

**Audit Committee News**

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# ISO 37001

**Setting the standard for an effective  
anti-bribery management system**



On 13 October 2016 the International Organization for Standardization (ISO) published the first international standard on anti-bribery management systems. ISO 37001 (the standard) is designed to help organizations prevent, detect and respond to bribery. It sets out requirements that an organization seeking certification of compliance with the standard must meet, drawing on elements appearing in previously published guidance on anti-bribery and corruption compliance.

### **The standard**

As far as its actual content is concerned, the new standard is not vastly different from the Resource Guide to the US Foreign Corrupt Practices Act (FCPA) (published by the US Department of Justice) or the guidance on the UK Bribery Act (released by the UK Ministry of Justice). However, what sets ISO 37001 apart from the aforementioned documents is that it is not designed to provide guidance in relation to any particular legislation; it is, by definition as an international standard, unbound by jurisdiction and designed to be internationally recognized.

A quick read through the new standard will reveal what one would expect from a robust and mature anti-bribery and corruption (“ABC”) management system. It covers both active and passive bribery, with the focus not only on organizations themselves, but also on their personnel, business associates and third parties (which, again, is nothing new and is presently a common and widely accepted practice).

Like other ISO standards, the new standard includes a provision allowing organizations to be ISO 37001 certified by an independent third party – an option of significant importance and potential. The benefits of certification should not be underestimated. Independent assurance that a company’s anti-bribery and corruption management system is in line with the ISO 37001 standard can provide a competitive advantage in realizing opportunities with potential business partners. It may also represent a mitigating factor for an organization facing bribery and corruption charges or prosecution (see the next section for further thoughts on this subject).

To get the benefits of being certified, an organization will need to demonstrate that the following areas of its anti-bribery management system are adequately addressed:

- the design of the anti-bribery management system takes into account the type, size and nature of the organization and the bribery risks it faces;
- top management and those charged with governance take an active role in the implementation and ongoing maintenance of the system;
- appropriate measures are taken to ensure that personnel understand and can execute their responsibilities in respect of the system;

- bribery risks posed by counterparties are adequately assessed and appropriately mitigated;
- appropriate anti-bribery controls are implemented in respect of transactions and business processes;
- effective and secure mechanisms for raising concerns regarding bribery are available to personnel;
- the organization is able to respond appropriately to violations that are brought to its attention; and
- the effectiveness of the system is monitored and, as appropriate, measures are taken to improve it.

### **Impact and importance for organizations**

Going through the certification process will require time and resources, so an organization will naturally wonder whether the end game is worth it. Businesses and non-profit organizations alike should consider the potential returns on investment and impact. Essentially they should ask, “What are the benefits for our organization?” Here are some of the main advantages organizations may potentially benefit from.

#### **Commercial advantage**

International anti-bribery and corruption laws hold organizations accountable for the actions of their business partners and acquired businesses. Thus, the standard due diligence process has evolved to include evaluations of a target’s or potential business partner’s approach to preventing bribery and corruption in their business operations. This is especially significant for companies of a smaller size with ambitions to grow; such firms are increasingly expected to have anti-bribery and corruption processes and controls in place to fulfill the compliance requirements of their large multinational business partners (especially those subject to the FCPA or the UK Bribery Act). Being able to demonstrate being ISO 37001 certified could be a powerful and differentiating factor for a company competing for such business opportunities.

It is also critical to demonstrate strong anti-bribery and corruption controls for existing relationships. Companies have developed comprehensive approaches to ongoing third-party risk management, which often include periodic monitoring and auditing of their business partners. A single supplier or distributor may undergo multiple ABC audits from different organizations in a single year – this disruptive practice has become a normal part of doing business. What

if that supplier or distributor could instead provide an ISO 37001 certification to all of its business partners? This could potentially reduce the number, frequency and duration of audits and site visits from partner companies, ultimately resulting in cost and time savings for all involved.

Therefore, a certification under the new standard may become a convenient and valuable asset offering both competitive advantages and risk-mitigating and cost-saving measures to organizations on both sides of a business partnership.

Even organizations who decide not to seek certification themselves may find the standard valuable as a basis for evaluating and improving their existing anti-bribery management system or for evaluating the anti-bribery management systems of current and potential business partners.

#### *Advantage vis-à-vis law enforcement & authorities*

In cases of actions taken by authorities against an organization for alleged bribery, it is currently not expected that compliance with the standard will be treated by the competent authorities as proof positive that an organization has taken adequate measures to prevent bribery, providing it with an automatic defense or entitlement to leniency should a breach occur.

On the other hand however, as past experience shows, the authorities will consider a wide range of factors, such as self-disclosure, full cooperation and the existence of an effective compliance program, when determining the appropriate level of enforcement action. An organization being investigated, charged or prosecuted for potential misconduct related to bribery and corruption may offer the certification as evidence that it has made significant efforts to implement a proper and effective anti-bribery management system.

Of course, having the certification is not in itself a guarantee that an organization is immune to the risk of corruption or that no bribery has occurred. However, the advantages of getting the certification outweigh the cost of the investment needed to receive it.

#### **The certification of ISO 37001**

Certification of compliance with the standard is based on detailed scrutiny of an organization's anti-bribery management system by an independent third party that has been authorized to provide certifications by an ISO national member body. Maintaining the certification requires periodic external audits of ongoing compliance.

## Conclusion

The much-anticipated standard is widely welcomed by the global community of anti-bribery experts and covers the most important elements of a solid anti-bribery management system. The standard is flexible enough to be applied to organizations of various sizes, sectors and industries, and can produce a valuable return for organizations willing to invest in becoming certified. For now, it is safe to conclude that the standard offers a recipe for successfully managing the risk of bribery and represents a real step forward by the international community seeking to combat corruption.



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