THE CHARTER

by Kersi F. Porbunderwala & Jacob Taarup

The Copenhagen Charter on combating Fraud and Corruption

Several decades of globalisation and liberalisation of the world's economies have changed the way people, money and information travels across states and regions. The changes have reshaped how we perceive the world and how we interact with each other in more ways than the centuries that have passed.

While we in many ways have embraced the potential that these changes have brought with them, there are also worries that the face of corruption and fraud will change in much the same way. Just as new possibilities for wealth creation have emerged, so have new avenues and possibilities for corruption and fraud.

Some efforts have been made to combat the increase in corrupt behaviour, which in themselves are good and live up to some of the very principles that we think highly off. But at the same time, there seems to be no decline in world corruption or fraud for that matter.

The 10th principle of the UN Global Compact concerns the subject of Corruption and how organisation deals with the subject. According to UNs own communication, this have been and continues to be the most difficult area to work with. While most signatories of the GC have identified the area as being a major obstacle in their work, very little evidence has been found that companies are effectively combating corruption. For instance only 20% of signatories had an anti-corruption policy that related to their own supply chain .

The OECD Convention on Bribery of Foreign Public Officials in International Business has created a framework from which business, governments and NGO can work together to combat corruption . And while the charter does subscribe a way for business to understand and articulate how corruption affects their operation it does not give any concrete advice on how anti-corruption work should look like in the field.

The aim of the Copenhagen Charter is to remedy this discrepancy and create a real, tangible and systematic approach to anti-corruption work in business and organisation in general.

The Elements of Corruption

Corruption is defined by Transparency International as the abuse of entrusted power for private gain. The cost and impact of corruption falls within four distinct categories: political, economic, social, and environmental corruption.

Political corruption can be defined in distinct ways with reference to the main political actors involved. In relation to persons at the highest levels of the political system, both within the elective system and governmental bodies, the purpose of the corrupt behaviour is to sustain and expand the hold on power. The aim of corruption can be related to both private and group financial gain, and for the preservation purposes. However, it is not always easy or there is no real sense to separate the two. Some of the larger and more serious political corruption scandals include both processes - accumulation on the one hand and the misuse of extracted or public money for political purposes on the other.

The cost of political corruption is hard to estimate but in some high profiled cases there have been an effort to put numbers to some of the most salient activities that heads of state have been accused of.

Head of Government	Estimates of Funds Allegedly Embezzled
Mohamed Suharto President of Indonesia, (1967 – 98)	US $ 15 to 35 billion
Ferdinand Marcos President of Philippines, (1972 – 86)	US $ 5 to 10 billion
Mobutu Sese Seko, President of Zaire, (1965-97)	US $ 5 billion
Teodoro Obiang Nguema President of Equatorial Guinea (1979- present)	US $ 5 – 10 billion
Sani Abacha President of Nigeria, (1993 – 98)	US $ 2 to 5 billion
Slobodan Milosevic President of Serbia/ Yugoslavia, (1989 – 2000)	US $ 1 billion
Jean-Claude Duvalier President of Haiti, (1971 – 86)	US $ 300 to 800 million
Alberto Fujimori President of Peru, (1990 -2000)	US $ 600 million
Arnoldo Alermán, Presedent of Nicaragura (1997 – 2002)	US $ 100 million

The economic category is interlinked with all the other aspects of corruption but needs a separate mention because this area is so common yet unexposed. We see this area of corruption in everyday life and on all levels of society. While the amount of capital that is exchanged might vary a great deal, the basic mechanism remains the same. We might call economic corruption many different names as to cover up its real intent, but in the end it is about the exchange of money for some type of favour. Cases range from the street cop in central Africa who sets up a control point to 'check' driver licenses for a small fee to large scale lobbyists with large representation accounts, which create real competitive advantages for the companies involved.

Not all corruption happens though a financial transaction and even though money has a role to play in the act, it is not the main motivator. A broader definition of corruption called social corruption involves not an exchange between two individuals, but rather individuals using their unique position in which he or she is trusted, to appropriate an organization's goods or services that the person does not deserve. Often we invent other words for this kind of behaviour, as 'corruption', 'nepotism' or 'bribery' does not conform to the norms of society. As for example when a sales manager uses excessive funds on lunches and dinners in order to get a deal done, it is not called a bribe but rather a business meeting in town or when engineers use too much money on their business trips, it is excused because they 'get the deal done'.

Social corruption arises from what we as a society believe to be the norm,- so if it is assumed to be normal to use excessive fund on business dinners, it is not considered as corrupt behavior in one country but might in the next one. Or when engineers use too much money on their trips, it might be considered to be a perk of being away from the family in one company but in the next one, it is misuse of company money. Therefore it is difficult to identify and correctly judge Social corruption without knowing in what context it is happening in. For this reason, the concept or rule of zero-tolerance on corruption can be impractical to enforce in our globalized economy.

Transnational companies that operate in several countries, regions and cultures will encounter several issues, which will be problematic to deal with. For one the definition of what is acceptable or what is unacceptable will be taken outside the society where the rule is to be enforced and therefore will not take into account local customs and ways to conduct business. Secondly the term Zero-tolerance is unusable in any practical sense as it will be impossible to conduct any kind of business or get 'anything done' in some regions without some from of transaction of finances or services. For the third aspect, in many countries giving gifts is an embedded part of the culture. It would be considered rude not to accept or give some kind of gift, which matches the situation, and the individuals involved. In Japan e.g. there is an old traditional reference; that a gift is not received unless it is opened.

Environmental corruption occurs when government officials are lured away from proper stewardship of public environmental resources. Mostly this form of behaviour happens when the official does not know the full extent of the impact a certain change will have on the environment but has full control of the decision-making process. These forms of corruption can happen on all levels of government from the landlord that allows the local aeromechanic to store his waste on the property, to large companies withholding or not sharing information which might change an official's decision on environmental issues. The main capital within environmental corruption is information in the form of knowledge and willingness to use this knowledge to the maximum effect in order to achieve a certain desirable outcome.

It is not possible to accurately estimate the cost of corruption, but the prevailing thinking on the subject is that it makes out a significant part of the running expenses in a large proportion of the countries most affected. As there is no agreed way to measure corruption on a unified scale, it would be a guess what these numbers would be, but a qualified guess lies between 20% and 30% extra in a low to medium corrupt country according to the World Bank.

In today's tightening legal environment, enterprises must manage the risk of bribery and corruption with greater care than ever before. A weak compliance programme that leads to a bribery incident can have major financial and reputational consequences for an enterprise. The business landscape is being further transformed by growing stakeholder expectations that enterprises should be open and transparent about the ways in which they manage a range of non-financial issues, including bribery and corruption.

Where does Corruption Occur

According to a World Bank study corruption can occur where there is some of organisational weakness, which can be exploited. The list is far from complete but does give an overview of the most common situations and transactions were organisations should be extra careful.

Vulnerabilities on State and Administrative level

☐ Where a government agent is responsible for issuing of licenses, permits, customs clearance and border-crossing documents, banking licenses, etc.

☐ Where government regulators decide about price controls or taxes on commodities (for example: to keep prices high on locally produced commodities that have an inelastic demand; or to assign high duties on imported goods that compete with domestic producers).

☐ Where policies are set that could block new firms and investors from entering the marketplace, and thereby allow a monopoly position of another firm.

☐ In the awarding of contracts for publicly procured goods or services.

☐ In making policy decisions or enacting laws that would grant to certain classes of enterprises subsidies, soft credits, or tax exemptions.

☐ Where government inspectors monitor tax compliance or evasion.

☐ In the setting of and administration of foreign exchange control mechanisms.

☐ In allocating real estate/privatizing state properties.

☐ Where government agencies could "selectively" enforce socially desirable regulations (e.g. location of certain types of businesses, enforcement of equal employment regulations, etc.)

☐ Where monitoring mechanisms are weak and allow government officials to maintain obscure or secret budgetary accounts.

All of these elements can lead and have in the past led to cases of corruption. Especially in countries where there is a high degree of centralised decision making focused on a few individuals or a small distinct group of people, there can be a higher risk of corrupt or fraudulent behaviour. And even though legislation might be in place, the system of control or the ability of governmental officials to enforce the law might be reduced or non-existent.

The complexity of Corruption

Not everything that can be counted, counts and not everything that counts can be counted. —Albert Einstein

Corruption can be difficult to identify even when it is happening in clear view. It is therefore necessary to understand what form and under what circumstances corruption occur.

Understanding the different forms the corruption can help to identify and confront different forms of corrupt behaviour. In general, a distinction can be made between active and passive corruption. In this context, active means that an organisation or individual agent either directly or through an intermediary influences someone through a financial or non-financial transaction. According to the European Commission (EC) the distinction can be recognised using these seven characteristics.

Active corruption	Active corruption
'Promising, offering or giving'	'Requesting or receiving or accepting the promise of'
'Directly or through an intermediary'	'Directly or through an intermediary
'A person who in any capacity directs or works'	'While in any capacity directing or working'
'For a private-sector entity'	'For a private-sector entity'
'An undue advantage of any kind'	'An undue advantage of any kind'
'For that person or for a third party'	'For oneself or for a third party'
'Perform or refrain from performing any act, in breach of that person's duties'	'Perform or refrain from performing any act, in breach of that person's duties'

Under what circumstances and conditions corruption can occur is a difficult question to answer. Both because it is seldom disclosed to the general public and higher up in the system it occurs, the harder it is to detect. Even within the same occupational system, there might be different forms of corruption happening, which might make it even more difficult to create full disclosure even when some of the elements are known. Corruption is basically a hidden transaction that the involved persons, both the giver and receiver, like to keep a close secret. The most widely condemned practices such as kickback and return commissions, as we saw in the food for oil scandal in Iraq are also the most hidden. Other forms of corruption might be more tolerated and visible practices such as forced tips or tutoring.

The different forms of corruption can take many shapes. An example of how it occurs on organisational and political different levels can look like this:

Corruption at the policy level:
1. Corruption in relation to the allocation of resources to different budget systems, leaving the sector in reality underfunded.
2. Policy makers prefer investments in tangible goods rather than running costs, as it is easier to hide corruption within procurement, kickbacks, consulting fees etc.
3. Policy makers can have other motives beyond monetary concerns- they can also be motivated along political lines. For example "if you don't support my political project, you won't get the contract".

Corruption at Administrative level
4. Involves the diversion of funds from procurement, construction and other administrative tasks ranging from smaller kickbacks to large-scale fraud.
5. Favours received or granted in the form of contracts and speed of bureaucracy from local officials because of personal relationship or network relations.

Corruption at low or tactical level:
6. Money and supplies are diverted before reaching the original buyer.
7. Employees in the lower level may secure opportunities or avoid punishment through bribes.
8. Corruption in relation to recruitment and promotion may lower the quality of employees.
9. Families or personal friends may pay or receive bribes to ensure their friends or other family members gain access to jobs.
10. Gender or ethnic bias may occur to the disadvantage of certain staff groups by bypassing them for promotions or raise and giving these to employees of the same social, gender or ethic group.

The Copenhagen Charter

It is the aim of the Copenhagen Compliance on combating corruption and fraud to give guidance and concrete measurable indicators for organisations anti-corruption and fraud efforts. The Charter comprises of 12 specific areas within which organisations can formulate effective strategies in order to combat such counterproductive organisational activities.

Copenhagen Charter on combating corruption and fraud ensures:

- Ensure that a Code of Ethics or Code of Conduct is implemented which is inline with international institutional norms and which promote high ethical standards.

Codes of ethics form the backbone of the organisations work against corrupt and fraudulent behaviour. It formulates the practical guidelines that all employees need to follow within the organisation in order to comply with the guidelines set by the board and executive management. Both corruption and fraud can be difficult to identify and employees in the field need to know exactly what the corporate policy is for accepted behaviour for receiving or giving gifts or how to bid for contracts. A Code of Conduct helps the employee take decisions and identify situations, which can lead to issues of concern.

- Organisations implement a sufficient level of financial and operative independence. Furthermore the organisation needs to implement internal and external audit coverage with the aim of uncovering corruption and possible fraud.

Auditors should be able to operate freely within the organisation. Even though most audits do not uncover corruption or fraud, is the independence of auditors send a powerful message to would-be whistle-blowers that an independent and unbiased system of control exists.

- Develop a system that encourages both employees and managers to communicate and report, to the relevant independent body all irregularities. Implement a procedure that ensures that these reports will be taken serious by the receiver, who has the power and authority to do investigate the claim.
- Implement an effective communicative system with local and regional authorities that ensure that the organisation's work is transparent and auditable by both governmental and organisational auditors.

Working together with local and national governmental agencies will enable one to create a system which is transparent and auditable not only by the organisations own auditors but also from third parties. Third parties will have other ideas and insights into local conditions, which is hard to get insight into as an international corporation.

- Organisations need to work with government officials and organisations in order to create guidelines and systems for disclosure of governance practices and transactions between the two parties.

It is the obligation of both the company and the governmental agencies that it works with to disclose as much information about their transactions as necessary to prevent dishonest behaviour. However, a system is needed in order to efficiently and effectively spread information to the relevant stakeholders', in this case governmental agencies, who have a interest.

- Designated and qualified staffs within the organisation have to play an active role in evaluating the efficiency and effectiveness of financial and internal control systems on a regular basis. On a regular basis they need to follow up on recommendations related to Corruption and Fraud Detection.

Like any other monitoring system, a systematic approach to anti-corruption and fraud monitoring and detection, needs some form of efficient mechanism for updates. The ways in which these types of acts are committed is constantly changing and is being developed mainly because corruption and fraud is a crime in most countries and perpetrators have to develop their techniques in order not to be prosecuted.

- The organisation needs to focus its control and audit strategies more on areas and operations prone to fraud and corruption by developing effective high-risk indicators, which can be effectively measured and managed.

What gets measured gets managed is a old saying within management, but one needs to know what to measure before an effective system can be put into place. Every company and industry is different and subject to their own dynamics and business culture. Within fraud and corruption there are no universal system that can just be implemented.

In order to effectively combat devious behaviour one must incorporate the dynamics of the business if one is to be successful. It is therefore essential that any system is based on local and industry knowledge and that people with the appropriate competencies are involved in the formulation of the systems indicators.

- Use multiple communications means to distribute your audit reports and invite stakeholders to participate in the investigation and establishment of a transparent organisation.

One of the most effective anti-corruption and fraud systems that can be implemented is to invite everybody to look inside, so that a critical look can be taken on the audit process. An auditor who thinks he knows everything knows nothing and by inviting stakeholders to participate in the continued investigation, one can create a basis of continued evaluation and transparency in the organisation.

- Communicate in a language that stakeholders of the organisation understands

If you communicate in a way, which alienates your audience, you will never be able to reduce corruption in your organisation. One might argue that using technical language will be more accurate and the from a legal point of view it would be more correct but the fact is that if you want people to read and understand what you are trying to say, then the reporting needs to be understandable.

- Use a network approach to combating corruption and fraud.

White-collar crime is a cross border discipline and as with the rise of globalisation, there is a need for business to learn, share and exchange knowledge from other parts of the world. No organisation is an island and if the business is divided on the fight on corruption and fraud it will ultimately loose the battle. Using a network approach and gartering resources from all levels of the organisation to be the eyes and ears of the organisation enables a much more effective intelligence on what is going on. While the information gathered might not directly lead to disclosure of crime, it highlights areas where there could be parts of the system which are not transparent and therefore can be subject to covering up wrong doing.

- Ensure that systems for the effective exchange and proliferation of knowledge are ensured both inside and outside the organisation.

Like the network approach can be used to gather information, it can also be a effective way to communicate with all parts of the organisation. In the information age, organisations need to have a reliable system for communicating with key stakeholders in order to combat rumours and getting a voice in a otherwise overcrowded media scene. If a company is branded as being corrupt or subject to large-scale fraud, it can cost its ability to conduct business and if it needs to establish channels of communication after the event, it will often be too late.

- Ensure that the systems for evaluation and incentives for management are established which support anti-corruption and fraud efforts in order to motivate employee ethical behaviour.

One of the major issues within corporate incentive plans is that they have often led to or initiated corrupt behaviour because of their design. The way in which companies compensate their managers and executives, have to be designed in a way that reduces the possibility of corrupt or fraudulent behaviour from occurring. This can example is through improved transparency in the incentive governance structure or third part validation of performance indicators. In high-risk regions, a managerial and specialist rotation program can also be in place in order to reduce the chance that top executives becomes too involved in the local business culture.

- Ensure that the organisation proactively functions as an example to be followed on fraud and corruption through international committees and working groups.

The ability to be innovative and more efficient is not only limited to other areas of business but also just as much within the field of auditing and governance. As knowledge within the organisation about fraud and corruption is increased, so is the ability to find new ways and systems for efficient governance in these areas. Working cross-culturally and tapping into these streams of knowledge allows an organisation as a whole to progress and innovate new ways to manage these areas. A committee function allows for effective management and the development of best practice techniques that eventually can find its way into the Code of Ethics or as part of the audit process system.