Chapter 8
What You Should Know About
Cost-Effective Compliance

Anti-bribery compliance costs are rising. In 2016 alone, U.S. foreign bribery–related settlements between the private sector and the Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC") resulted in an average penalty per company of approximately USD 75 million. Despite the large size of these penalties, companies embroiled in enforcement actions routinely conclude that the fines they pay are in fact less expensive than the costs of the investigations and remediation. Even for a company not in the middle of an ongoing investigation, there is an expectation that the company should be doing everything it can to prevent bribery from occurring within the organization. Indeed, many anti-bribery laws penalize companies for inadequate compliance procedures even in the absence of any bribery.

At the same time, many compliance officers express frustration that their programs are expected, year upon year, to be more sophisticated and broader in reach—without raising costs to do so. But although there is a limit to how far travel, training, due diligence, and risk-assessment budgets can be stretched, there is some good news for corporate compliance officers: government organizations, civil society, and the philanthropic arms of some institutions have been working to develop online compliance tools that are available to use at little or no cost.

In this chapter, we offer a survey of these free-of-cost and low-cost compliance resources in an effort to assist compliance officers with designing and implementing anti-bribery compliance programs at their companies. Of course, even the sum total of all of these resources will never be able to constitute the entirety of a company's compliance program, which will differ for each company. But by leveraging these tools and resources, in-house counsel can begin to address many key issues while reallocating resources to other critical areas of compliance.

I.   INFORMATIONAL RESOURCES

Standards and Guidance

Many government agencies responsible for enforcing anti-bribery laws have published guidelines and policy protocols meant to help companies understand how those agencies interpret and enforce the law. These guidelines seek to provide clarity not only for companies under investigation, but also for companies wishing to build defensible compliance programs. Two of the most well-known guidelines have been published by the U.S. and UK authorities:

- **A Resource Guide to the U.S. Foreign Corrupt Practices Act**[1] - Released in November 2012, this guide was the result of a joint collaboration between the DOJ and SEC to provide clarity regarding the provisions of the U.S. Foreign Corrupt Practices Act ("FCPA") and its enforcement. The guide addresses a wide variety of topics, ranging from the definition of a "foreign official"

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[1] https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf

under the FCPA to how successor liability applies in the mergers and acquisitions context. It also covers the hallmarks of an effective corporate compliance program, providing a general overview of those aspects that the DOJ and SEC assess when evaluating a program's strength.

- **The UK Bribery Act 2010 Guidance**[2] - Published in 2011 by the United Kingdom's Serious Fraud Office ("SFO"), this guide covers adequate procedures, facilitation payments, and business expenditures under the UK Bribery Act 2010. The UK government has also published rules governing the application and approval process for deferred prosecution agreements ("DPAs")[3] as well as guidance regarding corporate self-reporting.[4]

The DOJ has also issued an eight-page guidance document on "Evaluation of Corporate Compliance Programs,"[5] offering a condensed summary of "some important topics and sample questions that the Fraud Section has frequently found relevant in evaluating a corporate compliance program."

In addition to these enforcement agency guidelines, numerous intergovernmental organizations and NGOs have published policy documents to provide corporate compliance officers with a top-down view of enforcement trends and techniques. One of the most comprehensive of these is the **Anti-Corruption Ethics and Compliance Handbook**,[6] a collaborative effort by the Organisation for Economic Co-operation and Development ("OECD"), the United Nations Office on Drugs and Crime ("UNODC"), and the World Bank. The handbook covers risk assessments, support and commitment from senior management, policies, internal controls, recordkeeping, and promoting and incentivizing ethics and compliance within the organization. Other anti-bribery guidelines for businesses include the following:

- Corporate Governance and Business Integrity: A Stocktaking of Corporate Practices (OECD 2015);[7]
- Guide to Corporate Sustainability (UN Global Compact 2015);[8]
- APEC General Elements of Effective Voluntary Corporate Compliance Programs (Asia-Pacific Economic Cooperation 2014);[9]
- Business Principles for Countering Bribery (Transparency International 2013);[10]
- An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide (UNODC 2013);[11]
- ICC Rules on Combating Corruption (International Chamber of Commerce 2011);[12]
- Business Against Corruption: A Framework For Action (UN Global Compact 2011);[13]
- Summary of World Bank Group Integrity Compliance Guidelines (World Bank 2010);[14]

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[2] http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf

[3] http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2012/guide-to-criminal-procedure-amendment-no-2-rules-2013.pdf

[4] https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/corporate-self-reporting/

[5] https://www.justice.gov/criminal-fraud/page/file/937501/download.

[6] https://www.unodc.org/documents/corruption/Publications/2013/Anti-CorruptionEthicsComplianceHandbook.pdf

[7] http://www.oecd.org/corruption/corporate-governance-business-integrity-stocktaking-corporate-practices.htm

[8] https://www.unglobalcompact.org/docs/publications/UN_Global_Compact_Guide_to_Corporate_Sustainability.pdf

[9] http://mddb.apec.org/Documents/2014/SOM/CSOM/14_csom_041.pdf

[10] http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery

[11] http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf

[12] https://iccwbo.org/publication/icc-rules-on-combating-corruption/

[13] https://www.unglobalcompact.org/docs/news_events/8.1/bac_fin.pdf

[14] http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf

- Good Practice Guidance on Internal Controls, Ethics, and Compliance (OECD 2010);[15]
- Partnering Against Corruption — Principles for Countering Bribery (World Economic Forum 2009);[16] and
- APEC Anti-corruption Code of Conduct for Business (Asia-Pacific Economic Cooperation 2007).[17]

In addition, the International Organization for Standardization has established the **ISO 37001** standard for anti-bribery management systems,[18] presented both as an aid to the implementation of corporate anti-bribery compliance programs and as a reference point for certifying auditors. The ISO 37001 standards and guidance (which can be purchased online) are generic and largely reflect best practices already established by the international community in the above-mentioned guidelines. Even so, ISO 37001 articulates familiar principles from the perspective of a neutral, non-governmental international organization, not bound to the authority of any particular jurisdiction.

<u>Anti-Corruption Databases</u>

Every year, companies avoid protracted litigation by settling with enforcement agencies regarding corruption-related activities. Given how rarely such cases go to trial, these settlement agreements make up the bulk of anti-bribery case law, and can provide key insights as to what constitutes bribery and how company compliance programs fail to detect and prevent wrongdoing. The TRACE **Compendium of Anti-Bribery Cases**[19] provides detailed information on all transnational anti-bribery cases and most investigations in a fully searchable format. For example, it's possible to search for cases involving China, gifts and hospitality, and the communications industry. The compendium's scope is also far broader than just FCPA cases. As long as the matter crosses an international border, it's in the compendium. TRACE generally updates the compendium within 24 hours of news of any developments. Users can register to receive a brief "alert" whenever a significant matter is added or updated.

In addition, data from the TRACE compendium is collated annually in the **TRACE Global Enforcement Report**,[20] showing trends over time, by country and by industry, with every data point supported by a full description of each matter in the compendium.

For those solely interested in researching FCPA-related material, it may be worthwhile to have a look at the **Foreign Corrupt Practices Act Clearinghouse**,[21] a joint collaboration between Stanford University's Rock Center for Corporate Governance and the law firm of Sullivan & Cromwell LLP. The clearinghouse serves as a repository of original source documents, providing users with detailed information relating to enforcement of the Foreign Corrupt Practices Act.

Other databases collect laws and regulations relevant to jurisprudence in other parts of the world. The UNODC, for example, has launched a web-based anti-corruption portal known as **TRACK (Tools and Resources for Anti-Corruption Knowledge)**,[22] which features a legal library on the United Nations

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[15] http://www.oecd.org/daf/anti-bribery/44884389.pdf
[16] http://www3.weforum.org/docs/WEF_PACI_Principles_2009.pdf
[17] http://publications.apec.org/publication-detail.php?pub_id=269
[18] http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=65034
[19] http://traceinternational.org/compendium
[20] http://traceinternational.org/publications
[21] http://fcpa.stanford.edu/index.html
[22] http://www.track.unodc.org/Pages/home.aspx

Convention against Corruption ("UNCAC"), including laws from over 175 States organized by the requirements of the convention they implement.

Several think tanks have created more general resource centers, collecting papers and other public source material aimed at provoking thought in the area of combating corruption. The **U4 Anti-Corruption Resource Centre**,[23] an initiative of the ministers of international development from Australia, Denmark, Finland, Germany, Norway, Switzerland, Sweden and the UK, includes publications on themes ranging from international drivers of corruption, to corruption in the aid sector and natural resource management. Finally, the **World Bank Virtual Resource Center on Business Ethics and Anti-Corruption**[24] includes links to works on drafting codes of conduct, case studies, videos and presentations, as well as more general resources.

There are also several universities that have public, online web portals where it's possible to find the latest academic research on bribery- and corruption-related topics, as well as calendars for live events and speakers:

- Columbia Law School's Center for the Advancement of Public Integrity;[25]
- The Rutgers Institute on Anti-Corruption Studies;[26]
- Harvard University's Edmond J. Safra Center for Ethics;[27]
- The Oxford Centre for the Study of Corruption and Transparency;[28]
- The Sussex Centre for the Study of Corruption;[29]
- Griffith University's Institute for Ethics, Governance and Law;[30]
- The Wharton School's Carol and Lawrence Zicklin Center for Business Ethics Research;[31]
- University College London's Centre for Ethics and Law;[32] and
- Richmond School of Law's International Bribery Scholarship Database;[33]

In addition, Transparency International's **Anti-Corruption Research Network (ACRN)**[34] offers an online platform for anti-corruption academic researchers to share findings and exchange ideas and information with their peers in the academic field as well as with practitioners.

Country and Industry Resources

There are several tools available to aid compliance officers in assessing geographic risk for corruption. The **TRACE Matrix**[35] provides a specific measure of business bribery risk in nearly two-hundred countries across four domains: (i) business interactions with government, (ii) anti-bribery laws and enforcement, (iii) government and civil service transparency, and (iv) the capacity for civil society oversight. Nine

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[23] http://www.u4.no/

[24] http://go.worldbank.org/1ADEO3UGS0

[25] http://web.law.columbia.edu/public-integrity

[26] https://riacs.newark.rutgers.edu/about

[27] http://ethics.harvard.edu/

[28] https://podcasts.ox.ac.uk/series/oxford-centre-study-corruption-and-transparency

[29] http://www.sussex.ac.uk/scsc/

[30] https://www.griffith.edu.au/criminology-law/institute-ethics-governance-law

[31] http://www.zicklincenter.org/

[32] http://www.ucl.ac.uk/laws/law-ethics

[33] http://law.richmond.libguides.com/c.php?g=129551&p=846446

[34] http://corruptionresearchnetwork.org/

[35] http://traceinternational.org/trace-matrix

subdomains further break down the risk indicators resulting in a total of fourteen scores. Companies can use this information not only to identify particularly challenging areas, but also to implement appropriate risk-mitigation measures. For example, in a country with a high score in domain 1 (business interactions with government) a company may consider building more time into projects to get through red tape lawfully, as tight deadlines in countries with high levels of bribery make companies easy targets for bribe demands.

Transparency International's annual **Corruption Perceptions Index**[36] offers a more general look at perceived corruption risks, using 12 different data sources from 11 institutions that capture perceptions of corruption within the past two years, which are then aggregated and standardized on a scale of 0–100. Transparency International also publishes the **Global Corruption Barometer**,[37] which surveys a sampling of people worldwide to capture attitudes towards corruption.

Also of note is the Basel Institute on Governance's **B20 Collective Action Hub**,[38] which offers a global map and list of anti-corruption collective action initiatives by country. The Institute has also developed an **Anti–Money Laundering Index**,[39] which aggregates third party data from sources such as the FATF, the World Bank, and the World Economic Forum to rank countries by their risk of money laundering and terrorist financing.

For those interested in industry-specific information, there are several organizations that provide anti-bribery resources aimed at specific sectors. The **Global Infrastructure Anti-Corruption Centre (GIACC)**,[40] for example, is an independent not-for-profit organization which provides resources to assist in the understanding, identification and prevention of corruption in the infrastructure, construction and engineering sectors. Another sector-specific resource is **Ethicana**,[41] a 42-minute training video about corruption in the global construction industry made available to the public free of charge by the Anti-Corruption Education and Training Initiative, a consortium of agencies including the American Society of Civil Engineers. There are similar anti-bribery initiatives with respect to the following industries:

- Defense;[42]
- International development;[43]
- Extractives;[44]
- Maritime;[45] and
- Pharmaceuticals and healthcare.[46]

While many of the tools and resources found in these online portals are intended for a particular industry audience, they also provide general information that can be applied to other sectors as well.

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[36] http://www.transparency.org/research/cpi/
[37] http://www.transparency.org/research/gcb/
[38] http://www.collective-action.com/initiatives/map
[39] https://index.baselgovernance.org/
[40] http://www.giaccentre.org/
[41] http://www.ethicana.org/
[42] http://government.defenceindex.org/
[43] http://guide.iacrc.org/
[44] http://www.resourcegovernance.org/
[45] http://www.maritime-acn.org/
[46] http://ti-health.org/

News Sources

One of the most difficult tasks for a compliance officer is keeping abreast of new developments in the field. Fortunately, there are many very good anti-bribery blogs and email alerts, dense with information and updated several times each week. While judicious assessment of such sources may at times be warranted, sophisticated readers can nevertheless learn much from these authors' hard work and benefit from having succinct updates delivered to their inboxes on a daily basis.

One of the more objective news sources is **TrustLaw**,[47] an online center for anti-corruption news, run by the Thomson Reuters Foundation, the charitable arm of Thomson Reuters. For those who subscribe to the Wall Street Journal, its **Risk & Compliance Journal**[48] is also an excellent news source.

In addition, the **FCPA Blog**,[49] maintained by Richard Cassin, provides a wealth of timely, sane analyses of the latest anti-bribery news. There are dozens of others, so you might want to consider using an RSS feed reader to help curate your news.

II.   POLICIES & PROCEDURES

Benchmarking anti-bribery programs is a good way for companies to keep themselves well within the compliance pack, but many are reluctant to start the conversation. The UNODC, with the support of the Swedish government and the accounting firm PricewaterhouseCoopers, has collected the anti-bribery programs of the **Fortune 500 Global Index (2008)**[50] and made them publicly available. In addition, the Illinois Institute of Technology's Center for the Study of Ethics in the Professions maintains an online collection of over 1,000 Codes of Ethics in one place.[51]

There are also organizations, like the International Chamber of Commerce ("ICC"), that have published model policies and guides on topics like gifts and hospitality[52] and third party due diligence.[53] The ICC also has released a model **Anti-corruption Clause**,[54] which can be used in third-party contracts. The U.S. Department of State,[55] the UK government,[56] the United Nations and World Health Organization,[57] and the European Union[58] all publicly disclose their own per diem thresholds for almost all cities, broken down by meals, accommodation, and incidentals, which can be useful in benchmarking similar policies in-house.

III.   TRAINING

An increasingly scattered workforce means that in-person anti-bribery training is not always a viable option. Online training tools are popular with compliance professionals because they are easy to

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[47] http://www.trust.org/trustlaw/
[48] http://blogs.wsj.com/riskandcompliance/
[49] http://www.FCPAblog.com/
[50] http://www.unodc.org/unodc/en/corruption/anti-corruption-policies-and-measures-of-the-fortune-global-500.html
[51] http://ethics.iit.edu/ecodes/introduction
[52] https://iccwbo.org/publication/icc-guidelines-on-gifts-and-hospitality/
[53] https://iccwbo.org/publication/icc-anti-corruption-third-party-due-diligence/
[54] https://iccwbo.org/publication/icc-anti-corruption-clause/
[55] https://aoprals.state.gov/content.asp?content_id=184&menu_id=78
[56] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/359797/2014_Worldwide_subsistence_rates.pdf
[57] http://apps.who.int/bfi/tsy/PerDiem.aspx
[58] https://ec.europa.eu/europeaid/sites/devco/files/perdiem-rate-20150318.pdf

administer, multi-lingual, and auditable. Online training is, of course, not a perfect substitute for in-person training. Skills such as problem-solving and experiential learning—both of which are important facets of anti-bribery training—are best developed through in-person training, where the experience can be personalized on the spot by drawing out participants' concerns. But online training can serve as a useful and cost-effective supplement to a company's compliance program—if it is well-designed and well-presented, and ensures that employees are engaged and attentive.

TRACE offers a free one-hour-long training video entitled **Toxic Transactions: Bribery, Extortion and the High Price of Bad Business**.[59] The video, which was produced by NBC Universal's Peacock Productions, is a lively and informative anti-bribery training video designed for employees at all levels, featuring commentary from the DOJ, SEC, and FBI, as well as the UK's Serious Fraud Office, the OECD, and the World Bank. It's a great way to initiate the anti-corruption conversation with employees and a strong addition to the compliance officer's anti-bribery training toolkit.

There are also several free online courses available. In early 2016, the **UNODC Global eLearning Program**[60] launched two new modules: "Introduction to Anti-corruption" and "Advanced Anti-corruption: Prevention of Corruption." Both courses are primarily focused on the provisions of the United Nations Convention against Corruption ("UNCAC"). The UNODC and the UN Global Compact also offer a free online training tool called **The Fight Against Corruption**,[61] which covers topics such as gifts and hospitality, facilitation payments, intermediaries, and insider information. Other free online anti-bribery courses include a one-and-a-half hour long training entitled **Doing Business Without Bribery**[62] created by Transparency International, as well as a 30-minute course covering the basics of anti-bribery compliance offered by the **GAN Business Anti-Corruption Portal**.[63]

For those companies operating in Spanish-speaking parts of the world, another option is the **MOOC Chile Transparency and Anti-Corruption Course**,[64] which emphasizes transparency and anti-corruption practices in the public domain and includes case studies from Argentina, Brazil, Chile, Spain, Mexico, Peru and Venezuela. ("MOOC" is an acronym for "Massive Open Online Courses," and the program is funded by the Ford Foundation in New York.)

Otherwise, some of the best available resources are meant as supplements to and aids for live, in-person trainings. The ICC, working together with the United Nations Global Compact, Transparency International, and the World Economic Forum, has published a very helpful pamphlet called **RESIST: Resisting Extortion and Solicitation in International Transactions**.[65] The authors are primarily in-house counsel, and, as the title suggests, they provide brief scenarios describing tips for resisting demands for bribes and extortionate payments. The UN Global Compact also offers an entire suite of anti-corruption tools, organized around 10 themes, entitled the **PRME Anti-Corruption Toolkit**.[66] The toolkit is primarily

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[59] https://www.youtube.com/playlist?list=PLyEfKIedJVVX9MWPW4iTLddkYXVf44sFf
[60] http://www.unodc.org/unodc/en/corruption/news-elearning-course.html
[61] http://thefightagainstcorruption.org/
[62] http://www.doingbusinesswithoutbribery.com/
[63] http://elearning.business-anti-corruption.com/
[64] http://mooc.udp.cl/transparency-and-anti-corruption/
[65] https://iccwbo.org/publication/resisting-extortion-and-solicitation-in-international-transactions-resist/
[66] http://actoolkit.unprme.org/modules/introduction/

intended as a guide for the classroom, but it can equally be used by compliance officers for in-house trainings.

Learning about resisting bribery isn't just for your present-day workforce. In its 2016 "United Against Corruption" campaign, the UN emphasized the importance of engaging youth in understanding what corruption is and how to fight it.[67] In support of that goal, TRACE has developed **Bribe Busters**,[68] a series of short animated videos and comic books designed to teach children about bribery's effects on society and how they can stand up to it. Freely available in multiple languages, the series is an example of the kind of resource that can be used to extend anti-corruption efforts beyond your organization and into the broader community.

IV.   MANAGING THIRD PARTY RELATIONSHIPS

Managing third party relationships often takes up a disproportionate share of a compliance officer's time and effort. Conducting due diligence on third parties is both time-consuming and expensive. That trend is unlikely to abate anytime soon as more companies move toward an overseas model of vertical disintegration which relies on a global supply chain to handle non-core manufacturing and service activities.

Fortunately for compliance officers, new models for doing due diligence are upending traditional methods and reducing costs. TRACE offers a "portable" certification model for due diligence which shifts the responsibility for vetting anti-bribery concerns to intermediaries who—once approved—maintain their own compliance information. TRACE stores all of these third party reports in its **Intermediary Directory**,[69] creating a publicly searchable database of vetted, sanctions-screened and trained small and medium-sized enterprises ("SMEs"). SMEs included in the Intermediary Directory have completed the comprehensive TRACE*certification* review and analysis process (or have renewed their certification within the last year) and have provided their consent to appear in the public list. The Intermediary Directory streamlines the process of identifying and contacting potential new business partners.

TRACE has also created the world's only global beneficial ownership register, called **TRACE*public***.[70] Developed to encourage greater corporate transparency, the online database contains beneficial ownership information on thousands of companies in more than 100 countries. Users need only the name of a company or one owner to conduct a search. Like the Intermediary Directory, TRACE*public* is free to use and leverages a collective-action approach to due diligence in order to increase transparency around international standards.

That regulators and enforcement agencies expect more sophistication from corporate compliance programs does not necessarily mean that companies must spend more money on new tools and resources. When building out complete and robust compliance programs, in-house counsel should weigh all options, including free and low-cost offerings that exist. For the seasoned compliance officer, a dynamic and engaging compliance program is not the result of a single solution, but rather a melding of various components.

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[67] http://www.anticorruptionday.org/actagainstcorruption/en/about-the-campaign/what-can-you-do.html.

[68] https://www.traceinternational.org/bribe-busters.

[69] https://tpms.traceinternational.org/IntermediaryDirectory

[70] https://tpms.traceinternational.org/TRACEpublic