



NHO offer a series of publications on various aspects of corporate social responsibility.

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A silhouette of a person in a dark suit walking away from the viewer down a long, brightly lit hallway. The hallway has a patterned carpet and recessed lighting in the ceiling. The person is carrying a briefcase or folder.

STANDPOINT **corruption**

What is corruption?

Why bother?

Getting started?

Introduction

Norwegian business take a clear standpoint against corruption.

Many Norwegian companies have experienced that they lose contracts, assignments and deliveries as a result of refusing to participate in corrupt dealings. This has been an important driving force in both the business community's and NHO's involvement in the work against corruption.

Reading or hearing about corruption has become commonplace. From being a phenomenon surrounded by secret taboos and myths, corruption has come to be of concern to many people. NHO and Norwegian companies have become actively engaged in the work of raising awareness of, and establishing unambiguous attitudes towards, this issue.

In addition to the challenges facing individual companies, corruption is a threat to commerce and industry and the manner in which the market functions as a whole. To grapple successfully with corruption is a matter of how a company handles its operative risks and tends the trust and confidence it enjoys. On the international scene we have observed increased attention being paid to the extremely negative impact of corruption on social and economic development. Corruption is also a moral issue and has legal implications. Companies, which indulge in corruption, risk financial loss and at the same time jeopardise their reputation. For both businesses and individuals confrontation with accusations of corrupt practices can be disastrous. Those who are convicted can expect severe penalties and even those who are merely come under suspicion may experience that their reputation and respect are at risk. Companies may be faced with a crisis of confidence.

In 1999 NHO in close dialogue with member companies took an initiative in collecting and presenting basic information on corruption. Three crucial questions were at the centre of focus: What is corruption? In what way is your company affected by corruption? How can you and your company fight corruption?

The objective has in the first place been to get the topic onto the agenda. In addition to pointing to new legislation and regulations and various risks associated with corruption, we are attempting to fit this task into a wider framework by pointing out political and attitudinal changes in society which necessitate an active approach to opposing corruption. It has been a lengthy process. In 1999 we organised a mini-seminar on corruption. Attended by national authorities, Transparency International, and a number of Norwegian businesses participated. Later, in close cooperation with member companies, we produced this booklet, and have held a well-attended seminar on the topic. Bjørn Otto Sverdrup, Ingebjørg Harto, and Erik Lundebjerg of NHO have been responsible for the project.

The objective has been to create increased awareness of corruption and the struggle against corruption, and to encourage commercial and industrial enterprises to involve themselves actively in these issues. Moreover, NHO wishes to provide support to its members in their work related to corruption and also to participate actively in a broad social debate on how corruption can be combated. NHO's work in this field forms part of its involvement in the private sector's social responsibility, which i.e. encompasses the business community's attitude to ethics, human rights, the environment, development cooperation, and a number of issues related to the private sector.

NHO is not hereby ending its involvement in the issue of corruption. On the contrary, the Confederation is of the opinion that there exists an interdependence between commerce and industry and the wider community. This requires that companies act responsibly. Fighting corruption plays a critical role in this connection and is to the advantage of individual companies, the industrial sector as a whole, and society itself.

It is our hope that this booklet, entitled Standpoint Corruption, will prove to be a useful tool in the hands of Norwegian companies in their attempts to fight corruption.

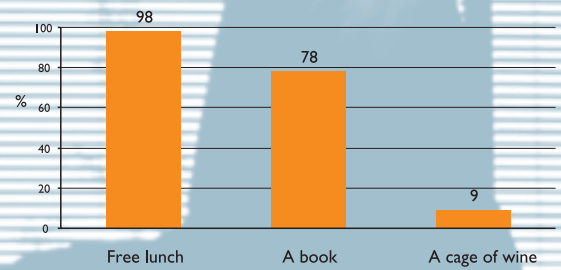


Ms Kristin Clemet

Deputy Director General
Confederation of Norwegian Business and Industry

1.	What is corruption?	4
2.	Corruption affects your company	6
3.	Combating corruption	9
4.	Difficult options	12
5.	Culture and control	14
Appendix I	OECD Convention on the Combat Against Corruption and Bribery	20
Appendix II	OECD's Guidelines for Multinational Companies	23

Acceptable gifts?



What is corruption?

1

Corruption is about power and the abuse of power. There are many and varied definitions of corruption. Rather than a special definition of corruption, we have found it appropriate to take as our starting point some elements which are often present:

- Abuse of the power inherent in a position of authority
- Those who participate in the abuse of power gain advantages
- Third parties are the ones who suffer
- Transactions take place in secret

Corruption has many faces. It may be in the form of money or of providing services in order to gain advantages such as favourable treatment, special protection, extra services, or reduced delays. It is important to realise that corruption is not exclusively a matter of money. To provide a person with a job, services or other favours, can in certain circumstances also be construed as corruption.

Corruption, bribery, gifts, friendly favours - which is which?

The line between corruption, bribery, gifts and "buddy" favours can be fine and difficult to draw.

When speaking of corruption it is therefore useful to differentiate between the various types.

By gross corruption is meant situations in which large sums of money change hands or services are performed, and in which the advantages one hopes to acquire are illegal or infringe established norms or business principles. This is the main problem in combating corruption and at which legislation is in the first instance directed.

Greasing and minor bribes are often referred to as petty corruption. This reflects both the value of the contribution and the extent and nature of the benefit. A typical example of petty corruption is handing over a small sum of money to get a public servant actually to do his job. "Petty" implies that one is not encouraging an illicit act.

Gifts fall into a special category which can pose problems. In some countries it is expected that one takes along small gifts to business connections when visiting. The limit for what is acceptable varies. In a survey among Norwegian leaders carried out by PriceWaterhouseCoopers in 1998 it came to light that almost all respondents felt that a free lunch was acceptable, while 9% felt that a case of wine was alright. Few felt that gifts worth over approximately USD 100 were acceptable.

Gifts can create problems for both the giver and the recipient.

Corruption is often mentioned in the same breath as impartiality and inability. Although codes of conduct distinguish clearly between these categories, it will be useful for the individual company to attempt to set limits in this area.

One who is corrupt: is he the one who gets, or the one who gives?

Who has not heard the following: "It doesn't pay to do business there, they are all totally corrupt", or "He is corrupt, he wants money from me to do his job"? One is often confronted with demands to pay money by way of compensation or to provide some return of service.

The one who demands and/or receives is often seen as the one who is corrupt. But is this really the case? What are we to call the one who pays to get something done, she who pays to sneak in the queue, or he who tries to gain advantage in one form or another? Who is actually corrupt, he who allows himself to be tempted, or the one who puts on pressure?

Without there being someone who pays, there would be no basis for making a demand. By paying one contributes to establish and maintain corruption.

OECD's Convention on corruption, which will be discussed later, is actually directed exclusively at the giver, not at the recipient!

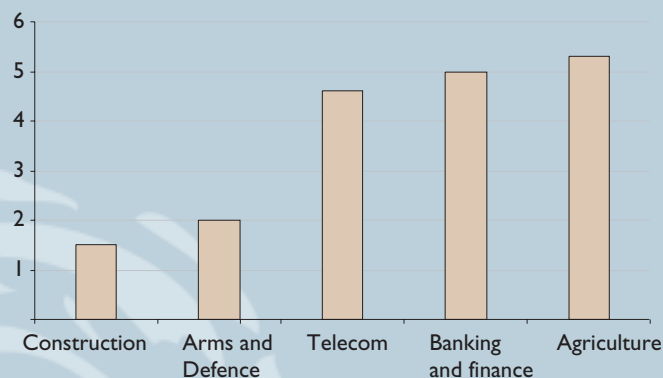
This by itself is a reason for realising that to be corrupt and to corrupt are two sides of the same coin. Both are destructive. Both should be combated.

In which sectors does corruption occur?

Bribery and corruption occur in a variety of sectors, in some countries in most segments of society.

Some sectors have traditionally been more exposed to corruption than others, among these being the defence industry and the infrastructural and public procurement sectors. The figure is based on a survey carried out in 1999 by Transparency International and Gallup International. The spread is not surprising. Typical high-risk situations readily arise in connection with procurements in which few persons are authorised and contracts involve large sums of money. There is little to indicate that there are large national variations as to which branches are most frequently related with corruption.

0 = Much corruption
10 = Low corruption



Is there corruption in Norway?

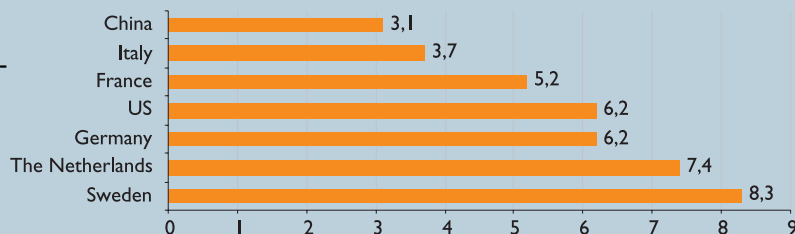
It is naïve to believe that corruption does not exist in Norway. At regular intervals Transparency International rates countries according to the frequency of corruption incidents (the so-called CPI-index). Though Norway is one of the world's least corrupt countries, it will be seen from the figure that Norway is perceived as more corrupt than the other Nordic countries.

It is thus a myth that corruption occurs exclusively in states with weaker democratic and less law-abiding cultures than those we see in the Nordic countries.

In Europe we have recently seen that bureaucrats, politicians

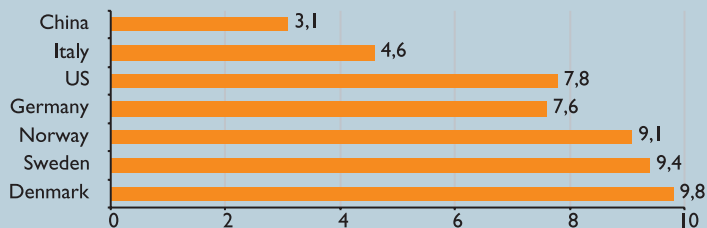
Bribery Payers Index

0 = Little corruption
10 = Much corruption



Corruption Perception Index 2000

0 = Much corruption
10 = Low corruption



Source: Transparency International

and political parties have received large kickbacks in connection with major public projects. Germany has just experienced a dramatic exposé of corruption which has paralysed the country's largest political party. The entire EU Commission was in 1998 replaced following suspicions of irregularities.

Also in Norway we have in recent years had several court cases and reports in the media which have exposed relatively extensive corruption. Those implicated in the Norwegian cases have first and foremost been private persons and businesses, and not public servants.

In the survey conducted by PriceWaterhouseCoopers, 57 percent of Norwegian industrial leaders felt that there was corruption in the Norwegian political environment. At the same time, very few had any firsthand experience of this. The high numbers may be due to the fact that the media are quick to publicise accusations of corruption in political systems, without elected leaders necessarily being involved.

There are clearly many countries in which corruption is more prevalent than in Norway, and most would say that this applies particularly to Africa. It is well known that many bureaucrats in China have "commercialised their administrative power". Developing countries are in a category of their own.

Corruption in Norway

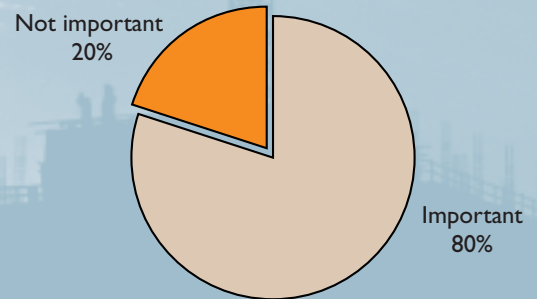
The survey carried out by PwC among top leaders of 95 major Norwegian companies revealed that:

- 10% of top leaders have been exposed to attempts at bribery/greasing.
- 60% feel that corruption is necessary to get into markets or to win contracts in developing countries.
- 40% feel that private companies win contracts in Norway as a result of bribery.

Source: PwC. Corruption in Norway

A business concern in the Middle East found a way of side-stepping the country's strict currency controls. Employees of the company received part of their salary in local currency, the rest being paid into a foreign account. By breaking the law, the company laid itself open to blackmail. One of the employees exploited the situation and asked for money, saying if he didn't get it he would expose the company's practice.

How important is the fight against corruption for your company?



Corruption affects your company

2

There are good economic, legal, moral and political reasons for actively countering corruption. Corruption represents both an operative risk and risk to the company's reputation which may undermine its freedom of action as well as its credibility. In a survey carried out by NHO among Norwegian businesses in the autumn of 2000, nearly 80% of respondents stated that the task of combating corruption was important to their company.

The disadvantages outweigh the advantages

The costs of corruption are often underestimated. The costs of corruption become starkly visible when one expands the time horizon. In addition to the direct costs, corruption is also a serious risk factor for the company. If a company resorts to bribery it usually does so because it thinks it can gain certain advantages. Many companies pay because they often incorrectly do not see any other alternative than to pay. By paying, the company exposes itself to enormous risk.

- If the company pays once, demands will typically be repeated. This applies to both greasing and corruption.
- If the company pays and does not get what it paid for, it does not have the option of complaining or bringing a legal charge before the courts.
- As the company has broken the law, it lays itself open to blackmail and future threats.
- If one has established a corrupt relationship with the authorities or a partner, it is extremely difficult to terminate the relationship without landing in problems such as threats and possibly violence.
- Close relationships with the authorities may entail special risks in the event of dramatic political changes.

This shows how difficult it is both to anticipate and simultaneously control and limit the long-term effects of corruption. When one first has paid, many will discover that it is difficult to stop. Unfortunate dependency is built up.

In the above-mentioned survey carried out by PriceWaterhouseCoopers on corruption in Norway, over 60% of company directors were of the opinion that bribes and graft created unhealthy dependence which exposed employees to external pressure to perform acts militating against their employers' interests. In addition, as many as 50% thought that threats of exposing earlier bribes caused greater pressures than the bribe itself!

The challenge is therefore in the first instance to prevent bribery and corruption. Combating corruption enhances profit.

Corruption hampers effectiveness

Only a few years ago one could come across research articles maintaining that less serious forms of corruption, i.e. greasing, could contribute to making ineffective political and administrative systems more effective. Corruption has also been seen as a form of cultural adaptation. Consequently Norwegian firms were in the past granted tax deductions for amounts used in bribery, as in most other European countries. This is no longer the case!

6

Difficult to quit?

The local management of a company doing business in Russia paid regular bribes to the local tax authorities in order to get tax reductions. The company had a clear anti-corruption policy, and when the practice was revealed by the regional leadership, the local management was dismissed. A local mafia, apparently with close connections with the tax authorities soon afterwards began to send threats to the management of the company about what they will do in case the company stopped the illegal practice.

The notion that corruption could contribute to greasing and improving the effectiveness of tardy bureaucracies has now been abandoned by research institutes.

The negative consequences of corruption are all-embracing. In addition to being a social, economic and political problem, corruption also represents a serious moral and ethical problem. Potential positive effects are completely overshadowed by the negative aspects of corruption.

The dominant impression now is: The more one is willing to pay, the more there is to pay.

Paradoxically enough, attempts to grease a palm reduce the readiness of the hand itself to perform the action requested. To put it another way, the more one is willing to pay a road toll, the more toll stations pop up. To remove these, everybody must refuse to pay.

The company's reputation is at stake

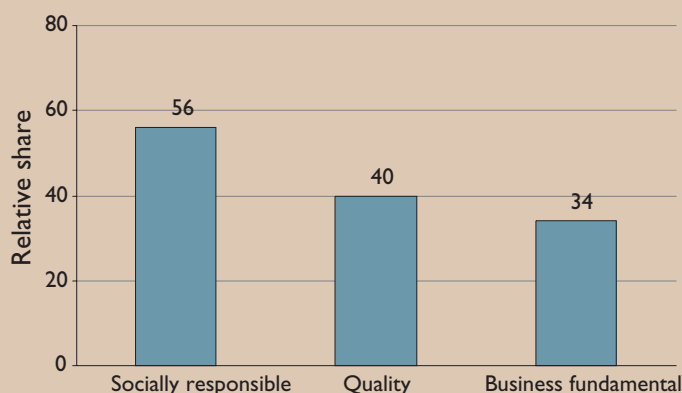
An important reason for actively opposing corruption is the threat which corruption represents to a firm's reputation, confidence and trust among its own employees, its customers, investors, partners, the authorities, and the community as a whole.

Companies and industries are to a growing extent seen as a natural and integrated aspect of society at large and to a diminishing degree as a separate sector. The distinction between working life and the private sphere becomes less important or meaningful. Companies are expected to accept more responsibility for ensuring a positive and sustainable development of the community. While one earlier often heard leaders of industry say: "We are into business, not politics", it is now considerably more usual to point to "the social responsibility of our company".

There are many different groups who today share this concern. Consumers are more taken up with the environment and ethics than before. One often speaks of ethically aware consumers. Employees are more concerned than before to identify themselves with the company for which they work. In an information society, this is becoming steadily more important. Also investors lay increasing emphasis on other than purely micro-financial considerations. Socially and environmentally responsible investment funds have entered the market, and the profits achieved by such funds are often very favourable. Goodwill and trust have become important dimensions in evaluating companies.

Additionally, the media is steadily on the lookout for revelations of irregularities, scandals and dirty tricks. A company's conduct and practices in foreign markets and countries far from home no longer escape the spotlight of either the media or NGOs. The Internet and telecommunications spread information rapidly and effectively, and news gets onto the front pages of the tabloids -and into consumer campaigns. To be actively concerned on behalf of the company's reputa-

What determines people's impression of a company?



Source: Millennium poll

tion has therefore progressively become a more important criterion of success. "Soft" values have become hard realities.

The survey "Millennium Poll on Corporate Social Responsibility" with 25 000 respondents from 23 countries demonstrated that what is most decisive for a corporation's reputation is whether it is perceived as socially responsible. Several considered this of greater importance than factors such as product quality or financial returns. A corresponding Norwegian profile survey carried out by MMI revealed that 75% of Norwegian consumers emphasise a firm's sense of social responsibility and morals when assessing a company.

It is in the light of this that we must view the efforts made by many firms to promote social responsibility, the environment, education, human rights, development, and anti-corruption.

Active opposition to corruption is in a steadily increasing number of firms an integrated aspect of the work being done on reputation management, risk management, and the task of creating a healthy company culture. In NHO's own survey on corruption, as many as 80% stated that these efforts were important for their company. It is a matter of building confidence between the leadership and staff, customers, investors, and the surrounding milieu. This is the result of progressively more people holding that such an active attitude is a precondition for ensuring profitability.

Fewer forms - less pitfalls?

Conditions for starting up a business in Peru have been depicted in a fascinating way by Hernando de Soto: What does it take to establish a local tailoring business if all the regulations are followed? Eleven different departments had to "give" their permission and 10 of these were willing to issue a permit only provided they received financial compensation. Two of the 11 departments threatened to bury the petitioner's application papers at the bottom of the pile unless they were paid. In order to obtain all the permits required by law he had to wait for 289 days and pay USD 1.230, an amount corresponding to 32 times the annual minimum wage in Peru.

Causes of corruption

A survey undertaken at the Harvard University Summer School in 1996 uncovered attitudes toward corruption among course participants from local elites in 63 developing countries and former communist states:

- Nearly half thought that corruption had increased during the past decade
- Respondents shared the opinion that corruption goes hand in hand with the absence of economic reforms, and that deregulation of the economy, modernisation of budgetary and tax systems as well as privatisation, played a substantial role in combating corruption.
- Local conditions were the most important causes of corruption, but two thirds felt that international participation in the war on corruption was decisive, and that international organisations should make reducing corruption a condition for development aid.

Source: Transparency International

Telephone queue

In many countries it is difficult to have a telephone installed. The telephone company often has a monopoly and charges USD 500 for the installation. There is often a delay of more than 12 months. Only 5 out of 100 applicants choose this legal alternative. The remaining 95% pay USD1000-1500 direct to the technicians working for the same company on a salary of approximately USD 400 per month. The telephone is installed in the course of a few days..

What do you do?



Corruption undermines the market

In addition to the challenges facing each individual company, corruption is a threat to the business and the manner in which the market functions as a whole.

Many Norwegian firms have discovered that they have lost contracts, assignments and deliveries as a result of corruption. This has been an important incentive to both the companies and NHO's involvement in the task of directing a spotlight on corruption.

Corruption is an evil which Norwegian firms are tired of and wish to uproot.

Corruption acts as an additional tax or charge which has the effect of discouraging investments and economic development. Often the result is a waste of public funds and inferior decision-making. In Italy it is said that the costs of road construction have been reduced by almost a fifth as a result of a campaign against corruption.

Corruption hampers the markets' ability to promote effectiveness, fair competition, and technological advance. Corruption sets in motion a vicious circle in which establishments and company development do not take place on the basis of competitiveness and quality, but on the ability to pay. A company which succeeds because of corruption has no incentive to strive for improved quality, since neither quality nor price is decisive.

A further consequence of public servants being corrupt is that the threshold for managing a company in a legal manner becomes so high that it hinders the establishment of new sound business. Companies are thrust into a grey market, with all this implies of fear of prosecution, threats, and other forms of censure.

Altering or eliminating a culture of corruption is more difficult than its prevention; therefore we all have a responsibility for preventing corruption from spreading.

Corruption thwarts development and harms the poorest

Corruption impedes economic and social development. The victims are often the poorest segment of society. The World Bank and the United Nations see corruption as one of the greatest hindrances to development and an effective onslaught on poverty in the world.

Corruption implies that individuals and groups of people enrich themselves by mismanaging public administration of the common wealth, or the good of others. Roads which should never have been built have drained public coffers. Unnecessarily expensive equipment has been purchased because that was what directed the most money into the private accounts of the decision-makers, while other and cheaper machinery would have suited the purpose just as well. Wastefulness and the undermining of law and order reduce confidence in institutions and governance.

Authorities indulging in corruption contribute towards reducing the competitiveness of local industries. Countries with a widespread culture of corruption stand far back in the queue of those wishing to attract investments and thus economic development. The magazine *The Economist* maintains that in Malaysia corruption alone accounts for an average of 20% of investment costs. Corruption thus acts as an effective barrier to foreign investments and slows down economic development.

It has been said that corruption leads to "the privatisation of profit and the socialisation of costs". The statement is universally applicable and clearly demonstrates the moral and ethical dilemmas involved.

3

Combating corruption

The war on corruption has in recent years got onto the agenda. This applies to both corruption between companies (disloyalty among staff) and in relation to public servants. Increased political and media attention is being paid to the phenomenon, both nationally and internationally. These conditions have cumulatively led business leaders to maintain that corruption alone is potentially the most serious risk factor for any company. Revelations or suspicions of corruption can in a short space of time totally undermine a company's reputation.

Important forces opposing corruption have simultaneously come into play. Ten years ago there were no international organisations working against corruption on a world-wide basis, while today there are many. The most important of these is Transparency International.

In important institutions such as the World Bank and the United Nations, one is concerned to combat corruption because it is seen as one of the greatest barriers to social and economic development. In OECD's guidelines for multinational corporations (which have just been revised), corruption occupies a prominent place. In the EU, corruption is being opposed in a number of areas, i.e. in relation to public procurement and within one's own organisation. Also in Norway political authorities have shown the flag, particularly in respect of international development policy. NORAD has developed its own anti-corruption strategy, and wishes to be in the international forefront against corruption.

As a result of i.e. the new focus on corruption, new and strict regulations have been drawn up, both nationally and internationally. Among international initiatives may be mentioned:

- The Council of Europe Convention on Corruption (1998)
- OECD's Convention on measures against the bribing of foreign public servants (1997)
- The United Nations Resolution on Measures Against Corruption (1996)
- The World Trade Organisation's agreement on openness in procurement (1996)
- The World Bank's Anti-Corruption Regulations for Loan and Investments Strategy
- The US Foreign Corrupt Practices Act (FCPA) (1997).

Corruption - the legal aspects

Legal regulations on corruption refer to acts of corruption which directly affect relations between companies; disloyal staff, signing of contracts, market position, misuse of company information, etc.

The regulations also concern acts of corruption which may indirectly influence relations between companies, namely acts of corruption involving the employees of public authorities.

Codes of conduct propose a variety of sanctions: individual punishment, company penalties, compensation, confiscation of economic gain, confiscation of public licences, suspension/termination of contracts, etc. Both the one who offers bribes and the one who is bribed are seen as corrupt, and are punished.

The penal code, company law, and marketing legislation all contain regulations to prevent corruption. Violation of these regulations may be punished, partly with imprisonment. The OECD convention on the combating of bribery and corruption of foreign public servants has entailed changes to the penal code. Corruption of Norwegian public servants and foreign government representatives are now on an equal footing.

In 1999 the Norwegian government adopted a plan of action against economic criminality. This also encompasses action to be taken against corruption. Økokrim. New codes of conduct have been introduced but these are not widely known either in Norway or abroad. In NHO's survey carried out in the autumn of 2000, only 10% of companies knew the

The OECD Convention (1997) has as of 01.11.2000 been ratified by 21 countries, including Norway. The Convention aims at establishing a common framework and similar regulations governing competition for companies from various countries, world-wide.

The Convention strikes at those who, in order to gain unfair advantage in connection with international business relations, deliberately offer or provide illegal benefits, financially or in kind, to a foreign public servant in order to induce him/her to perform, or neglect to perform, an official act.

The Convention has been incorporated in §128 of the Norwegian Penal Code and encompasses attempted bribery and corruption, as well as complicity. Offences are punishable by the imposition of fines or imprisonment for up to 1 year, confiscation (of financial gain), and compensation in accordance with civil legislation can be imposed as well as company fines. It is worth noticing that all who

are authorised to exercise authority by e.g. international organisations, are regarded as public servants in terms of the legislation. A clear weakness of the OECD Convention in relation to the private sector is that it does not address the "demand" side, the ones who demands or and accepts a bribe. The private sector is actively engaged in OECD's international work through BIAC in order to remedy this. NHO participates in these endeavours.

The Convention is reproduced in its entirety as an attachment to this document.

The OECD Convention on corruption (1998) is a follow-up of the Council of Europe's Plan of Action Against Corruption (1996). Its target is corruption in general, not only corruption on the part of public servants.

The Convention encompasses active (requesting) and passive (accepting) corruption in both public and civil jurisprudence, as well as money launde-

ring. It also includes regulations dealing with the culpable exchange of information as well as illegally granting immunity to informers. The Convention also deals with the line between permissible lobbying and the punishable influencing of politicians.

The Foreign Corruption Practices Act (FCPA, USA 1977) has first and foremost been of powerful symbolic significance. During the 20 years since it came into force, there have been fewer than 50 prosecutions in terms of the Act. The practical effect has been mainly deterrent and has contributed both to criminalise and to prevent corruption, as with the help of the Act it has been possible to persuade companies to monitor one another to an increasing extent.

contents of the OECD convention and even fewer were aware of amendments to Norwegian legislation.

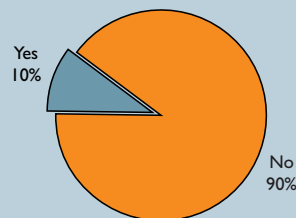
The legal aspects - a tricky balancing act

As the mentioned PwC survey demonstrates, the dividing line between what must be regarded as corruption and corruption-like advantages, and what are quite "acceptable benefits" both to provide and receive, is not easy to draw. This applies both to partners in the business world and to controllers and implementers of the codes, as well as to prosecutors and the law courts.

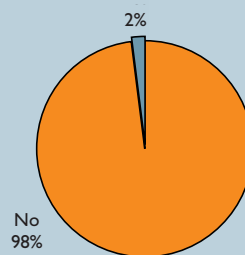
Few instances of bribery and corruption, particularly of the petty kind, have been brought before a court of law in Norway. Thus a review of Norwegian legal practice would not provide much guidance as to whether a trip to London for two persons paid for by a potential customer, with some official program included in the package, falls on the one side or the other of the dividing line. Other countries, for instance Sweden, have a different tradition in this respect. Here the business community itself, through an independent Institute against Bribery (Institut mot Mutor), has for nearly a century provided counselling and information on this difficult balancing act, both to companies and in the public sphere.

Against the background of Norwegian realities we have thus chosen not to draw distinguishing lines between what is lawful and what is not; here the individual's and the firm's knowledge and approaches must be decisive. We try to meet the need for knowledge of the rules by describing the contents of the regulations (see next page), as well as reproducing the regulations in their entirety.

Are you familiar with the OECD Convention?



Do you know of any amendments which have been made to Norwegian legislation?



Source: NHO Survey 2000

Swedish pioneers

Already in 1923 the Institut mot Mutor was established in Stockholm. The Institute is a commercial/industrial organisation for promoting good habits and practices related to influencing decision-making in the business sector, and to oppose the use of bribes and other improper benefits. The main intention was to inform companies and other private sector organisations, the authorities and the media, on customs, legislation and court practice within the areas of bribery, on corrupting marketing practices, and corruption itself in general.

Important Norwegian legislation on corruption

This is the contents of the most important regulations concerning corruption.

«Disloyalty»

§ 275 of the Penal Code

This regulation is aimed at those who:

- act against his/her employer's interests
- seek to procure for himself/herself improper gain.

This is presently the most important piece of legislation against internal corruption in commercial enterprises, and it has been used in court cases involving corruption.

Straffelovens § 405 b

This regulation is closely related to § 275 of the Penal Code, and concerns

- acts which conflict with the employer's or contractor's interests.

«Misuse of trade- and operational secrets»

§ 294 of the Penal Code

The regulation concerns

- violation of confidentiality in relation to trade- and operational secrets.

«Bribery of civil servants»

§ 128 of the Penal Code

The regulation concerns

- those who by threats, benefits or offers of such, illegally attempts to influence a civil servant's actions or failure to act
- attempted bribery, and complicity
- also includes foreign civil servants (see above on the OECD Convention).

§ 112 and § 113 of the Penal Code

These regulations concern

- those who illegally receive bribes ("benefits") actively - by requesting them passively - by accepting an offer
- "benefits" may be of monetary or non-monetary character.

«Remuneration from others outside the company»

§ 6-17 of the Company Act/Corporation Statutes

- Regulations as a rule forbid the management/chief administrator to accept emoluments from others than the company for its work for the company.
- The regulations include demands for/reception of commission rebate and the like.
- Violation is punishable by fines or imprisonment for up to 1 year.
- Compensation can be demanded.

«Gifts and the like to employees»

§6 of the Marketing Act

- This regulation forbids giving/offering gifts to the employees of other companies calculated to provide the recipient with benefits, and without the knowledge of the company management.

Real world experiences I

NN was Financial Director of a bank and on the board of a finance company. In this capacity he became acquainted with, and established social relations with, board member AA in a concern which for a period of time had been the beneficiary of a loan arrangement corresponding to SEK 1.3 billion (in 1998 USD 1.7 mill.) with the finance company. NN did not process the loan allocation to the company through his position in the bank. When NN celebrated his 50th birthday, he received from AA the gift of a work of art worth SEK 1.2 million (approximately USD 150 000). NN regarded this as a personal gift from AA and his family, and was at a loss to understand why he had received such a costly present.

AA was prosecuted and convicted of corruption ("gross misconduct"). The finance company of which AA was a board member had awarded NN's company appreciable credits, although this was handled at the administrative level. That the gift was a birthday present and that AA and NN were personal friends did not alter the nature of the act which was deemed corrupt in this case. For NN the relationship had been dated, and he was not prosecuted.

Source: Institut mot mutor

Real world experiences II

A bank employee and his superior, the director of the bank, both received Rolex watches from a consultant for their handling of a credit case. The gifts were handed over after the event. The watches had an approximate value of SEK 60.000 (approx. USD 6.700). The court regarded the gifts as bribes given to the recipients in exchange for their services. The consultant was found guilty of corruption and misconduct in relation to the credit business, and was sentenced to imprisonment. The bank employee was found guilty of corruption. The bank director was not prosecuted as it could not be proved that he had kept the watch.

Source: Institut mot mutor

Real world experiences III

Journeys to London and Warsaw respectively for two building inspectors employed by a housing cooperative were paid for by a sanitation engineering firm. The housing cooperative did not know about the journeys. The journey to London was declared to have the character of a holiday trip while the Warsaw journey was judged to be of a more professional/technical nature. The court determined that the jobs of the inspectors were of a character similar to that of public servants, and they received sentences of 30 and 50 days respectively, as well as confiscation of the benefits, i.e. the trip to London, namely the amount of SEK 5.373 (approx. USD 600).

Source: Institut mot mutor

Difficult choices

4

Successful action against corruption depends upon openness and the will to create a culture which will throw light on the problem. Commerce and industry also have a key role to play. At the same time public authorities and non-governmental organisations (NGOs) as well as the media are also responsible for increased transparency as a contribution to a dialogue which focuses on the most important challenges.

Corruption is not merely a problem for the private sector. Many others are involved, and especially those who operate in or have dealings with countries in which corruption is widespread, must be proactive in relation to this challenge. Norwegian NGOs experience many of the same problems as no commercial enterprises.

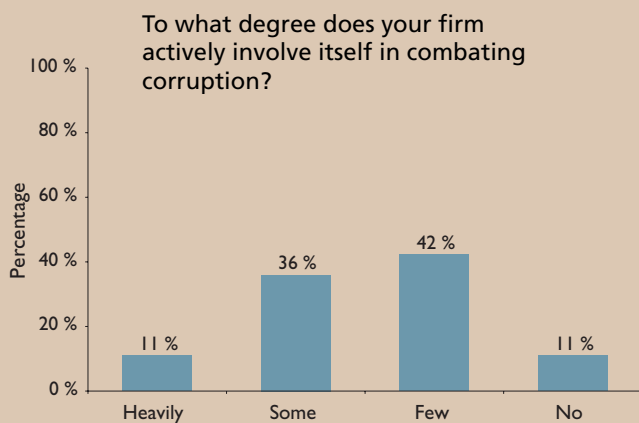
Norwegian development authorities are in a special category by virtue of their extensive involvement in developing countries and the large sums of money involved.

The Norwegian Agency for Development Cooperation (NORAD) has adopted a zero-tolerance attitude towards corruption. No forms of corruption, bribery or greasing are countenanced. This is an extremely demanding goal considering that NORAD works in many of the world's poorest countries, often in situations in which institutions and legal systems are weak or ineffective.

Clearly defined and communicated limits, such as "zero tolerance", may be an effective policy as it shields staff against pressures and prevents companies from becoming involved in corrupt relations from which it is difficult to extricate oneself. At the same time, such a policy is extremely difficult to live up to under all circumstances.

The causes of corruption in a society are often complex. Meagre salaries, an established tradition of corruption, and other cultural factors are some of the most important causes. Combating corruption effectively therefore demands cooperation in which also others, such as national authorities and international organisations, play a role. A company can seldom change an entire culture all on its own. What is seen as acceptable conduct is not exclusively determined by legislation and codes of conduct. Social norms, expectations from the environment, the surrounding atmosphere, special cultural characteristics, and situationally determined conditions, also play a role when attempting to work out what is permissible for a company and what is not. Examples contained in this document demonstrate that it can be difficult to decide what is an appropriate course of action.

The dividing line between an exchange of gifts as a normal form of social interaction on the one hand, and graft and corruption on the other, can vary over time and from culture to culture. There will thus in practice be a grey zone calling for discussion and the exercise of good sense.



Source: NHO survey 2000

Wait for import licences?

An employee of the Central Bank in a developing country is in a position to issue import licences. Through an open round of bidding your firm has won a contract entitling it to distribute medicines to the country's hospitals and chemists. You now want to import the medicine and need an import licence, but the member of staff at the bank is only willing to issue the licence provided "there is something in it" for him. Since the lives and health of patients depend on the medicament, your company finds itself in a tricky situation. As a result of the delay, the employees of the marketing firm decide to comply, and on the same day they hand over USD 500 the import licence lands on the company's desk.

Would you have paid? Perhaps the bribe contributes to saving lives?

Individual members of staff and companies must therefore exercise their own judgement against the background of company policy.

Established company policy and codes of conduct can serve an especially important function in combating corruption, but they are hardly sufficient. It is important for a company's employees themselves to be able to assess situations and to apply guidelines in an appropriate manner. The task of combating corruption must therefore focus precisely on acquiring such skills.

Should a company conclude that on the basis of local conditions, certain situations call for deviation from, or include exceptions to, the company's anti-corruption policy, it is important that this takes place in a transparent and organised manner. It will always be counterproductive for a company on the one hand to signal a firm attitude towards corruption and on the other to turn a blind eye to its practical implementation. The leadership should be acquainted with the realities of the situation and it should be communicated to the surroundings that one is aware of, and is tackling, the pro-

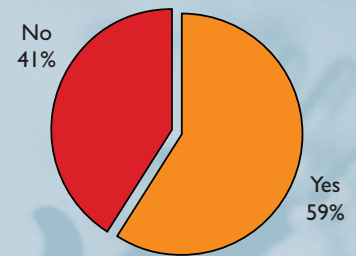
blems and not trying to pretend they do not exist. The risk to reputation and goodwill by ignoring realities is considerable. Transparency is essential, internally as well as externally. Say what you're doing - and do what you say! Public policy and legislation must reward honesty, stimulate lasting processes of improvement, and focus on the most important challenges associated with corruption. The authorities can contribute towards the private sector involving itself with greater success in the war on corruption, but can also hinder necessary openness and dialogue through adopting an overly rigid or naïve approach.

Corruption in order to get up speed?

Together with your family you arrive by air in a sun-drenched country for what is to be the holiday of your dreams, an African safari. The journey has been planned for over a year and the domestic airline tickets were ordered 10 months earlier. You arrive at the capital but when checking in for the domestic onward flight, you are told that the plane is overbooked and that you have no chance of joining the safari. Your holiday is about to be trashed. When the smiling company representative behind the airline desk suggests that if you pay an "administration fee" sufficiently large for him to discover that your family has been placed on the waiting list "by mistake", he can get you onto the plane.

What do you do?

Has your company formal guidelines or codes of conducts which deals with bribery?



Source: NHO Survey 2000

Culture and control

5

Combating corruption is difficult. It is important to combine measures for promoting sound attitudes to and knowledge concerning corruption, and in addition to establish monitoring and reporting systems.

It is a condition for success that the company management is willing to work actively over time in relation to attitudes, knowledge and practices in this area. Staff must be trained and listened to. Financial steering systems and monitoring procedures may have to be adjusted. The firm may perhaps also enter into alliances with other firms, authorities or NGOs in order to reach its goals. Effective, lasting and sustainable work against corruption is a long-term process.

Two types of situations which companies and consultants who have fought against corruption have experienced:

- More often than one would be inclined to believe one can get away with not paying. By consistently opposing corruption, one can systematically reduce the number of requests and demands for bribes.
- It is simpler to prevent corruption than to change already existing practices. Often the most critical situations, and the long-term risk associated with corruption, become visible when one attempts to improve or change practices.

The task of opposing corruption should be based on questions of the following kind:

- What can we contribute in order to prevent corruption in

the market in which we operate?

- What can we ourselves do to avoid being confronted with demands to pay?
- How can we in our company set in motion processes, make rules, devise procedures, and create a culture which thwarts corruption?
- How can we ensure that our own employees adhere to company policy?

Codes of conduct

Codes of conduct are important in fighting corruption. Having a clearly formulated attitude to the manner in which the company intends to handle corruption is decisive.

Many companies have already established such codes. In a survey carried out by NHO in the autumn of 2000 among Norwegian firms, 54% stated that they had formal codes of conduct which also dealt with corruption.

Formal codes of conduct do not by themselves solve all problems and a great deal would still need to be done through the use of good sense. In addition, we know that there are other instruments and leadership tools which are perhaps even more effective than encoded formal regulations in the promotion of ethical conduct, for example awarding such conduct and making attitudes among the leadership itself clearly visible.

How to avoid paying

- Make it easier for those who typically ask for bribes to do their jobs in the right way. Let forms and information be easily available and correctly filled in.
- Avoid running out of time and landing in situations where you are extra vulnerable in relation to demands for compensation.
- Devote time to receiving representatives of authorities in a respectful and businesslike manner. Show them respect, it often makes them less demanding.
- It is possible to use the legal system to secure your interests. In Russia foreign companies have actually won most of the court cases relating to tax issues.
- It is possible to build good relations with local authorities through legitimate channels and approaches.

How much do you have to pay?

An employee of a pharmaceutical firm in an African country discovers that he does not have the necessary papers to have his products cleared through customs. The customs officer says that it may take time to organise the paper work but hints that it might be possible "to make more flexible arrangements". You are unsure of what you're doing, but put USD 1000 between some of the documents and hand them over to the officer. He praises you for being so understanding and says that your cargo will be cleared immediately.

A couple of days later a colleague of yours who works in the country's food industry arrives and experiences the same problem. Your colleague is better prepared and has discussed the import of his product with the political leadership in advance. He tells the customs official that "the import has been cleared with the political leadership" and makes it clear that he expects the problems to be solved. The customs officer again expects some recompense. Your friend gives him the small change he has in his pocket, a total of USD 7, and his wares are cleared through customs.

Source: Harvard University

Inhability

You are responsible for the company's buildings and have excellent relations with a local entrepreneur who is often hired to do reconstruction work and carry out maintenance. You have bought a house which needs some reconstruction and alterations to suit your needs.

- Should you make contact with the entrepreneur with whom you have a good relationship through the company in connection with your private home?
- What do you do if you get a quote from this entrepreneur which is appreciably lower than the market rate?

Source: Shell

There are nevertheless grounds for maintaining that codes of conduct represent an important weapon in the task of combating corruption. Here openness relating to a company's attitudes can be created, and it can be ensured that signals from the leadership are not contradictory. For the individual employee it can be useful at meetings with partners and local authorities to point to precisely the written code of conduct, and to ease the handling of difficult situations. Codes of conduct should be made available in appropriate languages.

The manner in which codes of conduct are drawn up is important. Well formulated codes and declarations are of little or no value unless they reflect the experience of difficult situations which the company employees themselves have had.

Employees at local offices should preferably be actively involved in the formulation of codes of conduct. Senior management should also participate.

Codes of conduct must support a clear attitude on the part of the company's senior management who must take the lead and set a good example. The finest code of conduct is instantly undermined if the management itself doesn't live up to it.

Focus on those who experience the problems

The German firm, Control-Risk Group (CRG), has investigated who it is that is most involved in corruption. The investigation shows that local leaders constitute the largest risk group, almost 60% of companies surveyed highlighting this category. Senior management was not among the groups most deeply involved.

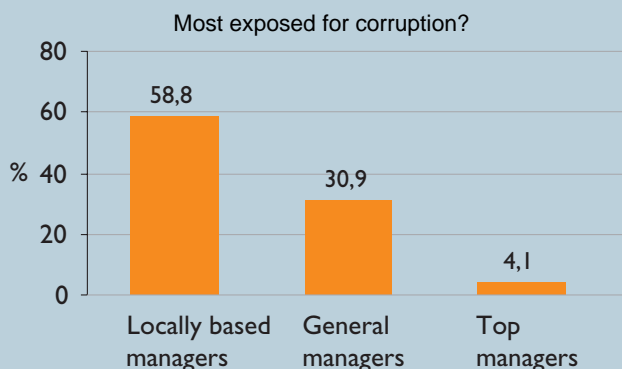
There are many circumstances which contribute towards local company managers at the intermediate level being the most exposed category. It is in the first instance they who meet local traditions and challenges face-to-face, and who must deal with these in order to succeed. They sit far from corporate head office policy makers while simultaneously being responsible for policy implementation. Many experience that they receive mixed signals from management: on the one side there are codes of conduct and policies in the area of corruption, while at the same time they know that the probability of gaining respect, bonuses and promotion, are linked with the achievement of results. Perhaps they receive polite sympathy if they lose a contract because a competitor was willing to pay, but rewards are normally linked with winning contracts, not with losing them in an honourable manner. Implementation and compliance with codes are thus an important management responsibility.

Bribery and blackmail

You are working for a western company in a developing country and must travel to another town. You are confronted by a military roadblock and a "toll" amounting to approximately USD 20 is demanded. It is generally known that soldiers do this in order to supplement their extremely meagre incomes. You have also heard that people have been shot at such roadblocks. What do you do?

- What if the demand had been for USD 500?
- Does it matter whether you are on a business trip or a personal trip?
- What if they had not been government soldiers but rebel militia?

Source: Shell



Source: Control Risk Group

Although senior management is often involved in the work of fighting corruption, studies show that many local managers feel that Head Office has inadequate respect for the difficulties they meet in the field. It is also uncertain whether the management is actually willing to support their employees were they actively to take a firm line against corruption. Such support would entail improved security precautions and, in the worst case, possibly the transfer of staff.

Raising awareness, creating attitudes, increasing knowledge

Formal codes of conduct are fine. What is decisive, however, is whether the individual employee is capable of interpreting situations correctly and finding favourable and proper solutions.

This requires that the individual is in possession of sufficient knowledge and skills in assessing situations and identifying alternatives, and is capable of implementing company policy in a professional manner when facing a variety of company and administrative cultures. This is a demanding task. The company may itself stimulate and train its own staff and partners in the appropriate skills through conducting seminars and holding discussions on the company's own experiences as well as those of others.

In order to succeed, the company must wrestle with its own systems and culture in order to allow and indeed encourage openness and dialogue on these issues.

Surveillance and Monitoring Systems

Strict financial/economic management is a precondition for succeeding in combating corruption and disloyalty.

Many firms have developed systems of internal control, reporting and monitoring. Some companies allow their

Use of middlemen

An American company wanted to sell its advanced radar system to Egypt. The company hired a retired Egyptian general as agent to assist with this. For USD 2.75 mill. he would help market the installations which had a price tag of USD 125 mill. The general informed the company that USD 500 000 of the money would be used to pay for a visit to the USA by 50 Egyptian officers. USD 1.1 mill. would be used to persuade the members of the procurements committee to buy American.

Source: Harvard University

senior- and middle-level management to report regularly and in detail if they experience situations in which the law and/or the company's code of conduct have been contravened. Each individual manager is explicitly held responsible for ensuring that reporting is in line with company policy. In the event of irregularities being exposed, the manager is held responsible and sanctioned.

In large companies it is not unusual to have special units which are responsible for combating bribery and corruption.

Surveillance and monitoring systems are often combined with explicit sanctions such as reporting matters to the police, dismissal or fines.

An important aspect of such surveillance and monitoring systems is to establish good channels of communication. Internationally one is concerned with so-called "whistle blowers" and the possibility of being able anonymously to report unacceptable incidents. By "whistle blowers" is meant individuals who report or give warning of corruption (a kind of informer).

The World Bank has for example a special web site soliciting reports on corruption at projects financed by the World Bank.

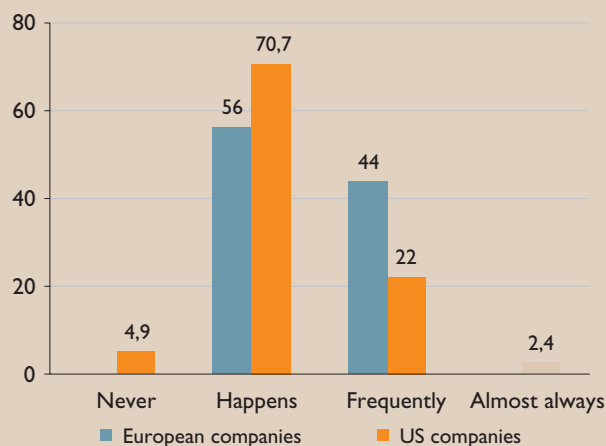
Though similar schemes on the part of a company can be a source of internal conflict and abuse, they can also serve as an important supplement. What is most important is nevertheless to establish fora in which problems can be discussed without fear of the individual being sanctioned.

Some have maintained that focusing one-sidedly on sanctions would hurt the weakest in the organisation in an unfair manner -and seldom a corrupt manager. This underlines that a successful strategy for combating bribery and corruption can seldom be based on monitoring and sanctions alone. As has been seen, it often depends on successful practice in terms of the employees and management being capable of analysing a concrete situation in the light of a policy framework, the company's own attitude, and other demands and expectations on the part of the surroundings. The balance between monitoring and sanctions, training, dialogue and positive incentives, must be determined by the company itself. Experience has shown that a wide spectrum of approaches and instruments works best.

Responsible use of middlemen

Corruption is seldom a matter of suitcases stuffed with banknotes changing hands. This happens mostly in movies. Many are of the opinion that the real stumbling blocks in the struggle against corruption is the use of intermediaries or middlemen.

Percentage use of middlemen



Many businesses choose to use middlemen or agents in their dealings with local authorities or potential customers. In some countries, foreign companies are even required by law to use such intermediaries.

A number of companies have regarded middlemen as a kind of buffer between themselves and the customer. In this manner "ethical problems" are solved "within the framework of local tradition". The idea is that the company does not know in detail how the agent operates, thus the company is falsely able to conclude that it has not violated its own code of conduct and values. This is a relatively common course of action in international business life, particularly in Africa and South East Asia. Experience has shown that middlemen are often those who employ corrupt practices.

Such a view bases itself on a dubious interpretation of international regulations and codes of conduct. Both the American FCPA and OECD conventions should be interpreted as stating that it is a breach of the convention if a company has grounds for believing that payment to an intermediary or agents will be used for bribes. Moreover, the idea of paying moneys to middlemen violates sound business principles and good economic management. The company exposes itself to both financial and other risks associated with corruption. Corruption also entails serious marketing risks in relation to customers.

Companies should therefore draw up codes of conduct governing the use of middlemen and procedures for ensuring that such practice does not place the company in a false position.

Communicating with partners

Communicating a company's attitude towards bribery and corruption in an orderly and respectful manner is of supreme importance. Attitudes toward corruption can rapidly become a seed of conflict between partners.

Some important questions:

- How can one win respect for one's own company policy?
- How can one avoid being seen as a moralist or culturally arrogant?
- How can one avoid denigrating other company's attitudes?

There are no easy answers. Many have experienced that it is an advantage to try to base oneself on the company's own experience when formulating internally consistent answers to the most common issues and dilemmas.

Experience shows that it can be useful to point to the fact that one's own company has codified regulations and that one can end up in an extremely awkward situation if these are violated.

Codes of conduct explicitly indicating why a firm has chosen a specific attitude and how it is tackling this area creates more understanding and respect than merely a brief formulation of the general regulations would. The more consistent a company's policy in the area of social responsibility, the more robust is its policy also in the field of corruption.

A company's policy can be underpinned by pointing to the attitudes of Norwegian authorities or Norwegian businesses, as expressed for instance through NHO's work on corruption. Thus the company signals that it desists from corruption as an expression of integrity based on its own businesses traditions at home, and not because of lack of respect for local traditions.

Build corruption-free relations

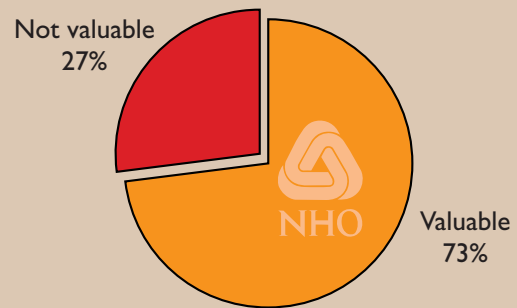
It would be to the advantage of all who pay bribes if corruption were to disappear completely, but many companies are afraid they will lose out as they are the only ones who do not bribe. That is why corruption is so tenacious. In order to solve this kind of dilemma, many companies experience that in the battle against corruption it pays to cooperate with others, both locally and at home.

One success factor is often to build alliances together with other stakeholders. Experience in the environmental and human rights sectors shows that many companies are served by establishing close relations with NGOs and other groups in the community. Wave the company's policy flag and make the policy known. Seek support and assistance in implementing measures.

This not least applies to countries in which corruption is particularly prevalent. It is easier for your own company to resist pressure to resort to corruption if it can demonstrate that one's project enjoys the support of several groups.

Doing business and building dependent relations with government authorities nationally, regionally and locally, is a two-edged sword. A project which depends exclusively on a single individual's assessment, moreover one who perhaps is corrupt, is particularly vulnerable in the event of political changes. If there are shifts in the political winds, one can easily experience problems with the new authorities. This line of thought makes many avoid "first family" companies and business relations.

Is NHO's work useful to my company?



Source: NHO Survey 2000

The challenge therefore lies in systematically building up a relationship with the broadest possible segments of the community. This demands both attention from management and considerable skills in communicating across cultural divides.

Trends against corruption

The costs associated with being a lonely pioneer in combating corruption may be great. Effective changes depend on many being willing to participate in this work. Progressively more companies have over the past few years made it clear that they intend to involve themselves actively in these efforts.

The growth of special interest organisations, increased media attention, and the establishment of an OECD Convention, has created a wave of initiatives aimed at combating corruption. International organisations have placed the struggle against corruption on their agendas, and national authorities in both industrialised countries and the developing world are focusing on reduced corruption.

This broad involvement contributes towards reducing the costs to individual companies who do not want to pay bribes. It remains costly to stand up against corruption, but it cost more in the past. At the same time the alternative is free of neither cost nor risk.

Thus, in the survey among Norwegian firms carried out by NHO in the autumn of 2000, over 70% stated that NHO's efforts in this area was seen as a significant contribution to their own company's work in this field.

Norway and Norwegian commerce and industry have a tradition of being very little marked by corruption. This is an important advantage which it is important to preserve. We know that a number of Norwegian companies have an easier time than many of their competitors because they meet the attitude: "They are Norwegian, and they never bribe". An expectation that Norwegian companies are incorruptible has been established; were such a valuable image to be destroyed it would be a loss to many Norwegian companies. On the other hand, the positive image it can also be reinforced and turned to competitive advantage for individual companies and for Norwegian commerce and industry as a whole.

How to analyse the situation

It may often be sensible to ask oneself and one's colleagues some questions should one land in an awkward situation. Some of the crucial questions one should ask in order to be able to assess the situation are:

- Does your considered course of action entail that national and international rules will be violated?
Are we encouraging illegal action?
- Is this in compliance with my company's codes of conduct and policy?
- Can this action expose my company or my colleagues to economic or other risks?
- Who profits, directly or indirectly?
- How much is the profit?
- Who will suffer as a result of this corruption?
- What is the relation between the likely damage and the potential gains in the total transaction?
- How large is the amount involved and how does this compare with the total involved?
- Is the amount already included in the project costs and known to all?
- Are there other courses of action with the same likelihood of success?
- Can I support this line of action?

The answer to these questions may help in assessing what the company can do in a given situation.

A company which allows dialogue and discussion of these problems is well equipped to handle such challenges in a favourable way.

Success factors in combatting corruption

- Effective action against corruption must be integrated in the company's overall strategy. It must in particular be an automatic aspect of handling risk, goodwill, and trust.
- It is easier to prevent than to change practices.
- Draw up codes of conduct dealing with corruption.
- Employees at offices abroad should participate in the formulation of codes of conduct.
- Senior management levels must commit themselves to drawing up codes of conduct and set aside the necessary time for this.
- Staff who are posted abroad must practise dealing with corruption and have a clear understanding of what company policy is in this respect, as well as learn techniques of resisting pressure and temptations involving corruption.
- Tidy up incentive structures and reward conduct which harmonises with company policy.
- Establish open lines of communication based on trust. There must be opportunity for discussing ethical problems. The best solutions are probably dialogue between local managers and the management at home.
- Build alliances

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

On 21 November 1997, OECD Member countries and five non-member countries, Argentina, Brazil, Bulgaria, Chile and the Slovak Republic, adopted a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Signature of the Convention took place in Paris on 17 December 1997.

Preamble

The Parties,

Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions;

Considering that all countries share a responsibility to combat bribery in international business transactions;

Having regard to the Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Council of the Organisation for Economic Co-operation and Development (OECD) on 23 May 1997, C(97)123/FINAL, which, inter alia, called for effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions, in particular the prompt criminalisation of such bribery in an effective and co-ordinated manner and in conformity with the agreed common elements set out in that Recommendation and with the jurisdictional and other basic legal principles of each country;

Welcoming other recent developments which further advance international understanding and co-operation in combating bribery of public officials, including actions of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the Council of Europe and the European Union;

Welcoming the efforts of companies, business organisations and trade unions as well as other non-governmental organisations to combat bribery;

Recognising the role of governments in the prevention of solicitation of bribes from individuals and enterprises in international business transactions;

Recognising that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, monitoring and follow-up;

Recognising that achieving equivalence among the measures to be taken by the Parties is an essential object and purpose of the Convention, which requires that the Convention be ratified without derogations affecting this equivalence;

Have agreed as follows:

Article 1

The Offence of Bribery of Foreign Public Officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.
2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.
3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as "bribery of a foreign public official".
4. For the purpose of this Convention:
 - a. "foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation;
 - b. "foreign country" includes all levels and subdivisions of government, from national to local;
 - c. "act or refrain from acting in relation to the performance of official duties" includes any use of the public official's position, whether or not within the official's authorised competence.

Article 2**Responsibility of Legal Persons**

Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

Article 3**Sanctions**

1. The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.
2. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.
3. Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.
4. Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.

Article 4**Jurisdiction**

1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.
2. Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.
3. When more than one Party has jurisdiction over an alleged offence described in this Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution.
4. Each Party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps.

Article 5**Enforcement**

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Article 6**Statute of Limitations**

Any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

Article 7**Money Laundering**

Each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

Article 8**Accounting**

1. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.
2. Each Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

Article 9**Mutual Legal Assistance**

1. Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance.
2. Where a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention.
3. A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy.

Article 10**Extradition**

1. Bribery of a foreign public official shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them.
2. If a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.
3. Each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution.
4. Extradition for bribery of a foreign public official is subject to the conditions set out in the domestic law and applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of Article 1 of this Convention.

Article 11**Responsible Authorities**

For the purposes of Article 4, paragraph 3, on consultation, Article 9, on mutual legal assistance and Article 10, on extradition, each Party shall notify to the Secretary-General of the OECD an authority or authorities responsible for making and receiving requests, which shall serve as channel of communication for these matters for that Party, without prejudice to other arrangements between Parties.

Article 12**Monitoring and Follow-up**

The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference, or within the framework and terms of reference of any successor to its functions, and Parties shall bear the costs of the programme in accordance with the rules applicable to that body.

Article 13**Signature and Accession**

1. Until its entry into force, this Convention shall be open for signature by OECD members and by non-members which have been invited to become full participants in its Working Group on Bribery in International Business Transactions.
2. Subsequent to its entry into force, this Convention shall be open to accession by any non-signatory which is a member of the OECD or has become a full participant in the Working Group on Bribery in International Business Transactions or any successor to its functions. For each such non-signatory, the Convention shall enter into force on the sixtieth day following the date of deposit of its instrument of accession.

Article 14**Ratification and Depositary**

1. This Convention is subject to acceptance, approval or ratification by the Signatories, in accordance with their respective laws.
2. Instruments of acceptance, approval, ratification or accession shall be deposited with the Secretary-General of the OECD, who shall serve as Depositary of this Convention.

Article 15**Entry into Force**

1. This Convention shall enter into force on the sixtieth day following the date upon which five of the ten countries which have the ten largest export shares (see annex), and which represent by themselves at least sixty per cent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification. For each signatory depositing its instrument after such entry into force, the Convention shall enter into force on the sixtieth day after deposit of its instrument.
2. If, after 31 December 1998, the Convention has not entered into force under paragraph 1 above, any signatory which has deposited its instrument of acceptance, approval or ratification may declare in writing to the Depositary its readiness to accept entry into force of this Convention under this paragraph 2. The Convention shall enter into force for such a signatory on the sixtieth day following the date upon which such declarations have been deposited by at least two signatories. For each signatory depositing its declaration after such entry into force, the Convention shall enter into force on the sixtieth day following the date of deposit.

Article 16**Amendment**

Any Party may propose the amendment of this Convention. A proposed amendment shall be submitted to the Depositary which shall communicate it to the other Parties at least sixty days before convening a meeting of the Parties to consider the proposed amendment. An amendment adopted by consensus of the Parties, or by such other means as the Parties may determine by consensus, shall enter into force sixty days after the deposit of an instrument of ratification, acceptance or approval by all of the Parties, or in such other circumstances as may be specified by the Parties at the time of adoption of the amendment.

Article 17**Withdrawal**

A Party may withdraw from this Convention by submitting written notification to the Depositary. Such withdrawal shall be effective one year after the date of the receipt of the notification. After withdrawal, co-operation shall continue between the Parties and the Party which has withdrawn on all requests for assistance or extradition made before the effective date of withdrawal which remain pending.

Appendix II

The OECD Guidelines for Multinational Enterprises

The revised OECD Guidelines for Multinational Enterprises were adopted by the governments of the 30 Member countries of the OECD and Argentina, Brazil and Chile on the occasion of the OECD's annual Council meeting at ministerial level in Paris on 27 June 2000.

Extracts

VI. Combating Bribery

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channeling payments to public officials, to employees of business partners or to their relatives or business associates.

Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.

Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.

Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.

Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of "off the books" or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.

Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

Source: OECDs Retningslinjer for flernasjonale selskaper, 2000.

