under GRI varies greatly with some companies providing much more detail than others.²² The fourth generation of GRI reporting guidelines (G4) was released in May 2013.²³ However, companies have not yet started using the new guidelines for their disclosure reports as GRI will recognize the old G3 guidelines until December 31, 2015.

TI/UN Global Compact requires a much more comprehensive report, by converting the TI Business Principles for Countering Bribery into reporting requirements. Created under the chairmanship of TI and sponsorship of UN Global Compact, this framework represents a multi-stakeholder effort to implement the 10th principle of the UN Global Compact – “Businesses should work against corruption in all its forms, including extortion and bribery.” Participation in the Global Compact is voluntary, but having joined, members are required to produce an annual, publicly available “Communication on Progress” report on all ten principles.

With respect to the 10th principle, the report seeks answers to three questions:²⁴

- Does the company have an anti-corruption policy?
- Has the policy been implemented in detail?
- Is the effectiveness of the policy monitored on an ongoing basis?

To answer these questions, companies are required to report on seven key elements of an anti-corruption program and encouraged to report on an additional fifteen elements. The seven required elements are:

- Publicly stated commitment to work against corruption in all its forms, including bribery and extortion;
- Commitment to comply with all relevant laws, including anti-corruption laws;
- Translation of the anti-corruption commitment into action;
- Support by the organization’s leadership for anti-corruption;
- Communication and training on the anti-corruption commitment for all employees;
- Internal checks and balances to ensure consistency with the anti-corruption commitment; and
- Monitoring and improvement processes.

22 See, e.g. Dow Chemical Company, 2011 Global Reporting Initiative Report, available at <http://www.dow.com/sustainability/pdf/23489-Sustainability-Report-interactive.pdf>.

23 These G4 guidelines are available at <https://www.globalreporting.org/reporting/g4/Pages/default.aspx> and require all companies to provide some general disclosure about the organization’s values, codes, mechanics for seeking advice on ethical matters, and whistleblowing mechanisms. This is a change from the G3 guidelines which did not require such general disclosures. There are also specific disclosures that organizations are required to make for anti-corruption if the organization deems anti-corruption as material to its business. These requirements are similar to the earlier G3 guidelines above except that the some reporting elements have been expanded. For example the requirement on training has been expanded to include communications on anti-corruption policies to governance body members and business partners.

24 TI/ UN Global Compact, “Reporting Guidance on the 10th Principle Against Corruption,” 2009, at 12, available at http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf.

Companies report in many different ways, from brief high-level descriptions to detailed, comprehensive reports.²⁵ TI has published guidance with the aim of giving practical examples on how and what to report, including references to indicators from other initiatives and providing a suggested format to structure and facilitate reporting.²⁶ Although designed to fulfill the needs of the UN Global Compact corporate members, the reporting elements are applicable more generally and can be used for public reporting on anti-corruption by any corporation, whether a UNGC member or not.

Additionally, UN Global Compact has been engaged in a multi-year effort to align its Communication on Progress reports to GRI guidelines. In May 2013, UN Global Compact and GRI jointly published guidance on how to use the GRI reporting guidelines to prepare a UN Global Compact Communication of Progress Report.²⁷ What this might mean for UN Global Compact's more comprehensive anti-corruption reporting guidelines is unclear.

Indices. TI's Transparency in Reporting on Anti-Corruption (TRAC), Promoting Revenue Transparency (PRT) and Defence Companies Anti-Corruption Index (Defence Companies Index) are not reporting standards but a survey of what information companies are actually providing about their anti-corruption programs, measured in principle against the TI/UN Global Compact reporting guidance. Each index assesses the availability of information about a company's anti-corruption program. TRAC and PRT also require public listing of subsidiaries, affiliates and joint ventures and country-level revenue. TRAC streamlines the 22 TI/UN Global Compact reporting elements to 12, while PRT looks at 28 elements. The Defence Companies Index is based on publicly available information on 34 elements, as well as information provided confidentially by many of the companies covered by the index.

Indices of corporate social responsibility also include anti-corruption program metrics. FTSE4Good evaluates companies which are at high risk of corruption as a result of their industry sector, geographical location and public contracts.²⁸ Companies are rated on three categories of practice, comparable in scope and structure to those in the TI/UN Global Compact reporting matrix. In order to be included in the FTSE4Good Index these high-risk companies must make publicly

25 See, e.g., Seagate, FY 2011 Global Citizenship Annual Report, at 7-8, available at http://www.seagate.com/www-content/about/global-citizenship/en-us/docs/2011_gcar.pdf; Accenture, United Nations Global Compact: Communication on Progress, at 14-17, March 2011, available at [http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-UNGC-Communication-on-Progress-\(March%202011\).pdf](http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-UNGC-Communication-on-Progress-(March%202011).pdf). Baker Hughes Form 10-K (2012) provides a detailed description of its anti-corruption program, available at <http://www.fcpablog.com/blog/2013/3/13/is-this-the-worlds-best-compliance-disclosure.html>.

26 TI/ UN Global Compact, "Reporting Guidance on the 10th Principle Against Corruption," 2009, available at http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf.

27 UN Global Compact and Global Reporting Initiative, Making the Connection: Using the GRI G4 Guidelines to Communicate Progress on the UN Global Compact Principles, at 4, May 2013, available at <https://www.globalreporting.org/resource/library/UNGC-G4-linkage-publication.pdf>.

28 FTSE, FTSE4Good Index Inclusion Criteria: Thematic Criteria and Scoring Framework, at 18, available at http://www.ftse.com/Indices/FTSE4Good_Index_Series/Downloads/FTSE4Good_Inclusion_all_copy_Aug2013.pdf. The Criteria refer to over 20 high risk industry sectors and define geographic risk by reference to TI's Corruption Perceptions Index and the World Bank's "Worldwide Governance Indicators" database, available at <http://data.worldbank.org/data-catalog/worldwide-governance-indicators>.

available information about their anti-corruption policies, management systems and program implementation.²⁹ The Dow Jones Sustainability Index uses a checklist on bribery, built on TI's Business Principles, which is filled out by companies.³⁰

Public reporting can enhance confidence in corporate anti-corruption efforts, and can be a valuable tool for communicating corporate policy and commitment, within an organization and to business partners and the general public. Although corporate self-reporting facilitates monitoring by stakeholders and the general public, there are some limitations to using public disclosure as verification of a compliance program. As noted above, there are multiple reporting frameworks that recommend reporting under varying indicators. None of the frameworks mandates comprehensive reporting; rather each has "core," but limited elements, and the remaining criteria are voluntary. As a result, there are great variations in how companies report under the GRI and TI/UN Global Compact frameworks and much of the public reporting does not fully reflect the elements of the various reporting frameworks (GRI and TI/UN Global Compact).³¹

There are some examples of good practice in corporate reporting. For example,

- Baker Hughes provides a detailed description of its anti-corruption program in its public filings.³²
- General Electric provides information about its compliance process, its ombudsperson network, the number of integrity concerns received in the previous year, the number of investigations undertaken, and the disciplinary actions taken.³³
- Statoil's ethics disclosure provides information regarding, among other things, the number of business units assessed for risk of corruption and the number of employees provided with anti-corruption training.³⁴

29 Id. at 19.

30 Dow Jones Sustainability Indices, Sample Questionnaire, available at <http://www.robecosam.com/images/sample-questionnaire.pdf>.

31 For example, the Dow Chemical Company 2012 Sustainability Report, at 106, and Seagate 2012 Global Citizenship Annual Report, at 8-9, provide basic disclosure on some criteria, while the Accenture 2013 Communication on Progress," at 19-21, provides much more detailed information in response to the TI/UN Global Compact criteria. These reports are available respectively at <http://www.dow.com/sustainability/pdf/35865-2012%20Sustainability%20Report.pdf>, http://www.seagate.com/files/www-content/about/global-citizenship/en-us/docs/2012_gcar.pdf, and <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-2013-UN-Global-Compact-Communication-on-Progress.pdf>.

32 See, e.g., Baker Hughes Form 10-K (2012), at 31-32, available at <http://www.sec.gov/Archives/edgar/data/808362/000080836213000017/a201210-k.htm>.

33 General Electric Sustainability, "Distributed Compliance Strategy," available at <http://www.gesustainability.com/how-ge-works/integrity-compliance/distributed-compliance-strategy/>; General Electric Sustainability, "Compliance Process," available at <http://www.gesustainability.com/how-ge-works/integrity-compliance/compliance-process/>; General Electric, "Ombudsperson Process," available at <http://www.ge.com/investor-relations/governance/ombudsperson-process>; General Electric, "Sustainability Growth 2011," available at http://static.gecitizenship.com/wp-content/uploads/2012/07/GE_Sustainable_Growth_2011.pdf.

34 Statoil, 2012 Sustainability Report, at 22, available at <http://www.statoil.com/AnnualReport2012/en/Download%20Center%20Files/01%20Key%20downloads/20%20Sustainability%20Report%202012/Sustainability.pdf>.

- Accenture describes the elements of its anti-corruption program, including its risk assessment, training, due diligence on third parties and application of its code of ethics and training requirements to suppliers and sub-contractors, and its anti-corruption program review.³⁵

There is little disagreement in principle with the general concept of transparency. In our consultations, companies expressed some concerns about public reporting. Some companies believe that their current reporting practices are adequate and doubt the utility of more comprehensive reporting. Many feel that reporting should not be mandated and should be flexible to account for different corporate circumstances. Additionally, some companies felt that reporting is an administrative burden and believed that stakeholders are not paying attention to the information companies report. Concern also was expressed about the potential for misuse of disclosed program information in private litigation.

Despite these concerns and the opposition by some companies to fuller voluntary public reporting, it is important to recognize that disclosure is an important element for rebuilding credibility and that there is a trend worldwide towards greater transparency. To address the limitations in the current disclosure practices, there is a need to make public reporting more useful in demonstrating corporate commitment to combating corruption. Encouraging companies to provide meaningful disclosures about their anti-corruption program would help. Efforts to improve public reporting by companies recently received a boost. On April 15, 2014, the European Parliament adopted the directive on the disclosure of non-financial and diversity information by certain large companies.³⁶ This directive will require an estimated 6000 companies in the EU with more than 500 employees, to disclose information on policies, risks, and outcomes as regards anti-corruption and bribery issues, among various other issues.

4.2 Accounting Firms, Law Firms and Consulting Firms (Excluding companies providing certification)

Accounting firms, law firms and consulting firms (collectively, “review firms”) provide a wide range of services that can supplement internal corporate efforts and can be tailored to meet identified corporate needs. Their services range in scope, depending on the client’s needs, anti-corruption risk, risk tolerance, and compliance history. The review firms can be used to:

- Assess the existence and effectiveness of policies both at the corporate and local levels;
- Assess management communication/tone at the top;
- Assess employees’ understanding of anti-corruption policies and procedures;
- Conduct a risk assessment or review an existing risk assessment;
- Interview select members of management and/or employees;
- Obtain and analyze financial data;
- Perform transaction testing, look for existence of red flags and/or potential violation(s) of company policy or law;

35 Accenture, United Nations Global Compact: Communication on Progress, at 19-21, March 2013, available at <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-2013-UN-Global-Compact-Communication-on-Progress.pdf>.

36 European Commission, Non Financial Reporting, available at http://ec.europa.eu/internal_market/accounting/non-financial-reporting/index_en.htm.

- Review agreements with third parties;
- Review sales contracts;
- Identify gaps in policies and controls, and formulate recommendations for improvement;
- Tailor training programs to different geographic regions;
- Provide language skills and cultural knowledge that may be lacking;
- Conduct due diligence on potential joint venture partners;
- Conduct anti-corruption due diligence for mergers and acquisitions.

In essence, reviews support the company's efforts in creating a sustainable program which is periodically updated to take into account evolving risks and challenges.

Review firms do not provide certificates or opinions that a company's anti-corruption program complies with legal requirements. There are many reasons for this position. Reviews of compliance programs are based on a limited sample during the relevant period covered by the program review, meaning that review firms can only evaluate the strength of a company's compliance program for the period during which it was tested. Business is not static over time and companies continuously implement new systems, establish new policies, sign agreements with new distributors, representatives or agents, and grow their business. Given this, review firms expressed reluctance to provide certifications of compliance programs, as this could be viewed as an assurance that the program will continue operating effectively even as the corporate environment changes.

Review firms also expressed concerns that providing opinions or certificates could expose firms to the risk of being sued if the company had a bribery incident after certification. The overwhelming view of the review firms was that the company is responsible for monitoring its own compliance program. Accounting firms drew an analogy to a financial audit. Even in an audit of financial statements, management is responsible for the financial statements and for maintaining effective internal control over financial reporting. The auditors only provide reasonable assurance about whether the financial statements are free of material misstatement. Their reviews thus focus on providing recommendations for improvement, rather than providing a seal of good standing.

All three types of review firms generally provide tailored reviews based on the needs of the company, its budget, and its risk profile. The review firms can provide a comprehensive review of a company's program when requested to do so; i.e., they can review the design and also test the effectiveness of the company's program. The scope of a work plan may also be limited to individual business units, subsidiaries or geographic regions. Firms have their own methodology for the review and they can use this to benchmark a company's program against other companies and provide recommendations for improvement based on the current trends.

The output of the review process depends on the company's request and ranges from oral briefings to written reports. When a written report is provided, it usually includes a description of the scope of work as well as findings, observations, and recommendations. The report is generally not made public, although occasionally the company may share it with regulators. If the report is prepared by attorneys, then it is likely to be covered by the attorney-client privilege that would protect its contents from disclosure. This is generally also the case with respect to work by accountants hired by legal counsel. In certain situations, a company may choose to risk the waiver of the privilege (or attempt to limit the waiver) and provide the report to enforcement agencies.

The usefulness of external reviews is supported by recent FCPA settlements with the U.S. Securities and Exchange Commission (SEC).

- As part of its settlement with the SEC for FCPA violations in December 2012, Eli Lilly and Company agreed to comply with certain undertakings including the retention of an independent consultant to review and make recommendations about its foreign anti-corruption policies and procedures.³⁷
- In an October 2013 settlement with the SEC, the scope of obligations imposed on Stryker Corporation was influenced by the corporation's prior retention of a "third-party consultant to perform FCPA compliance assessments and compile written reports for Stryker's operations in dozens of foreign jurisdictions across the world."³⁸

The GRI and TI/UN Global Compact reporting frameworks recommend the use of independent external assurance for verification of anti-corruption programs.³⁹ The International Standards for the Professional Practice of Internal Auditing also recommend external assessments.⁴⁰

Our consultations also corroborated many benefits in using external reviews firms to conduct a verification review. Many of the companies consulted found that the reviews provide useful recommendations for improving the company's anti-corruption program. The review firms bring an independent eye to assessing a company's anti-corruption policies and procedures and help companies take a more critical look and see potential gaps in their programs, which ultimately can lead to strengthening the programs. Review firms tend to have significant experience with similar programs in other companies and have an understanding of best practices. Additionally, many review firms have a global presence and can bring to the task relevant language skills and local expertise. The reviews also help the company in documenting its compliance efforts. Further, lawyers are bound by rules of professional conduct and ethics while U.S. accounting firms are regulated by the Public Company Accounting Oversight Board (PCAOB), and are subject to independence rules set by the U.S. Securities and Exchange Commission and the various state boards and CPA societies, adding to the credibility of the work performed.

In several of our consultations, companies stated that the major impediment to using firms is the cost. As a result, some companies prefer to monitor their own programs and hire experts to supplement their efforts as needed, for instance, to review a high risk location or to conduct detailed testing of certain transactions. One company noted that another drawback in using

37 U.S. Securities and Exchange Commission Press Release, "SEC Charges Eli Lilly and Company with FCPA Violations," 20 December, 2012, available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171487116>.

38 U.S. Securities and Exchange Commission, Release No. 70751 / October 24, 2013, "Order," at para. 40, available at <http://www.sec.gov/litigation/admin/2013/34-70751.pdf>.

39 GRI, *The External Assurance of Sustainability Reporting*, at 5, 2013, available at <https://www.globalreporting.org/resourcelibrary/GRI-Assurance.pdf>. TI/UN Global Compact, *Reporting Guidance on the 10th Principle Against Corruption*, at 32, available at http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf.

40 International Standards for the Professional Practice of Internal Auditing (Standards), at 7, available at <https://na.theiia.org/standards-guidance/Public%20Documents/IPPF%202013%20English.pdf>.

external reviewers is that they face a higher learning curve in understanding the company's processes.

It is important to note that third party reviews are generally not publicly available and thus do not assist a company's efforts in communicating its commitment to anti-corruption nor do they signal transparency or credibility with stakeholders.

4.3 Compliance Monitors

In settling FCPA cases, the U.S. Department of Justice and U.S. Securities and Exchange Commission often appoint a corporate compliance monitor as part of the settlement. In 2012 and 2013, half of the FCPA-related deferred prosecution agreements included such requirements.⁴¹

Recently in the U.S. there has also been an increase in "hybrid" monitors appointed, with an independent monitor's term of 18 months followed by 18 months of corporate self-monitoring.⁴² Several monitors also have been appointed as a result of joint settlements with U.S. regulators and the U.K. Serious Fraud Office. Compliance monitors are appointed in special circumstances where serious offences have occurred and are not recommended a part of the normal verification exercise.

A monitor does not provide a "seal of approval." Rather, a monitor's "primary responsibility [is] to assess and monitor a corporation's compliance . . . and reduce the risk of recurrence of the corporation's misconduct."⁴³ The duration of the monitorships is generally three years, but terms as short as 18 months and as long as four years have been used.

The DOJ agreements generally require that the monitor, usually an experienced attorney in private practice: (1) possesses FCPA and compliance policy expertise, (2) is sufficiently independent, (3) provides an initial report followed by follow-up reviews, (4) reviews the FCPA compliance program and recommends changes, and (5) reports non-cooperation to the DOJ.⁴⁴

Government monitors do not operate from a uniform set of procedures governing how they carry out their monitoring responsibilities. Rather, the settlement agreements with the government provide general guidelines that offer the monitor flexibility in assessing the company's FCPA compliance, including broad discretion in both the methods the monitors employ as well as

41 Hughes Hubbard & Reed LLP, FCPA/Anti-Bribery Alert Winter 2013, at 5, available at <http://www.hugheshubbard.com/PublicationDocuments/FCPA%20Anti-Bribery%20Alert%20Winter%202013.pdf>.

42 Sherman and Sterling, *FCPA Digest*, 6 January 2014, available at http://www.shearman.com/~media/Files/Services/FCPA/2014/January_2014_FCPA_DigestFCPA010614.pdf.

43 Memorandum from Craig S. Morford, Acting Deputy Attorney General, U.S. Dept. of Justice, "Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations," 7 March 2008, available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00163.htm.

44 Lawrence D. Finder, Ryan D. McConnell, & Scott L. Mitchell, "Betting the Corporation: Compliance or Defiance? Compliance Programs in the Context of Deferred and Non-Prosecution Agreements – Corporate Pre-Trial Agreement Update – 2008," *Corp. Counsel Review*, 23 January 2009; see also, Morford Memorandum.

their recommendations of policy and procedural changes that the company must implement.⁴⁵ The monitor usually develops a scope of work, on a case by case basis, with input from both the government and the company. Once the work plan is agreed upon and the monitor's work is underway, the monitor is required to submit periodic reports to the government and to the company. These reports are not made available publicly, and the government takes the position that such reports are exempt from Freedom of Information Act ("FOIA") requests.

Based on our consultations with government-appointed FCPA compliance monitors as well as representatives at the companies they have monitored, we have concluded that these monitorships, while not uncontroversial (in large measure due to the costs and perceived intrusiveness of such appointments), generally appear to be effective in ensuring the effective implementation of a corporate anti-corruption compliance program.

Companies that desire to review and enhance their anti-corruption compliance program can incorporate the effective elements of a government-imposed monitorship into their voluntary anti-corruption compliance verification process. The key elements are: **(1)** engaging expert outside professionals to lead the process, including forensic accounting experts; **(2)** having the Board of Directors, or a committee of the Board such as Audit or Compliance, oversee and direct the verification exercise; **(3)** conducting a front-end risk assessment; **(4)** conducting field visits to remote and high-risk locations, including in-person interviews, transaction testing, and return visits where possible; **(5)** ensuring adequate resources are devoted to the assessment while using cost-effective techniques; and **(6)** focusing on a qualitative assessment of the company's anti-corruption compliance program and concrete recommendations for improvement rather than seal of approval or certification.

4.4 Certification Programs

Third party certifications with respect to corporate anti-corruption programs are a relatively new phenomenon. Certifying organizations verify anti-corruption programs against a standard that is proprietary to the organization. A certification is a public statement of the state of a company's compliance program. As a public statement, certification needs to be clear; its validity depends on the ability of the public to understand what it means. There are several organizations⁴⁶ currently issuing certificates relating to anti-corruption programs.

There is no uniformity in the types of certificates available from the certifying organizations and there are variations in the scope of review and the review process. Some of the certification programs are only available to companies that become a member of the certifying organization. The fact that a certificate has been granted is publicly available, though the underlying report that

⁴⁵ *But cf.*, Gary C. Grindler Memorandum, Acting Deputy Attorney General, U.S. Dept. of Justice, "Additional Guidance on the Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations," 25 May 2010, [Providing that if the monitor provides a suggestion that "the company considers unduly burdensome, impractical, unduly expensive, or otherwise inadvisable, the company . . . may propose in writing an alternative . . . designed to achieve the same objective or purpose" and if the company and monitor prove unable to agree on the appropriate methodology, the issue will be heard by the DOJ.]

⁴⁶ The organizations providing certifications relating to anti-corruption programs include Ethic Intelligence, Ethisphere, and the Open Compliance & Ethics Group.

resulted in the certification is not. Some of the certificates expire after a certain period of time and a new review has to be undertaken to maintain it; others have no expiration date.

Some organizations have a range of certificates with different names, based on the scope of the review. At the most minimum level, the certificate is based solely on corporate self-reporting. Other certificates are based on a design review – a review of documents creating the corporate anti-corruption program. Still other organizations perform a document review and interviews. The personnel conducting a review vary among the certifying organizations. Some of the certifying organizations use accountants to carry out their reviews, while the others depend on lawyers, risk analysts, and inspection companies.

In many cases, the certifying organization will tailor the review at the request of the client to a specific corporate entity, geographic region, business line or third party supplier or acquisition target. It is not always clear from the certificate issued whether a review has been limited by geography or business line.

Reviews based on self-reporting consist of a company completing a questionnaire which is usually accompanied by a signed statement from an officer of the company. Questions can relate to financial stability, FCPA compliance, description of the elements of the company's anti-corruption programs and policies, information on the company's litigation history and office locations and similar information. In some cases, the certifying organization checks the information provided and conducts reputational screening, such as internet searches of government watch lists and sanctions lists, media reports, and criminal records. In other cases, the information is simply accepted without further review.

In undertaking a design review, the certifying organization assesses whether the program is designed to be in compliance with legal requirements and best practices in corporate compliance such as: codes of ethics; policies regarding gifts, entertainment and donations; scope of training and training materials; existence of a whistleblower program; and the use of a risk-based approach to the program elements.

A few certificates are based on a document review and interviews. The review looks at documents such as contracts, training materials, investigation reports, internal audit reports, ethics committee or board minutes, and whistleblower hotline submissions and responses, and includes interviews at corporate and subsidiary level (based on the risk assessment), employee surveys, review of design of financial controls and other elements. Certifying organizations indicate that they benchmark a company's programs against other companies of similar scope and size to provide recommendations for program improvement. Some certifying organizations indicate that their recommendations are based on a company's specific corruption risk, as assessed at the beginning of the review. It is our understanding that certifying organizations do not typically undertake transaction testing.

The certifying organizations identify strengths and weaknesses of the anti-corruption program and provide suggestions on improvement to meet best practices. In some cases, the certifying organization will make recommendations on program changes that must be implemented before a certificate can be issued. The cost of these certification programs vary depending on the type of certificate and the scope of review with prices running from a few thousand dollars to a several hundred thousand. In many cases, the cost varies based on the size of the company.

The findings from our consultations about certification programs were very mixed with widely diverging views of the usefulness and effectiveness of these efforts. Some of the companies that were certified stated that certification process provided information on how to improve their company's anti-corruption program so that the program would reflect best practices for their size and industry sector. Some of the certified companies felt that the certification enhanced the public credibility of their efforts and viewed the certification as a business advantage with marketing and recruitment value. Additional companies felt that certification differentiates the certified company from other companies and provides an independent review that has more credibility. There are also indications that certification has been found useful by companies located in countries where enforcement by the government is poor. These companies regard certification as a way to improve their credibility in competing for international business.

There have been concerns expressed that certifying organizations have a conflict of interest – both providing service to improve a program and then certifying it. It is important to note that some certifying organizations have devised a two tier system intended to address this conflict of interest. They use (1) an independent inspection firm accredited by the certifying organization to conduct the audit, and (2) a certification company consisting of international lawyers who study the audit results independently and then decide whether to grant the certification.

A further obstacle to public credibility is that not all certifying organizations use standards that are publicly available or subject to scrutiny, making it difficult to judge the quality of the certifications. Moreover, each organization has at least two kinds of certifications depending on the review conducted, and it is not always possible to determine the scope of review based on the name of the certification. Further certification is a new and evolving field and formal standards have not yet been established for certification.

At present, certificates are not recognized by enforcement agencies in making enforcement decisions.

4.5 Social and Environmental Certifications

There are a substantial number of international systems for social, ethical and environmental management system certification currently in use, which provide examples of verification approaches that may be applicable in the anti-corruption area. In these cases, certification is a statement, backed by reports and independent audits that an effective system is in place for managing the issue in question. The characteristics shared by these systems are:

- Consensus developed international standards, including multi-stakeholder consultation;
- Auditing protocols, periodic surveillance, structured follow up for corrective actions;
- Incentives for compliance, in the form of market access, risk management, production benefits, consumer demand;
- Complaint systems;
- Oversight of auditors so results are reliable and comparable across regions;
- Auditor training and competency testing.

The presiding institutions are the International Organization for Standardization (ISO), and the International Social and Environmental Accreditation and Labeling Alliance (ISEAL).⁴⁷ ISO is headquartered in Geneva and sets guidelines for national, mostly governmental, accreditation agencies and also issues numerous international standards most of which apply to production and technical processes. ISEAL, headquartered in London, is a membership association of international standard setting organizations and international accreditation bodies that are focused on social and/or environmental impact.

The certification audit pattern is the same, regardless of the subject: **1)** Does the documented management system adequately and appropriately address the issue? **2)** If so, is there adequate evidence that the system is functioning effectively? Thus, both documented procedures and actual performance are tested.

There are very practical differences in applying the lessons from the social/environmental programs to those aimed at curbing corruption. One critical difference is that the social and environmental standards have metrics that generally can be quantified, making it easier to verify compliance. Verification of an anti-corruption program depends on a more qualitative evaluation.

Another difference is that these standards were developed by multi-stakeholder groups that included industry and civil society and have long been accepted by everyone, including government regulators. Moreover, companies often have economic incentives for seeking a social/environmental certification – not only to respond to consumer demand, but often to receive government benefits given to accredited companies. In addition, they are recognized by government agencies in many countries. Such incentives do not currently exist with respect to anti-corruption programs.

4.6 Other Standards for Verification of Anti-Corruption Programs

Given the need for improving public credibility and the increasing expectation for companies to communicate the measures and efforts they are deploying to counter and detect bribery to both their internal and external stakeholders, several standards for assurance and certification have been developed. One such standard, The Assurance Framework for Corporate Anti-Bribery Programmes (the “Framework”), was developed by Transparency International, with the support of the World Economic Forum, and launched in June 2012.⁴⁸

The Framework sets out and explains the process for companies commissioning independent assurance and provides benchmarks in the form of 22 control objectives for use by companies in designing and evaluating their anti-corruption programs in anticipation of independent assurance. The process under the Framework results in a written report that may be provided to the Board

47 There are eight founding members of ISEAL: Fairtrade Labeling Organization International, Forest Stewardship Council, International Federation of Organic Agricultural Movements, International Organic Accreditation Services, MAC, Marine Stewardship Council, Rainforest Alliance, and Social Accountability International.

48 Transparency International, Assurance Framework for Corporate Anti-bribery Programmes, 21 June 2012, available at http://www.transparency.org/whatwedo/pub/assurance_framework_for_corporate_anti_bribery_programmes.

of Directors, management and external stakeholders. While the Framework was developed for companies to use internally, the criteria may eventually become generally accepted for use in anti-corruption assurance engagements. The most significant limitation of the Framework is that it currently does not address the operational effectiveness of a company's program. The Framework is being field tested and further modifications may be required.

There are also evolving standards that have been proposed, though none is internationally accepted or recognized by enforcement agencies. Groups in Germany, Australia, and the U.K. have adopted standards to address compliance with anti-corruption programs. These constitute first steps in trying to standardize the practice. The German Public Auditors' Institute adopted a standard in March 2011 for the auditing compliance management systems – that is, measures put in place by companies to ensure adherence to legal regulations and internal company policies. The German standard provides a framework for all areas of compliance from anti-bribery to anti-trust and trade compliance.⁴⁹ It specifies elements that make up a compliance management system: compliance culture, organization, risks, compliance program, communication, and monitoring and improvement. It also provides for three different types and levels of audits. Many German companies publicly report on the elements described in the standard in the reporting of their compliance management system.⁵⁰

Standards Australia adopted a "Fraud and Corruption Control" Standard in 2008.⁵¹ The Standard provides a suggested approach to controlling the risk of fraud and corruption and is intended to apply to all entities operating in Australia. The fraud and corruption contemplated by the Standard fall into three main categories: misappropriation of assets, manipulation of financial reporting, and corruption. The Standard provides minimum acceptable compliance and guidance provisions. One of the minimum acceptable provisions is that entities should develop and implement a Fraud and Corruption Control Plan which should be reviewed and amended every two years at minimum.⁵²

The UK Bribery Act, which was passed in 2010, introduced a strict liability for companies for failure to prevent bribery. The only defense available to a company against this liability is if the company can demonstrate that it had adequate procedures in place to prevent bribery.⁵³

49 Institute of Public Auditors in Germany, Incorporated Association (IDW), *Executive Summary of the IDW Assurance Standard: Principles for the Proper Performance of Reasonable Assurance Engagements Relating to Compliance Management Systems (IDW AssS 980)*, 19 April 2011, available at <http://www.idw.de/idw/portal/n589244/n589350/n611308/index.jsp>. Also, Iain McLeod, "New German Compliance Standard Published by the German Public Auditors Institute," SAI Global Blog, 18 September 2012, available at <http://compliance.saiglobal.com/community/blogs/item/4012-new-german-compliance-standard-published-by-the-german-public-auditors-institute>.

50 Siemens AG, *The Siemens Compliance Management System*, March 2013, available at http://www.siemens.com/sustainability/pool/en/core_topics/compliance/compliance_system_en.pdf.

51 Standards Australia, *AS 8001-2008 Fraud and Corruption Control*, 6 March 2008, available at <http://www.saiglobal.com/PDFTemp/Previews/OSH/AS/AS8000/8000/8001-2008.pdf>.

52 "Corruption Prevention Plan," Independent Commission Against Corruption (ICAC), available at <http://www.icac.nsw.gov.au/preventing-corruption/corruption-prevention-strategy/cp-plan/4871>.

53 U.K. Ministry of Justice, *The Bribery Act 2010—Guidance*, March 2011, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181762/bribery-act-2010-guidance.pdf.

In response to the new age of enforcement introduced by the UK Bribery Act, the British Standards Institute adopted BS 10500, "Specification for an anti-bribery management system," in 2011.⁵⁴ The idea behind developing the BS 10500 was that compliance with it would help a company to demonstrate that it had implemented reasonable and proportionate measures designed to prevent bribery. This standard is meant to be applicable to both large multi-nationals and small/medium sized enterprises in many different sectors. The standard is beginning to be applied, with the first company having been certified in July 2012.⁵⁵ Some of the elements of the standard include anti-bribery policy, communication, training, responsibility for compliance, risk assessment, due diligence, gifts and hospitality policy, financial and procurement controls, whistleblowing arrangements, and investigation and disciplinary procedures. According to the British Standards Institute, the standard is scalable to the size of the organization and is risk-based to reflect the company's bribery risk profile.

In 2012, the British Standards Institute submitted a proposal to the International Standard Organization (ISO), which is composed of national standards bodies from 163 countries, for an international standard using the BS 10500 as a base document.⁵⁶ According to the proposal, the standard will address bribery in public, private and not-for-profit sectors, as well as direct and indirect bribery regardless of whether cash is involved. ISO has set up an international technical committee to develop the new international standard for an anti-bribery management system (ISO 37001).⁵⁷ Work is already underway, with the draft international standard expected to be available for public comment in 2015. Transparency International's national chapters in Malaysia, Switzerland, and the U.S. are participating in national technical advisory groups to support the development of the new standard. Transparency International-Secretariat has also been accepted as a liaison organization to the ISO technical committee.

It will be particularly challenging to develop an effective standard in a field where objective metrics are hard to define. Additionally, anti-corruption programs must be risk-based and therefore the program and its implementation will vary from company to company. Much of the implementation of an anti-corruption program has to be judged on a qualitative basis, rather than a quantitative one, so it is difficult to envision quantifiable metrics.

54 British Standards Institute, *Beating Bribery: A BSI Whitepaper for Business*, available at <http://www.bsigroup.com/LocalFiles/en-GB/bs-10500/resources/BS-10500-Whitepaper-UK-EN.pdf>. Also, Iain McLeod, "BS 10500—The New Benchmark for Adequate Anti-Bribery Procedures," SAI Global Blog, 23 May 2012, available at <http://compliance.saiglobal.com/community/blogs/item/3565-bs10500-new-benchmark-for-adequate-anti-bribery-procedures>.

55 Mabey Bridge Press Release, "Mabey Bridge Awarded British Standard in Anti-Bribery," August 2012, available at <http://www.mabeybridge.com/2012/08/06/british-standard-in-anti-bribery-management-system/>.

56 ISO, *New Work Item Proposal*, October 2012, available at http://www.standard.no/Global/PDF/Standardisering%20-%20nye%20prosjekter/CL_NWIP_Anti-bribery_management_system_Requirements.pdf.

57 "ISO/PC 278 Anti-bribery management systems," ISO, available at http://www.iso.org/iso/home/standards_development/list_of_iso_technical_committees/iso_technical_committee.htm?commid=4515115.

5. RECOMMENDATIONS

1. The most critical part of verifying corporate anti-corruption compliance is a company's own internal review. In conducting internal reviews, companies must determine the extent to which they can rely on in-house resources and the extent to which they need to supplement those resources with external resources.

Companies should evaluate their program on a regular basis for effectiveness and make the necessary improvements. Periodic reviews can uncover new risks, contribute to ongoing risk assessments and help companies significantly improve their controls and internal processes to mitigate the likelihood of violations.

A larger company with greater resources and experienced internal audit and legal staff may be able to rely on its internal staff for self-assessments. Many companies may, however, also need to supplement their internal resources with outside expert support.

There should be no managerial interference within companies in a review and no adverse consequences to the reviewers from uncovering problems in program implementation.

2. A risk-based approach is essential in defining both the appropriate scope of compliance programs and of verification. A risk-based approach should include a consideration of risks presented by the company's geographic locations, business sectors, business partners, and the nature of its transactions, as well as the extent of its interactions with government officials.

There is no one-size-fits-all anti-corruption program or method of verifying whether the program is working effectively. A well-designed program will differ from one company to another, depending on countries of operation, industry sector, and past history, among other factors. The scope and breadth of reviews will depend on a company's risk profile. This means that a company with a lower risk profile would not necessarily be subject to the same level of review as a company with a high risk profile. It is important that risks are assessed in a comprehensive manner and on a recurring basis and also when circumstances change.

3. In addition to internal reviews, companies should undertake independent external reviews on a regularly planned basis. The scope of the engagement and the frequency of review will depend largely on the risk profile of a company. Companies with high risk profiles should consider conducting external reviews of their high risk businesses every three years.

Companies should use external reviewers – lawyers, accountants, and consulting firms –to conduct independent reviews. We recommend that companies build external reviews into their planning regularly enough to verify the effectiveness of their anti-corruption program. Companies with high risk profiles – including geography, industry sector, and past history – should consider conducting external reviews of their high risk businesses every three years. Ideally the Board of Directors or a committee of the Board should be consulted on the decision regarding independent external reviews.

In general, external reviewers help a company take a fresh look at an existing program to learn about weak spots and areas for improvement, benchmark its program against other companies or undertake a more comprehensive risk assessment. Even the most sophisticated companies can benefit from a periodic external review to get an independent opinion on effectiveness. Moreover, if a company is likely to be acquired or likely to enter into a joint venture, a verification review may be required to satisfy the buyer or joint venture partner.

4. In choosing external providers companies should consider the expertise and independence of the provider, define the scope, and understand the limitations of the review.

Meaningful verification requires an appropriate verifier – that is, an individual or team of individuals with the right knowledge, experience, and skill set for a particular form of review. Independence of the reviewer is an important consideration for the value of the verification exercise and to promote public credibility. Conflicts of interest can arise from past or present affiliation with the company.

Understanding the scope of the review and its limitations is important. Reviews may not cover the entire corporate entity. Reviews are not a guarantee against improper conduct.

5. Reviewing for program effectiveness in high risk locations cannot be done solely from the corporate center.

Procedures for high risk locations should generally include site visits, data mining, interviews, targeted testing of compliance sensitive transactions, and analysis of interactions with third party agents, consultants and other intermediaries, and assessment of relevant internal controls.

6. Companies should make public disclosures about their anti-corruption program, including program implementation and verification, to increase transparency and public trust.

The level of public disclosure and reporting should be sufficient to provide adequate public assurance that the company understands and effectively manages the corruption risks of the businesses in which it is engaged. Companies may need to exercise some discretion with respect to the appropriate level of disclosure for anticipated and ongoing investigations and litigation. Fuller disclosure will be required for companies operating in higher risk countries and sectors.

Companies can choose to make this disclosure as part of their annual report or as part of a specialized report such as the corporate citizenship report.

7. Certifying organizations, companies, investor groups, and non-governmental organizations should develop broader agreement on the standards for certification to help promote greater transparency of the scope of the review. It is important to clearly define the scope of review on which a certificate is based.

Certification is at an early stage of development. There is no common understanding on the meaning and wording of certificates and what type of review is required as a condition of certification. Companies that choose to use certification providers should understand the scope of

the specific review conducted and the qualifications of the reviewers.

A certificate issued on the basis of corporate self-reporting has little value regarding the effectiveness of an anti-corruption program. A certificate which is issued based on a more detailed review (including risk assessment, site visits, interviews and similar elements) could enhance public credibility. Certification providers should consider eliminating certificates based on self-reporting and clarify certificate names to make the scope of the review on which the certificate is based clear.

Certification may be useful for companies in countries with endemic corruption and weak governance that feel the need for an independent assessment of their anti-corruption efforts.

8. The development of the International Standard Organization's new standard for an anti-bribery management system is potentially a promising development and should be encouraged.

International Standard Organization's new standard (ISO 37001), when issued could provide a basis for certification of compliance. However, it will be particularly challenging to develop an effective standard in a field where objective metrics are hard to define. Additionally, anti-corruption programs must be risk-based and therefore the program and its implementation will vary from company to company.

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