



Kyiv  
International  
Economic  
Forum

# COMPLIANCE WITH ANTI-BRIBERY LAWS

- What do anti-bribery laws prohibit?
- What is the impact of those laws?
  - What does compliance mean?  
What Ukrainian companies can do

Kyiv, October 6-7, 2016

# Laws in most countries prohibit *bribes* to foreign officials

- **US Foreign Corrupt Practices Act (1977)**  
= more fines/ sanctions up to 2014 than by all other governments combined
- **OECD anti-bribery Convention (1999)**  
signed by its 41 (soon 45) members and by RU, BG, SA, AR, BR. Enforcement was by 17 countries: 361 individuals and 126 companies convicted up to DEC2014
- Bribery has proven most significant for:
  - 1) public procurement contracts
  - 2) payments made through third parties and/or in lax financial jurisdictions
  - 3) transactions in higher risk countries

## A bribe, as per most anti-bribery laws:

- Offer, promise, give or authorize the giving of anything of value, directly or indirectly, to a Government Official, for an improper or corrupt objective, so as to obtain/retain business or a related benefit

TRACE Matrix of bribery risks for business: Ukraine = 64	Risk Score (NZ = 20) (Nigeria = 97)
Business Interactions with Government	69
Enforcement of anti-bribery laws	52
Transparency of Government and Civil Service	53
Capacity oversight by Civil Society & Press	49



## Increasing enforcement, by more countries, with greater penalties

Greater and faster international collaboration

Wider interpretation of 'anything of value'

Greater enforcement capacity as more countries seek to retain penalties



Increasing risk that companies be prosecuted in multiple countries

Focus on individuals: more executives are being convicted and sent to prison

Increasing penalties and overall costs to companies convicted of bribery:

1. **Siemens** (Germany): \$800.000.000
2. **VimpelCom** (Netherlands): \$795.000.000
3. **Alstom** (France): \$772.000.000
4. **KBR / Halliburton** (USA): \$579.000.000
5. **BAE** (UK): \$400.000.000
6. **Total SA** (France) \$398.000.000

**A total penalty of €1.400.000.000 has just been proposed to Telia (Sweden) by USA and Netherlands authorities for bribery in Uzbekistan**

# Companies use a Compliance program and Due diligence to manage risks including by their business partners

1. Country risk: where the company is based? operates?
2. Credibility risk: registrations and permits in order?
3. Exposure risk: who and where are its main customers?
4. Legal risk: ownership /interactions with government?
5. Sectoral risk: company operates in higher-risk sectors?
6. Knowledge risk: history / depth of the relationship?

***Ignorance of anti-bribery compliance is a serious warning signal***

- **A thorough due diligence report reveals *red flags***
- **Understand/correct red flags to reduce a company's risk profile**
- **Credible due diligence reports are valuable, marketing tools**

## A rigorous due diligence report is a valuable business tool

- Detailed questionnaire: identification of company directors/managers and owners (beneficial ownership), countries and sectors of operation, company history/track record
- Company literature reviewed
- Business registrations validated
- Financial and professional references validated
- Data bases searched for *red flags*: sanctions, criminal convictions, negative media reports, association with government officials (PEP)
- Code of Conduct/Policy for Anti-bribery/Ethics
- Anti-bribery training of employees most exposed to potential bribery

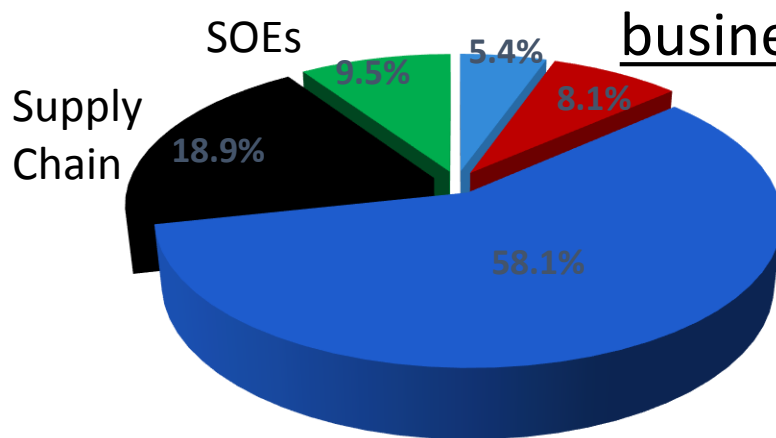
**...increasingly required by companies as a prerequisite for establishing/continuing a business relationship**

**TRACE** promotes **greater commercial transparency worldwide**

**Autonomous of all governments** with no public financing

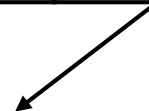
As a **non-profit membership organization** dedicated to fostering compliance with anti-bribery laws, TRACE works with multinational corporations to establish procedures and best practices for compliance programs

Risk based **due diligence** especially on



COMPLIANCE CHALLENGES

business partners



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*Raising the Standard of Anti-  
Bribery Compliance Worldwide*