

NO EXCUSES!

COUNTERING THE 10 MOST COMMON
EXCUSES FOR CORRUPT BEHAVIOUR

A Pocket Guide for business practitioners



Alliance for Integrity

The Alliance for Integrity is a global initiative bringing together all relevant stakeholders in the field of corruption prevention in the private sector.

Our major goal is to raise business integrity and compliance capacities.

www.allianceforintegrity.org

This publication was adapted to the Ghanaian context with the support of the following persons:

Abdul-Kudus Husein, Ghana Anti-Corruption Coalition

Bernard H. Asamoah, United Nations Office on Drugs and Crime

Charles Ayamdo, Commission on Human Rights and Administrative Justice

Eunice Ansah-Agyeman, Private Enterprise Federation

Francisca Alorkpah, Association of Ghana Industries

Frederic Olbert, Allianz Ghana

John Defor, Association of Ghana Industries

Kristine A. Lartey, Surfline Communications Ltd.

May-Gloria Tedam, Nestlé Ghana

Michael Boadi, Ghana Integrity Initiative

Yvonne Sackey, Surfline Communications Ltd.



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COUNTERING EXCUSES FOR CORRUPT BEHAVIOUR

Corruption is one of the most pressing concerns of our time. It fuels poverty and political instability, undermines sustainable economic growth and distorts fair competition. The business sector has a critical role to play in addressing the problem. Stakeholders such as national governments, intergovernmental institutions and civil society organisations demand that *businesses should work against corruption in all its forms, including extortion and bribery*.¹

The business sector has clearly stepped up in the last decade. Businesses have established internal, external and collective measures to counter corruption. Only a few business people now believe that corruption is acceptable. Better enforcement of anti-corruption laws has helped, increasing the risk of legal, commercial and reputational consequences.

Despite these positive developments, however, corruption continues to make headlines, even in some of the world's largest and most prestigious businesses.

WHY IS THERE THIS CONTRAST, BETWEEN GROWING ACTION ON THE ONE HAND, AND CONTINUING MISCONDUCT ON THE OTHER?

Real-world motives and contributing factors for corruption are complicated. It is not as black and white as greedy employees, seeking to by-pass business policies and procedures for their own private gain. In fact, the majority of employees understand the negative consequences of corruption, and disapprove of it. The trouble is that real-world circumstances may challenge their beliefs. For example, employees may operate in a competitive environment where not everybody plays by the rules. Employees may find that they are expected to pay bribes to win contracts. Increasing the pressure, a business' success may substantially depend on hitting performance targets. Employees may feel that corruption also offers a short cut in the day-to-day running of the business, due to the existence of enormous bureaucratic obstacles for even the smallest activities, such as getting a phone connection.

¹ United Nations Global Compact, 10th Principle.



The result may be a perception that corruption represents either a vital short-term opportunity, or is simply part of doing business. In such cases, employees may opt for engaging in a corrupt act, despite knowing that this is wrong.² Acting in this way causes an inner conflict, because employees, as all human beings, want to think of themselves as honest and ethical people.

HOW DO EMPLOYEES RESOLVE INNER CONFLICTS?

It turns out that employees use “excuses”. Some employees may simply argue to themselves that their situation is unique, and therefore does not fit common definitions of corruption. Others may acknowledge that their action is “somewhat” corrupt, but find reasons to justify their actions, such as the infamous phrase, “the end justifies the means”. Either way, employees are using rationalisation strategies, whether consciously or unconsciously. Rationalization means that employees find an excuse for unethical action, such as corruption, which allows them still to consider themselves as honest.³

WHAT CAN BE DONE?

Anticipating, challenging and countering excuses for engaging in unethical behaviour is an effective way to reduce the likelihood that employees will engage in corrupt acts. Businesses must therefore go further than simply prohibiting corruption according to their rulebook, for example their Code of Conduct. Employees must be persuaded. And this starts with appealing to “hearts and minds”, through two key messages: beating corruption **must be done**, and **can be done**.

This Pocket Guide, produced by the Alliance for Integrity, addresses this issue in a practical and easy-to-use format. The Guide lists 10 of the most common excuses that employees use to justify illicit acts, and provides clear and comprehensible counter arguments. In addition, the guide provides practical tips on how to address these excuses, as part of an anti-corruption ethics and compliance programme.⁴

The Guide is intended for all employees, and especially those in charge of establishing effective programmes within their businesses.

² There are also employees engaging in a corrupt act simply out of unawareness (see Excuse No.1).

³ Taken from Esther Pieterse and Sven Biermann, „Employees facing corruption: Aligning anti-corruption measures to the influencing factors of decision-making”, *Journal of Business Compliance*, 2014.

⁴ Short “anti-corruption programme” or “programme”.

NO. 1 I DIDN'T KNOW THIS WAS CORRUPTION!

One of the most commonly used definitions of corruption is “*the abuse of entrusted power for private gain*” (Transparency International). In the absence of a global legal definition,⁵ this convenient shorthand encompasses a host of illegal acts, and recognises the breadth of the concept. But it does not attempt to enumerate or precisely delimit the term. Indeed, there is some difficulty pinning down a definition.

Not all corruption-related activities are as easily recognisable as the bribing of a public official to win a contract. The “classic” bribery image of a briefcase full of cash being exchanged to close a deal, is a bit out-dated.

Today, corruption can be far more subtle, making it more difficult for employees to recognise it unequivocally. The borderline between legal and corrupt practices can be quite blurred. For example, providing hospitality is common practice and perfectly legal in situations where the aim is to maintain good business relationships or to demon-

strate a business’ largesse and capability. However, providing hospitality directly to influence a decision is forbidden.

These nuances complicate the task of precisely defining corruption, which may be used by employees, intentionally or unintentionally, as an excuse for illegal behaviour.

No eXcuses – Facing the facts!

■ **It’s everyone’s responsibility:** Corruption is illegal and should be prohibited at all times and in any form, whether small or large, direct or indirect, active or passive. Employees must understand that countering corruption is the responsibility of everyone in the organisation, and not just of senior management, or dedicated personnel, such as a Compliance Officer.

■ **Ignorance is no justification:** The international legal framework for countering corruption is based on the principle that ignorance of a law is irrelevant regarding the legal consequences for transgression.

⁵ During the negotiations of the United Nations Convention against Corruption, UN Member States carefully considered the opportunity for the global anti-corruption treaty to provide a legal definition of corruption. Concluding that any attempt at a comprehensive definition inevitably would fail to address some relevant forms of corrupt behaviour, the international community reached global consensus on a large number of manifestations of corruption while leaving each State free to go beyond the minimum standards set forth in the Convention. The Convention calls for ratifying States to outlaw, at a minimum, bribery of public officials; embezzlement, trading in influence, abuse of function, and illicit enrichment by public officials; and bribery and embezzlement in the private sector, as well as money laundering and obstruction of justice.

■ **Recognize “grey areas”:** Countering corruption starts with a clear understanding of what corruption actually is. But this is easier said than done. Corrupt acts are not all equally recognisable. Facing a biased Terms of Reference that exclusively favours one supplier, or a customs official who demands a “special”, off-the-record fee to release perishable goods may immediately raise a warning sign. But employees often face more complicated situations:⁶

- Business practices that are illicit, but perceived as normal or even required, such as a “facilitation payment” to get a license or work permit, for example.
- Business practices that are legal, but carry the risk of being misused to disguise corruption, such as the misuse of charitable contributions, gifts or hospitality as a bribe for a national public official.
- Business practices that are based on biased decisions, for example where there is a conflict of interest.

A business must recognise these “grey areas”. Simply prohibiting facilitation payments, for example, is not enough. Employees may not be motivated or bothered to consider rules “on paper”, especially if rules are perceived as out of touch with their daily reality. As a general guidance, the following three questions should therefore be used when addressing grey areas:

WHEN does a particular situation count as corruption?

WHY should an employee act against it?

WHAT can they do to prevent it?

Failing to address any one of these will send a less coherent and persuasive message to employees. Businesses must develop clear-cut policies on what constitute corruptible acts and behaviours and must communicate same clearly to their employees.

■ **Intended corruption is also punishable:**

It is important to note that the mere intention to engage in corruption is as wrong as actually executing it. The United Nations Convention against Corruption, which sets the tone for many national criminal laws, clearly states that offering or demanding an undue advantage counts as corruption, as much as the actual transfer of such advantages.

➤ **Corruption is encountered in a wide range of business activities. As a result, it is sometimes difficult to set hard rules which identify boundaries between legal and corrupt behaviour. Businesses must acknowledge this challenge and provide guidance and support that translates “on paper” rules into practical reality for employees. At the same time, every employee should know that hiding behind these complexities, or even using them as an excuse, will make them no less accountable.**

⁶ Taken from United Nations Office on Drugs and Crimes, “An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide”, 2013.

NO.2 I DIDN'T DO IT FOR ME, I DID IT FOR MY ORGANISATION!

This excuse is often used by employees who promise, offer or actually give an undue advantage to a client.⁷ Employees may find themselves in a situation where they have to compete against perceived corrupt competitors, or where they face a solicitation request from a counterparty. In such situations, employees may feel that the only way to achieve their business objectives, for example to win a contract, is through corruption.

Such employees will need an excuse to justify such unethical behaviour, so that they can still consider themselves as good people, and maintain their sense of self-worth. Such justification cannot admit selfish interests, such as the fear of losing a business opportunity which directly impacts their own remuneration. A more altruistic excuse is often sought. In this case, the employees convince themselves that they actually acted in the interest of their business or organisation, to help achieve its objectives, and so avoid negative consequences such as the laying off of peer colleagues.

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■ **Corruption is illegal, irrespective of the underlying intention:** Major anti-corruption codes, such as the United Nations Convention against Corruption, or the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, leave no room for consideration of motive. Prominent national laws, like the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, the Brazilian Clean Companies Act and Ghana's Criminal Code, 1960 (Act 29) likewise have no such provisions.

■ **The underlying motive is always employee benefit:** Perceived motives, whether generous, heroic or noble, to help the business, turn out to be less altruistic upon closer inspection. Even if the employee does not receive a direct financial gain, such as a bonus or higher salary, from using illegal acts to win a contract, there may be a motive for indirect gains. These could include an elevated status for getting the job done or a promotion, or greater job security.

⁷ Such business partners include national public officials, foreign public officials, officials of public international organizations or representatives from a private sector entity.



■ **The entire business is put at risk:**

Seeking to obtain an undue advantage from a public official or a business partner, even if perceived to have the best or most noble intentions, carries enormous risks. Such employees put themselves at risk of punishment, individually. In addition, legal, commercial and reputational penalties⁸ often apply to an entire business and its management. As a result, naively good intentions can be disastrous. For example, an entire business might be banned from a lucrative market, ultimately even leading to staff cuts, as the business is forced to cut costs.

➤ “Doing it for the business” may be perceived by some employees as a noble motive for conducting a corruptive act. However, such altruistic behaviour is often only a cover, to make the employee feel less guilty. And even when corruption is used with the best intentions, it is still an illegal act and will be prosecuted, regardless. Corruption can have severe negative effects for the individual employee and the entire business.

⁸ A comprehensive overview of legal, commercial and reputational penalties can be obtained from HUMBOLDT-VIADRINA Governance Platform, “Motivating business to counter corruption: A Practitioner Handbook on Anti-Corruption Incentives and Sanctions”, 2013.

NO.3 NO ONE GETS HURT, IT IS ACTUALLY A WIN-WIN!

The argument that corruption can be a “victimless crime” makes an especially appealing excuse. The notion that it can be beneficial for all parties, in this way, is primarily heard from employees using active bribery to obtain an undue advantage from a public official or business partner. For example, an employee may face an especially tortuous bureaucratic process, such as applying for a work permit. In such a situation, the employee may prefer to pay a public official to speed up the process, often referred to as “greasing the wheel”.

The nature of such so-called facilitation payments is that they are often rather small, and therefore perceived not to impact the business’ bottom line. In addition, as the excuse goes, the payments may actually be beneficial to the perceived, underpaid public official counterparty. The payments may therefore be seen merely as a tip, donation, or altruistic payment.

However, such an attitude can escalate to more substantial payments or arrangements, to win or conclude business deals. In this case, the employee may collude with the customer, granting some kind of undue advantage under the contract terms, to win the deal. The advantage – whether financial or other – is often not paid out directly from the business’ resources, but is rather anticipated and directly calculated into the business transaction. The employee wins the contract without paying additional costs,

while the customer obtains their undue advantage. Both sides feel that “no one got hurt”, and that their arrangement was therefore beneficial for both parties.

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■ **Facilitation payments essentially “sand the wheels”:** Let’s start with the perception that there is no victim when employees use small, improper, unofficial payments to speed up bureaucratic processes. The popular belief is that these payments “grease the wheel”, even assisting under-resourced public institutions. But evidence points in the opposite direction.⁹

> **They are illegal:** No matter how small, facilitation payments are bribes, and therefore prohibited under most national laws. The laws must be enforced.

> **They are unjustified:** It is true that in some countries they may still be considered normal practice, or even necessary to do business. It may also be true that public officials in many parts of the world are indeed poorly paid. However, they are not legally entitled to request extra, unrecorded money. These payments provide an extra source of earnings, depriving

⁹ For example Pierre-Guillaume Méon and Khalid Sekkat, “Does corruption grease or sand the wheels of growth?”, Public choice 122.1-2, pages 69-97, 2005; or Daniel Kaufmann and Shang-Jin Wei, “Does “grease money” speed up the wheels of commerce?”, National bureau of economic research – No. w7093, 1999.

the country of much needed income tax revenues.

➤ **They do not speed up bureaucratic processes:** Through such payments, officials are motivated to introduce additional, unnecessary steps or delays in public processes, to solicit more money. Gradually, ever more “grease” is needed to obtain permits and licenses.

➤ **They are not small:** While such payments are perceived as insignificant each time they are paid, and even beneficial given the services that they provide, such as reduced waiting times, they can add up to a significant burden on the business over time. For example, in the documented case of Westinghouse Air Brake Technologies Corp.’s Indian subsidiary, Pioneer Friction Ltd., such individual payments were as small as \$31.50 per month, but totalled more than \$40,000 in one year.¹⁰

➤ **They aggravate over time.** When tolerated, facilitation payments undermine a culture of zero-tolerance for corruption within an organisation, and may ultimately lead to a perception that bribery is acceptable, regardless of its size.

➤ **They are harmful for the business environment, and for the overall economy:** Eventually, on the national scale, such payments erode standards in public office and in business, creating a spawning ground for much larger public sector bribery and state theft.

■ **There is also no win-win in large scale corruption:** In the case of larger pay-

ments, the absence of a perceived, direct victim may again mislead the employee and their customer to believe that this is beneficial for all sides. But there is a victim: the general public. If the “wrong” supplier is chosen, taxpayers get less value for public expenditure. Even if the “right” supplier is selected, the cost can be above the market price. The country ends up either getting a poor deal, or spending too much on products and services. And there can be further, negative knock-on effects for society, including political instability, widening inequality, and mistrust in public institutions. The economy can also suffer if unfair competition discourages private investment, ultimately leading to lower growth.¹¹

➤ **Corruption is not a victimless crime. Both large-scale and petty corruption has a corrosive effect on everyday life, and on a business’ operations and ultimately its bottom-line. To counter corruption effectively, businesses must go further than simply prohibiting corruption according to their rule-book, for example their Code of Conduct. Employees must be persuaded. And this starts with appealing to “hearts and minds” through two key messages: countering corruption must be done and can be done.**¹²

11 For example Mohsin Habib and Leon Zurawicki, “Corruption and foreign direct investment”, *Journal of international business studies*, pages 291-307, 2002; or Peter Egger and Hannes Winner, “How corruption influences foreign direct investment: A panel data study”, *Economic Development and Cultural Change* 54.2, pages 459-486, 2006.

12 There are tangible solution approaches on how businesses can counter corruption. For example Transparency International UK, “Countering Small Bribes”, 2014; or United Nations Global Compact / World Economic Forum (PACI), International Chamber of Commerce / Transparency International, “Resisting Extortion and Solicitation in International Transactions”, 2011.

10 Taken from Transparency International UK, *Adequate Procedures – Guidance to the UK Bribery Act 2010*, 2010.

NO.4 YOU DON'T UNDERSTAND HOW BUSINESS IS DONE HERE ...

This excuse is often used by employees operating in business environments where corruption is perceived to be deeply embedded or endemic in daily life. Employees will argue that the “rules of the game” are different, and businesses have no choice but to accept them. An employee may apply this excuse across a range of situations and behaviours, including client expectations for gifts or hospitality; regulations encouraging the use of local partners; offset arrangements; and the handling of security issues.

Employees using this excuse may resort to the label, “culture of corruption”, to convey that it is impossible to operate in any other way, in a particular sector or jurisdiction. The implication is that local corrupt practices are so deeply embedded in how people think and act that it is impossible for an individual to change anything. For example, employees working abroad may feel that moral values and codes of conduct in “far-away” corporate headquarters are not applicable to or realistic for them.

Employees at businesses with a strong anti-corruption culture may try and buck the trend, and argue against corruption, when dealing with local business partners in high-risk areas. They may also be confronted with this excuse. When they counter the excuse, they may even be accused of trying to impose “western standards”.

No eXcuses – Facing the facts!

■ **Corruption is illegal, irrespective of the jurisdiction:** Businesses seeking to operate in high-risk countries are often torn between two extremes. Operating in such environments often yields higher returns. But this may come with a price tag in the form of higher risks, including corruption. Such businesses must accept that corruption is not an option, and must embrace the task of avoiding it. The international legal framework does not differentiate between corruption in low-risk and high-risk countries. Corruption is illegal, and culpable employees, alongside their businesses and management, will be punished.

■ **The fight against corruption is universal:** The United Nations Convention against Corruption (UNCAC) embodies the principle that corruption must not be tolerated. More than 170 countries have ratified the UNCAC. The principle that corruption is wrong therefore applies to businesses and their employees operating in the vast majority of countries worldwide.

■ **The structures are to blame, not the people:** Using the label “culture of corruption” may attempt to imply that a particular country is somehow intrinsically more corrupt. This can be a powerful excuse, because it adds to the impression of individual powerlessness. How could anyone change the national character of a whole country? However, in fact, human values are the same everywhere. Integrity forms the basis for education, regardless of the country. Regardless of the country or culture, it is unacceptable to use a common fund for personal gain. Corruption prospers not as a result of a difference in national values, but a lack of accountability and transparency, as a result of weak government or excessive concentration of power among certain officials.

■ **Everyone can make a difference:** There are many inspiring examples where businesses adhere to the highest standards of integrity and still successfully conduct business in high-risk business environments. Success starts with establishing an anti-corruption programme within a business’ own operations, followed by sincere engagement with local business partners. But this is not enough. Regardless of their size, power or influence, businesses should also collectively engage with peers and other stakeholders to address issues of systematic governance failures. Collective action can serve as a practical long-term approach (see also excuse No. 6: “We cannot make a difference on our own.”).

■ **Businesses have a responsibility to act:** Fixing a systemic failure of governance requires both private initiatives and strong government action. Even in the absence of the latter, however, businesses cannot simply “sit and wait”. Adherence to principles of corporate responsibility assist the orderly functioning of markets, so vital for economic growth and development, and therefore for business opportunities. The OECD Principles of Corporate Governance and Guidelines for Multinational Enterprises are a good example.

➤ **Corruption is not a matter of national culture. Nor is countering corruption a “western standard”. Businesses that seek to do business in high-risk environments, perhaps anticipating a higher rate of return compared with other markets, must also sincerely address the risk of corruption. Falling into a state of paralysis, waiting until everything gets better, is unacceptable. Every business has a responsibility to shape its business environment. Proven approaches, including initiatives for collective action, show that taking responsibility can yield successful results.**

NO.5 IF WE DON'T DO IT, SOMEONE ELSE WILL...

This is a common excuse for corruption among sales staff and their managers. The root cause can be a pressured environment to seal business deals in the face of fierce, and perhaps, perceived unfair competition.

Significant business opportunities can be protracted affairs, subject to cancellation, delay and renegotiation, with much at stake. The process of bidding for a large, international contract can take years, where failure is therefore all the more costly, since the next opportunity could be far off. Such a competitive environment creates enormous pressure to succeed, with a “win big, lose-big mentality” at the front line. Linking of salaries and bonus schemes to demanding performance targets may fuel a perception that the business’ anti-corruption policy either does not apply, or else is secondary, and simply “out of touch with reality”.

Although most managers disapprove of corrupt practices today, there can be a perception that following the business’ policies will jeopardise short-term opportunities, and that corruption is simply a necessary part of doing business. Perpetrators may justify using bribery to win a business deal by referencing a “culturally” or “historically” corrupt environment. They may argue that their rivals routinely flout ethical values, and so they must either do the same, or else go out of business.

These rationalisations are not theoretical: they reflect what sales managers actually report when doing business. Corruption is still endemic in parts of today’s business world. And globalisation is driving ever stiffer competition. *“A sales person trying to make a living in a high-risk region who’s looking for an excuse to pay a bribe never has to look too far.”*¹³

This excuse becomes even more powerful when combined with the altruistic excuse No 2: “I didn’t do it for me; I did it for my organisation”. Combined with the feeling of having no real alternative, this is a dangerous combination which employees may feel justifies illegal behaviour.

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- **Everyone is put at risk:** Employees should be constantly reminded that winning contracts through corrupt means is illegal almost everywhere. The short-term benefits of winning business deals illegally are an illusion. Corrupt behaviour burdens a business, its management and employees with significant legal, commercial and reputational risks. The hope that these negative consequences may never materialise, because of a perceived

¹³ Richard Bistrong, “When corruption becomes normal”, FCPA Blog, 30 June 2015.

low risk of getting caught, is increasingly misplaced (see Excuse No. 9).

■ **There are solutions on the “supply side” of corrupt payments:** Sales people often voice the perception that they have to compete on an “un-level playing field”. Their competitors may offer an expensive gift or other advantages to a client, to secure a deal. The problem of competing against unfair peers may be a reality. The good news is that more and more front-line staff disapprove of corrupt practices. The bad news is that they are often unsure whether anything can be done. Such employees need to be persuaded, not only of the potentially severe, negative consequences of corruption, but also of practical and proven solutions. *Collective action initiatives* may serve as inspiring examples, where many convincing success stories already exist.¹⁴ Such initiatives demonstrate how cooperation between businesses and governments can significantly reduce the risk of corruption.

■ **Solutions also exist to address the “demand side”:** Businesses may not only compete against corrupt competitors. Bribery solicitation and extortion also represent serious concerns in many parts of the world. In such situations, businesses may feel that they have to “give in to such requests”, or otherwise face serious short-term consequences, for example losing a deal. Again, businesses have positive

opportunities for tackling solicitation and extortion. For example, so-called *high-level* reporting mechanisms (HLRMs) include prevention-oriented approaches for addressing demand-side issues. In practice, they allow businesses to report bribery solicitation to a dedicated, high-level institution that is tasked with responding swiftly in a non-bureaucratic way.¹⁵ Ghana’s Whistleblower Act, 2006 (Act 720) is an example of HLRMs.

➤ **Businesses must sincerely acknowledge the difficulty for front-line employees, seeking to adhere to the business’ integrity values while at the same time trying to secure business, often in environments where corruption is perceived to be the norm. However, deserting integrity values because “everyone else is doing it” will not save a corrupt employee and its business from punishment. Employees must be persuaded not only to refrain from such acts, but also understand that there are existing approaches for businesses to make a difference. Many front-line employees are still unaware of these opportunities. It is time to change this!**

¹⁵ Public procurement is one of the areas that lends itself to this type of approach. HLRMs are not meant to replace existing structures and processes offering legal redress, or investigative bodies that have to examine allegations of illegal conduct. But these processes inevitably take longer however, and do not necessarily offer swift responses to businesses critical issues. Rather, the HLRM seeks to resolve matters while a tender is still open so as to prevent further attempts at improper activity from occurring and thereby securing the transparency and fair conclusion of the concerned procurement process. It allows the business to continue participating in the tender without breach of integrity. Businesses may also require a speedy response to reports of solicitation and extortion in situations where time is of essence such as the processing of a licensing application, release of goods from customs, etc. The prompt handling response may also act as a deterrent to bribery in the first place, and prevent damage to the reputation of the tender processes and related agencies. <http://www.collective-action.com/initiatives/hlrm>.

¹⁴ For more information please refer to the International Centre for Collective Action (ICCA) Initiatives at <http://www.collective-action.com>.

NO. 6 WE CANNOT MAKE A DIFFERENCE ON OUR OWN...

This popular excuse is not corruption-specific. Indeed, it is most often applied to negligent behaviour. The argument is that unilateral, individual action is pointless, since it cannot solve a large or systemic problem.

For example, people may refrain from turning the light off when leaving the room, or stopping the engine when their car is briefly parked, even though this would save energy, money and carbon emissions. Regarding countering corruption, small and medium-sized enterprises in particular, may perceive that they are too small to make a difference.

Portraying one's own business as insignificant, a small "drop in the ocean" of the wider economy, makes it easier to rationalise restraint in countering corruption. Why should the business act on its own, thus risking negative consequences, such as losing a business opportunity to corrupt competitors? Similarly, why should the business invest valuable, scarce resources in an anti-corruption programme, if no one else is doing the same?

This excuse becomes even more powerful when combined with excuse No 5: "If we don't do it, someone else will...". Businesses may feel helpless or overwhelmed by the steps needed to stop corruption. They may therefore surrender to the local environment

and rules of the game, even though they know that this is wrong.

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■ **Individual actions inspire others:** When facing challenging or critical situations, employees generally imitate the behaviour and actions of their superiors, as the likeliest way to secure reward and approval. Similarly, smaller businesses may turn to larger, more influential peers or customers, to compete on level terms. Each individual business can therefore choose to make a difference, by establishing an anti-corruption programme for their own operations, and engage on this basis with their business partners, including intermediaries and suppliers.

■ **The group is stronger than the individual:** Businesses engage allies or partners on a daily basis, when faced with complex situations such as bidding for a large contract or delivering a demanding project. Few businesses can do everything on their own. The same holds for countering corruption. Corruption is a complex situation, and seeking allies is a proven solution approach. Engaging *collectively brings vulnerable individual players into an alliance of like-minded organisations, and levels the playing field between competitors. It increases the impact and*

*credibility of individual action.*¹⁶ Collective action initiatives take various forms, ranging from short-term agreements to long-term initiatives with external enforcement. Ghana's National Anti-Corruption Action Plan (NACAP) for instance provides a framework on how various stake-holders can play a role in the fight against corruption in the country.

> **Commitment to fair tendering:** One practical example of collective action is a so-called "Integrity Pact". The Integrity Pact is a tool, developed by Transparency International, which defines a legal agreement between a contracting authority, such as a public institution, and private bidders. An external third party, such as a civil society organization, plays an independent monitoring role. The immediate benefits for each individual party include:

- The contracting authority agrees to refrain from requesting or extorting advantages from bidders.
- Bidders agree to abstain from active corruption, safe in the knowledge that their competitors have agreed the same.

To date, hundreds of Integrity Pacts have been applied across more than 15 countries,¹⁷ significantly reducing the risk of small and medium-sized enterprises, in particular, losing business to corrupt competitors, or being extorted from by government representatives. In

Mexico, for example, Integrity Pacts have been applied to more than 100 contracts worth US\$ 30 billion.

> **Commitment to equal conduct:** Another example of collective action is through so-called "standard-setting initiatives". Businesses, often from the same industry, commit to defined compliance standards and procedures. The public nature of the commitment, in the eye of the general public and media, incentivises businesses to respect its obligations. One example of collective adherence to ethical standards is the International Forum on Business Ethical Conduct for the Aerospace and Defence Industry (IFBEC). IFBEC members have developed a set of global principles for business ethics, including zero-tolerance of corruption.

> **Bringing individual actors into an alliance with like-minded organisations helps to "level the playing field". Over time, such alliances create a business environment with reduced risk of corruption, where all businesses can contribute, independent of their size or market power. Proven collective solutions have been shown to address corruption in a range of situations, from short-term challenges, such as biased bidding, to long-term transformational change. They show that the excuse of not being able to make a difference is no longer valid.**

¹⁶ Taken from World Bank Institute, "Fighting Corruption through Collective Action – A guide for business", Version 1.0, 2008.

¹⁷ For more information refer to Transparency International at www.transparency.org/whatwedo/tools/integrity_pacts.

NO.7 WE NEED LOCAL PARTNERS TO GET THE JOB DONE

This is a common excuse among front-line employees such as sales agents and logistic staff doing business in a challenging or unfamiliar environment. For example, an employee may be tasked with establishing an office in a new country. They may face complex, confusing regulations, or a foreign culture where making inroads relies heavily on personal relationships with decision makers.

In such cases, businesses may choose to involve local partners for the execution of day-to-day business activities, such as obtaining licences, permits and other authorisations. Such local partners can include business development consultants, sales representatives, customs agents, lawyers and accountants, all with an in-depth knowledge of local business customs and practices, as well as extensive personal networks.¹⁸

Engaging with local partners may indeed yield operational benefits. But the underlying rationale may be to outsource the risk of corruption to a third party. An employee may be aware that in a particular country, an improper payment can help to speed up processes or obtain services. But an employee may prefer not to get their "hands dirty". In the case of misconduct by the local

partner, the employees can then excuse themselves by denying any absolute knowledge or direct responsibility.

No eXcuses – Facing the facts!

■ **It is a serious risk – businesses are liable for partners and intermediaries:** While engaging with partners and intermediaries may be necessary to do business, it may also present a considerable risk regarding corruption. Data suggest that from 1999 to 2014, three quarters of prosecutions for foreign bribery involved payments through intermediaries.¹⁹

Every employee should therefore know that tackling corruption does not stop at the business' door. Their wider responsibilities cover the bigger business environment, including engagement of external partners.

Businesses are increasingly obliged to know what these partners are doing, and how they conduct their business affairs. For example, under the UK Bribery Act 2010, a commercial organisation is liable if an "associated" person uses bribery to obtain or retain business or a business

¹⁸ Taken from United Nations Office on Drugs and Crimes, "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide", 2013.

¹⁹ Taken from OECD Foreign Bribery Report, "An Analysis of the Crime of Bribing Public Officials", 2014.



advantage for that organisation. An “associated” person is defined as someone who performs services *for or on behalf* of the organization. In this case, the UK Bribery Act treats external partners in the same way as internal employees.

US law applies similarly. For example, in 2014, Alcoa Inc. had to settle US \$384 million in charges to the U.S. Securities and Exchange Commission, in a criminal case brought up by the U.S. Department of Justice. An Alcoa subsidiary had made more than US \$110 million in corrupt payments to Bahraini officials, using a London-based consultant as an intermediary to negotiate with government officials and make the illicit payments.²⁰

■ **Deliberately “turning a blind eye” poses a serious threat:** Increasingly, businesses understand the risk of engaging business partners. In response, they may state their expectations towards their partners in detailed policies, such as a “Code of Conduct for Suppliers”, or an equivalent document. Such a code generally requires compliance with all applicable laws, and explicitly prohibits any kind of corruption, such as bribery. However, simply having

a Code is not, on its own, a sufficient safeguard against liability. An “I did not know what they were doing” defence may not stand, if proper due diligence would have uncovered misconduct. Legal provisions for “willful blindness” or “conscious avoidance” include closing one’s eyes to the high probability of improper behaviour.

➤ Many jurisdictions are introducing stronger anti-corruption legislation, treating business partners acting on a business’ behalf in the same way as a business’ own employees. Ignorance is not a valid defence: deliberately looking away from a partner’s business conduct may not shield the business and its employees from reputational, commercial and legal penalties.

²⁰ Source: <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540596936>

NO. 8 WE CANNOT AFFORD AN ANTI-CORRUPTION PROGRAMME

At most businesses, there are multiple and competing claims on scarce human and financial resources. These rivals for attention may include research & development into a new product line, a fresh marketing campaign, or the establishment of an anti-corruption programme. They all have legitimate goals.

In this internal competition for business funds, however, an anti-corruption programme may be disadvantaged. First, it may be perceived as burdensome, adding a bureaucratic layer to the business' operation. Second, decision-makers in the business may find it more difficult to estimate its direct monetary benefit. And third, employees may withhold their support, if they do not understand the underlying intentions, or fear disapproval from their peers.

Company executives and others in charge of developing and implementing business strategy often understand the importance of establishing and maintaining an anti-corruption programme. But they may still prioritise other activities. They may use the excuse that such a programme will impose an excessive financial burden, or even "scare employees". These excuses must be addressed, as much in small and medium-sized enterprises (SMEs) as in large multinationals.

No eXcuses – Facing the facts!

■ **Penalties matter:** Crippling fines, debarment from lucrative markets, termination of contracts and negative press are all examples of the consequences facing businesses and their management from corruption. The risk of being caught has also increased significantly in recent years (see Excuse No. 9).

■ **Double punishment:** While no business is immune to corruption, they can take steps to reduce the risk. An anti-corruption programme reduces the risk that employees will take chances with corruption. This fact is increasingly codified in anti-corruption rules and codes. Thus, businesses guilty of corruption now often face additional penalties if they have no anti-corruption programme, as for example under the UK Bribery Act 2010.

■ **The "insurance" factor:** The reverse holds true, as well. In the event that an employee is found indulging in corruption, against the business' best efforts, the presence of such a programme may result in suspended or reduced sanctions. In this way, investing in an anti-corruption program can be seen as a form of insurance, in the same way as paying insurance premiums against a situation which one hopes will never occur.



■ **It doesn't have to be expensive:** To a large extent, there is consensus on the key elements and requirements of an anti-corruption programme, including support from senior management, training and communication, internal controls and record keeping, reporting mechanisms, and monitoring and review.²¹ Applying these to the business' individual characteristics should be based on a risk-based approach. This ensures not only the identification and prioritisation of risks that really matter to the business, but the most cost-effective use of financial and human resources. As a general rule of thumb: the more complex the organization, the more complex the programme will be. This is especially relevant to SMEs, which can often apply new policies and procedures more effectively than large, decentralised businesses.

■ **Lots of great guidance material available – free of charge:** Finally, there is an ample literature of free, high-quality information and guidelines regarding implementation. While these materials should not be used in a “copy and paste” way, they do provide an inspirational source of information.²²

➤ **Businesses starting to address the risk of corruption may initially face scepticism or even fear from their own employees: Is there something wrong with our business? Why are we dealing with this now? Therefore, employees should know that no business is immune to the risks of corruption, and that these risks will grow if they are neglected. The international legal framework is increasingly disapproving of corruption, for example applying harsher sanctions. As a result, a business can no longer afford NOT to have an anti-corruption programme.**

21 For example: OECD / UNODC / World Bank, “Anti-Corruption Ethics and Compliance Handbook for Business”, 2013.

22 An overview of common information sources can be obtained at www.afin.international.

NO.9 THEY ARE ONLY GOING FOR THE BIG BUSINESSES ANYWAY

This is an especially popular excuse among small and medium-sized enterprises (SMEs). The view among SMEs persists that the focus of anti-corruption law enforcement is still large, multinational businesses.

Combined with excuse No. 8 (“We cannot afford an anti-corruption programme”), this may lead to an informal cost-benefit analysis which argues against the cost of introducing a business-wide anti-corruption programme. Clearly, if the risks of getting caught are perceived as low, the anticipated costs of such a programme may appear to outweigh the benefits, even in the face of rising penalties.

No eXcuses – Facing the facts!

- Corruption is illegal, regardless of the size of the business: The international legal framework does not differentiate between multinational businesses and SMEs. Corruption is illegal, and culpable employees, alongside their businesses and management, will be punished.
- **Significant increase in law enforcement:** The past decade has seen a growing political priority to combat corruption. The US, the UK, Germany and Switzerland all show active enforcement, for example. In addition, the majority of large emerging economies, including Brazil, China and

India, have committed to developing anti-corruption laws and enforcement. Ghana has also shown commitment to anti-corruption in recent times and has enacted legislations including the Whistleblower Act, 2006 (Act 720) to strengthen the fight against corruption.

- **Turning the spotlight on SMEs:** Law enforcement agencies no longer focus on large multi-national businesses. SMEs with an international presence are also increasingly the focus of prosecutors.²³
- **Extraterritorial reach:** Law enforcement is increasingly global. The world’s two most prominent national laws, the US FCPA and UK Bribery Act 2010, both have extraterritorial reach. In the case of the FCPA, US enforcement agencies exert jurisdiction over non-US businesses on the basis of apparently remote actions, such as the sending of incriminating emails across US-based servers, or making financial transfers through a US bank account.
- **Innovative approaches are increasing the risk of getting caught:** The risk of detection is rising, for example due to industry-specific investigations, or incentives for whistle-blowers.

²³ Source: International Chamber of Commerce. Anti-Corruption Third-Party Due Diligence, A Guide for Small and Medium-Size Entities, 2015.

› Industry-specific investigations are becoming increasingly frequent, sweeping businesses of all sizes within a particular sector. In 2010, in the first such industry sweep, US authorities reached settlements with businesses in the oil services industry for allegedly violating the FCPA by paying millions of dollars in bribes to foreign officials, “to receive preferential treatment and improper benefits during the customs process”. Cheryl J. Scarborough, then Chief of the US Securities and Exchange Commission (SEC) FCPA Unit, stated that the “FCPA Unit will continue to focus on industry-wide sweeps, and no industry is immune from investigation.”²⁴

› Rewards for whistle-blowers. Under the current international legal framework, some governments offer business employees financial incentives for reporting suspected corruption offences. Under the US Dodd-Frank Act, for example, whistle-blowers can receive between 10–30 per cent of any penalty paid by a business exceeding US\$ 1 million. This may motivate employees to report issues that would otherwise remain undetected. Such incentives do not apply solely to the employees of large businesses.

■ **It is not only law enforcement:** Misconduct is also increasingly uncovered by business partners, civil society and investigative journalism.

› Supply chain audits. Many SMEs are suppliers for larger businesses. These larger businesses may have “Supplier Codes of Conduct” which require suppliers to establish anti-corruption measures in their own operations. The codes may allow large businesses to monitor their suppliers, for example through on-site audits, to enforce anti-corruption commitments.

› Public scrutiny. Social media have seen expert bloggers join civil society organisations and the media in the investigation of potential corporate misconduct. In one media exposure, New York Times articles in 2012 alleged that bribes were paid by Wal-Mart, the world’s largest retailer by revenue, to obtain permits to build stores in Mexico. The articles led the U.S. Department of Justice to launch an investigation.

› **Cost-benefit analysis is a common tool used for weighing business decisions. However, it does not apply to comparing the benefits from engaging in corruption with the cost of establishing an anti-corruption programme. Corruption is a crime with serious consequences where the costs should not be quantified rationally. Many business practitioners are still a victim of the misconception that corruption is unlikely to be detected. In fact, significant progress has been made in law enforcement, supply chain audits and public scrutiny. Such progress is likely to continue. Employees should therefore not gamble the fate of their business.**

²⁴ Taken from Securities and Exchange Commission, “SEC Charges Seven Oil Services and Freight Forwarding Companies for Widespread Bribery of Customs Officials”, 4 November 2010.

NO. 10 I DON'T KNOW HOW TO RESPOND TO CORRUPTION!

Congratulations! If you are in charge of your business' anti-corruption programme, and this excuse is raised by employees, it is an encouraging sign. It shows that your employees understand what corruption is, are interested in combating it, and feel confident enough to discuss how to achieve this. They are already willing to act against corruption, and now need the tools to do this in practice.

As a result, this section is less about countering an excuse, and more about providing practical tips to support your employees in their work.

- **Recognise:** Employees often feel uncomfortable raising questions about how best to address corruption. Those that do come forward should therefore be recognised, to send a strong signal that your business values this kind of behaviour and enquiry.

- **Learn from employee feedback:** If one employee asks a particular question, such as the appropriateness of a gift for a client's wedding, it can probably be assumed that the question applies more widely across your organisation. These kinds of real-world scenarios should therefore be integrated into your training courses, for the benefit of all.

- **There is no "one-size-fits-all" solution:** Different employees face different situations requiring different tools, to address their particular circumstances. Your logistics staff may face frequent requests for small facilitation payments. A senior sales manager may be under pressure to achieve ambitious performance targets, and therefore be tempted to break the law when bidding for contracts against perceived corrupt competitors.

- **Not your typical training:** Standard anti-corruption training may use computer-based solutions and other forms of self-study. This may be suitable for increasing awareness across large audiences, for example in a business-wide training programme. However, it is not the best way to sharpen



the ability of employees facing difficult situations. In this case, more interactive approaches are needed, such as role-playing activities among peer colleagues.

■ **Have an open door:** Employees should always have opportunities to raise questions, seek advice or suggest improvements to an anti-corruption programme. This may be accomplished either through the designation of a dedicated person or department within the business, or through a designated hotline. Providing this support will help employees answer concerns such as, "I don't know how to respond". In addition, it will facilitate communication and trust within your business, and help identify areas for further support and training.

➤ **Your employees should never have unanswered questions on how to respond to corruption. Your business must encourage an atmosphere of open communication, to support a Code of Conduct. Only then will you successfully reduce the risk of corruption over time. Persuade and empower your employees!**

PRACTICAL CONSIDERATIONS FOR COUNTERING EXCUSES

A business cannot act on its own. The decision to commit, or refrain from, corruption may be taken by a single representative, or by a group of employees. This brief Guide has outlined some of the most common excuses used by employees to justify illegal or immoral behaviour. Any effective anti-corruption programme must counter these excuses with convincing arguments. When employees understand that their excuses do not hold, and that they are therefore unable to justify their behaviour, the chances are much higher that they will abstain from these acts.

UNDERSTAND THE RISKS

As a starting point, preventing corruption requires an understanding of the risks the business faces. That understanding will include a recognition of how employees may justify corrupt behaviour, whether established staff, new hires, or even business partners.

An assessment of corruption risks should be the foundation for implementing and continuously improving an anti-corruption programme, including countering excuses. This is called a “risk-based approach”. Corruption risks among employees include the following:

- Failing to understand what corruption actually is. As outlined in Excuse No. 1, in reality, defining corruption is not as easy as it sounds;
- Having an approving attitude towards corruption.²⁵ If employees tolerate corruption, then the business clearly needs to increase its efforts to stress its negative consequences, both for the individual employee and the wider business;
- Having a disapproving attitude towards corruption, but nevertheless excusing it. In this case, the business must understand the range of excuses that employees might use in various decision-making dilemmas, to justify corruption. Employees are more likely to develop or resort to excuses in particular situations, such as:
 - > High-risk environments, where corruption is seen as a “way of doing business”, with resulting peer pressure to do the same. Colleagues, business partners and even family and friends have a strong influence on an employee, encouraging the excuse, “everyone else is doing it, so why not you?”
 - > Where the illicit act is perceived to be remote, at arm’s length. For example, it may be easier to excuse taking office material that is worth \$10 than stealing the same

²⁵ While such “soft factors” appear difficult to quantify, businesswide surveys on topics like organisational culture and the perception of corporate values can be used to gather relevant information.



amount in business cash.²⁶ In the same way, front-line employees who are far from the business headquarters may view corruption as a victimless crime.

TRAIN AND COMMUNICATE PROPERLY

Some businesses may establish anti-corruption programmes purely to fulfil a legal regulation imposed from outside. However, changing the attitudes of employees, to refrain from corruption as a core principle, requires winning their “hearts and minds”. This is not going to be achieved by watching training videos or reading rule books and codes of conduct. It needs to be more persuasive.²⁷ Instead, the business should link a commitment to countering corruption directly to being a good corporate citizen. The message should be clear: the business wants to do this as “the right thing to do”, and not because it has to. This key message should be repeated regularly in the business’ communication and training.

To increase employee awareness, commitment and capability further, the following three questions should be addressed:

WHEN does a particular situation count as corruption?

WHY should an employee act against it?

WHAT can they do to prevent it?

By addressing all these, a business can develop a coherent and persuasive message. Countering corruption then becomes more than an academic exercise. There are many encouraging, practical examples of how corruption can be significantly reduced, for employees to learn from.

REMIND EMPLOYEES REGULARLY

It has been shown that reminding employees of their business’ ethical values has a reinforcing effect on their behaviour. This may be as simple as hanging up a compliance poster in the office, or signing an integrity pledge prior to engaging in contract negotiations.

REWARD THOSE WHO EXCEL

Businesses often design and implement anti-corruption programmes according to standards of best practice. However businesses may fall short in encouraging their employees to comply with these values and norms. Offering rewards is one option to increase employee motivation.

²⁶ Taken from Dan Ariely, “The (Honest) Truth about Dishonesty”, 2013.

²⁷ Taken from Richard T. Bistrong, “The Practitioner’s Viewpoint – Employees facing corruption: A personal reflection”, Journal of Business Compliance, 2013.

Employees can be rewarded for participation, and for their performance, in compliance training; for their participation in risk assessments; for proposing improvements to the compliance programme; or for demonstrating a willingness to question or reject dubious conduct or proposals.²⁸ Rewarding such behaviour demonstrates that the business values such behaviour. It also shows that there is nothing to fear from speaking up, or from refusing to engage in corruption, even where such refusal may result in the business losing a deal.

PUNISH WRONGDOERS

It is equally important to punish violations of best practice, to gain commitment to an anti-corruption programme. Proportionate punishment has a positive reinforcement effect on human behaviour, underscoring a business' commitment. In addition to the corrupt act itself, any deliberate flouting of business practice should also be punished, such as the dodging of critical internal controls. When employees seek to justify their violations with excuses, the behaviour should be shown to be wrong, and the excuses to be bogus. Violations provide

potential learning material, to improve the overall programme.

DO GOOD, AND TALK ABOUT IT

Public disclosure of a business' anti-corruption endeavours sends a strong signal about its commitment and responsibility to the corporate social responsibility agenda. Public reporting of an anti-corruption programme may reinforce awareness and motivation among employees, since they may then think: "if we talk about this publicly, we must be serious about it". Public disclosure may also help attract skilled and motivated staff; encourage business partners to do the same; and secure a competitive advantage, by becoming a preferred choice for ethically concerned customers, suppliers and other stakeholders.²⁹

WALK THE TALK

Perhaps most important of all, a business should set a coherent "tone from the top". Certainly, senior management can send a strong signal to employees by regularly emphasising the importance of the compliance programme, and addressing some of the excuses described in this guide.

²⁸ Such Non-financial rewards can include recognition awards for employees and business partners, celebration of activities in business journals, access to executive education courses, personal acknowledgment by senior management or peer recognition. United Nations Office on Drugs and Crimes, "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide", 2013.

²⁹ Taken from United Nations Global Compact / Transparency International, "Reporting Guidance on the 10th Principle against corruption", 2009.



However, the real litmus test comes when the business supports its programme when it is under pressure. For example the business may walk away from a significant contract, because it refuses to make an illegal payment, or lose money as a result of process delays because goods cannot be claimed from customs on time. Senior management must be aware of these difficult decisions and be prepared to act accordingly.

Studies indicate that the behaviour of senior management is the most influential factor in guiding employees' decision-making. In a challenging situation, employees generally imitate the behaviour and actions of their superiors, as the best or safest course of action.

The business must therefore ensure that it does not send conflicting messages to employees, between a zero-corruption policy on paper, and a reality of winning deals at all costs. In this context, it may be relevant to review the business' incentive scheme, to assess whether it rewards excessive risk-taking, for example through bonuses linked to overly ambitious performance targets. The business may, therefore, proactively anticipate volatile sales in high-risk regions, or delays in projects that rely heavily on government interactions for licenses, customs clearance and work permits.

➤ There is no shortcut for doing business with integrity. Countering corruption may initially be the more difficult road, towards a more successful and sustainable business. But there is no alternative. Corruption has a myriad of negative social and economic consequences. And of course, corruption is illegal and businesses of all sizes, industries and regions are increasingly punished for their misconduct.

It is important to counter the risk of corruption in a structured way, by establishing formal policies and procedures within a business. But the human factor should never be neglected. Your employees may invent excuses for corruption, they may claim unawareness of its negative consequences, that it is a victimless crime, or that it is impossible to beat. Whatever excuses they use to justify their behaviour, these must be clearly addressed.

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