



Actual trend

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# Internal Audit's Role in Anti-Corruption Programs

Rome, TorVergata University, 12/12th/2015



# What we'll cover

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- Why does Internal Audit have any role in an anti-corruption program?
- What does an internal auditor need to know about anti-corruption laws and control objectives?
- What does a measurable/assessable anticorruption program look like?
- What tools can internal audit use to assess and certify the program for design effectiveness and operation as designed?

# Why does Internal Audit have any role in an anti-corruption program?

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## Common Comments

- It isn't the job of internal audit to design or manage a compliance program
- Internal audit is only responsible to assess the program and provide assurance to management and the board
- We can't audit it if we design it



# Why does Internal Audit have any role in an anti-corruption program?

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## Common Problems

- Compliance programs aren't designed to allow for or support measurement
- Compliance professionals know the requirements they must meet but not what sort of metrics to use to demonstrate outcomes
- Internal Audit can have an important role when trying to develop a meaningful, efficient review



# Why does Internal Audit have any role in an anti-corruption program?

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## The Answers

- Consult with those developing the anticorruption program to ensure measurability
- Help to identify measurable risk assessment processes and controls
- Suggest key performance indicators and other metrics
- Suggest use of standard frameworks



# What does an internal auditor need to know about anti-corruption laws and control objectives?

## The Regulatory Context for AntiCorruption Related IA Activities

US	Italy
USSG: US Sentencing Guidelines give the rules for an Effective Compliance Program and for the judge in determining liability and sanctions (1977)	All the main principles of the USSG were shared for an Effective Compliance Program
FCPA	FCPA
UK Bribery Act** and UK Bribery Act 101 (2001)	UK Bribery Act** (2001)
Dodd-Frank Act 101	D.lgs.231/01 (2001)
Corrective Action and Business Partner Risks	Anac (2015)



\*UK Anti-Corruption Plan: On december 18th 2014, UK government publicized the first anti corruption plan of UK to assure a better implementation of the UK Bribery Act.



# From US Sentencing GL to Italian ones

USSG* Requirements	Content of an Effective Compliance Program	Requirements in Italy
Management Accountability	The organization will exercise due diligence to prevent and detect criminal misconduct	shared
Oversight of Board of Directors and Audit Committee	Governing authority will be knowledgeable and will exercise reasonable oversight with regards to the compliance and ethics program	shared
Code of Ethics/Conduct	The organization will promote a culture that encourages ethical conduct and compliance with laws	shared
Ethics/Whistleblower Hotline	The organization will have and publicize a system where employees/agents, personnel and external parties may report potential or actual criminal conduct	shared
Hiring & Promotion	The company will make efforts not to employ individuals with substantial authority that they know (or should have known) has engaged in illegal activities	shared
Disciplinary Remediation	Appropriate disciplinary measures will be taken against those who have engaged in criminal conduct	shared
Process for Assessing Risk	The organization will periodically assess the risk of criminal conduct	shared
Training	Effective training programs will be conducted throughout the organization to communicate it's compliance and ethics program	shared
Monitoring by Management	Management will ensure that the organization has an effective compliance and ethics program	shared

\*<http://www.uscc.gov/guidelines-manual/2015/2015-ussc-guidelines-manual>

# FCPA and UK Bribery Act compared



U.S. Foreign Corrupt Practices Act Public Briber	UK Bribery Act Commercial and Public Bribery
The US are the first country to adopt specific rules aimed at prevent international corruption phenomenon: in 1977 US Congress launched the «Foreign Corrupt Practices Act».	It became law the 1 <sup>st</sup> july 2011 introducing a new concept of liability for corruptive facts committed to its advantage or interest by persons who perform services for or on behalf of the organization in the case of lack of preventing models.
Bribe <b>Payers</b> (that is Payment to assure improper advantages in favor of the company )	Bribe <b>Takers</b> and Bribe <b>Payers</b>
Crimes: against corruption of foreign public officers with the aim to obtain/ mantain commercial relationships.	Crimes: active or passive corruption to public or private officers, corruption of foreign public officer, lack of a preventing model
<b>Intent</b> (no compliance defence) it doesn't worth the adoption of a compliance program, it can be used only to reduce sanction	<b>Failing to Prevent</b>  (an effective compliance model can prevent the commission of specific categories of offenses by persons associated with it (that is "adequate procedures") can exempt companies
Natural Persons/Legal Persons (US or resident in US), Issuers in U.S. marketplace, including their «officers, directors, employees, agents and shareholders» (the essencial factor is the recurring of the US marketplace)	UK persons, UK Entities or carrying on business or part of a business in the UK, UK Entities acting abroad, no-UK Entities carrying on business or part of a business in the UK (it is not important where the fact was committed)*
<b>Facilitation Payments Exception</b> (given in relation to Government activities as long as registered in corporate books)	<b>Facilitation Payments are all illegal</b>





# Anac Guidelines (june 25th 2015)

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- On june 25th 2015 the Anti corruption National Authority («ANAC») publicized on its site the «Determination n. 8 of 17 june 2015», carrying «Guide Line for the execution of the rules in matter of preventing corruption and trasparency from companies and entities of private law that are controlled and partecipated by public administration and government-owned businesses». These Guide Lines were put in public consultation from march 24th to april 15th 2015.

## Anac Guidelines:

- are addressed to the companies and entities of private law controlled and shared by public administrations, as well as the government-owned businesses;
- don't apply to listed companies and to companies with financial instruments listed on regulated markets and their subsidiaries: the indications about the applicable regulations will be subject to specific guidelines to be adopted at the outcome of the findings of the working group that the Ministry Economy and Finance and the ANAC started with Consob.
- The guidelines specify how to adjust the obligations under the 190/2012 law to corporate reality, introducing elements of flexibility with respect to the law and at the same time indicating the minimum contents that must be met: the Law 190 does in fact refer to a broader concept of corruption with respect to the provisions of Legislative Decree no. 231/01. The decree 231/2001 in substance regards offenses committed on behalf or for the benefit of society, while the law 190/2012 is to prevent also offenses committed against the company.
- ANAC Guidelines consist of requirements for the prevention of the risk of corruption and transparency requirements, articulated differently depending on whether it's completely or partially owned by the government.



# Areas at corruption risk

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- Joint venture contracts
- Intermediation contracts
- Sponsorship contracts
- Gifts and hospitality
- Mergers and acquisition
- No-profit initiatives
- Consultancy contracts
- Personnel selection
- Relationships with public officers





# Why do we care?

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While there are some overlaps, the UK Bribery Act has increased scope compared to the FCPA. Some US companies will need to make adjustments to the higher standards established by the UK Bribery Act:

- Extraterritorial jurisdictions – UK presence abroad as well
- Not limited to public sector – covers private sector as well
- No facilitation payment permitted
- Strict liability provision - corporate failure to prevent offense is prosecutable

Companies with UK presence should act now  
to develop "adequate procedures"





# UK Bribery Act 101

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Comprehensive, zero tolerance anti-corruption legislation ... Introduces a specific corporate offence of failing to prevent bribery.

- Replaces previous offenses with a general bribery offense and a specific offence relating to the bribery of foreign public officials.
- Introduces a specific corporate offense of failing to prevent bribery.
- Companies incorporated elsewhere and carrying on “a business, or part of a business” in the UK can be found guilty – referred to as “adequate procedures”.
- Penalties include unlimited fines, prison term and/or debarment from UK government contracts.
- Effective ?

“This creates a level playing field and ensures that ethical corporates in the UK will not be disadvantaged by the activities of those elsewhere who seek to derive a competitive advantage through corruption ...”

# UK Bribery Act 101: Scope and Application



Although it is UK legislation, the Act has serious implications for US companies with ties to the UK

Bribery Offense	Paying / Receiving	Foreign Public Official	Failure to Prevent	Penalties
Individuals	“Closely connected” British citizen / resident			<ul style="list-style-type: none"><li>• Unlimited fine</li><li>• Up to 10 years imprisonment</li></ul>
Companies	Incorporated in the UK		<ul style="list-style-type: none"><li>• Incorporated or carry on all or part of business in the UK</li></ul>	<ul style="list-style-type: none"><li>• Unlimited fine</li><li>• Debarment from competing for government contracts</li></ul>
Bribe Location	Anywhere in the world even if operating through an agent / subsidiary			

# UK Bribery Act 101: Adequate Procedures Defense

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- Ministry of Justice guidance for “Adequate Procedures” defense ...
- Six Principles for Bribery Prevention:
  - Risk Assessment – ongoing assessments performed by adequately trained personnel
  - Tone at the Top – accountability
  - Due Diligence – know your business partners (e.g., vendors)
  - Clear, Practical and Accessible Policies and Procedures – directed internally (e.g., employees) as well as externally
  - Effective Implementation – beyond "paper compliance"
  - Monitoring and Review – internal controls, anti-corruption program



# UK Bribery Act 101: Be proactive to put adequate procedures in place ...

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Opportunities to act now include:

- Risk Assessment – employ a systematic, scheme-and-scenario based approach to identify and assess risk factors and risk indicators suggesting opportunities for bribery and corruption
- Tone at the Top – evaluate organizational tone / corporate culture, management information, communication and training
- Due Diligence – suppliers, vendors, third party agents, and intermediaries
- Clear, Practical and Accessible Policies and Procedures – enhance existing or develop new policies and procedures
- Effective Implementation – disciplinary guidelines, addressing dealings with sanctioned individuals
- Monitoring and Review – ongoing monitoring activities as well as separate periodic evaluations, assess "red flags"



# Dodd-Frank Act 101

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- Reshapes financial regulation in the US ...
- The primary changes brought about by the Dodd-Frank Act include:
  - Encourages witness cooperation – new incentives for whistleblowers
  - Expands legal charges which can be brought by the SEC
  - Requires additional information disclosures to the SEC
  - Increases the SEC's available resources to charge offenders
  - Encourages cooperation among regulators

Additional funding to support regulatory activities, including enforcement and examination

Additional funding to support regulatory activities, including  
enforcement and examination



# Dodd-Frank Act 101: Whistleblower Provisions

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For whistleblowers to receive 10-30% of amount awarded legally or in settlement, the following must occur ...

- Whistleblower must voluntarily come forward
- Whistleblower's tip must be original
- Whistleblower's tip must lead to penalties or disgorgement of >\$1M
- A whistle-blowing co-violator must be awarded as long as whistleblower is not criminally convicted
- Anonymous whistleblower must be represented by counsel



# Dodd-Frank Act 101: Whistleblower Provisions

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May result in more enforcement investigations and "cause" examinations

- Prohibits retaliation against whistleblowers
- Provides right of action against employers who retaliate
- Payment of bounties will likely inspire large number of additional complaints and tips
- Unintentional effects:
  - Whistleblowers may forgo internal reporting or hotlines in order to go straight to the SEC with the perceived complaint
  - Those with knowledge of possible violations due to the nature of their positions may now consider themselves to be "whistleblowers"





# Risk Indicators

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- High risk countries
- State-owned or controlled entities
- Excessive commissions
- Unusual compensation arrangements
- Use of mandated third parties (e.g. agents, distributors)
- Cash payments required to entities or individuals
- Re-directed payments
- Required gifts and donations
- Non-cash consideration



# Regulatory focus on Business Partner due diligence

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The current regulatory environment expects, and regulators are increasingly demanding that companies know who is conducting business on their behalf and proactively manage the risks associated with such relationships.

*“The FCPA prohibits corrupt payments through intermediaries. It is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. The term “knowing” includes conscious disregard and deliberate ignorance.*

*To avoid being held liable for corrupt third party payments, U.S. companies are encouraged to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives....”*

- Department of Justice, Lay-Person’s Guide to FCPA

# Challenges of Managing Business Partner Risk

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- We have found that many organizations face similar challenges managing Business Partner risk. These challenges include:
- Large volume of partners requiring considerable resources to vet
- Lack of standardized procedures applied consistently across all partners
- Lack of visibility into partner risk profiles
- No central oversight of overall partner compliance processes
- Inability to quickly and easily assess the current status of partner on-boarding
- Lack of insight into individual workloads and process bottlenecks
- Lack of collaboration of Compliance with Business Units
- Too much back-and-forth via e-mail and voice mail
- Documentation and approvals stored in various locations
- Manual, paper-based processes
- Complex data privacy and language requirements, varying across geographic locations





# Business Partner Lifecycle

Business Partner Identification	Preliminary Approval	Risk Assessment	Due Diligence	Final Approval	Contracting	Continuous Monitoring
<ul style="list-style-type: none"><li>• Identify a potential business partner</li><li>• Entry of initial profile information and defining the scope of services to be performed</li><li>• Vetting against existing master business partner data</li></ul>	<ul style="list-style-type: none"><li>• Management performs a preliminary vetting to determine if this is a viable business partner candidate</li></ul>	<ul style="list-style-type: none"><li>• Perform the necessary information gathering</li><li>• Assign a risk rating to the potential business partner</li></ul>	<p>Due diligence procedures for specific risk categories based on identified business rules</p>	<ul style="list-style-type: none"><li>• Approval</li><li>• Rejection</li><li>• Business Case</li><li>• Appeal Process</li></ul>	<ul style="list-style-type: none"><li>• Contract language based on risk assessment applied</li><li>• Contract payment terms</li><li>• Contract approval</li></ul>	<ul style="list-style-type: none"><li>• Periodic reassessment of existing business partners for continuance</li><li>• Audits of activity and payments of contractual terms</li><li>• Reporting</li></ul>



# Recovery/Corrective Action

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- Business process remediation
- Internal control remediation
- Criminal referral
- Civil action
- Disciplinary action
- Insurance claim
- Extended investigation



# What does a measurable anticorruption program look like?

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Must allow auditors to perform standard tests of inquiry, inspection and observation

- Consider DESIGN to ensure program contains elements necessary to mitigate corruption risk
- Ensure elements are supported by evidence of OPERATION to enable a successful audit
- Not enough to have program documented... regulators will consider this a “paper program”
- Program must be proven to be operating effectively... which can only be done by passing an effective anti-corruption audit



# What are key components of a measurable anti-corruption program?



Design	Prevent & Promote: Policies	Operation
Contains clear anti-bribery and books and records provisions		Employees know about the policy (encourage auditor random inquiry)
Translated in multiple languages		Policy is widely distributed and available to all employees (e.g., Intranet and blog distribution, etc.)
Not limited to FCPA (i.e., reference other laws, private bribery, facilitation payments)		Policy is provided to third parties (e.g., referenced in contracts as addendum)
Current (i.e., updated w/in 2 years)		Executive management is aware of policy content
Formal and published by executive management		Policy serves as living document (e.g., referenced in disseminated advice and guidance)

# What are key components of a measurable anti-corruption program?



Design Prevent & Promote: Awareness & Education	Operation
Materials are current, relay clear expectations and align to policy	Evidence of 100% training completion (manual or automated)
Translated in multiple languages	Discipline administered as appropriate for incompletes
Multi-dimensional (e.g., online, inperson, etc.)	Supplemental materials (e.g., blogs, emails) periodically distributed
Mandatory and ability to track completion	High risk roles receive increased/targeted awareness
Identified applicable audience (e.g., Sales, Finance, Marketing) for increased awareness	Employees comprehend materials and able to explain lessons learned
Means to ensure effectiveness	Attendee credit based upon passing score

# What are key components of a measurable anti-corruption program?



Design Prevent & Promote: Preventative Controls	Operation
Signatory authorities established for contracts of certain nature or amount	Proof of signatory review/sign-off (e.g., w/in contract management system) that ties to signatory matrix
Anti-corruption provision designed for third party contracts	Anti-corruption clause contained in third party contracts
Established process/system for third party due diligence/integrity checks	Evidence of due diligence/integrity checks performed
Investigation process extended to third parties	Relationship terminated in the event of integrity concerns
Education and awareness activities extend to third parties	Evidence of training completion

# What are key components of a measurable anti-corruption program?



Design Prevent & Promote: Preventative Controls cont.	Operation
Defined record retention requirements	Records available to support auditors' requests
Disbursements limited to valid requests for payment	Payments traced to valid invoices; Existence of products or services procured
Signatory authorities established for disbursements of certain nature or amount	Proof of signatory review/sign-off (e.g., w/in disbursement system) that ties to signatory matrix
Approvers , \$ limits and business case required for directly related and reasonable hospitality provisions	Hospitality w/in \$ limits, acceptable business case and proof of review/sign-off (e.g., gift registry)

# What are key components of a measurable anti-corruption program?



<b>Design</b> Detect & Discern: Hotline & Notification; Respond & Resolve: Internal Review & Investigation	<b>Operation</b>
Means of intake for inquiries or concerns (e.g., Helpline)	System is operational (be prepared for auditor testing)
System for tracking/recording and reporting matters	Policy inquiries are tracked and consistent advice provided
Category established for anticorruption matters	Thorough and systematic investigation performed according to defined process
Investigation process provides for Attorney-Client Privilege	Discipline administered as appropriate for policy violations
Defined team members (e.g., Legal, Ethics, PR, Accounting) for matters w/ potential FCPA implication	Remedial actions identified and implemented (always opportunity for improvement)

# What are key components of a measurable anti-corruption program?



<b>Design</b> Assess & Align: Risk Identification, Risk Analysis	<b>Operation</b>
Process to identify areas of increased exposure	Evidence of process executed (i.e., identification of business activities, geographic locations, etc.)
Education and other program activities planned and prioritized in response	Education and other program activities executed according to plan

# What are key components of a measurable anti-corruption program?



Design Organize & Oversee: Roles & Responsibilities	Operation
Accountability for compliance integrated in executive performance plans and related processes	Advancement and compensation decisions based on compliance performance; Compliance messages delivered by business leaders
Senior executive charged with implementation and oversight of compliance with Code and policies	Chief Ethics & Compliance Officer role established and filled
Executive management oversight of program initiatives and activities	Evidence of oversight and program monitoring (e.g., council meetings)
Governing authority oversight of program initiatives and activities	Evidence of oversight and program monitoring (e.g., Board minutes)

# What tools can Internal Audit use to assess and certify the program?

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An Internal Audit corporate function can create, both ispirating to the best practice given by the Association of Italian Internal Audit and to the internal system of control, a process model that may be applied to design:

- Any specific compliance program
- Harmonized risk management systems
- Fully integrated approach to governance, risk mgmt and compliance

That is part of an interdisciplinary approach that sums up principles of:



# What tools can Internal Audit use to assess and certify the program?



## Governance

- National Laws (Sarbanes-Oxley, etc.)
- Various governance frameworks
- AS 8000

## Risk

- COSO ERM
- AS/NZS 4360:2004
- A Risk Management Standard (IRM, ALARM, AIRMIC)
- RMA – Financial
- Basel II - Banking

## Compliance

- U.S. Federal Sentencing Guidelines
- Various regulatory frameworks and guidance
- AS3806; AS4269

## Audit

- COSO Internal Control
- CoCo; Turnbull/Cadbury
- AS 5; SAS 99

## Ethics & Culture

- Various CSR frameworks (AA1000, SA8000,..)
- Social Psychology Research

## Quality

- ISO 9000 series; ISO 14000 series
- Six Sigma



# The multiple objectives of IA

