



BETTER POLICIES FOR BETTER LIVES

# **Perspectives on Global MedTech Industry Ethics & Compliance Initiatives**

**International MedTech  
Compliance Conference**

**15-17 May 2013  
Warsaw, Poland**

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# The OECD Anti-Bribery Convention



- History of the OECD Anti-Bribery Convention
  - U.S. Foreign Corrupt Practices Act (1977)
  - Came into force 15 February 1999
- 40 States Parties (34 OECD countries + 6 non-OECD countries)
- The Working Group on Bribery
  - 2/3 world exports (2011)
  - Non-OECD countries: Argentina, Brazil, Bulgaria, Colombia, Russia, South Africa
  - Emerging economies: Argentina, Brazil, Chile, Colombia, Israel, South Africa, Russia, Turkey
  - G20: 15 out of 19 (20<sup>th</sup> is the EU)

# Regulatory Landscape of WGB

- Legislation criminalising bribery of foreign public officials in all 40 member countries (e.g., UK Bribery Act)
  - Russia and Colombia recently enacted
- Prohibition on tax deductions for bribes paid
- Establishment of effective corporate liability
- Enforcement of foreign bribery (as of 2011)
  - 210 individuals and 90 entities for foreign bribery
  - Approximately 300 investigations in 26 States Parties

**Pressure from int'l organisations, member countries, and civil society organisations to increase enforcement.**

# What About Emerging Markets?

- **China**
  - Foreign bribery offence in force as of May 2011
- **India**
  - Introduced in Parliament in 2011; expected to be enacted 2013
- **Malaysia**
  - Section 22 of MACC Act as of 2010
  - Prosecuted foreign company for domestic corruption
- **Indonesia**
  - Draft foreign bribery legislation ; expected to be passed in 2014 (tentatively)
  - KPK actively investigating domestic bribery by transnational actors



# Growing Role for Corporate Compliance

- UK Bribery Act (Defense)
  - Section 7: “Adequate procedures to prevent persons associated with it from committing bribery”
- Australia Criminal Code (Element)
  - Liable if “corporate culture” encouraged, tolerated or led to the offence, or if it did not create a compliant “corporate culture”.
- Canada Criminal Code (Element)
  - Section 22.2: “With the intent at least in part to benefit the organisation, one of its senior officers”: [...] 3. Knowing that a representative of the organisation is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.
- U.S. Sentencing Guidelines (Mitigation)
  - “Effective Compliance and Ethics Program”

# Accounting and Internal Controls

- Over 60 individuals and 100 companies sanctioned for other offences related to foreign bribery
- Charges usually based on:
  - Ineffective corporate governance response
  - Failure in internal audit controls
  - Lack of implementation of paper policies
  - Inadequate communications from top management

# International Standards for Compliance

- 2009 Recommendation, Annex II (“Good Practice Guidance”) is the only international guidance issued to the private sector that has been endorsed by the major exporting countries.
- Sets out the basic requirements for a compliance programme:
  - Visible corporate policy prohibiting foreign bribery
  - Risk-based due diligence
  - Oversight and detection of foreign bribery issues
  - Communication from senior management
  - Channels of reporting and whistleblower protection

# Potential Areas for Improvement

- Awareness among SMEs
- Whistleblower protection
- Ensuring compliant third-parties and supply chain
  - Monitoring and auditing
  - Training of third parties
- Awareness among internal and external auditors and accountants
- Weakness in anti-*foreign* bribery policies
  - Definition of foreign public official
  - Gifts and hospitality expenses