

## **Anti-Bribery Compliance Incentives: Scope of Applicability**

**Dr. Dr. Fabian Teichmann**

*Attorney-at-Law and Public Notary  
Teichmann International (Schweiz) AG*

### **Abstract**

Incentives could help to eliminate bribery in multinational corporations. In particular, bonus and malus payments could incentivize employees to comply with anti-bribery rules. However, it has not been investigated yet what the scope of applicability of such incentives could be. This article is based upon a qualitative content analysis of ten semi-structured expert interviews and discusses under which circumstances employees should be rewarded for following rules and blowing the whistle.

**Keywords:** Bribery, Corruption, Compliance, Incentives.

### **Anti-Bribery Compliance Incentives: Scope of Applicability**

As it has been argued that anti-bribery incentive systems could, under certain circumstances, be a valuable tool in the fight against corruption in multinational corporations, it has to be assessed in which situations their use was particularly recommended. In order to address this rather difficult question, an explorative approach had to be chosen. Hence, 10 semi-structured expert interviews were conducted and analyzed based upon a qualitative content analysis. The results were then compared and contrasted with the existing literature.

#### **Environmental Factors**

The interviewees came up with five major categories, suggesting that, in situations characterized by a corrupt environment, a weak implementation of formal rules, a lack of control, bad culture, or a lack of sanctions, anti-bribery incentives could be particularly useful. This approach is in line with the literature review, which referred to institutional inefficiency, weak private property rights, capital intensive natural resources, centralization, reputation, history and levels of political competition as determining factors for high levels of corruptions (Mo, 2001: 76; Rothstein & Uslaner, 2005: 71; Acemoglu & Verdier, 1998: 1382; Leite & Weidmann, 1999: 30; Fisman & Gatti, 2002: 339; Tirole, 1996: 18; Gupta, 1995: 393; Montinola & Jackman, 2002: 167). The idea that anti-bribery incentives could be particularly useful in countries in which bribery is a major problem and anti-bribery compliance is still in its early stages is reasonably intuitive. In particular, it has been emphasized that, if there exists a historical acceptance of paying bribes, anti-bribery incentives should prove useful. This is very much in line with the existing literature on corruption, which suggests that historical factors play an important role in determining the levels of bribery in certain countries. History and the associated levels of corruption are often shaped by capital-intensive resources, centralization and political structures, and reputation levels of political corruption (Leite & Weidmann, 1999: 30; Fisman & Gatti, 2002: 339;

Tirole, 1996: 18; Gupta, 1995: 393; Montinola & Jackman, 2002: 167). Hence, in countries that have history of low levels of bribery, anti-bribery incentives are presumably less necessary than in countries with historically high levels of bribery.

It has been mentioned that, if other companies pay bribes or if there is a significant pressure of gaining sales, employees could be more likely to engage in bribery in order to avoid losing out on attractive deals. This idea seems to be particularly pertinent if employees are rewarded with incentives for their sales. As has been pointed out in the literature review, under the “stretch goals with bonuses for success” scheme and similar methods, employees are assigned goals that are extraordinarily challenging and ambitious. If the employees manage to fulfill their assigned goals, they commonly are rewarded with an enormous bonus. However, if they fail to reach their assigned benchmarks, they do not receive any goals (Locke, 2004: 130). In such an environment, it would not be surprising if employees agreed to pay bribes if everyone else does so. After all, they risk losing business if they do not bribe anyone. Given their incorrectly set incentive schemes, losing business would result in a significant financial loss for them. This issue could be compensated for through the use of anti-bribery incentives. If their financial loss were mitigated by a bonus for compliance, they might be less tempted to bribe anyone. After all, paying bribes also constitutes significant risks for them. Hence, they would presumably have a higher expected utility if they simply complied with the rules and received a bonus for anti-bribery compliance.

It has also been highlighted that cultural differences can lead to different levels of bribery and hence require anti-bribery incentives. In this context, it should be remembered that, due to cultural differences, corruption is often defined differently in various parts of the world. For example, the Chinese *guanxi* is often not considered bribery in China, but would be illegal under German or Swiss law (Räber & Vogt, 2013: 9; Steidlmeier, 1999: 121; Lui, 1996: 28). Hence, it is anticipated that differing social norms may be taken into account when assessing corrupt environments and the potential use of anti-bribery systems (Hauk & Sáez Martí, 2002: 313 f.). Generally speaking, however, most multinational corporations are forced by law to utilize certain definitions of bribery. In such situations, anti-bribery incentives could help to emphasize the importance of anti-bribery policies, and thereby allow employees from a different cultural background to understand that corruption is not encouraged or tolerated by their company. Although it might be argued that strong formal rules and a clear code of conduct should be sufficient in ensuring that employees comprehend that bribery is not desired, past instances have shown that many still believed that they were doing their companies a favor when bribing someone. However, if their employers pay them for not bribing anyone, it should be obvious to anyone that bribery is not desired. After all, there assuredly is no reason that someone would be paid for undesired behavior.

Also, it has been suggested that poverty and low salaries might prompt employees to pay bribes. However, as noted, corruption affects both developed and developing countries. In fact, it is a phenomenon that can be found at different stages of economic development and under various economic and political systems (Misangyi et al., 2008: 767; Ehrlich & Lui, 1999: 270). Hence, it may be concluded that, while poverty and low salaries could be factors that call for increased anti-bribery incentives, such

incentives could also be required under different circumstances.

It has also been observed that a weak implementation of formal rules could create situations in which anti-bribery incentives would be particularly useful. For instance, it was suggested that, in the case of a weak implementation of formal rules, employees could misunderstand their company's approach towards anti-bribery compliance. Some employees might believe that they are doing their companies a favor by gaining business through bribery. Multinational corporations are institutions that are shaped by outside standards, such as the values and norms of society, while employees who are members of these institutions commonly try to conform to those external rules. Hence, it is of particular importance that multinational corporations ensure, through suitable implementations of formal rules, that an "anything goes" culture is not going to be tolerated under any circumstances (Meyer & Rowan, 1977: 343; Eisenhardt, 1988: 491; Kulik, 2005: 349). As also noted, anti-bribery incentives could play an important role in this context. Specifically, they could support employees in the process of understanding that the company's formal rules are more important than external norms.

Alternatively, one might also take a stewardship approach toward this issue. Stewardship theory argues that employees' objectives are aligned with those of their principals. In this particular context, it could be contended that employees are indeed stewards rather than agents and hence wish to do their companies a favor by paying bribes. However, this problem only occurs if employees do not believe that their principals want to combat bribery. In such a context, anti-bribery incentives could help principals to communicate to their employees that eliminating bribery is a goal that should not be compromised under any circumstances.

Another problem that was identified during the interviews is that many employees perceive corruption as a victimless crime. They seemingly fail to see the big picture and argue that both the selling and the buying party benefit from bribes. As was identified in the literature review, corruption negatively affects a country's efficiency, justice, and legitimation of state activities by benefiting a select few at the expense of the larger community (Rose-Ackerman, 1997: 32; Uslaner, 2004: 26). In addition, corruption takes resources from public goods and leads to inefficient uses, unfair redistribution of income and wealth, and to secessionist structures (Levin & Satarov, 2000: 114 f.; Argandoña, 2007: 482; Collier, 2002: 6). Furthermore, high levels of corruption discourage legitimate private business investments and inward foreign direct investment by facilitating arbitrary actions and a lack of transparency (Mauro, 1995: 683; Rose-Ackerman, 1999: 3; Wei & Shleifer, 2000: 306; Wei, 2000: 8; Wei, 1997: 1). In the existing literature on corruption, there is overwhelming agreement on the idea that bribery is in fact not a victimless crime. Hence, it seems that a communication problem has been identified.

While it has been submitted that bribery might have a few positive effects in the context of the efficiency of public servants, willingness for compromise among politicians, and in policy making, and its negative impact on growth is not necessarily verifiable in firm-level analysis, the impact of corruption is reported to be overwhelmingly negative (Bayley, 1966: 729; Scott, 1969: 1142; Ades & Di Tella, 1997: 500; Mo, 2001: 66 f.; Fisman & Svensson, 2007: 64 f.). Therefore, it can be concluded that occasionally

employees suffer from a misperception when they consider bribery to be a victimless crime. In such cases, it is important to illustrate to them that bribery is in fact harmful. If multinational corporations showed a willingness to pay for anti-bribery compliance, it would emphasize their determination to combat this phenomenon. In addition, employees could be rewarded for tasks that help them to understand the negative consequences of corruption. For example, they could be paid a bonus for attending training sessions that emphasize the potential threats corruption poses to both corporations and entire nations. Alternatively, they could have to face a malus if they did not attend such training programs. These steps should help to increase employees' awareness of the negative consequences of corruption, and hence foster their willingness to contribute their fair share to the elimination of the problem.

#### First Order Incentives

It was mentioned during the interviews that anti-bribery incentives could be particularly valuable under circumstances that are characterized by a lack of control, and, correspondingly, it can be very difficult for multinational corporations to know whether a bribe has been paid by an employee. In this context, a bonus for whistleblowing could therefore be particularly valuable. After all, agency theory generally considers information to be a purchasable good (Eisenhardt, 1989: 59), and, using this anti-bribery incentive, multinational corporations would be purchasing private information from their agents.

In addition, anti-bribery incentives could also help to compensate for a lack of control due to an absence of supervisors or direct reports. While it might be argued that, instead of purchasing information from employees through a whistleblowing bonus, one could simply establish additional control mechanisms, it should also be kept in mind that one cannot control everything. From a practical perspective, it is simply not feasible to introduce direct reports and supervisors for every single task. If it were possible to fully control employees, agency theory would be obsolete and could be dismissed. Moreover, controlling employees all day long would simply be too expensive. Equally, though, one needs to maintain suitable control mechanisms in order to protect multinational corporations from liability causes and other legal consequences. Hence, selectively purchasing information and maintaining adequate control mechanisms together should offer a suitable solution for many agency problems in multinational corporations.

Agency theory posits that agents are more likely to act in their principal's interests if the principal can verify their agents' behavior (Eisenhardt, 1989: 60). Accordingly, it is reasonable to assume that whistleblowing incentives would be a useful tool with which to foster compliant behavior among employees. They would not only help to reduce information asymmetry and thereby identify non-compliant employees who engage in bribery, but could also raise the standard of behavior among all employees. In addition, it was suggested during the interviews that a bad culture could bring about corruption and hence require anti-bribery incentives to counter it in multinational corporations. In particular, it was observed that some employees simply cross the line between legality and illegality. That is, while some employees might not be aware of the illegal nature of their actions, others deliberately commit major crimes. In this context, too, anti-bribery incentives seem to be particularly valuable tools,

and specifically in terms of mitigating a bad culture, they could reduce information asymmetries through whistleblowing bonuses. In addition, employees who help to contribute to a more compliant culture could be rewarded with a bonus. Ultimately, employees who have a negative impact on a company's culture could be sanctioned with a malus.

Lastly, it was advanced during the interviews that anti-bribery incentives could be employed in environments that are characterized by a lack of sanctions. If corporations are not strictly regulated and do not have some form of sanctioning scheme in place, corruption tends to flourish. In such circumstances, an anti-bribery malus might be particularly useful—that is, a bonus could be reduced or cancelled. Bonus banks are commonly considered to be reparative instruments in such circumstances, but it needs to be kept in mind that they only work if the agents have accumulated a positive balance during the initial time periods (Murphy & Jensen, 2011: 14). In any case, canceling a current bonus would always be an option.

Note that other sanctions, such as the termination of employment or the initiation of civil or criminal proceedings against employees who paid bribes, cannot be replaced by such a malus. Strict sanctions are important and can take many forms, and, while anti-bribery incentives are certainly one possible option, they should be combined with other tools in order to be most effective.

#### Second Order Incentives

It was suggested during the interviews that second-order incentives could also be valuable in certain situations, all of which seem to have in common the issue that barriers to whistleblowing have to be overcome. Employees seem to abstain from whistleblowing when they fear retaliation or a lack of confidentiality, and cultural differences may play a part too. However, retaliation does appear to be the biggest obstacle to whistleblowing in multinational corporations (Miceli & Near, 1989: 93 f.). Employees often suffer from past experiences. In particular, they seem to be concerned that corporations would rather protect high-profile managers than a whistleblower. They also fear that blowing the whistle could damage their relationships with friends and colleagues. Hence, whistleblowing often requires courage.

It is not surprising that many employees abstain from blowing the whistle, if they risk facing negative consequences yet they do not receive a reward and are not compensated for taking the risk of blowing the whistle. Indeed, one might ask why employees should blow the whistle. After all, they only stand to lose. Commonly, it is suggested that employees who blow the whistle are intrinsically motivated. They often believe in eliminating corruption. Others presumably want to get rid of certain co-workers and hence report their illicit behavior. However, it is not unreasonable to assume that the majority of employees would not necessarily compromise their own future in order to eliminate corruption or get rid of a co-worker. Hence, one needs to think about creating the right incentives for these employees.

It is often claimed that retaliation can be avoided through the implementation of legal protections (Miceli & Near, 1989: 91 f.), and, during the interviews, it was suggested that retaliation often occurs due to a lack of legal protections. This is not surprising, for two reasons. Firstly, multinational corporations frequently operate in countries that do not have legal protections for whistleblowers. Secondly, the burden of

proving the causal relationship between retaliatory measures, such as a termination of employment or a lack of promotions, and the whistleblower's report is usually on the employee. However, proving such a relationship is often very difficult or even impossible.

It is evident, therefore, that a whistleblowing bonus could help to overcome these barriers by creating an incentive for employees to take the risk of having to face retaliation. If it is not possible to completely eliminate retaliation, reasonable employees presumably want to be compensated for potentially having to face difficult situations. This is particularly true if they are not intrinsically motivated to blow the whistle.

Another major obstacle to whistleblowing that could be compensated through second-order incentives is a lack of confidentiality. While this is certainly related to the fear of retaliation, it was mentioned as a separate topic by several of the interviewed experts. In particular, it was suggested that whistleblowers could be concerned that their information was not going to be treated confidentially, sometimes due to a lack of legal protections in certain jurisdictions, and, in other cases, because it is simply impossible to achieve confidentiality. For example, if only two employees were involved in a certain transaction and one of them blows the whistle, the other one is most likely able to discover who reported him or her.

A lack of confidentiality can be feared by employees for multiple reasons. While some concerns are linked to retaliation, others could simply be connected to reputational factors. In these cases, it seems reasonable that employees somehow want to be compensated for their loss. If they now have a reputation for turning other people in, they presumably want a bonus in exchange. Again, some employees are intrinsically motivated and happy to blow the whistle without receiving anything in exchange. However, others apparently lack this intrinsic motivation.

Finally yet importantly, cultural differences should be taken into account when discussing barriers to whistleblowing that could be overcome through second-order incentives. In some countries, such as China, whistleblowing is not part of the culture and people believe that it is important to respect higher-level managers. Hence, employees might hesitate to report acts of bribery. In these cases, second-order incentives could help to communicate that the company does not tolerate acts of bribery under any circumstances and wants its employees to report illicit behavior. Such a statement is credible if a company demonstrates its willingness to financially reward valid reports by paying whistleblowers a significant bonus.

It also needs to be kept in mind, though, that whistleblowing is a delicate topic and multiple aspects need to be taken into consideration. Simply introducing a bonus for whistleblowing is not going to solve all problems described in the previous paragraphs. However, it can be stated that, whenever barriers to whistleblowing exist, anti-bribery incentives could partially help to solve these issues in a way that benefits all parties (Teichmann, 2017: 1 f.).

## Bibliography

Acemoglu, D., & Verdier, T. (1998). Property rights, corruption and the allocation of talent: A

- general equilibrium approach. *The Economic Journal*, 108(450), 1381–1403.
- Ades, A., & Di Tella, R. (1997). The new economics of corruption: A survey and some new results. *Political Studies*, 45(3), 496–515.
- Argandoña, A. (2007). The United Nations convention against corruption and its impact on international companies. *Journal of Business Ethics*, 74(4), 481–496.
- Bayley, D. H. (1966). The effects of corruption in a developing nation. *The Western Political Quarterly*, 19(4), 719–732.
- Collier, M. W. (2002). Explaining corruption: An institutional choice approach. *Crime, Law and Social Change*, 38(1), 1–32.
- Ehrlich, I., & Lui, F. T. (1999). Bureaucratic corruption and endogenous economic growth. *Journal of Political Economy*, 107(S6), 270–293.
- Eisenhardt, K. M. (1988). Agency- and institutional-theory explanations: The case of retail sales compensation. *Academy of Management Journal*, 31(3), 488–511.
- Eisenhardt, K. M. (1989). Agency theory: An assessment and review. *Academy of Management Review*, 14(1), 57–74.
- Fisman, R., & Svensson, J. (2007). Are corruption and taxation really harmful to growth? Firm level evidence. *Journal of Development Economics*, 83(1), 63–75.
- Fisman, R., & Gatti, R. (2002). Decentralization and corruption: Evidence across countries. *Journal of Public Economics*, 83(3), 325–345.
- Gupta, A. (1995). Blurred boundaries: The discourse of corruption, the culture of politics, and the imagined state. *American Ethnologist*, 22(2), 375–402.
- Hauk, E., & Sáez Martí, M. (2002). On the cultural transmission of corruption. *Journal of Economic Theory*, 107(2), 311–335.
- Kulik, B. W. (2005). Agency theory, reasoning and culture at Enron: In search of a solution. *Journal of Business Ethics*, 59(4), 347–360.
- Leite, C. A., & Weidmann, J. (1999). *Does mother nature corrupt? Natural resources, corruption, and economic growth* (IMF working paper, WP/99/85). Washington, D.C.: International Monetary Fund.
- Levin, M., & Satarov, G. (2000). Corruption and institutions in Russia. *European Journal of Political Economy*, 16(1), 113–132.
- Locke, E. A. (2004). Linking goals to monetary incentives. *The Academy of Management Executive*, 18(4), 130–133.
- Mauro, P. (1995). Corruption and growth. *The Quarterly Journal of Economics*, 681–712.
- Meyer, J. W., & Rowan, B. (1977). Institutionalized organizations: Formal structure as myth and ceremony. *American journal of sociology*, 340–363.
- Miceli, M. P., & Near, J. P. (1984). The relationships among beliefs, organizational position, and whistle-blowing status: A discriminant analysis. *Academy of Management Journal*, 27(4), 687–705.
- Misangyi, V. F., Weaver, G. R., & Elms, H. (2008). Ending corruption: The interplay among institutional logics, resources, and institutional entrepreneurs. *Academy of Management Review*, 33(3), 750–770.
- Mo, P. H. (2001). Corruption and economic growth. *Journal of Comparative Economics*, 29(1), 66–79.
- Montinola, G. R., & Jackman, R. W. (2002). Sources of corruption: A cross-country study. *British Journal of Political Science*, 32(1), 147–170.
- Murphy, K. J., & Jensen, M. C. (2011). *CEO bonus plans: And how to fix them* (HBS working papers, 12–022). Boston, MA: Harvard Business School.
- Rose-Ackerman, S. (1999). *Corruption and government: Causes, consequences, and reform*. Cambridge, England: Cambridge University Press.
- Rose-Ackerman, S. (1997). The political economy of corruption. In K. A. Elliott (Ed.), *Corruption*

- and the global economy (pp. 31–60). Washington, D.C.: Institute for International Economics.
- Rothstein, B., & Uslaner, E. M. (2005). All for all: Equality, corruption, and social trust. *World Politics*, 58(1), 41–72.
- Scott, J. C. (1969). Corruption, machine politics, and political change. *American Political Science Review*, 63(4), 1142–1158.
- Steidlmeier, P. (1999). Gift giving, bribery and corruption: Ethical management of business relationships in China. *Journal of Business Ethics*, 20(2), 121–132.
- Teichmann, F. (2017). *Anti-Bribery Compliance Incentives*. Kassel: Kassel University Press.
- Uslaner, E. M. (2004). Trust and corruption. In J. G. Lambsdorff, M. Taube, & M. Schramm (Eds.), *The new institutional economics of corruption* (pp. 76-181). New York, NY: Routledge.
- Wei, S. J. (1997). *Why is corruption so much more taxing than tax? Arbitrariness kills* (Working paper series no. 6255). Cambridge, MA: National Bureau of Economic Research.
- Wei, S. J. (2000). How taxing is corruption on international investors? *Review of Economics and Statistics*, 82(1), 1–11.
- Wei, S. J., & Shleifer, A. (2000). Local corruption and global capital flows. *Brookings Papers on Economic Activity*, 2(2000), 303–354.