



ANALYSIS OF SOME INTERNATIONAL STANDARDS AND CROSS-BORDER NORMS OF ANTI-CORRUPTION COMPLIANCE CONTROL SYSTEM.

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ABSTRACT

This article reflects the international standards for anti-corruption compliance control. And it examines some cross-border norms that apply in this field. UN Convention against Corruption, ISO 37001:2016 Anti-Bribery Management Systems, ISO 19600:2014 Compliance Management Systems, Organization for Economic Co-operation and Development (OECD) 1997 Convention on Combating Bribery of Foreign Officials in International Business Transactions and recommendations. In particular, it analyzes the mandatory and recommended norms aimed at ensuring its legal activity. This article contains introduction, discussion and conclusion parts.

Introduction

This article examines international legal norms and standards of some foreign countries that have a cross-border nature. In particular, the UN Convention against Corruption, ISO 37001:2016 Anti-Bribery Management Systems, ISO 19600:2014 Compliance Management Systems, the 1997 Organization for Economic Cooperation and Development (OECD) "Combating Bribery of Foreign Officials in International Business Transactions" convention and recommendations. They are reviewed based on a legal-practical approach.

Discussion

The UN Convention against Corruption.

The adoption of the UN Convention against Corruption at the international level has become essential in the field of fighting corruption. Article 12 of this convention stipulates the general obligations of the member-states to take measures to prevent corruption in the

private sector and to determine responsibility for non-compliance with such measures¹. In addition, Article 12 of the UN Convention against Corruption contains provisions that define possible measures to prevent corruption. A number of the proposed measures are directly related to the development of the field of compliance control to fight against corruption in organizations. Such measures include, first of all, establishing the obligation of states to assist in the development of standards and procedures aimed at ensuring integrity in the activities of relevant private organizations, including a code of conduct to ensure fair, conscientious and ethical behavior.

This text does not require states at the legislative level to compel private companies to implement anti-corruption compliance controls, however, I do not think it would be necessary to introduce regulatory and regulatory frameworks that would help companies develop codes of conduct or codes of business ethics, as well as other necessary anti-corruption measures that refers to the adoption of internal documents. In addition, this convention obligates states to adopt rules aimed at preventing conflicts of interest. As a result, such standards will be included in the laws of countries, business codes of conduct, and anti-corruption policies of companies. Also, the convention provides for mandatory identification of legal and natural persons participating in the establishment and management of corporate organizations.

Currently, it is mandatory to identify the founders, managers, and beneficiaries during the registration of legal entities in the member states of the Convention. Companies include counterparty identification as a mandatory section in their anti-corruption policy. At the same time, this UN convention establishes the duty of states to impose restrictions on the professional activities of former officials. This rule is aimed at preventing possible abuses by former officials in employment and during the work process. In many cases, such individuals have a large amount of proprietary information, which, once transferred to a private business, can harm competitors, as well as public interests.

ISO 37001:2016 Anti-bribery management systems.

The International Organization for Standardization (ISO) developed the ISO 37001:2016 Anti-Bribery Management Standard in 2016. This standard provides guidance to organizations on how to prevent, detect and respond to bribery and corruption in all its forms. The standard applies to any organization regardless of size or sector operating in any country. Although this standard contains specific anti-bribery guidelines, it can be applied to prevent corruption in general.

The purpose of the ISO 37001:2016 standard is to provide a framework for organizations to assess their existing anti-bribery policies and procedures, as well as to develop and implement effective anti-bribery management systems. Organizations can certify their anti-bribery management system against this standard to demonstrate their commitment to combating bribery and corruption.

ISO 37001:2016 standart includes 11 key principles that organizations should follow when developing and managing an anti-bribery management system²:

- Adopting a written policy statement that reflects the organization's commitment to preventing, detecting and responding to bribery and corruption;

¹ https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

² <https://www.sist.org.cn/xwzx/tzgg/201804/P020190301519827489288.pdf>

- Establish a risk assessment process to identify potential risk areas and establish appropriate controls to eliminate these risks;
- Develop a bribery detection program that includes education, feedback and proactive monitoring;
- Creating a due diligence process for evaluating and monitoring third parties related to the organization, such as suppliers and business partners;
- Develop processes for employees and third parties to be aware of and comply with the organization's anti-bribery policy;
- Establishing the procedure for investigation of suspicious incidents related to bribery and corruption and consideration of detected violations;
- Taking appropriate disciplinary measures against those who violate the organization's anti-bribery policy;
- Providing guidance on resolving conflicts of interest, gifts and hospitality;
- Constantly monitoring and reviewing the effectiveness of the anti-bribery management system;
- Ensuring that a member of the top management is charged with the responsibility of overseeing the implementation and support of the anti-bribery management system;
- Provide adequate resources to support the anti-bribery management system.

ISO 37001:2016 provides organizations with a comprehensive approach to managing bribery and corruption risks and improving their compliance programs. Organizations can ensure they meet their legal obligations and protect their reputation by establishing anti-bribery policies, procedures and resources. Therefore, organizations should understand and comply with the requirements set forth in this standard.

ISO 19600:2014 Compliance management systems.

ISO 19600:2014 Compliance management systems³ is an international standard that provides guidance on the establishment, implementation, maintenance, review and improvement of a compliance control system. The standard was developed by the International Organization for Standardization (ISO) in cooperation with the international expert group on Compliance Management Systems. Its main purpose is to help organizations manage compliance-control risks related to legal and regulatory requirements, as well as ethical standards.

ISO 19600:2014 offers a framework to help an organization design, develop and implement a comprehensive compliance management system. The main purpose of this standard is to ensure that organizations comply with applicable laws and regulations, as well as ethical requirements. The standard is organized around four main processes: assessment, control, monitoring and improvement. Each of these processes is divided into four sub-processes with their own set of activities. The standard also includes a number of additional resources, such as guidance on documenting compliance management systems procedures and implementation plans, as well as a glossary of terms.

Compliance with applicable laws and regulations is critical for organizations operating in today's complex regulatory environment. Properly implemented and supported, ISO 19600:2014 helps organizations protect their reputation, reduce enforcement action, and reduce financial and operational risk. It also helps organizations demonstrate to stakeholders

³ <https://cdn.standards.iteh.ai/samples/62342/70f1bb105d814e8894e17f65a773e7f0/ISO-19600-2014.pdf>

that they are taking appropriate steps to ensure compliance with relevant laws and regulations. This standard can also foster a culture of compliance, which in turn can lead to improved business performance. Employees are more likely to follow standards and practices when they understand the importance of them and how they contribute to the success of the organization. It also helps organizations respond to changes in the external environment, such as new regulations or market changes.

In conclusion, ISO 19600:2014 is an invaluable resource for organizations seeking to establish and maintain compliance management systems. By systematically assessing, monitoring and improving compliance activities, organizations can ensure their compliance with applicable laws and regulations as well as standards of conduct. In addition, ISO 19600:2014 helps organizations develop a culture of compliance, which leads to improved business performance. Also, this system leads to improved efficiency and transparency, reduced risks, improved reputation, and cost savings.

Organization for Economic Co-operation and Development (OECD) Convention on Bribery of Foreign Officials in International Business Transactions 1997.

The Organization for Economic Co-operation and Development Convention "On Combating Bribery of Foreign Officials in International Business Transactions" adopted in 1997 had a significant impact on the development of the legislation of many countries.

This Convention is an interesting example of the interaction of international law and national legislation. The adoption of the Convention was greatly influenced by the active position of the USA. In the 1970s, there were a number of controversies involving bribery by American companies to government officials in various countries in order to promote their business. The Foreign Corrupt Practices Act was enacted in 1977 in response to scandals that seriously damaged American business and even the reputation of the United States as a nation. The new law prohibits U.S. companies from paying bribes to foreign government officials to establish or conduct business in foreign countries, or to obtain any improper advantage in doing business, and makes companies and individuals liable for such actions.

As a result, U.S. companies in countries with high levels of corruption are at a disadvantage compared to other foreign companies that can pay bribes to promote their business with impunity. In order to ensure that American companies have a level playing field in foreign markets, the US government initiated the development of the OECD convention prohibiting bribery of foreign government officials. The idea of the need to develop a convention was supported by other OECD member states.

Following the adoption of the 1997 OECD Convention on Bribery of Foreign Officials in International Business Transactions, the 1998 Foreign Corrupt Practices Act of 1998 was implemented in the United States to regulate foreign nationals and US-based organizations which is expanding amendments were made to actions⁴. In accordance with Article 1 of this Convention, States Parties shall prohibit any person, directly or through intermediaries, from knowingly offering, promising or giving any inappropriate property or other benefit to a foreign official in favor of such official or a third party, that official a person must take the necessary measures to recognize as a criminal act any other illegal advantages related to the

⁴ The International Anti-Bribery and Fair Competition Act of 1998, S. 2375: Pub L 105 - 366.

implementation of a commercial or international commercial transaction in the performance of his official duties⁵.

States have also committed to criminalizing responsibility for complicity in these crimes, including allowing the bribery of a foreign public official. According to the OECD's official commentary to the Convention, facilitation payments⁶ to civil servants for the performance of their normal functions within specified periods are not considered an offense under Article 1. The prosecution of such acts is left to the discretion of the states.

The Convention stipulates the obligation of states to determine the liability of legal entities for bribery of foreign officials, as well as the liability of individuals. The question whether companies should be held criminally, administratively or civilly liable is at the discretion of the states. The implementation of the provisions of the Convention on the responsibility of legal entities into the national legislation of the states led to the emergence and development of anti-corruption compliance-control in companies in order to prevent corruption-related crimes. The laws of a number of countries have developed norms that provide for the possibility of protecting a company from liability if there are appropriate anti-corruption policies and procedures in place.

In general, the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions 1997 has influenced the development of anti-corruption legislation of states, primarily in terms of establishing liability for corruption-related crimes and offenses, including those committed on the territory of foreign countries. In turn, establishing the liability of companies for bribing foreign officials has encouraged companies to adopt anti-corruption policies that take into account the possibility that the anti-corruption laws of different countries will apply to companies.

Recommendations of the Organization for Economic Cooperation and Development on the development of anti-corruption compliance control.

The OECD has published a series of guidelines and recommendations to help governments and companies develop and implement codes of conduct and anti-corruption policies. The most important documents of the OECD include: Council Recommendation on Bribery and Officially Supported Export Credits 2006⁷, OECD Principles for Integrity in Public Procurement 2008⁸, Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions 2009⁹, Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions 2009¹⁰, Good Practice Guidance on Internal Controls, Ethics and Compliance 2010, OECD Guidelines for Multinational Enterprises 2011¹¹. These guidelines and recommendations can be classified as "soft law".

Recommendations for further combating bribery of foreign officials in international business transactions suggest that countries develop incentives for companies to develop

⁵ https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

⁶ Commentaries on the Convention on Combating Bribery of Foreign Public Officials In International Business Transactions. URL: www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

⁷ [https://one.oecd.org/document/TAD/ECG\(2019\)2/En/pdf](https://one.oecd.org/document/TAD/ECG(2019)2/En/pdf)

⁸ <https://www.oecd.org/gov/ethics/48994520.pdf>

⁹ <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>

¹⁰ <https://legalinstruments.oecd.org/public/doc/202/202.en.pdf>

¹¹ <http://mneguidelines.oecd.org/text/MNEGuidelinesRussian.pdf>

programs and measures to take compliance-control, ethics and other necessary measures against bribery, bribery and solicitation. The Good Practice Guide to Internal Control, Ethics and Compliance summarizes companies' best practices. Best practices include: involvement of top management in preventing bribery; clearly defined state position of the company on the non-acceptance of bribery of foreign officials; establishing an obligation to comply with anti-corruption standards at all levels of the company; control of compliance with ethics rules and compliance programs, including the right of responsible employees to notify the audit committee of the board of directors of detected violations; implement an ethics and compliance program in all subsidiaries and companies that the company effectively controls; application of anti-corruption policy rules in relations with third parties, including intermediaries and contractual partners. They can help disseminate information about new anti-corruption laws, international and regional initiatives, and advise companies on implementing anti-corruption procedures and training employees.

Conclusion

The above-mentioned international documents caused the emergence and development of anti-corruption compliance control. The OECD convention gave a great impetus to the creation of this industry. These conventions and recommendations played a key role in the creation of structures such as internal control (compliance control) in organizations and state bodies. In this regard, it is necessary to highlight the criminal liability of companies. ISO standards are the "blood" or "heart" of this field. ISO 37001:2016 Anti-bribery management systems and ISO 19600:2014 Compliance management systems expressed the systematic implementation of compliance control and its importance. Also, these reflected the working mechanisms and main directions of this system. In addition, it has long been used as a guide against corruption.

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