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Collective action to tackle corruption

An important factor for success in anti-corruption collective action is that it should be a business-driven endeavour.

That being said, the essential role of civil society must be recognised for its contributions towards successful multi-stakeholder approaches to fight corruption. This support can manifest itself in a number of different ways: assisting a company in initial steps towards finding opportunities for collective action; maintaining an established initiative's momentum; or fostering positive interactions between business, the public sector and wider society. This article looks at these and other ways in which civil society can play an integral part in helping businesses meet their anti-corruption goals.

Collective action

Anti-corruption collective action involves a coordinated and sustained effort from business and other stakeholders to jointly tackle shared corruption challenges, particularly systemic corruption where it is difficult for one company to engender long-term change on its own. The concept is centred on the notion that, by working together, companies can achieve greater results in anti-corruption and more effectively promote positive change in the business environment than could be otherwise accomplished when acting alone.

In recent years, collective action has increasingly been recognised and practiced by companies seeking to move beyond their internal systems and towards a broader approach through aligning with competitors and other private sector actors. It provides an effective method for companies to highlight best practices in anti-corruption compliance, promoting a form of 'race-to-the-top' and removing the notion of compliance being a

Building a strong coalition with civil society puts business on the front foot

brake to business activity or reduced to a tick-the-box exercise. Engaging with civil society in this process can be decisive from the very beginning.

Civil society inspiration and facilitation

Civil society can provide a practical safeguard against allegations of anti-trust when industry competitors gather together, as well as being the inspiration and support for companies considering anti-corruption collective action. One of the earliest examples of this – and of collective action in general – is the Wolfsberg Group.¹ The Wolfsberg Group originally focussed on the risks of laundering the proceeds of corruption and brought together the largest private banks in the world at that time.

Today, the group comprises 13 banks and the subjects have

expanded to many aspects of financial crime. The banks that came to form the group were accompanied from the outset by Transparency International and Mark Pieth, professor at the University of Basel and president of the board of the Basel Institute on Governance; the latter organisation is still a regular attendee at Wolfsberg meetings.

The Wolfsberg Group initially focussed on bringing US and European banks towards common anti-money laundering (AML) standards. With the help of the facilitators' networks, their advocacy work and knowledge of the topic, the group established meetings between US and European banks, thus taking these efforts in an international direction. The novelty of such an initiative and sensitive nature of the topic under discussion elicited hesitancy from the participants. The skills of the facilitators from civil society however were essential in promoting mutual trust

TEAMWORK
A strong coalition can coordinate efforts against corruption



among the private bankers involved, allowing the conversation to continue and eventually leading to a broadened geographical footprint of the group, the drafting in 2000 of a common document on due diligence and know-your-customer (KYC) rules for private clients and the permanent establishment of the Wolfsberg Group. Civil society participation as a neutral facilitator was a key partner in this endeavour by bringing together the group, providing expertise and guidance and keeping the topic of anti-corruption alive whilst the group also focussed on other pressing matters that arose in the wake of 9/11. Since its inception the Wolfsberg Group has produced best practice papers on a number of topics, with the facilitators from civil society continuing to provide input and advice, in particular in relation to anti-corruption.

A more recent example of civil society and the private sector working together is the Maritime Anti-Corruption Network (MACN) collective action, which aims to promote a shipping industry free of corruption.² This business-driven initiative was led by Maersk in 2011, with advice and inspiration provided by civil society Transparency International, as well as inter-governmental organisations, such as the United Nations Development Programme (UNDP). From an official launch in 2012 with eight companies, the MACN rapidly formalised its operations and currently comprises more than 70 members of the shipping industry, supporting its members to improve their compliance

programmes, sharing best practices and developing tools, reporting systems and studies to further improve the business environment. From its launch through to the present, MACN has been supported by civil society representative BSR, a global non-profit business network that has acted as the secretariat and thus contributing to the formalisation process of the initiative.

The benefits of active civil society participation in collective action are not limited to the initiation stage. Civil society can also support existing initiatives. This is illustrated by the International Centre for Collective Action (ICCA) at the Basel Institute on Governance teaming up with the International Forum on Business Ethical Conduct for the Aerospace and Defence Industry, or IFBEC, to address offset arrangements.³ IFBEC is an initiative composed of more than 30 US and European

companies from the aerospace and defence industry, which, through its global principles, has sought to promote industry-wide ethical standards. In 2014, IFBEC sought to explore further topics in which the organisation could offer guidance and advocacy to its membership and external stakeholders, inviting the ICCA to lead and take part in a brainstorming session with members of one of IFBEC's governance committees. From this meeting IFBEC decided it would explore the mitigation of bribery risks in defence-related offset arrangements, a practice many within and outside of the industry consider as having heightened bribery risks.

The ICCA chaired and facilitated discussions among a small group of experts from IFBEC member companies, whereby offset activities and related bribery risks and best practices in compliance were examined. The group also looked at opportunities for promoting transparency and reducing corruption risks and the perception thereof in offset transactions, using a survey of its membership in offset-related compliance practices to adduce the basis for the discussions. The ICCA worked with the IFBEC experts to produce a report in 2015, setting out recommendations on areas where IFBEC as a whole and its members individually can raise standards across their industry. This form of cooperation between an industry initiative and civil society demonstrates how even a temporary partnership can assist an existing initiative in achieving positive outcomes in its anti-corruption efforts. This echoes civil society contributions in the establishment of collective action initiatives, by contributing to internal trust-building processes among initiative members. Civil society support, however, is also relevant in the context of building trust with external stakeholders, specifically the wider public and government.

Widening the circle of stakeholders

By involving civil society in a collective action initiative, businesses offer greater assurance to the general public as to the credibility of their unilateral declarations, helping to reduce public scepticism. This can often be an issue in self-regulatory activities, whereby doubts arise as to the authenticity of practitioners' motives. Voluntary commitments that are dependent completely on self-enforcement mechanisms and devoid of civil society participation are particularly susceptible to such concerns. The inclusion of civil society thus helps to assuage these concerns. More robust forms of civil society participation however can go even further, providing certification of participants' anti-corruption compliance programmes, monitoring to ensure that commitments are upheld and even sanctioning mechanisms for instances of a breach of the agreement. One form of collective action initiative that incorporates these elements to a significant degree is the integrity pact (IP).

IPs were pioneered by Transparency International in the 1990s and consist of agreements between a government or government agencies and a company, or group of companies, frequently in the context of public procurement processes. Under the agreement, parties commit to refrain from bribing in any form and from colluding with competitors, with procurement contracting authorities from the public sector similarly required to sign on to such commitments. »

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» One role of civil society in these arrangements, be it a local Transparency International chapter, another NGO or a consortium of civil society experts, is to serve as an external monitor to oversee the procurement process. The monitor seeks to ensure that commitments made by the signatory parties are upheld, and when necessary, advising for or levying sanctions in instances of a breach of the agreement. This level of civil society involvement, particularly when undertaken in an engaged and proactive manner, is a critical component to ensure that incompliant behaviour among competitors is minimised, reducing the chance of an incidence of corruption and thus engendering greater confidence from external stakeholders.

An added benefit of civil society involvement that is evidenced by the IP is the ability of civil society to foster cooperative linkages between business and government, promoting broader multi-stakeholder coalitions against corruption. Government and public sector involvement is often essential to successful joint anti-corruption approaches yet this can also prove challenging. Mistrust between the private and the public sector is one element that can stymie effective cooperation. In addition, a purely private sector-driven entreaty to engage with government may be dismissed as a lobbying exercise. Effective civil society participation can help to bridge this gap between the public and private sector, working to build trust and elicit effective solutions. One example developed by the Basel Institute, together with the OECD, is the High Level Reporting Mechanism (HLRM), an initiative which aims to tackle the 'demand' side of bribery.⁴

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The HLRM is a tool that acts an in-country process for the receiving, assessment and resolution of complaints from the private sector when faced with situations of bribery or extortion. Complementing but not replacing official legal procedures, the HLRM provides a quick and non-bureaucratic approach towards resolving disputes or concerns, with a flexibility that allows it to be shaped within different country contexts. Current versions of the HLRM are in operation in Colombia, focussing on infrastructure procurement, and Ukraine, focussing on unfair treatment of business overall. Panama will launch a pilot HLRM in mid-2016. While the institutional frameworks and areas of focus for both HLRMs vary, they share in part their initiation as the result of frequent, sustained discussions between the public, private and civil society sectors, ensuring that business concerns were met in the final versions of the mechanism developed in the respective countries.

The neutral facilitator can also play an essential part in eliminating anti-trust and anti-competition concerns; whilst anti-trust laws do not prohibit competitors' discussion of compliance best practice, some are nervous about meeting their peers unless the environment is carefully controlled.

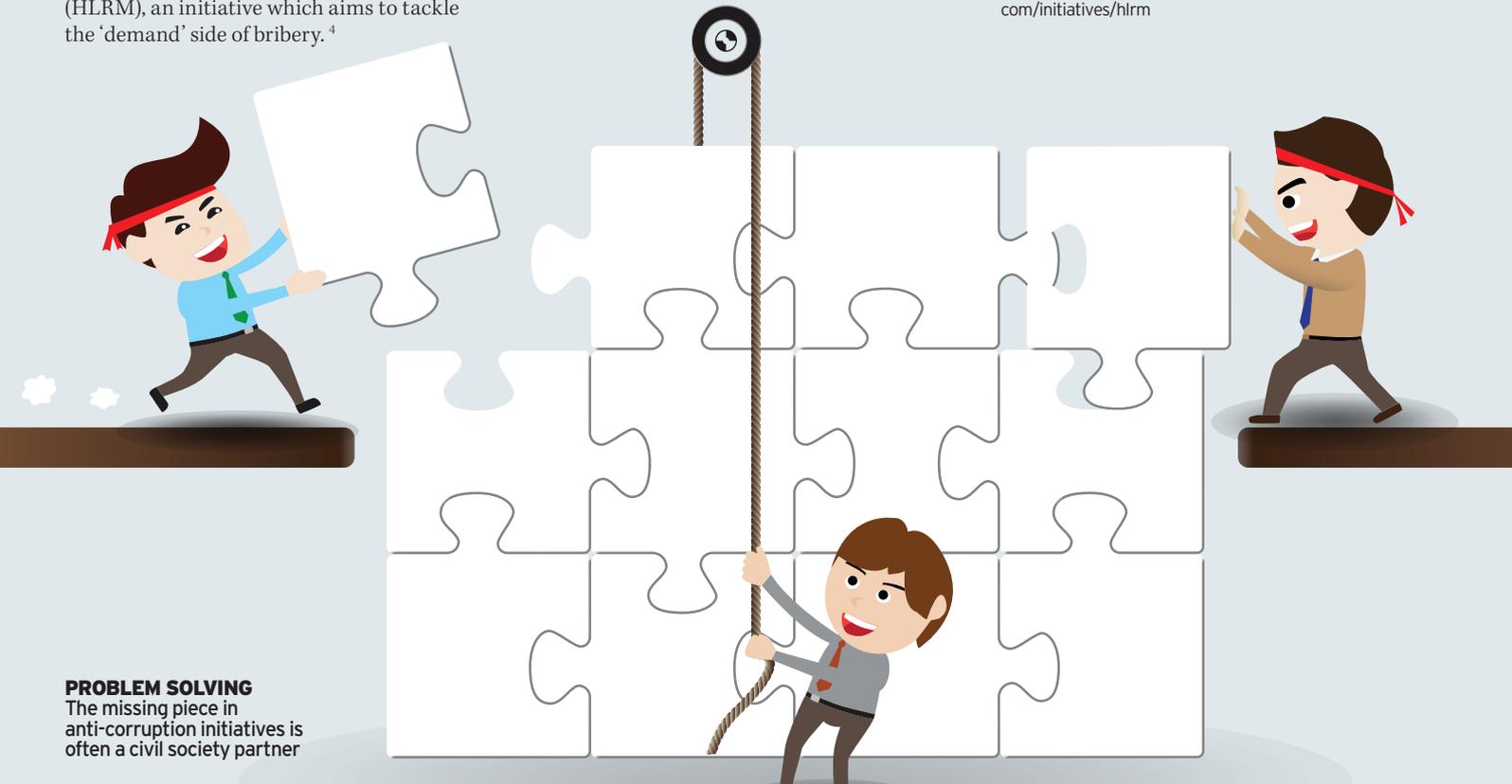
Civil society facilitators can reinforce this by ensuring that discussions among members party to a collective remain focussed on anti-corruption and compliance. If there is any doubt that companies in the same sector should take positive steps to address corruption risks through collective action they need look no further than the UK's Ministry of Justice Guidance on what a company can do to show under the UK Bribery Act that it has 'adequate procedures' against bribery: 'Principle 2: Top Level Commitment,' lists involvement by companies in the same sector in a collective action against bribery as evidence of this commitment.

As collective action gains further momentum, more and more organisations, including the Basel Institute on Governance's ICCA, remain prepared to support business in crafting practical multi-stakeholder solutions. Finding credible partners in civil society should thus be a top agenda item for companies considering collective action strategies against corruption. ©

¹<http://wolfsberg-principles.com> ²<http://www.maritime-acn.org/#home> ³<http://ifbec.info> ⁴<http://collective-action.com/initiatives/hlrm>

Conclusions

Civil society participation in business-driven anti-corruption collective action is essential to allay internal and external trust issues in a collective action initiative, enabling a neutral third party to convene the meetings, act as secretariat and expert to guide the discussions and to keep the members focussed on a positive outcome.



PROBLEM SOLVING
The missing piece in anti-corruption initiatives is often a civil society partner