

# Workshop Report

## The Challenges of Implementing Best International Anti-Corruption Standards

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**A BHF-TI Workshop**

Business Humanitarian Forum

Geneva, Switzerland

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## *1. Introduction and Summary*



Following the successful launch of their first joint anti-corruption workshop last year, the Business Humanitarian Forum (BHF) and the Swiss Chapter of Transparency International (TI) continued their cooperation by hosting a second workshop on “The Challenges of Implementing Best International Anti-Corruption Standards” which took place in Geneva on October 6, 2011.

The goal for this and planned subsequent events is to inform attendees of latest developments in the field of anti-corruption and to strengthen the dialogue on best practices for internationally active companies.

Featuring a variety of presentations by expert speakers, ranging from general policy discussions to practical case studies, the event once again attracted a relatively large number of professionals from companies as well as from the public and NGO sectors, in consonance with the BHF mandate.

In order to encourage frank exchange, the workshop was held under the Chatham House Rule of confidentiality. For this reason, individual speakers and their organizations are not identified in the report.

The first session provided a general overview of latest developments in the field of anti-corruption by notably discussing some of the more prominent cases currently in the news and with a particular focus on tools and guidance for corporations wishing to establish a thorough anti-corruption program.

The second speaker addressed the UK Bribery Act and its potential implications for internationally active companies, including those based in Switzerland. He discussed the various steps companies can undertake to be in compliance with the new legislation and provided some insight as to actual implementation of the latter by the courts.

The third session featured two presentations on “tackling good company practice: reporting, investigatory and disciplinary measures”. The first discussed a number of scenarios illustrating the challenges of implementing effective anti-corruption practices in different sectors and provided advice as to how shortcomings can be overcome. The second speaker of the session focused specifically on best reporting, investigatory and disciplinary measures in the financial services industry. She also provided an overview of the various conventions and pieces of national legislation that form the legal framework for banks’ anti-corruption standards and practices.

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The afternoon program started with a session centered on presentations of concrete company dilemmas. The first dealt with a case study of a corruption incidence within a large German multinational company involving new and more complex paths of routing bribe payments to ultimate recipients, the consequences for the involved executives and how the company subsequently put in place a more comprehensive compliance program.

The next speaker discussed different types of corruption challenges his company has been confronted with over the years, how the company dealt with them and how an improved compliance program brought about a cultural change.

A short video on a fraud scandal at an international telecommunications company rounded off the session by highlighting the importance of the tone and action at the top to prevent corrupt behaviour throughout the company.

The subsequent presentation discussed the positive potential of collective action by a group of companies to fight corruption, especially in developing countries. The speaker discussed a number of successful cases and explained their merits.

The final speech of the workshop covered corruption in Latin America with a particular focus on Peru. The case study started by giving some historical and sociological reasons for corruption in the region, how it manifests itself in everyday life and the negative implications for economic and human development in Peru.

## *II. Workshop Partners*

### **About Business Humanitarian Forum**

The Business Humanitarian Forum, established in 1999, encourages better understanding and cooperation between the public and private sectors, and works with partners to address humanitarian problems and promote sustainable economic development. The BHF does this by arranging for direct private sector involvement and investment in areas where it is needed, and by providing training and facilitating dialogue between organizations and private companies. The BHF builds awareness that business has a strong, long-term economic, political and social interest in supporting the work of the humanitarian community, and that private sector investment is the key element for economic development and overcoming long-term humanitarian problems. Both sectors are essential for the stabilization and social progress of developing and post-conflict societies. The BHF has initiated and carried out several reconstruction projects in post-conflict areas and helped create partnerships between businesses, humanitarian agencies and local governments. The BHF has also sponsored contact groups, workshops and conferences to heighten

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awareness of the important role business can play in alleviating humanitarian problems. The BHF is a non-profit association based in Geneva and was founded with the encouragement of UN Secretary General Kofi Annan.

### **About Transparency International Switzerland**

Transparency International, the global civil society organization leading the fight against corruption, brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world. Its mission is to create change towards a world free of corruption. Transparency International challenges the inevitability of corruption, and offers hope to its victims. Since its founding in 1993, TI has played a lead role in improving the lives of millions around the world by building momentum for the anti-corruption movement. TI raises awareness and diminishes apathy and tolerance of corruption, and devises and implements practical actions to address it.

The Swiss Section of Transparency International was formed in 1995. Its main activities are information, prevention, counseling and lobbying and its target groups are the federal and local governments, the private sector, the political parties and civil society. TI Switzerland is currently focusing on the financing of the political parties, whistleblowing and a fair public procurement law. It further aims at helping especially small and medium-sized enterprises and non-government organisations to introduce efficient anti-corruption measures.

## ***III. Workshop Presentations***

### **Opening Remarks**



The workshop was opened by one of the organizers of the event who reminded participants of the main purpose of the workshop: to explore the current state of anti-corruption initiatives as they apply to the private sector and beyond. His organization, through direct implementation of its own projects in several regions of the world, has realized that both the public and private sectors are vulnerable to corruption, but initiatives designed to curtail such practices are often more effective

when the two sectors work together. He thanked all the partners for attending and for their contributions in the subsequent discussion. He expressed the view that such events on issues of transparency and anti-corruption are held to keep all stakeholders up-to-date on challenges and opportunities in this area and that his organization would continue to focus on this very important issue.

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## **Anti-Corruption and Good Governance: An Overview**

The first presentation from an international NGO devoted to fighting corruption started by defining the latter as the “use of entrusted power for private gain”, either in the private or public sectors. The speaker’s organization tries to achieve its mission through information sharing, counseling and lobbying activities that target private and public actors.

The speaker began with an overview of “corruption in the headlines”, giving for instance examples of Iraq, India and of countries involved in the Arab Spring. These examples of sometimes unbearable dimensions effectively demonstrated how the issue of corruption is truly a global one that can reach into the highest levels of a country’s leadership.

In terms of established “facts” on corruption, it is estimated that more than \$2 trillion annually are paid in bribes – an amount which is slightly higher than the UK’s GDP for 2010. According to a rather conservative estimate more than 15% of all development aid is diverted to bribes; this would correspond approximately to \$80 billion from World Bank projects alone in the first 60 years of the Bank’s existence. Sectors which are most prone to corruption globally include: public work, construction, real estate and the oil and gas sector. Bribes are most often paid to public officials and civil servants, police officers and, thirdly, to employees in the private sector. The speaker noted that such bribery often falls under the category of “petty” corruption. This may seem relatively harmless at first, however, it can carry significant consequences for a country’s economy and population, especially for the least privileged strata of society.

The speaker then discussed various efforts to counter corruption. Using Swiss anti-corruption laws as an example, he touched on three main areas of enforcement. The first focused on the bribing of civil servants (Swiss and abroad), punishable by up to five years in prison. The second dealt with bribery between private individuals or within the private sector, which is unfortunately prosecutable only upon the lodging of a complaint. Lastly, Swiss law provides for the criminal liability of legal entities, whereby the fines imposed can affect the company and indirectly, shareholders. However, fines are limited to a maximum of CHF 5 million which is inadequate for cases of high level corruption. He also explained the Swiss law on repatriation of stolen assets which permits the confiscation of stolen assets in the case of failed states. However, this is only possible if the state first makes a request for international legal assistance but then does not follow-up.

Next, the speaker highlighted some of the latest tools and guidance for corporations wishing to establish an anti-corruption program, including: annex II to the 2009 OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, the UK Bribery Act Guidance Document, the Transparency International Business Principles for Countering Bribery, and the ICC Rules on Combating Corruption, the latter of which are expected to be issued shortly.

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The speaker concluded by emphasizing the need for anti-corruption procedures to be introduced and integrated into a company's culture, especially given the new climate of consciousness about anti-corruption.

In the discussion that followed, an audience member asked about the next steps in Tunisia (where Swiss banks had frozen the assets of the former regime's leadership). The speaker responded that the decision to block the assets was a matter of urgency, but now the routine legal assistance procedure will likely be adopted whereby the funds will be returned to the new and legitimized government.

Another audience member inquired about how active Switzerland is in prosecuting private to private corruption cases and respective legal liabilities. The speaker did not know of any private-private cases that had been brought to court, likely because they can only be instigated upon the lodging of a formal complaint to Swiss legal authorities. With respect to corruption in the public sector, there have been several cases of corruption of Swiss officials and three of foreign officials that have been convicted. According to information from the Federal Prosecutor's Office, there are currently about 30 investigations underway. The speaker also noted that globally, there has been rising frustration that the major cases of corruption in the past five years concerned allegations against corrupters (rather than the corrupted). He expressed the hope that this would soon change.

An audience member commented that the United Nations Convention against Corruption (UNCAC) places the obligation on governments to forbid civil servants from accepting bribes, and to train them accordingly. He added that although the US has ratified this convention, it continues to mainly follow only the guidelines of the OECD convention. Therefore, it is important to look at both the ratification and implementation of conventions in assessing countries on their anti-bribery practices and respective improvements.

### **UK Bribery Act: Update and Outlook**

The next speaker, a specialist in forensic and investigation services at a major international accounting and consulting firm, addressed the implications of the UK Bribery Act (2010) for companies, including those based in Switzerland. He emphasized that legislation had been drafted in an extremely broad way so as to capture as much bribery activities as possible. This is therefore the case law that will be developed going forward based on this Act which will provide real insight on how this law will be interpreted by the courts.

The Act outlines four main offences: two general offences covering paying or receiving bribes; a discrete offence of bribery of a foreign public official and, a new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage. Nonetheless, the last offence can be defended against if the company can prove that it had adequate procedures in place to prevent bribery. The Ministry of Justice published guidance on adequate procedures in March 2011.

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The penalties companies can incur are quite severe and can result in unlimited fines and individual liability which can either result in a sentence of up to ten years' imprisonment, a fine or both. The Act also includes penalties for management who "turn a blind eye": that is, senior officers who consent or connive in the commission of an offence under the Bribery Act, excluding the corporate offence, for which they can also be personally liable. Directors may also be vulnerable to civil claims for failure to establish or maintain 'adequate procedures'.

Furthermore, the Act has extra-territorial reach for UK companies doing business abroad. A UK company



can commit an offence of failing to prevent bribery if an associated person (e.g., employee, agent, subsidiary or service provider) bribes another person anywhere in the world to obtain or retain business for the UK company. However, the subsidiary or associated person has to be performing services on behalf of the parent company– it is not clear at this stage how this definition as regards the subsidiary, will be applied by the courts.

The relevant commercial organization under the Act includes any company that is incorporated in the UK and carries on business in the UK. However, there is also uncertainty on this point in regards to organizations that are foreign domiciled but are listed on UK stock exchanges: will they automatically be covered by the Act?.

Other key issues highlighted by the speaker included the lack of clear distinction between corporate hospitality and bribing, as well as between facilitation payments and bribing. He advised companies that make facilitation payments abroad to record them, and to consider reporting them to their embassy locally and to the local government. He also noted that according to the Director's Guidelines to the Act issued by the UK's Serious Fraud Office and The Crown Prosecution Services, there will be a two part test that will be applied in the decision of whether to prosecute an alleged act of bribery: 1) evidence, and 2) was the bribe in the public interest or not?

The speaker recommended a five step response to creating an adequate procedures' framework in organizations: 1) obtaining leadership commitment, 2) corruption risk assessment, 3) revision of policies and procedures, 4) communicating procedures across the organization and training, and 5) monitoring program. He highlighted that the fourth phase was the most critical part and companies should adequately invest in this.

Going forward, the speaker predicted that those industries which are already heavily regulated (e.g., banking) will most likely be more conversant with ensuring the adequacy of their procedures.

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In the subsequent discussion, an audience member asked if a head of Scotland Yard could be prosecuted for corruption under the Act based on allegations of paying \$17,000 out of Scotland Yard's budget towards spa services for a former newspaper editor hired as a "public relations advisor". The speaker confirmed that the case could have been investigated under the new legislation (if the activity occurred after 1 July 2011) since it covers corruption in both the private and public sectors.

Another question based on the jurisdiction of the Act revealed that foreign companies raising capital in the UK could be considered as "carrying on business" in the UK. Thus, bribes paid by subsidiaries could be seen as business acts performed on behalf of the parent companies.

The next query from the audience questioned the extent of liability that companies face for activities of their independent dealers abroad. The speaker responded that this will be influenced by whether the dealers could be classified as "associated persons". Company liability also depends on the language found in contracts with the dealers, as well as the broader compliance program that it has in place. Another audience member inquired as to whether the Act concerns NGOs or only commercial businesses. The speaker answered that this depends on whether the NGO has any "commercial components" (e.g., shops).

The final question from the audience addressed whether it is better for companies to explicitly state and strive for a zero-tolerance policy, or to recognize that some corruption will always occur and therefore not state such policies. In the speaker's opinion, part of driving towards the right ethical culture is to educate people about what the issues are and helping them learn how to respond. Thus, presumably negative language (such as zero tolerance) does not generally contribute towards these goals.

### **Tackling Good Company Practice: Reporting, Investigatory and Disciplinary Measures**

The third speaker from the forensic and dispute services department of an international accounting and business advisory firm presented several scenarios which illustrated the challenges of implementing effective anti-corruption practices. He emphasized that well-known best practices (e.g., from the OECD) such as commitment from senior management, a policy prohibiting bribery abroad, and related internal controls should be considered starting points of a more comprehensive strategy.

The speaker presented a variety of examples during his presentation. Ranging from companies in the electricity sector inadequately monitoring its commissions paid to a telecom company in which local management set up undeclared bank accounts used to pay bribes to a public sector organization which had been penetrated by organized crime, overriding its impartial tender process. One case which focused on facilitation payments was used to highlight the fact that the UK Bribery Act does not prohibit bribery when an employee's life or health is being threatened. Another case which featured an NGO illustrated that "whistle blowers" are not always well-protected and in Europe especially, there has been little use of whistle-blowing systems.

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In conclusion, the speaker noted that while companies are currently quite good at implementing some anti-corruption practices, other aspects need to be improved. These include risk assessments (not all risks tend to be considered), due diligence procedures (“checking the box” approaches often fall short), whistleblower systems (to include the possibility of receiving complaints from external sources), sanction and remediation policies (not always consistent throughout staff levels), and monitoring. He also emphasized the need for the fight of corruption to be driven at the industry level. Furthermore, he stated that especially medium-sized companies can and should do more in terms of anti-corruption efforts

The next speaker, a compliance officer in a large bank discussed best reporting, investigatory and disciplinary measures in the financial services industry. In this sector, implementations of anti-corruption systems are mainly being driven by the need to comply with regulations and to limit risk exposure. These include reputational risk, potential reduction of the levels and efficiency of financing and investment activities in places facing significant levels of corruption. The “Arab Spring” revealed that Swiss banks had been harbouring some funds of a number of the most corrupt individuals in the region, hence the need to review screening tools and banks’ abilities to upload and block restricted funds

The presenter then gave an overview of the many conventions and pieces of national legislation that form the legal framework for banks’ anti-corruption standards and practices including among others, the Swiss Penal Code, the US Foreign Corrupt Practices Act and the OECD Anti-Bribery Convention. She also touched on several best practices including due diligence, which takes into account various risk factors. Such factors include country risk, which is determined by perceived high levels of corruption and the absence of effectively implemented anti-bribery legislation and a failure to promote transparent policies. Many banks consider this very important and have developed country-specific operating manuals. The speaker also noted that certain types of transactions may give rise to higher risks. Examples include charitable or political contributions, licences and permits, and transactions relating to public procurement. For this reason, clear documentation of the rationale for clients doing business with the bank is required.

The speaker also advised about the necessity to ensure that transactions for charitable gifts, sponsorships and donations are not made as an incentive to obtain improper advantages. She added that potential conflicts of interest (e.g., employment of a public official, employees’ external business activities) should be identified, recorded and disclosed. She also offered several pieces of advice on developing appropriate policies concerning gifts and entertainment of guests and partners, whistle-blower hotlines and outside employment.

The speaker emphasized that in Switzerland, if breaches are reported to authorities, the conduct of the corporation (i.e., organisational measures established to prevent corruption) will be taken into account if and when establishing sanctions. The presenter concluded by predicting that the Swiss Code of Obligations

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regarding protection against dismissal for whistle-blowers would be revised to include penalties for unfair or abusive dismissal. Answering a question from the audience on the Swiss government's reaction to the recommendation by the Council of Europe Group of States against Corruption's (GRECO) to apply special means when investigating bribery in the private sector, the speaker concluded that this could indeed have important implications for the banking industry.

### **Concrete Company Dilemmas: Two Case Studies**

The fifth speaker, a professor of finance at a leading Swiss management studies institute, presented a case study of corruption within a large German multinational company.

In 1998, the International Bribery Law was enacted in Germany, making bribing of foreign officials



a crime and the following year, no longer qualifying such payments for tax deductibility. In response, the company in question devised a new and more complex path of routing bribe payments to the ultimate recipients. In 2004, Swiss and German authorities began investigations on suspicious transactions involving shell companies or concerning consulting agreements with no clear business purposes. Two years later, in 2006, several company executives were arrested. The company itself identified dubious payments amounting

to €1.3 billion, with the total costs of the corruption scandal estimated at €2.5 billion, including fines, legal advisory and criminal defence fees. A comprehensive compliance program was subsequently put in place, with compliance and legal making up almost 600 employees.

The speaker also presented the case of a Nordic company which produces heavy machinery. The company bid for and won a contract to supply \$150 million worth of machines to Indonesia. One of the key-parts was held up in Indonesian customs, and the company was “invited” to pay a fee (which was less than 1% of the contract value) to retrieve it. The company refused and instead requested the foreign office at home to tag the replacement part as diplomatic baggage. It then had it transported to Indonesia – an expense which significantly exceeded the cost of the “fee”– but ultimately allowed the company to stick to its non-tolerance of bribes and contributed to its good reputation.

In spite of a number of high profile corruption cases over the past few years, the speaker cited a survey by KPMG in North America and the UK which found that a significant number of companies still have, no specific anti-corruption strategies, no training practices, no respective compliance officers, and performed no anti-bribery risk assessments. He therefore emphasized the need to put such practices and procedures in place, and also called on external auditors to be more diligent and involved in this process.

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In the subsequent discussion, an audience member expressed puzzlement over the case of the Nordic company, since using a diplomatic tag to get the machine through customs could still be seen as unethical. The speaker responded that the case may not necessarily be “best practice” but has been hailed as a mark of the company’s unwillingness to pay bribes, and supported the home country’s robust anti-bribery legislation.

Another attendee questioned how to find and train compliance officers, especially outside of Europe. The presenter noted that the full time and executive MBA programs offered by his institute emphasize the need for companies to be compliant, but agreed that there is little interest in becoming a compliance officer because of the perceived status associated with this position. For this reason, companies should work on raising the status and also give these individuals real, direct access to the Board.

The next speaker works as a corporate compliance officer for a leading forwarding and logistics service provider. The company operates in about 85 countries, many of which are in high risk corruption zones.

The presenter gave three examples of the kinds of corruption challenges the company has been confronted with. His first example involved a warehouse in Russia which had stayed empty due to the blockage of cargo at customs. The company was told that it would have to pay a small amount of money for each unit of cargo that was imported. Estimations indicated that an annual amount of money in excess of \$1million would have to be paid to ensure smooth clearance of all future shipments. In response, the company decided together with the client to re-route all future shipments to another point of entry. As a consequence, customs at the original point of entry decided to release the cargo without further requests. This late release resulted in the company’s client being burdened with the demurrage cost as well as the loss of market share.

The second example highlighted a situation at an airport in Equatorial Guinea where the company was landing two to three freight planes each week. With most of the cargo destined for the oil industry, it sometimes occurred that oil rigs were unable to operate without the missing parts; timely delivery was thus of very high importance. In one instance, the company was asked to pay a \$50,000 “fine” in cash to the airport authorities without any specific or justifiable reason. The company refused to pay the bribe and re-routed its flights to another airport, from which they transported the material with trucks and vessels to its final destinations. Once the airport authorities realized freight planes from this company would no longer land at the airport, they decided to drop the request for the \$50,000 “fine”.

The third example outlined the more general issue of customs clearance in numerous countries where corruption risk is high. Constant demands for facilitation payments have been and still are quite common. One of the competitive factors in the customs clearance business is the time that it takes to clear cargo. Making these facilitation payments often reduces this time and thus the companies that are making

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these payments have a competitive advantage. To make sure that such payments are not made one has to develop a “no payment mentality” and communicate that openly with the clients. Many clients these days are prepared to wait an additional 2 or 3 days until they receive their cargo.

The speaker then introduced the compliance program the company had implemented. Among other elements, it included a clear statement of what is expected of all employees and assured them of support when they act accordingly. The company also has a code of conduct translated into thirty languages, and has developed policies on a range of topics, including anti-bribery, political contributions, third parties, free competition, trade regulations and whistleblowing procedures. In addition, it has a dedicated compliance department, which the speaker leads, and reports only to the legal committee of the Board and to the CEO.

The presenter added that ongoing training is a cornerstone of the program, since the key issue is not an “intellectual challenge” of driving the message “don’t pay a bribe”, but rather maintaining a high level of awareness, especially in the face of growing competitive pressures. The speaker also noted the importance of due diligence procedures, given that the company works extensively with sub-contractors. This is a part of the compliance program that is constantly updated to reflect new developments. Currently, sub-contractors are divided into two groups – “critical” and all else, with different procedures for the two groups. In this context, on-site assessments have proven to be very fruitful. The majority of companies are relatively open about their practices, and since many are not big corporations, it allows them to learn about current anti-corruption standards and what the company expects of them. In addition to regular internal audits, compliance assessments are also performed in countries which are deemed to have high corruption risks.

The presentation concluded with a note about the importance of the “tone at the top”. The compliance program has transformed the company – and triggered much cultural change. For example, when the program was implemented, many managers left the company, often out of their own initiative as they no longer fit in with the new corporate culture. He also added that oversight of the Board is key, and emphasized that compliance officers should report to them regularly.

An audience member added that the “message at the middle” is also critical. Local managers need to “live and breathe” the messages of the anti-corruption program because local employees are often disconnected from the top layers of management.

Another attendee asked if the company’s values drove its strategy, or vice versa. The speaker responded that they had initiated a value “program” about a year ago, by surveying employees on what they thought the corporate values should be. In this particular case, the values followed the strategy, which was already in place. However, the presenter saw the two as constantly interacting. For example, the company’s operations in Nigeria have been very significant both strategically and financially however; operations in the country were shut down due to compliance risks.

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### **Short Film: “Tone at the Top”**

Next, a short film on fraud and leadership from the top which used an accounting / bankruptcy scandal as a case study was shown. It re-emphasized the idea that leaders should state clearly and convincingly what their expectations are in terms of the values they expect employees to live by. Another key point raised was with regard to code of conducts, which can actually be counterproductive, in that they allow employees to believe that as soon as they sign the document, their responsibilities are fulfilled.

### **Collective Action: A Feasible Way of Fighting Corruption**

The next presenter works with a private consultancy firm working globally to fight fraud and corruption. The company is a member of the World Bank Working Group on Collective Action. This group was founded on the belief that combating corruption on an individual company level is difficult; bringing the issue to an industry level or sector is easier.

Collective action accomplishes several goals from a business perspective. Firstly, it functions in a similar manner as due diligence, which helps to establish a certain amount of trust between different organizations. Collective action can also improve public trust in business and help to influence future laws and regulations. One such case was when businesses successfully lobbied for the US Foreign Corrupt Practices Act to permit facilitation payments abroad. (e.g., facilitation payments allowed by US FCPA). It has also proven to be a rather efficient tool for small and medium sized enterprises that are dealing with corruption, especially in developing regions, as they are not big or influential enough to always find appropriate solutions acting on their own.

Collective action on anti-corruption is also a topic which can help attract foreign investment. Such as in the case of the Nigerian Convention on Business Integrity, which endorsed a group of foreign companies wanting to invest in Nigeria. In certain cases, collective action may also help to reduce transaction costs. The speaker cited the example of Tanzanian industries where, after facing serious problems for years with tax collectors wanting bribery payments, a “Help Desk Tanzania” was established. Whenever tax collectors visited a business, they were directed to the help desk which asked for the collector’s name, if they could have a receipt and the name of the tax number. In over half of the cases, the tax collectors did not pursue the payments. Furthermore, the initiative helped industries to collect documentation to illustrate to the government the level of extortion that they faced. For all of these reasons, business associations are increasingly offering collective action services to their members.

The speaker identified different types of collective action: long/short term, ethical commitment/external enforcement. The same structure may not be appropriate for different scenarios. For example, “integrity pacts” may be troublesome in the context of US competition laws, but may be suitable in other places. The speaker also emphasized that collective action is possible all over the world, with perhaps the most impressive examples found in African and Latin American countries.

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He concluded by explaining that collective action usually involves multiple stakeholders, including civil society, companies and governments. Organizations should be aware of the inherent risk of working with an entity that may damage a company's reputation by association. He noted that there appears to be a growing awareness of collective action in the NGO environment (e.g., Transparency International's "Islands of Integrity" and "Integrity Pact" projects) and international organizations are equally looking for new means of fighting corruption. Governments are also encouraging collective action and soft law as an alternative to legislation.

In the discussion that followed, an audience member added that other notable groups working on this topic include the UN Global Compact's local networks, foreign investment advisory councils, and development agencies such as USAID.

Another audience member asked about examples of governments using soft law as an incentive or reward for companies' anti-corruption practices. The presenter answered by pointing to public procurement in the US and UN organizations, which reward companies for having such procedures in place. He also cited a new law in Denmark which requires all companies in share classes one and two to report on their corporate social responsibility activities, with the exception of Global Compact members who can simply submit their regular annual Global Compact status report as it also covers anti-corruption issues.

### **Impacts of Corruption on Latin America: A Brief Overview**

The last speaker represented a business association working both in Western Europe and Latin America. He used Peru as a case study to explain attitudes towards and practices of corruption in Latin America.

He started with a brief history of Peru in the 20th century, which saw ten dictatorships in the country, and led to a new "category" of civil servants used to and often complicit in relatively open corrupt practices. As an example, the presenter cited biased legislation such as law 29703, which states that public servants are criminally responsible for corruption only if it causes economic damage to the state. Embezzlement is thus seen by civil servants as a sort of routine entitlement. Not surprisingly, nepotism is widespread and there is a serious lack of will by police and judicial authorities to take action.

Therefore, most citizens lack trust in the state, see no link with it and regard it as an "abstract entity". As a consequence and since the elite of the country is not seen as playing by the rules, a culture has developed which does not often put much importance on observing laws, paying taxes or otherwise conforming to standard rules of responsible citizenship. The media also tends to trivialize the problem. This is in part because some representatives of the media industry itself are closely linked with the government and therefore cannot fulfill the media's role of providing unbiased information to its citizens. This situation has been inherited from the Fujimori's regime in the 90's decade.

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According to the presenter, corruption has a significant impact on the country: 10,000 cases of irregularities have been reported between 2009-2011 alone, with \$25 million estimated to have been paid in bribes or stolen from 2009-2010. Furthermore, potential business from foreign companies has likely been lost, since these companies may not be willing to deal with the financial and/or reputational risks of operating in a country that is perceived as highly corrupt. The speaker concluded that the costs of both systemic and grand corruption in Peru have been severe and, if not fought against at the top, a culture of engaging in such practices with no apparent consequences will increasingly become the norm.

At the end, an audience member commended the speaker for discussing these problems in such frank manner, and also for highlighting the key problems of people feeling disenfranchised because the leadership has broken the social pact.

### **Concluding Remarks**

The workshop on « The Challenges of Implementing Best International Anti-Corruption Standards » brought together some 50 senior representatives from companies, but also from governments, UN agencies, non-profit organizations and academia to engage in a constructive and often quite frank dialogue on anti-corruption regimes of corporations and how they can be improved. The wide participation by company representatives and very active partaking by all attendees were again proof of the usefulness of such a gathering. The organizing partners therefore intend to continue their cooperation on this topic and, in addition, to launch a new initiative to provide a forum for private sector anti-corruption practitioners throughout Switzerland.

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## Annex I: List of Attendees and their Organisations

Amstuts, Eric  
Manager of Business Practices EAME  
Caterpillar

Cherpillod, Irene  
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## Annex II: Workshop Agenda

The Challenges of Implementing Best International Anti-Corruption Standards

A BHF-TI Workshop

October 6, 2010

Geneva, Switzerland

### Agenda

Event held under Chatham House Rule

09:30	Registration and Coffee
09:45	Welcome and Introduction
10:00	Anti-Corruption and Good Governance: An Overview
10:45	Questions and Discussion
11:00	UK Bribery Act: Update and Outlook
11:25	Questions and Discussion
11:40	Coffee Break
11:55	Tackling Good Company Practice: Reporting, Investigatory and Disciplinary Measures
12:45	Questions and Discussion
13:00	Networking Lunch
14:00	Concrete Company Dilemmas: Two Case Studies
14:50	Collective Action: A Feasible Way of Fighting Corruption
15:05	Questions and Discussion
15:45	Afternoon Refreshments
16:00	Impacts of Corruption on Latin America: A Brief Overview
16:25	Questions and Discussion
16:40	End of Workshop

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## Annex III: Resources

### UK Foreign and Commonwealth Office

UK Bribery Act

<http://www.fco.gov.uk/en/global-issues/conflict-minerals/legally-binding-process/uk-bribery-act>

UK Serious Fraud Office

<http://www.sfo.gov.uk/>

### Organization for Economic Co-Operation and Development (OECD)

International Bribery Act

[http://www.oecd.org/document/30/0,3343,en\\_2649\\_34859\\_2027102\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/30/0,3343,en_2649_34859_2027102_1_1_1_1,00.html)

### International Chamber of Commerce

Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations

[www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC\\_Rules\\_of\\_Conduct\\_and\\_Recommendations%20\\_2005%20Revision.pdf](http://www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC_Rules_of_Conduct_and_Recommendations%20_2005%20Revision.pdf)

Policy and Business Practices

[www.iccwbo.org/policy/anticorruption](http://www.iccwbo.org/policy/anticorruption)

### Nigerian Convention on Business Integrity

<http://www.theconvention.org/>

### Swiss Financial Market Supervisory Authority (FINMA)

Due Diligence obligations of Swiss banks when handling assets of “politically exposed persons”

[http://www.finma.ch/e/aktuell/Documents/bericht\\_pep-abkl%C3%A4rung\\_20111110\\_e.pdf](http://www.finma.ch/e/aktuell/Documents/bericht_pep-abkl%C3%A4rung_20111110_e.pdf)

### The Federal Authorities of Swiss Confederation

Swiss Penal Code

[http://www.admin.ch/ch/e/rs/311\\_0/index.html](http://www.admin.ch/ch/e/rs/311_0/index.html)

### Transparency International

Corruption Perception Index

[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010](http://www.transparency.org/policy_research/surveys_indices/cpi/2010)

Global Corruption Barometer

[http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2010](http://www.transparency.org/policy_research/surveys_indices/gcb/2010)

Bribe Payers Index

<http://bpi.transparency.org/>

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UN Global Compact : Anti-corruption

[http://www.unglobalcompact.org/Issues/transparency\\_anticorruption/index.html](http://www.unglobalcompact.org/Issues/transparency_anticorruption/index.html)

United Nations Convention against Corruption

<http://www.unodc.org/unodc/en/treaties/CAC/>

US Department of Justice

Foreign Corrupt Practices Act

<http://www.justice.gov/criminal/fraud/fcpa/>

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