On December 9, 2009, the OECD created a set of recommendations, including coverage of facilitating payments and appropriate tax measures. However, the main focus of this article is on the compliance and ethics section which is covered in Section X C of the OECD Recommendations. By covering ethics and compliance, the OECD has shown striking leadership in its fight against unethical practices.

Before Section X, Section III sets the tone. It calls for ‘concrete and meaningful steps’ to examine company and business accounting, external audit, as well as internal control, ethics, and compliance requirements and practices.

Section VI (ii) recognizes the power of compliance and ethics programs by calling for governments to encourage companies to use their programs to prevent small facilitation payments in internal company controls, ethics and compliance programs or measures recognizing that such payments are generally illegal in the countries where they are made and must be accurately accounted for in company books.

X. RECOMMENDS that Member countries take the steps necessary, taking into account where appropriate the individual circumstances of a company, including its size, type, legal structure and geographical and industrial sector of operation, so that laws, rules or practices with respect to accounting requirements, external audits, and internal controls, ethics and compliance are in line with the following principles and are fully used in order to prevent and detect bribery of foreign public officials in international business according to their jurisdictional and other basic legal principles.

Originally, the OECD working group looked only at audit and ‘internal controls.’ However, audit cannot be the first line of defense. Auditors check systems, they do not prevent misconduct. Regarding ‘internal controls’, the Society of Corporate Compliance and Ethics (SCCE) made it clear that this is typically a financial concept, and lacks the depth and impact of compliance and ethics programs. Ethics & compliance programs include both audit and internal controls and go well beyond these two parameters.

Also different companies vary in respect to each other in different ways due to individual circumstances. So compliance and ethics programs should match each company’s circumstances.

C. Internal controls, ethics and compliance
Member countries should encourage:

- **Companies to develop and adopt adequate internal controls, ethics and compliance programs or measures for the purpose of preventing and detecting foreign bribery**

  Governments have agreed that their role is to encourage adequate compliance and ethics programs with a particular focus on preventing and detecting foreign bribery. Just paper based codes of conduct can never be sufficient. Countries should understand what actually makes programs work, and then work with their companies to ‘develop and adopt’ such programs.

- **Business associations and professional organizations, where appropriate, in their efforts to encourage and assist companies, in particular small and medium size enterprises, in developing internal controls, ethics and compliance programs or measures for the purpose of preventing and detecting foreign bribery**

  There is a myth that SMEs cannot prevent violations because of their size. However, what makes a program effective is not that big companies can throw massive bureaucracies at issues; rather, the two essential elements are management’s will to prevent misconduct, including bribery.

  Also, it can actually be easier for a small company to be successful at preventing misconduct because if top executives do the right thing, it will have a bigger impact on employees close to the executive, which is the case in such companies. SMEs can achieve much by pooling resources to achieve compliance and ethics results. Member governments are expected to help make this happen.

- **Company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programs or measures, including those which contribute to preventing and detecting bribery**

  Member nation governments are expected to promote compliance programs/measures disclosure among its companies. The USA too needs to work on this aspect.

- **The creation of monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards**

  This element calls for having an independent monitoring body for compliance and ethics efforts. Serious companies would have their CECOs report to such bodies without interference.

- **Companies to provide channels for communication by, and protection of, persons not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for persons willing to report breaches of the law or professional**
standards or ethics occurring within the company in good faith and on reasonable grounds, and should encourage companies to take appropriate action based on such reporting.

This was agreed by all 38 members of OECD. This provision tells the countries to promote whistleblower systems in their respective companies, including protection for those who resist or protest misconduct. This is not restricted to just resisting or reporting bribery.

Those wishing to get past excuses for resisting reporting systems around the world now have this authoritative source for implementing one of the most important weapons to fight corruption and other misconduct.

- **Their government agencies to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics, and compliance programs or measures in their decisions to grant public advantages, including public subsidies, licenses, public procurement contracts, contracts funded by official development assistance, and officially supported export credits.**

OECD calls for countries to consider, where providing ‘public advantages’ related to international business transactions, a company’s ethics and compliance program and measures. When governments recognize the importance of compliance and ethics programs, give practical guidance on what should be in such programs, industry will respond.

**Conclusion:**

With the inclusion of these recommendations, OECD members finally reached consensus and agreed that meaningful and powerful ethics and compliance programs are required in corporations. The member governments themselves have been called upon to focus on encouraging the implementation of these recommendations (viz. Promoting whistleblower systems and independent monitoring bodies, etc.) to stimulate a sense of awareness of ethics and compliance.

However, there are a host of factors, like including compliance program information in a company’s annual report, or the use of incentives to promote compliance, that are alien even to the United States. These are matters that ethics professionals should monitor to ensure their respective governments have a positive approach to these recommendations.

Full Report