

INTERNATIONAL BUSINESS STANDARDS ON ANTI-BRIBERY

This paper examines the various international standards available on anti-bribery. It gives an overview on the benefits and challenges of integrating these standards into current business practices in Cambodia and highlights case studies from within the region that have successfully implemented them.

OBJECTIVES

The International Organization for Standardization (ISO)'s official definition of standards states that a standard is a "document that provides requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose". Anti-bribery business standards, within the context of this paper, are official benchmarks that companies can use as a guide to designing compliance systems. These standards are flexible, in that they often come in customised packages and can vary in kind and size to tailor to the needs of a diverse set of companies. Companies can adopt local standards, which may comply to local laws or those of other countries, if the company has operations or ties beyond its home country's borders.

The current implementation of compliance systems in Cambodia, especially within Small and Medium Enterprises (SMEs) is low. For instance, according to the 2015 Transparency International (TI) Cambodia report on Corruption Perceptions in Small and Medium Enterprises in Cambodia, 63% of CEOs have never discussed business integrity in their company despite 47% of them saying they have experienced or have heard of corruption issues. Additionally, a 2014 survey by the International Labour Organization (ILO) stated that when faced with corrupt and unethical practices, the majority of firms (33%) operating in Cambodia take no action while only 19% have created specific company policies or codes of conduct to reduce the effect of corrupt and unethical practices. Furthermore, there is a lack of an all-encompassing Cambodian anti-bribery standard that companies operating in Cambodia can look to.

The introduction of international standards can thus bridge this gap by forming the framework for future company policies dealing with corruption. This paper also aims to increase awareness and business demand to integrate international business standards into daily company practices. In the long term, the research aims to help develop a culture of integrity and ethics within businesses in Cambodia.

TI Cambodia's Business Integrity Programme (BIP)

Transparency International Cambodia (TI Cambodia) is the

national chapter of Transparency International, the global civil society organisation leading the fight against corruption. TI Cambodia's Business Integrity Programme (BIP) was launched in January 2014 as part of an international initiative by TI to reduce corruption through improved transparency, accountability and integrity in business practices. The BIP works directly with businesses through various services and training programmes to help shield businesses from corruption risk. Services range from helping companies implement partial or more comprehensive Corporate Integrity Systems (CIS), basic Anti-Corruption Law training, public service fees and basic regulatory procedures. BIP also offers health checks, risk assessments and technical training self-assessment tools for companies to evaluate their current compliance policies and procedures to maximize effectiveness. The BIP is also compiling and tracking information on international standards to introduce them into the Cambodian business arena.

BENEFITS OF INTERNATIONAL STANDARDS

Relationship with Buyers and Investors

Cambodia's key industries such as agriculture and light manufacturing are buyer-driven as opposed to producer-driven. Industries with buyer-driven value chains have low barriers to entry and as a result, face a higher amount of competition relative to producer-driven industries. With such high competition, producers are forced to differentiate their products, either through design or marketing, to maintain or increase transactions with buyers. In essence, the success of companies in buyer-driven industries is bound to the buyers' favour. It is also notable that most traders and buyers are multi-national players who obtain products from producers to sell within international markets.

Sustainable investment assets in Asia grew from \$40 billion to \$53 billion from 2012 to 2014, a total increase of 32 percent.

Ascribing to international anti-bribery and compliance standards will help producers be more competitive relative to those who do not. International companies are increasingly stringent with clean business practices due to their commitment to key stakeholders such as customers and shareholders. As a result, these companies may enter into more partnerships with producers that are more socially responsible.

For instance, according to the 2014 Global Sustainable Investment Review, the world's sustainable investment market grew from 21.5% (2012) to 30.2% (2014) of professionally managed assets. Sustainable investment

assets in Asia, according to the report, grew from \$40 billion in 2012 to \$53 billion in 2014, a total increase of 32%. These statistics indicate a growing trend for investors to enter into deals which they perceive as more sustainable.

Having international business standards as part of company policy reassures potential buyers and investors of the producer's credibility and professionalism and the business' sustainability. Cambodian companies can reap benefits from such a positive and clean reputation, especially against the backdrop of Cambodia becoming an increasingly attractive destination for investment. In 2014, the country was quoted to be one of the "biggest improved countries for participation in the [Global Value Chain]".¹ The observation was made following intense Japanese investment in the country's manufacturing sector, encouraging other investors to take note.

Furthermore, international standards, by virtue of them being international, can be more widely recognised by international buyers relative to local standards. Companies that have been associated with acts of corruption and bribery in the past and have received negative press for them, can also use the installation of these internationally-recognised standards to win back confidence from stakeholders. Such installation of international standards, in the eyes of stakeholders, will be a testament to the company's renewed affirmation towards clean business practices.

This reassurance will help stem stronger, more trusting and sustainable relationships between companies and their buyers and investors. This prospect of increased investment and partnerships between international and local companies will be beneficial for Cambodian companies who are already or are thinking of entering regional or global markets. It is also notable that if a country has a less than favourable reputation for labour and human rights, that integrating such standards into a company's structure will add value to its business if it aims to spearhead regional and international initiatives.

Relationship with Parent Company

Integrating anti-bribery standards will provide companies with a strong defence should an associate or member of the company be accused of committing offenses related to corruption or bribery. Companies effectively protect themselves in court and make themselves less vulnerable to the possibility of indictment if they prove that an Anti-Bribery Management System (ABMS), certified by international standards, is in place throughout their company structure. This aspect will be elaborated upon greater in the **BS 10500** section of this paper.

Relationship within Internal Staff

Integrating anti-bribery standards will help streamline a company's existing compliance/anti-bribery structures to establish Standard Operating Procedures (SOPs) when dealing with bribery. The existence of SOPs generate predictability and help staff understand what to do during a bribery-related event, thereby improving decision-making amongst staff and protecting business activity from disruption. Additionally, understanding of a system in place to prevent

corruption will help deter staff from paying or receiving bribes in the first place.

There are various standards that companies can sign onto or adopt to reap the aforementioned benefits.

TYPES OF STANDARDS

UN Global Compact

The United Nations Global Compact (UNGC) is a United Nations sustainability initiative aiming to partner business and communities in efforts to uphold the Compact's Ten Principles. These Principles comprise ideals from fields including human rights, the environment, labour and more importantly, anti-corruption. The Principles are as follows:²

- Businesses should support and respect the protection of internationally proclaimed human rights; and
- Make sure that they are not complicit in human rights abuses.
- Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced and compulsory labour;
- The effective abolition of child labour; and
- The elimination of discrimination in respect of employment and occupation.
- Businesses should support a precautionary approach to environmental challenges;
- Undertake initiatives to promote greater environmental responsibility; and
- Encourage the development and diffusion of environmentally friendly technologies.
- **Businesses should work against corruption in all its forms, including extortion and bribery.**

These principles thus offer a public policy framework for companies to develop, implement and disclose comprehensive Corporate Social Responsibility (CSR) policies, including anti-corruption. Businesses interested in adopting this framework sign onto the Compact and become signatories. These signatories convene on both local and international levels, by setting up a UNGC Local Network in the country for the former or by taking part in UNGC initiatives for the latter. Local networks are often managed by Contact Persons, appointed by Steering Committees made up of representatives from various multinational corporations (MNCs), a Global Compact LEAD company, SMEs and members of civil society. Global Compact LEAD companies take their CSR initiatives to a more advanced level, working more actively with relevant UN agencies, pursuing a more vigorous information-sharing programme with other members of the UNGC local network and attending more private and high-level summits and meetings.

¹ "Value chain in decline: WTO," <http://www.phnompenhpost.com/business/value-chain-decline-wto>.

² "The Ten Principles of the UN Global Compact," <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

Currently, the Compact has over 10,000 business participants from over 145 countries. Activities open to signatories include being able to participate in policy dialogues, seminars, workshops, training sessions and programmes concerning the UNGC principles, including adopting sustainable business models and markets. Other activities including promoting the company's products and services at gatherings and receiving information regarding case studies on inclusive market development, strategies to improve workstreams related to CSR and various management tools and resources.

SIGNING UP WITH THE COMPACT

To sign up with the UNGC, companies need to prepare a Letter of Commitment signed by the company's highest leadership (such as the CEO) to express commitment to the UNGC and its Ten Principles. It then has to complete an online Application Form and upload the digital copy of the Letter of Commitment.

Companies are required to fulfill various obligations other than the Letter of Commitment. For instance, companies make a regular financial contribution per year to support the UNGC and more importantly, issue an annual Communication on Progress (COP) to disclose the progress made over the year in implementing the Compact's Ten Principles. It is notable that the COP can either be submitted as a standalone document or part of the company's annual financial report to maximise efficiency.

For more information on how to get started, access <http://www.unglobalcompact.org>.

BS 10500

The BS 10500 is an Anti-Bribery Management System (ABMS) introduced by the British Standards Institution (BSI). The standard is available for companies regardless of size, due to its customisable nature. More importantly, the BS 10500 is also available for companies the world over.

A unique quality of the BS 10500 is that it uses the extra-territorial UK Bribery Act 2010 as its baseline to align itself with UK legal requirements. For instance, article 2 of section 7 of the UK Bribery Act states that companies, when accused of bribery, has to prove that it has "adequate procedures" in place to prevent employees from taking or receiving bribes. This proof will act as a "defence" for the company throughout court procedures, especially if the company's subsidiary, parent company, employee or any other associated persons have actually been seen to have acted corrupt. The BS 10500 thus ensured that its own system counts as "adequate" within the Bribery Act's legal framework. Companies, thus, who are liable under the UK Bribery Act can adopt the BS 10500 standard as a preventive measure in the event that it is

associated with a bribery event. Companies that are liable under the Act include foreign subsidiaries of UK companies which can cause the parent company to become liable if the subsidiary itself commits an act of bribery. Additionally, foreign companies who wish to do business in the UK are also liable to be indicted under the UK Bribery Act of 2010.

The BS 10500 ABMS provides comprehensive implementation of anti-corruption and anti-bribery procedures throughout the company's supply chain, business partner and customer relationships. These procedures cover pertinent fields such as employment procedures, gifts/donations policies, facilitation payments, procurement controls, whistleblowing arrangements and a top management review. At the end, the company will be able to secure independent third party certification under the BS 10500.

Participating in the BS 10500 certification process entails:

1. APPLY

Apply for the certification through the BS 10500 website (listed below) by requesting a quote or more information. A client manager will be appointed to guide the company through the next steps.

2. ASSESS

A review on the company's current organisational preparedness will be conducted to check if necessary BS 10500 procedures have already been developed by the company. If such requirements are in place, a formal assessment of current company procedures will be conducted to make sure that they have been implemented and are functioning effectively as required for BS 10500 certification. If procedures are not in place, BSI will aid the company in their implementation through its customised service packages.

3. ACCREDIT

Having passed the formal assessment, the company will receive its BS 10500 certificate, which will be valid for 3 years.

4. APPRAISE

The client manager will visit the company regularly to improve upon the system and ensure that it remains compliant under official BS 10500 standards.

The BSI Group has regional offices for companies in various continents to seek more information concerning their services. **Cambodia's** nearest regional office is in **Thailand**. Companies can also consult the services of Swiss audit and inspection corporation SGS SA for more on the BS10500. SGS has an office in Phnom Penh, Cambodia, amongst others across the globe.

For more information including client brochures, access the BSI website on the BS 10500 at <http://www.bsigroup.com/en-GB/BS-10500-Anti-Bribery/>.

Foreign Corrupt Practices Act of 1977 (FCPA)

The FCPA is a famous extra-territorial act passed in the US that dictates penalties against bribery in companies dealing with or inside the US. The Act is extra-territorial and persons and entities subject to it include:

- “Domestic concerns”: US-incorporated business/entities including those that conduct business abroad through foreign subsidiaries or foreign joint ventures;
- “Issuers”: US and foreign public companies with securities publicly traded in the US;
- Certain foreign persons or businesses acting within US territory.

The Act contains two sets of provisions on anti-bribery and accounting respectively. Anti-bribery provisions include the prohibition of payments to foreign officials to obtain or retain businesses. Accounting provisions requires issuers to make and keep accurate books and records and an adequate system of internal accounting controls. They also prohibit businesses from falsifying books or records. Unlike the UK Bribery Act, the FCPA does not cover corrupt dealings between private parties, but only private to public transactions. Nonetheless, it is notable that corruption between private individuals “can be caught” under other US laws.³

Although the FCPA does not align itself with a particular standard, the official 2012 Resource Guide to the FCPA provides ideas on the particular characteristics, or hallmarks, an “effective” compliance program needs to have to comply with the FCPA and mitigate any bribery risks in daily company practices. These are the key points in the company that will be investigated by the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) should a company be accused of flouting the FCPA. These hallmarks often overlap with international standards programs mentioned above and below, when addressing ISO37001. For instance, the Guide recommends that compliance programs involve a clear statement of commitment from senior management and the development of a clearly articulated policy against corruption, which are also encouraged when a company seeks certification by international standards. Other hallmarks include risk assessments, training of staff and disciplinary measures, amongst others.

This Act is important as it is a major determinant of whether US investors would choose Cambodia as a potential investment destination. US companies are careful not to engage in corrupt dealings due to the stringent nature of the Act. The 2015 American Chamber of Commerce survey stated that 82% of US businesses in Cambodia were “dissatisfied” with corruption, hinting at the high risks involved when US

firms do business in the Kingdom.⁴ Implementing a standard according to the FCPA Guide’s criteria will help minimise investment risk and improve Cambodia’s attractiveness as a potential site for the transfer of US skill and resources into the Kingdom.

ISO37001

ISO37001 is the first international standard for the implementation of an ABMS.⁵ It can apply to all organisations regardless of size and nature in varying sectors such as public, private and non-profit. Key aspects include the drafting of an anti-bribery policy, the appointment of staff to oversee anti-bribery compliance, personnel training, bribery risk assessments and due diligence, financial and commercial controls and reporting and investigation procedures. The ISO37001 is comprehensive and involves experts from over 28 participating countries, 16 observer countries and 7 liaison organizations.⁶ The ISO37001 however is not finalised and will only be published in 2016.

REGIONAL CASE STUDIES

Malaysia

Malaysia launched its Global Compact Network, the country’s local network, in 2008. The country currently has 50 signatories listed in its local network, with companies derived from sectors including electronics and electrical equipment, software and computer services, support services and general industries. The Network is also an independent legal entity under the Malaysian Registrar of Society’s Act.

FUJI XEROX MALAYSIA

Fuji Xerox is a Japanese-American multinational document processing firm with a subsidiary in Malaysia. The company joined Malaysia’s UNGC Local Network since its inception in 2008 and is the only Global Compact LEAD company in the network. Having joined the Compact, Fuji Xerox was and is able to use the Compact’s tools and resources to help revise its Code of Conduct in 2007 to align it with the Compact’s principles. It then is able to constantly review and update its ethics policies to ensure that they continually meet such international standards. Fuji Xerox sought to make aware this revised Code of Conduct with its staff by holding compliance training throughout the year to make them aware of the need to minimise risk when it comes to violating anti-corruption laws. These initiatives resulted in the company having no confirmed incident of corruption to date, as stated in its 2014 Sustainability Report.

⁴ “US investors put off by uncertainty and corruption,” <http://www.phnompenhpost.com/post-weekend/us-investors-put-uncertainty-and-corruption>.

⁵ “New business tool for anti-bribery,” <http://www.iso.org/iso/news.htm?refid=Ref1902>.

⁶ “ISO 37001 anti-bribery management systems standard,” http://www.iso.org/iso/iso_37001_anti-bribery_management_systems_standard_brochure.pdf.

³ “Differences between the UK Bribery Act and the US Foreign Corrupt Practices Act,” <http://www.nortonrosefulbright.com/knowledge/publications/52195/differences-between-the-uk-bribery-act-and-the-us-foreign-corrup-practices-act>.

Indonesia

Indonesia launched its Local Global Compact Network in April 2006 during the Asia-Pacific Business Forum. It currently has 117 signatories comprising multinational corporations (MNCs), national corporations, Small & Medium Enterprises (SMEs), universities and various civil society organisations (CSOs). Activities the Network engaged in include organising exclusive network conferences for signatories to maximise the benefits of participation in the Compact and various Corporate Social Responsibility (CSR) initiatives with other UN agencies such as UNESCO.

ASIA PULP & PAPER GROUP (APP)

Asia Pulp & Paper Group is an Indonesian pulp and paper company with ownership of paper mills including PT Indah Kiat Pulp & Paper Tbk and PT Pindo Deli Pulp & Paper Mills. These milling companies are all part of the Indonesian UNGC Local Network. APP signed onto the UNGC in 2008. According to APP's Statement of Continuous Support in its 2012 Communication on Progress, the Compact's principles continue to be the "foundation" for the company to assess itself as a "respected global pulp and paper manufacturer". APP then launched its APP Sustainability Roadmap Vision 2020 which was designed to incorporate UNGC Principles in the formation of the company's short and long term sustainability goals. APP was also able to partner with the UNGC and other parties on projects to improve quality of the company's local water resources, with the knowledge that the company depends heavily on local water sources. Such projects help to improve the treatment of important primary sources that fuel APP's main business operations.

Thailand

Although Thailand has no local network, there are a number of companies signed onto the UNGC, with one of them highlighted below. Notably there have been foreign companies such as California-based life science company Bio-Rad who have been indicted under the FCPA for bribing officials in Thailand, amongst other Southeast Asian companies in exchange for contracts. The penalty Bio-Rad had to pay in total summed US\$55 million.⁷

THAI UNION FROZEN PRODUCTS

Thai Union Frozen Products (TUF) is one of the largest seafood producers in the world with annual sales exceeding US\$2 billion. TUF joined the UNGC in 2013. According to TUF's Director of Sustainability Dr. Wit Soontaranun, TUF valued international best practices and adopted them when revising their workplace codes of conducts to "fulfill expectations of various stakeholders internally and externally across multiple locations". Furthermore, TUF's CEO Thiraphong Chansiri acknowledged the need to "promote transparency" in workplace conduct as it was an important factor in increasing value to their business especially in the eyes of shareholders. Living up to the 10 Principles showed

that TUF was committed to providing quality products and increased their attractiveness as a potential site for investment. TUF acknowledged that there needed to be a balance between business development and a focus on corporate social responsibility practices. It acknowledged that it manages to enjoy developing both.

CHALLENGES

Despite the extensive benefits that can be accrued when adopting these international standards, there are still challenges that companies may face in implementing these anti-corruption standards and systems.

Lack of Ability

Companies often fail to submit proper documentation such as the Communication on Progress (COP) follow-up required for continued UNGC membership. For instance, in the Philippines, the launch of the UNGC Local Network in 2002 met with 150 signatories. However, two-thirds of these companies were delisted due to their failure to submit their COP. Less than 60 were present in 2015. Companies, especially SMEs, may not have the proper economic resources to administer the relevant overhead and maintenance procedures following the installation of an Anti-Bribery Management System. Additionally, companies may find it too costly for them to implement policies for all 10 UN Global Compact Principles, as they are unable to choose which Principle to prioritise. In such a position, it would be useful for the company to choose other packages such as the BS 10500 that is more customisable to the size, needs and priorities of the Company.

Lack of Willingness

Benefits of installing an anti-bribery system that precedes certification of a particular standard are seen to favour bigger firms. This is the case especially for multinational corporations (MNCs) that have business operations in countries with inadequate regulations. In this regard, international standards certification benefits subsidiaries of such MNCs more than local companies. For instance, these firms often need to assure stakeholders that any operations in such a country are undertaken with integrity and continue to be socially responsible, non-exploitative and secure. This reassures the parent company and in turn, its shareholders. However, local companies may be less willing as they receive less pressure from shareholders. Rather, they instead receive pressure from other external factors, such as government officials, to commit corrupt acts. Nonetheless, it is important to note that local companies can also benefit from international standards certification if they plan to enter into business partnerships with MNCs and their subsidiaries. Local companies' exports would also be more value-competitive should companies with international standards certification produce these products.

Inadequate Integration

Firms that sign the UNGC may not adequately integrate these standards within their current CSR programme. Companies may not even have basic compliance measures in place to be audited. In this event, other anti-bribery management systems

⁷ "Bio-Rad pays \$55 million to settle FCPA offenses," <http://www.fcablog.com/blog/2014/11/3/bio-rad-pays-55-million-to-settle-fcpa-offenses.html>

such as BS10500 will help as they seek to evaluate any incumbent programmes before installation. Furthermore, integration needs to occur through increasing awareness among staff that an anti-bribery mechanism is in place. This awareness, via training and other workshops, for instance, will aim to educate them on the benefits of proper conduct at the workplace, what to do should employees be in a position or are pressured to engage in corrupt behaviour and how to minimize the overall risk of corrupt business practices.

WITHIN CAMBODIA

The level of participation in international anti-bribery standards such as the UNGC is relatively low in Cambodia. Cambodia lacks a UNGC Local Network, which implies there is room for one to be set up. There are only 2 Cambodian companies currently stated on the list of participants on the UNGC website, industrial transportation company **Teng Transportation Co Ltd** and fixed line telecommunications company **Ezecom**. The Cambodian subsidiary of transport and logistics company **RMA Group** has also pledged support to the Compact.

It is notable that in Cambodia, proper certification auditors may not be available, due to the current lack of demand for anti-bribery mechanisms. It can be costly to train trainers and consultants to implement new and rigorous standards and render them capable to install such mechanisms.

EZECOM

Ezecom is a private fixed line telecommunications SME with 180 employees based in Cambodia. In August 2014, it became the first company in Cambodia to sign on to the Compact. With this membership, Ezecom has pledged its commitment to implement the Compact's 10 Principles and to submit a COP each year to track its progress. The company also recruited a CSR manager for the task. As the first company to sign on, Ezecom prided itself on being a leader for CSR initiatives in Cambodia. It has turned this quality of the company into a brand for potential investors to recognise. The certification complements other international standards to Ezecom's name such as the ISO9001:2008, the management system provided by the International Organization for Standardization (ISO). With such international standards, Ezecom recognises the need to continuously improve its service offerings and delivery and check it against international benchmarks. This renders the company a global platform to pit itself against other competition from various countries the world over.

CONCLUSION

Despite the challenges that companies may face, adopting these international anti-bribery standards are not a rigid, but rather flexible process. Nonetheless, it is acknowledged that the implementation of international standards are at the present moment favouring subsidiaries of multinational companies in Cambodia as opposed to local SMEs. This is primarily due to the limited amount of resources hold to install such systems. Thus at the present moment, efforts can focus on training and raising awareness amongst local SMEs

concerning the option to install such standards throughout company structures. However in the long term, as Cambodia's private sector grows, companies may intend to integrate their practices further into global markets. Foreign companies from countries with stringent anti-bribery laws such as the US and the UK may also increasingly look to pursuing investment in Cambodia. International standards will be useful as a stepping stone to assure Cambodia's new global partners of the country's credibility, sustainability and growing success.