

BUSINESS FOR THE RULE OF LAW FRAMEWORK



United Nations
Global Compact

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BAN KI-MOON

UNITED NATIONS SECRETARY-GENERAL

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“The rule of law is crucial for promoting economic growth, sustainable development, human rights and access to justice. Where the rule of law is strong, people and businesses can feel confident about investing in the future. The Business for the Rule of Law Framework provides guidance to the private sector and other actors. I call on businesses everywhere, and of every size, to explore what more they can do to support the rule of law and build lives of dignity for all.”

United Nations Secretary-General, Ban Ki-moon

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A ROLE FOR BUSINESS TO ADVANCE THE RULE OF LAW

Over the past fifteen years, there has been a significant focus on international frameworks and principles designed to help guide responsible business and promote action on corporate sustainability-related issues at the global and local level¹. These include the Ten Principles of the United Nations Global Compact (“UN Global Compact”) and the UN Guiding Principles on Business and Human Rights (“UN Guiding Principles”)².

The UN Global Compact is a call to businesses everywhere to align their values, strategies and operations with its Ten Principles in the areas of human rights, labour, environment and anti-corruption, and to take action in support of UN goals and issues. The UN Global Compact, along with over 85 Global Compact Local Networks around the world, serves as a critical enabler for businesses – regardless of their size, location or industry – to advance corporate sustainability through activities and collaboration with various other societal actors³.



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¹ Corporate Sustainability is defined by the UN Global Compact as “a company’s delivery of long-term value creation in financial, social and environmental, and ethical terms.” See also UN Global Compact, *Guide to Corporate Sustainability: Shaping a Sustainable Future* (2015).

² The UN Global Compact’s mandate comes from the UN General Assembly. It is the world’s largest corporate sustainability initiative, with over 8,000 companies and 4,000 non-business signatories based in 160 countries. For more information about the [UN Global Compact](#). For more information on the [UN Guiding Principles](#).

³ For the location and contact details of [Global Compact Local Networks](#) around the world.

Business for the Rule of Law complements other work of the UN Global Compact by highlighting that strong rule of law – including the protection of investments, property rights (including intellectual property), contractual rights, and legal identity – is essential as a foundation for economic and social development. The rule of law is a key part of the enabling environment for responsible business to play an optimal role in helping to drive sustainable development. As such, the purpose of the Business for the Rule of Law Framework (“Framework”) is to advance the rule of law by engaging responsible business to support the building/strengthening of legal frameworks and promotion of more accountable institutions – serving as a complement to, not a substitute for, government action.

There are a growing number of business leaders who see the interdependence of their business’ success with the sustainability of the societies where they operate, and recognize they have a vitally important role to play in advancing the rule of law. Lawyers who advise businesses – whether from within companies or in law firms – are also key in realizing the significance of the rule of law in helping businesses to become more responsible and sustainable. This Framework presents new opportunities for lawyers and other business leaders to lead initiatives as part of delivering on their organization’s commitments to corporate sustainability.

“ACE has learned from its experience in doing business in more than 50 countries that an effective and credible legal system is essential for successful entrepreneurial activity. A true rule of law makes it possible for businesses to make long-term commitments and to invest in the future of the countries in which they operate.”

Nicola Port, Senior Vice President and Associate General Counsel, ACE Group
Business for the Rule of Law Workshop, New York, USA, January 2015

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DEFINING THE RULE OF LAW FOR BUSINESS

At its core, a society based upon the rule of law is one in which all actors – including governments, businesses and individuals – are equally accountable to clear, fair and predictable laws. The rule of law requires a strong institutional framework to ensure these laws are enforced through accessible and impartial institutions, in a manner consistent with international human rights standards and norms.

For businesses, an operating environment which is governed by the rule of law, provides the basis for commercial certainty and creates the foundation for long-term investment and growth, and sustainable development for all⁴. Women and minority owned businesses may face particular obstacles from laws that are inconsistent with universal norms and standards⁵.

“The rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

Report of the UN Secretary-General, Ban Ki-moon
The Rule of Law and Transitional Justice in Conflict and
Post-Conflict Societies, 2004

Business may refer to various resources to understand the state of the rule of law in regions in which they currently, or intend to operate, including:

- Institute for Economic and Peace ‘Global Peace Index’
- World Bank Group ‘Ease of Doing Business’ Report
- World Bank Group ‘Women, Business and the Law’ Report
- World Justice Project ‘Rule of Law Index’
- Transparency International ‘Corruption Perceptions Index’

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⁴ For some recent empirical research on the positive relationship between Foreign Direct Investment and strong rule of law, and conversely, the challenges weak rule of law poses for businesses see: Hogan Lovells, Bingham Centre for the Rule of Law and British Institute of International and Comparative Law Investment Treaty Forum, *Risk and Return: Foreign Direct Investment and the Rule of Law* (2015). The research identifies the top rule of law issues experienced by companies as lack of transparency of regulatory and legal rule-making processes; arbitrary or discriminatory treatment by host country government; and lack of recognition of intellectual property and contract rights.

⁵ For more information please see the World Bank Group’s “Women, Business and the Law” report (2014).

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BUSINESS RESPECT AND SUPPORT FOR THE RULE OF LAW

All societal actors, including businesses, are required to respect the rule of law. Not respecting human rights, engaging in corruption, and fuelling conflict all undermine the rule of law. Thus modelling responsible business conduct in its corporate values, strategies, policies and processes is fundamental in order for a business to also have the credibility and legitimacy to take action in support of the rule of law.

Business action relevant to the rule of law falls into two categories: respect and support.

“Respect” for universal principles, including human rights and anti-corruption, is the minimum standard for business behaviour. It focuses on a business’ compliance and “doing no harm”. It calls attention to the need for businesses not to undermine the rule of law. It is concerned with robust management policies and procedures, mainstreaming principles into a business’ corporate functions, and throughout its value chain, so a business can know, show and address its impacts⁶.



“Support” for the rule of law is a complement, not substitute for, “respect” for the rule of law – respect is the “must do” and support is the “optimal”. Support is voluntary action taken by businesses that goes beyond the responsibility to respect by making a positive contribution to help strengthen legal frameworks and promote more accountable institutions. These fundamental concepts are explained in more depth below.

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⁶ See the [Blueprint for Corporate Sustainability Leadership](#) and the [UN Global Compact Management Model](#).

RESPECT FOR THE RULE OF LAW

Participating in the UN Global Compact

By joining and participating in the UN Global Compact, businesses can both acknowledge their responsibilities and publically express their commitment to respect corporate responsibility principles, including in areas of human rights, anti-corruption, and peace, which are crucial to the rule of law. Meeting their corporate responsibility to respect human rights, avoiding corruption and bribery in all its forms, and avoiding complicity in violent conflict are crucial for businesses to avoid undermining the rule of law. Tools and guidance materials to help businesses meet their responsibilities and commitments in these areas are available on the UN Global Compact website⁷. Furthermore, there are over 85 Global Compact Local Networks around the world which serve as key fora where businesses can talk about and take collective action on rule of law challenges at the local level.

Respect for the rule of law means ensuring that the businesses respect the letter and spirit of applicable laws, and do not take action that undermines or interferes with the administration of justice, or the effectiveness and accountability of institutions. Where international standards exceed those in national law, respect for the rule of law calls on businesses to strive to meet those higher standards. Modelling good behaviour and ensuring the business itself is not implicated in abuses is one of the most important contributions that businesses can make to the rule of law.

Respect for the rule of law includes, but is not limited to:

- Respecting the Ten Principles of the UN Global Compact, including on human rights and anti-corruption
- Complying with laws and regulations throughout the company's operations and value chain, requiring and supporting business partners to do the same
- Complying with tax laws and policies
- Honouring contractual obligations and commercial agreements
- Honouring dispute resolution procedures and decisions at all levels



⁷ See UN Global Compact guidance materials on implementing [Human Rights](#), [Anti-Corruption](#) and [Business for Peace](#).

SUPPORT FOR THE RULE OF LAW

For the rule of law to become a global norm more than just respect for the rule of law will be needed from all societal actors. For its part, beyond respecting the rule of law, businesses also have the opportunity to also engage in voluntary actions to support the rule of law by helping to build and/or strengthen the legal framework and promote more accountable institutions where they are currently or intend to operate.



Support for the rule of law can take a variety of interconnected forms, including:

Core Business

Businesses can help to strengthen the rule of law through their core business operations, such as through the products and services they supply commercially that help close rule of law gaps, including those that assist with the process of law making and implementation, access to information, and the administration of and access to justice.

Some examples of Core Business activities:

- ***Improving accessibility to the law***
Legal resource providers improve access to the law through their commercially available products and services
- ***Improving the marketplace and access to legal services***
A number of commercial services that have been developed to help the public and companies find lawyers and law firms that are suited to their needs
- ***Promoting diversity and inclusion within the legal profession***
Many in house legal departments promote diversity and inclusion to the law firms that they work with
- ***Providing on the job training opportunities***
Corporate law departments and their law firms can provide internships within their organizations to law students or secondments to government and civil society lawyers in order to provide commercial training and experience

Strategic Social Investment and Philanthropy

Businesses can provide financial and/or in-kind support to governments, the United Nations and other international organizations, academic institutions, communities and non-government organizations to strengthen the rule of law. Such strategic support measures could include providing specialized expertise, volunteering, thought leadership, training or mentoring, or making in-kind contributions of products or services to help address gaps in the legal framework and institutions. Businesses can join existing efforts or initiate projects themselves.

“Many businesses advance corporate citizenship initiatives from both corporate foundations and the corporate treasury. Inside lawyers must press to have these “justice” issues be part of the company’s citizenship agenda to obtain necessary funding whatever the corporate financial source. Corporations and law firms should also support rule of law initiatives, not just in the developed world, but in emerging markets to promote the signal importance of doing business with integrity in societies today marked by corruption and a deeply flawed legal system (although making these initiatives have impact, not just sound good, is a great challenge).”

Lawyers as Professionals and as Citizens; Key Roles and Responsibilities in the 21st Century by Ben W. Heineman, Jr.,
William F. Lee & David B. Wilkins

Some examples of Strategic Social Investment and Philanthropy include:

- ***Supporting legal education***
Businesses can encourage their legal and other staff to teach in law schools and other settings where such opportunities exist. Teaching opportunities generally have low costs and low risks to a business, while also having a high impact on increasing legal awareness and capacity in a community. Moreover, they are motivating and provide professional development for all staff involved.
- ***Bolstering judicial training***
Businesses with the capacity to do so could support judicial training programmes in jurisdictions with overburdened judicial systems.
- ***Loaning staff and staff volunteering***
Businesses and their law firms can provide temporary work assignments of their lawyers within government or civil society to help support the drafting and implementation of laws, and law reform proposals. Similarly, law firms and businesses can support their legal staff in volunteering in community legal aid and low-income legal community services, and/or in law reform efforts through bar associations. An emerging trend is businesses partnering with their outside law firms to provide support, capacity and resources to various vulnerable groups or stakeholders on projects through comparative legal analysis, direct representation, and capacity building.

Advocacy and Public Policy Engagement

Businesses can publicly acknowledge rule of law challenges (such as the existence of corruption) in their own operating environment and take action, independently or collectively, through advocacy and/or public policy engagement. This is where the business community, acting collectively or through other organizations, can play an important role. Collective action amongst various companies and organizations increases the effectiveness of rule of law advocacy, and may decrease the resource requirements for individual businesses that participate. Collective action from the responsible business community can be a powerful agent of change.

Some examples of Advocacy and Public Policy Engagement:

- ***Advocate responsibly and transparently*** when engaging with governments on rule of law matters, such as legislative reform relating to, among other things, the elimination of corruption or enforcement of labour standards
- ***Supporting inclusive consultation processes*** in the development of/or changes to laws or advocating for improved funding to the justice system

Partnerships and Collective Action

Businesses have the opportunity to engage in rule of law through a broad variety of partnerships and initiatives that pool expertise and resources with governments, international organizations and civil society. In addition to Global Compact Local Networks, bar associations and employer organizations are important settings for businesses to engage in collective action. Working through international organizations can also be a more suitable channel for businesses and host governments to interact, as some governments may be sensitive to engaging directly with businesses on rule of law issues.

Some ways businesses can partner in initiatives with other societal actors with the aim of:

- *Strengthening and improving access to the justice system*
- *Building local capacity to make, disseminate, implement, apply, enforce, interpret and reform the law*
- *Promoting more effective, accountable, transparent and inclusive institutions at all levels*
- *Encouraging more responsive, inclusive, participatory and representative decision-making at all levels*

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OPPORTUNITIES FOR BUSINESSES TO ENGAGE IN ADVANCING THE RULE OF LAW

There are a number of internal and external obstacles that may make it difficult for responsible businesses to support the rule of law as part of their strategy and activities. However, these obstacles can often be addressed, and even turned into opportunities, particularly when collaborating with industry peers, government institutions, intergovernmental organizations, and civil society.

INTERNAL TO THE ORGANIZATION

Raising awareness

Businesses do have a general understanding of the legal and regulatory environments in which they operate, however the “rule of law” and understanding of its relevance to business are relatively new concepts. Building internal understanding of the rule of law, and identifying opportunities to help strengthen the legal system where the company is operating, help to build the business case for action in support of the rule of law.

Longer-term viability

Businesses are understandably concerned about the impact of their activities on shareholders, partners, and other stakeholders; many of whom favour short-term results. However, a growing number of businesses are taking a longer term view and recognizing that action to support the building of the legal system where they operate is a good investment in their company’s own sustainability⁸.

Return on investment

Rather than being a drain on resources, actions to support the rule of law can be a strategic investment that will benefit businesses by creating an enabling environment for operating responsibly. Some actions in support of the rule of law may show return on investment more quickly, such as advocacy around the need for better laws and enforcement, which if successful, may reduce the need for such hidden costs as comprehensive social auditing⁹.

“Advancing the rule of law and making money aren’t mutually exclusive. Without the rule of law, economies cannot develop... advancing the rule of law helps to advance business. If you take a long-term view, it can be good for profit.”

James Harper, Head of Legal, UK & Ireland, LexisNexis
Business for the Rule of Law Workshop, London, UK, March 2015

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⁸ ‘Coping, Shifting, Changing: Strategies for Managing the Impacts of Investor Short-Termism on Corporate Sustainability’ offers guidance to business on how to address issues of short-termism.

⁹ The [Value Driver Model](#) is a tool that utilizes key business metrics to determine the return on investment of corporate sustainability activities. It offers companies a simple and direct approach to assess and communicate the financial impact of their sustainability strategies.

EXTERNAL TO THE ORGANIZATION

“The rule of law is about creating a level playing field while at the same time creating a stronger environment for businesses to operate in.”

Ritva Sotamaa, Chief Legal Officer, Unilever Business for Rule of Law Workshop, London, UK, March 2015

Pre-competitive state

Businesses operate in a competitive environment. However, an increasing number of them are recognizing that strengthening the rule of law in line with international standards is a matter of pre-competitive common interest. It addresses the root causes of systemic challenges that all responsible businesses face in implementing their corporate sustainability commitments. For example, respecting human rights and avoiding corruption is harder for all businesses in situations of impunity, and where important elements of the legal framework are missing such as a system that provides clarity around title to and interests in property, and the ability to enforce contracts.

Race to the top

Businesses look to lawmakers to define appropriate and inappropriate behaviour, and to government to enforce the laws they make. Where this does not happen, it can be difficult for businesses to understand what is expected from them in a given environment. Where

enforcement is weak or nonexistent, some may be tempted to not comply, putting those that do comply at a competitive disadvantage. Taking action in support of the rule of law can help prevent or address situations of uncertainty and inconsistency. Further, where national law sets a lower standard than international law, businesses are encouraged to strive to meet international standards¹⁰.

Working with governments

There is growing acknowledgement within various government constituencies of the need for strengthening legal frameworks and institutions. Business voices that make the link between the rule of law and sustainable development are critical in emphasizing the importance of this relationship between the two. Some businesses may be averse to taking action in support of the rule of law due to concerns that a government may not view their actions positively and for fear of retaliation against the business. However, concerns can be mitigated by acting collectively, and/or through home state governments, industry peers, bar associations, civil society, academia, Global Compact Local Networks, and international organizations including relevant United Nations in-country representatives (such as UNDP or UNICEF).

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¹⁰ ‘Good Practice Note: Meeting the Responsibility to Respect in Situations of Conflicting Legal Requirements’ provides business with a non-exhaustive set of good practices for addressing situations in which local or national laws appear to conflict with internationally recognized human rights.

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WAYS BUSINESSES CAN SUPPORT THE RULE OF LAW

There are many ways in which businesses have already taken action to support the rule of law around the world¹¹. This section provides guidance and offers practical examples organized around some of the main functions of the rule of law. Since the UN Global Compact already has detailed guidance on how to “respect” universal principles such as human rights and anti-corruption, this section is focused on actions that companies can take to “support” the rule of law, to help build the legal framework and more effective and accountable institutions where they operate.

3 STEP ENGAGEMENT PROCESS

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STEP one



BUSINESS CASE

STEP two



IDENTIFY ACTIVITIES

STEP three



GETTING STARTED

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¹¹ For a growing list of examples of business action in support of the rule of law, please visit [Business for the Rule of Law](#).

ENSURING ACCOUNTABILITY

All persons, institutions and entities, public and private, including the State and State-owned enterprises, must be accountable through laws and a robust legal system. If a person or entity commits a wrong or violates the rights of another, that person or entity must be held accountable by means of appropriate remedy.

STEP one



BUSINESS CASE

Where the rule of law is present, corruption is discouraged and the playing field is levelled so that businesses are able to compete in a manner that is fair, ethical, predictable and sustainable. It provides equal accountability before the law to allow effective management of risk and security of investment in a given country. In addition, the rule of law reduces transaction costs as bribes are not required to do business¹². Where the rule of law is present, fewer people are excluded from economic activity, and the productive capacity of a country is increased.

STEP two



IDENTIFY ACTIVITIES

Some activities that business can take to support the rule of law:

- Actions in support of reducing corruption and bribery in all their forms ¹³
- Actions in support of more effective, accountable, and inclusive institutions
- Actions that combat illicit financial and arms flows, strengthen the recovery and return of stolen assets, and combat all forms of organized crime

STEP three



GETTING STARTED

Be sure to consider:

Respect and support the rule of law | Complement government action | Partner with others | Engage in open dialogue and transparent processes | Take a long-term view | Incorporate into strategic decision-making | Understand the impact of efforts to support the rule of law



¹² For more on the business case against corruption, see, for example, [UN Global Compact](#), [Transparency International](#), [WEF](#), [ICC](#), [Clean Business is Good Business](#).

¹³ Note that actions to address the company's own risk of involvement in corruption, such as through policies and processes to ensure compliance, would be actions to "respect" the rule of law. Actions that seek to address corruption in society more generally are actions to "support" the rule of law. An anti-corruption-related example of an activity to support the rule of law would be a conference for the business community, and other societal actors, to engage in dialogue aimed at agreeing jointly to resolve ending corruption in the relevant host country.

CONTRIBUTING TO GOVERNMENT REFORM IN EMERGING MARKETS

Business: General Electric Company and GE Foundation, USA (Conglomerate)

Types of “Support”: strategic social investment/philanthropy, advocacy/public policy engagement, and partnerships/collective action

● ○ ○ BUSINESS CASE

Enhancement of the rule of law in emerging markets is vital to General Electric’s Company’s (“GE”) ability to do business, and to respect and support international standards such as through its participation in the UN Global Compact, and application of the UN Guiding Principles on Business and Human Rights.

● ● ○ IDENTIFY ACTIVITIES

Senior representatives of GE held a series of meetings with non-governmental organizations (NGOs), business leaders, and government officials with respect to reforms in a Southeast Asian country, with a view to addressing issues regarding fair and open procurement, leadership training, the legal environment for responsible investment, and the rule of law. In addition, the GE Foundation has sponsored the provision of legal services by the Senior International Lawyers Program to legal institutions in this country and the participation of government officials in international training on infrastructure development and competitiveness at the Lee Kuan Yew School of Public Policy.

● ● ● GETTING STARTED

To ensure the effectiveness and legitimacy of their action, GE sought out reputable partners with whom they could work and collectively determine the most impactful contribution they could make.

Please refer to Section 7 for more information on Getting Started.

FUNDING RULE OF LAW PROJECTS AROUND THE WORLD

Business: ACE Group, Switzerland (Insurance) and ACE Rule of Law Fund

Types of “Support”: strategic social investment/philanthropy

● ○ ○ BUSINESS CASE

As one of the world’s largest multiline property and casualty insurers, ACE Group, through its affiliated companies, enters into important contractual commitments every business day in more than fifty countries. The reliability of those commitments depends upon the maintenance of strong legal systems marked by impartiality, efficiency, equal access and enforceability.

● ● ○ IDENTIFY ACTIVITIES

Since 2008, ACE Group has sponsored a “Rule of Law Fund” whose mission has been to support projects that advance the rule of law. The Fund’s initiatives have included support for the development of civil legal codes in emerging economies, training and support of domestic judges and fairer procedures for detained migrants and juveniles.

● ● ● GETTING STARTED

The ACE Rule of Law Fund was initiated by the lawyers of the ACE Group. Their individual contributions to the Fund were matched by the Company and by ACE’s leading law firm partners. A Steering Committee was established to review grant applications from organizations involved in rule of law-related activities, to manage the financial affairs of the Fund, and to chart its overall activities. The Steering Committee meets several times each year. Fundraising takes place annually.

Please refer to Section 7 for more information on Getting Started.

OTHER EXAMPLES OF BUSINESS SUPPORT FOR “ENSURING ACCOUNTABILITY”

ASSISTING GOVERNMENTS TO IDENTIFY GAPS IN THE RULE OF LAW

DLA Piper and New Perimeter established a non-profit organization to provide pro bono legal services in a country, which at the time, was experiencing a transitioning government. Services included assessing the rule of law with respect to constitution drafting, human rights protections, international treaties and criminal law. Moreover, thousands of pro bono hours were being donated by the firm to advance law reform efforts.

Type of support: strategic social investment/philanthropy.

CALL FOR PROBE INTO CRACKDOWN ON FACTORY WORKERS

Nike, along with a local trade union and non-profit organization, asked the host government to open an independent inquiry to determine the cause of an incident involving police, which resulted in the injury of a number of workers in the garment industry.

Type of support: advocacy/ public policy engagement.



PROVIDING CERTAINTY

Laws must be clear, prospective, accessible, transparent and allow people and entities to understand their rights, obligations and remedies. The drafting and application of laws must also be done in a transparent manner. Individuals and businesses must be able to know, understand, and rely upon their legal rights and obligations, as well as enforce them.

STEP one



BUSINESS CASE

Where the rule of law is present, companies are able to enter into transactions and carry out operations with the confidence that they will not be subject to sudden and detrimental changes in the legal environment¹⁴. Under these circumstances, companies are able to have confidence in the security and sustainability of their present activities and make forward-looking investments with a view to building competitive strength.

STEP two



IDENTIFY ACTIVITIES

Some activities that business can take to support the rule of law:

- Actions to strengthen the recognition, protection, and enforcement of intellectual property and other property rights
- Actions to improve the quality and accessibility of rules applicable to commercial relations
- Actions that strengthen labour and environmental standards

STEP three



GETTING STARTED

Be sure to consider:

Respect and support the rule of law | Complement government action | Partner with others | Engage in open dialogue and transparent processes | Take a long-term view | Incorporate into strategic decision-making | Understand the impact of efforts to support of the rule of law



¹⁴ The 'Human Rights and Business Dilemmas Forum' highlights the potential issues associated with the use of stabilization clauses, and offers some guidance to business on how to refrain from imposing obligations on host states that may impede its ability to improve human rights protection.

SECURING INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLE

Business: Stern, Kessler, Goldstein & Fox, USA (Legal)

Types of “Support”: Core Business and Philanthropy

● ○ ○ BUSINESS CASE

Sterne, Kessler, Goldstein & Fox saw protecting the intellectual property (“IP”) rights of indigenous and other under-represented/disenfranchised groups on a pro bono basis as a contribution to the public good, and to ensuring greater certainty of the rule of law with regard to IP rights. Supporting such public interest matters, particularly in this specialized area of law, had the potential to enhance the Firm’s profile in terms of appealing to law school graduates, building legal expertise and ultimately attracting new fee-paying clients seeking to protect their own commercial interests.

● ● ○ IDENTIFY ACTIVITIES

The Firm only takes on pro bono matters dealing with biological technologies, where potential clients need legal assistance to protect their economic, social and/or cultural rights, and primarily in jurisdictions where the government is a signatory to the UN Convention on Biological Diversity (“CBD”) and observes the complementary Nagoya Protocol. These efforts contribute to raising the standard and promoting certainty with respect to the manner in which IP rights are accessed and managed. The efforts also ensure that, when negotiating with developed-country counterparts for licenses to the indigenous IP, the counterparts become educated to comply with the legal frameworks of the CBD and Nagoya Protocols.

● ● ● GETTING STARTED

In order to effectively represent indigenous groups, the Firm needed to develop a knowledge base on the legal and business aspects of indigenous rights. The Firm also partnered with local companies in the developing world that are in compliance with international conventions, such as CBD and the Nagoya Protocol, in order to facilitate the advanced legal and business transactions necessary for such work.

Please refer to Section 7 for more information on Getting Started.

OTHER EXAMPLES OF BUSINESS SUPPORT FOR “PROVIDING CERTAINTY”:

SUSTAINED CALLS FOR GOVERNMENT TO INCREASE MINIMUM WAGES

H&M Hennes and Mauritz advocated for a host government to increase local minimum wages. This has included collective action from a group of brands writing to the host government to initiate a global multi-stakeholder dialogue to intensify calls for improved working conditions in the country. The company’s CEO met with the host country President to call for an increase in the minimum wage.

Type of support: advocacy/public policy engagement and collective action.

CALL FOR REPEAL OF LAW CONDONING VIOLATION OF LABOUR RIGHTS

Forty-seven international clothing brands have called on the President of a country to repeal a law governing “non-traditional exports”, on the basis that it encourages and condones violations of labour rights.

Type of support: advocacy/public policy engagement and collective action.

5.3

PROMOTING EQUALITY

All persons should be equal under the law. Laws must be applied equally, independently, fairly, and non-arbitrarily by public officials.

STEP one

BUSINESS CASE

Where the rule of law is present, businesses are better able to understand the “rules of engagement” in a particular location. They can also feel more confident in knowing that they are able to sustainably secure their rights without the risk of being unfairly treated or discriminated against, and without the risk that there are other unknown stakeholders with competing claims. For instance, if a robust land title system is in place, and indigenous rights and interests in land are recognized, costs to business of due diligence are reduced. Such a provable interest in land enables that land to be used as collateral for investment, which fosters economic growth. Similarly, if there are large numbers of people without legal identity, businesses face additional risks and costs associated with age verification of young workers. There are also more likely to be individuals and entities in their operations or supply chains that are undocumented/unregulated, and as such, making such individuals and entities less likely to gain access to government and financial services, and more likely to be vulnerable to exploitation and violence.

STEP two

IDENTIFY ACTIVITIES

Some activities that business can take to support the rule of law:

- Actions that improve access to basic services, including achieving legal identity for all
- Actions to support the promotion and enforcement of non-discriminatory laws and policies
- Actions that support achieving gender equality
- Actions to legally empower the poor and to raise the awareness of vulnerable individuals and groups of their legal rights

STEP three

GETTING STARTED

Be sure to consider:

Respect and support the rule of law | Complement government action | Partner with others | Engage in open dialogue and transparent processes | Take a long-term view | Incorporate into strategic decision-making | Understand the impact of efforts to support of the rule of law

ADVOCATING FOR MARRIAGE EQUALITY

Business: Microsoft Corporation, USA (Technology)

Types of “Support”: advocacy/public policy engagement and collective action

● ○ ○ BUSINESS CASE

In order to produce products which meet the needs of its customers, Microsoft needs a workforce with a diversity of backgrounds, perspectives, skills and experience as well as access to the best employees. The company’s ability to recruit employees benefits from an environment where employees are treated equally by the government.

● ● ○ IDENTIFY ACTIVITIES

Microsoft has publicly advocated for marriage equality in places in which it has facilities and employees. Microsoft has joined various major local and global companies to publicly support the passage of legislation recognizing marriage for same-sex couples, including in its home state of Washington, USA and further afield in the USA and globally. Such efforts include publicizing the business case for supporting marriage equality on its blog, writing a letter of support to the Governor of Washington in recognition of same-sex marriage, and submitting an amicus or “friends of the court” brief urging the Supreme Court of the United States to strike down state bans on same-sex marriage.

● ● ● GETTING STARTED

Microsoft has respected and supported the rule of law regarding marriage equality through its internal policies for many years, as it was the first Fortune 500 Company to provide same-sex domestic partner benefits to its employees. In addition, Microsoft has often partnered with other leading companies as part of its public advocacy effort and made its support transparent by publicizing the business case for its actions on its website.

Please refer to Section 7 for more information on Getting Started.

CREATING AN AUTOMATED BIRTH REGISTRATION SYSTEM IN AN AFRICAN COUNTRY

Business: Uganda Telecom Limited, Uganda (Telecommunications)

Partners: UNICEF

Types of “Support”: core business, strategic social investment and partnership

● ○ ○ BUSINESS CASE

Legal identity is essential to ensuring access to basic services such as health care and education, and for the protection of individuals’ fundamental rights, including against exploitation and violence. Legal identity also provides individuals with the ability to contribute to the economy through employment and consumption of goods and services.

● ● ○ IDENTIFY ACTIVITIES

Uganda Telecom Limited partnered with UNICEF, and the relevant government agency, to create an automated registration system that gathers birth information via mobile phone at the community level and a web based application at hospitals. This has resulted in births being documented in a timely and accurate manner.

● ● ● GETTING STARTED

Uganda Telecom understood that its efforts would help ensure every citizen’s fundamental right to be counted. In order to develop a programme that effectively addressed the needs of the population, the company benefited from partnering with UNICEF to leverage its expertise in strategic programme management, and with the local government agency for its knowledge of the needs of the population.

Please refer to Section 7 for more information on Getting Started.

PROTECTING HUMAN RIGHTS

Laws should protect the human rights of all persons. Governments, individuals and businesses must ensure that they are not involved in human rights abuses.

STEP one



BUSINESS CASE

Rule of law requires respect for human rights. The rule of law is the vehicle for the promotion and protection of human rights. The rule of law contributes to lower crime rates, and offers greater protection of workers' rights including, protection from discrimination and assurance of physical safety. This allows more individuals to participate in the workforce and engage in productive enterprises. Associated costs from social auditing and from potential reputational, legal and brand risks are also minimized.

STEP two



IDENTIFY ACTIVITIES

Some activities that business can take to support the rule of law:

- Actions that help prevent violence and other crime, including against women and children
- Actions to enhance access to information and protect other fundamental freedoms
- Actions in support of more responsive, inclusive, participatory and representative decision-making at all levels, and to boost public participation in law making
- Actions to support the consistency of local laws and international standards

STEP three



GETTING STARTED

Be sure to consider:

Respect and support the rule of law | Complement government action | Partner with others | Engage in open dialogue and transparent processes | Take a long-term view | Incorporate into strategic decision-making | Understand the impact of efforts to support of the rule of law

PROVIDING LEGAL HELP FOR VICTIMS OF HUMAN TRAFFICKING

Business: Baker & McKenzie LLP, USA (Legal)

Types of “Support”: Philanthropy and Partnership

● ○ ○ BUSINESS CASE

The victims of human trafficking and forced labour are often girls and women who are exploited for, or victims of, sexual exploitation. These victims are often homeless, work the streets and find themselves on the wrong side of an array of legal issues. As a result, law enforcement or the justice system can become barriers that prevent them from reporting these alleged offences, and therefore escaping, sexual exploitation. Accordingly, in discussions with the local police, crown prosecutors and street youth activists, it was clear that these victims required access to legal advice and support, while the justice system needed to be further educated on the issues of victimization.

● ● ○ IDENTIFY ACTIVITIES

Baker & McKenzie lawyers are providing pro bono legal advice and support to the victims of sexual exploitation. They are preparing legal guides for those working with street youth to help them address the legal hurdles they face, and provide a roadmap of legal rights. Finally, Baker & McKenzie trains local police services and crown prosecutors to educate them on the legal barriers and challenges faced by victims of sexual exploitation.

● ● ● GETTING STARTED

Baker & McKenzie partnered with a large not-for-profit that assists homeless street youth to provide shelter, vocational training, health care and other support to address underlying social issues and reintegrate victims back into a stable self sufficient environment. They are on the front line and often are the first to interact with or encounter the victims. The partner’s work supports the rule of law by ensuring the legal rights of victims of sexual exploitation are protected and police services, crown prosecutors and the judiciary are trained and educated to understand the issues related to the victims of exploitation.

Please refer to Section 7 for more information on Getting Started.

OTHER EXAMPLES OF BUSINESS SUPPORT FOR “PROTECTING HUMAN RIGHTS”:

PROGRAMME TO ADDRESS COMMUNITY GENDER BASED VIOLENCE:

Barrick Gold Corporation is working with an international NGO and a local NGO to build capacity of the local non-government organization to develop and deliver training to local communities and employees regarding gender-based violence.

Types of support: strategic social investment, advocacy/public policy engagement and partnership.

PREVENTING THE TRANSMISSION OF UNDESIRABLE BULK MESSAGES

Safaricom, partnered with the government to develop administrative guidelines preventing bulk electronic content/messages that incite violence. It also sent messages of peace across its network to promote stability during elections.

Types of support: core business, public policy engagement and partnership.

INVESTING IN THE ELIMINATION OF GENDER BASED VIOLENCE AND HUMAN TRAFFICKING

Avon contributed funds to establish a “Global Center for Women and Justice” at Cornell University Law School. The Center works with judges, legal professionals, governments, and NGOs from around the world to improve access to justice to eliminate violence against women and girls. Efforts include hosting an annual “Women and Justice Conference”, conducting clinical research, and facilitating judicial and trial advocacy training with respect to human trafficking in regions around the world. **Types of support:** strategic social investment/philanthropy and partnership.

SUPPORTING ACCESS TO JUSTICE

Everyone must have access to justice mechanisms, to seek a remedy for breaches of law, and to peacefully resolve disputes. For there to be access to justice, those mechanisms must be affordable, accessible, understandable, trustworthy, and not create or be subject to excessive or unnecessary delay.

STEP one



BUSINESS CASE

Where the rule of law is present, businesses and individuals have constructive avenues for dispute resolution. These options may reduce the level of hostility and volatility that would otherwise be extremely disruptive to businesses and their assets, and potentially dangerous to their employees and to other vulnerable groups in the communities in which they operate. In jurisdictions where there is a high level of access to justice for all individuals and entities, businesses are better able to secure their rights sustainably, which creates an enabling environment for economic growth. Weak rule of law creates excessive or unreasonable delays in the legal process often resulting in unnecessary economic costs, undermines confidence in the judicial process, and prevents the speedy and cost effective resolution of disputes. Moreover, it tends to disproportionately affect the poorest by excluding them from access to justice.

STEP two



IDENTIFY ACTIVITIES

Some activities that business can take to support the rule of law:

- Actions to improve access to justice mechanisms and public access to information
- Actions to improve the quality of legal education and capacity of and access to the legal profession
- Actions that support the independence of the judiciary
- Actions that support speedy and cost-effective resolution of legal processes

STEP three



GETTING STARTED

Be sure to consider:

Respect and support the rule of law | Complement government action | Partner with others | Engage in open dialogue and transparent processes | Take a long-term view | Incorporate into strategic decision-making | Understand the impact of efforts to support of the rule of law

IMPROVING GOVERNMENT EFFECTIVENESS AND PUBLIC SERVICE IN AFRICAN COUNTRY

Business: Vale SA, Brazil (Mining)

Partner: World Bank Group

Types of “Support”: strategic social investment, advocacy/public policy engagement, and partnerships

● ○ ○ BUSINESS CASE

Prior to making a long-term investment in an African country, Vale sought to ensure that there was a sound legal framework in place which, among other things, would allow for the enforcement of contractual obligations, labour laws, and health and safety laws.

● ● ○ IDENTIFY ACTIVITIES

Vale worked with the World Bank Group to support various projects to improve governance and help reform the legal sector. This included bringing judges from the company’s home country to assist with the legal training of judges in the host country, modernizing the national juridical training centre, and piloting programmes aimed at improving the administration of, and access to, courts and legal services.

● ● ● GETTING STARTED

Vale took a long-term view of its operations and incorporated its support for the rule of law in its strategic decision making by investing in the host country’s legal framework at the same time it moved to make a large business investment in that country. While other business sectors are more likely to have greater flexibility in the markets they choose to operate in, the mining industry is typically drawn to where primary resources are located. As such, long-term commitments need to involve a reliable legal framework.

Please refer to Section 7 for more information on Getting Started.

EXPANDING ACCESS TO LAWS IN ASIAN ISLAND NATION

Business: LexisNexis Legal & Professional, Asia Pacific (Legal)

Types of “Support”: core business

● ○ ○ BUSINESS CASE

Laws and Law Reports are the most important sources of law without which no legal system can function effectively. The lack of easily accessible legislation and case law can result in far reaching negative consequences. In such circumstances, access to and knowledge of the law is effectively denied. Some inevitable consequences of this are impeding the administration of justice. No legal system can hope to achieve justice, stability, development and the protection of the citizenry under circumstances where the content of the normative law is subject to uncertainty.

● ● ○ IDENTIFY ACTIVITIES

The laws of an island nation in the Indian Ocean have never been consolidated nor translated into English or any other widely-spoken language. As such very few people in the world can reference or learn from them. At the request of the Attorney General, LexisNexis is consolidating, updating and indexing all laws in the country. It will result in the creation of a final and updated version incorporating all legislation and amendments to these. The laws will also be translated into English and made available in the printed format and on a bi-lingual online platform. This will effectively create a new national legal reference framework for the country, thereby enhancing the administration of justice and facilitating good governance. As the laws will also be made available in English, the rest of the world will also be able to reference these laws and learn from them.

● ● ● GETTING STARTED

LexisNexis understood that its efforts would not only facilitate the administration of justice but would strengthen the legal structure of the country and support the understanding and practice of law. It was critical to publish and present the laws in a way which would best address the needs of those who would reference and apply these laws. With the support of the Attorney General's Office, the team facilitated in-depth interviews and roundtable dialogues with members of the judiciary, private practitioners and academia to gain insight into the challenges of legal practice in the country and identify the best way to create a solution which would address these challenges in a practical manner. The knowledge was fed into the design, structure and creation of the solution for the country.

Please refer to Section 7 for more information on Getting Started.

OTHER EXAMPLES OF BUSINESS SUPPORT FOR “SUPPORTING ACCESS TO JUSTICE”:

IMPROVING ACCESSIBILITY TO LAW

LexisNexis Legal & Professional has partnered with governments to create electronic databases of national laws in several developed and developing countries.

Type of support: core business, strategic social investment and partnership.

DIRECT PROVISION OF LEGAL SERVICES

Microjustice4all has developed a business model to provide legal services and legal documentation at low cost to people living in poverty.

Type of support: core business.

PROVIDING SUPPORT FOR TRAINING THE JUDICIARY AND PUBLIC DEFENDERS

Statoil worked with UN Development Programme, the host government, and Amnesty International to provide training to judges and public defenders on human rights and international law.

Type of support: strategic social investment.

6



CALL TO ACTION FOR BUSINESSES AND GOVERNMENTS

While businesses have the interest and capacity to play a key role in supporting rule of law efforts, it is government that has the primary duty to establish a strong legal framework

and more accountable institutions. This section is a call to action for both businesses and governments to undertake efforts to support the rule of law as outlined in this Framework.

BUSINESSES

To be sustainable, the UN Global Compact has identified that businesses must do five things¹⁵:

1. *Principled Business*

Any company seeking to be sustainable begins by operating with integrity – respecting fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption. *This also ensures that the business is not undermining the rule of law.*

2. *Strengthening Society*

Sustainable companies look beyond their own walls and take actions to support the societies around them. *Actions in support of the rule of law, as described in this Framework, help to build sustainable societies with benefit for society and business.*

3. *Leadership Commitment*

Leadership must send a strong signal throughout the organization that sustainability counts, and that all responsibilities are important. Joining the UN Global Compact and deepening the company's engagement in the initiative are important demonstrations of leadership. *Support for the rule of law is a business leadership opportunity.*

4. *Reporting Progress*

Reporting to stakeholders in a transparent and public manner is fundamental for companies committed to sustainability. *Being transparent on a business' actions in support of the rule of law builds trust and legitimacy and also inspires other businesses to join the effort.*

“Workshop participants expressed a common desire to learn about the meaning of the rule of law from a business perspective, and learning from other businesses how to take action to support the rule of law and overcome obstacles as they arise...[O]ne suggestion provided was to establish a forum for dialogue between small and large businesses – such as through the Global Compact Local Network – to explore ways they might be able to work together to support improvements in the rule of law, share “good practice” and leverage the capacity of larger companies to level the playing the field.”

Gaythri Raman, Head of Rule of Law and Emerging Market,
Asia Pacific, LexisNexis
Business for the Rule of Law Workshop,
Yangon, Myanmar, October 2014



¹⁵ Corporate Sustainability is defined by the UN Global Compact as “a company's delivery of long-term value creation in financial, social and environmental, and ethical terms.” See also [UN Global Compact, Guide to Corporate Sustainability: Shaping a Sustainable Future \(2015\)](#).



GOVERNMENTS

5. Local Action

Companies with operations and supply chains extending around the world need to understand locations far from headquarters and view sustainability through a local lens. Global Compact Local Networks provide an invaluable opportunity to do this as well as providing a forum for subsidiaries and local firms to work together, including on issues of business and the rule of law. *By becoming a member of a Global Compact Local Network, and engaging in Business for the Rule of Law, businesses can work with others to identify rule of law gaps and needs at the local level, and join forces to take action to help address them in ways that make sense for them. Forming a working group at the local level on Business for the Rule of Law is one way to continue the conversation, share good practices and provide a platform for collaboration and collective action.*

Responsible businesses need and want governments to strengthen the rule of law by, among other things¹⁶:

- Building peaceful and inclusive societies
- Ensuring effective, predictable, accountable and inclusive institutions at all levels
- Providing access to justice for all

“Workshop participants felt there was a need to call on businesses to speak up more through responsible lobbying, including large multinational companies using their leveraging power as a force for good, to call on governments for consistency and certainty with respect to the rule of law.”

Mohd. Shah Bin HASHIM, President, Global Compact Network
Malaysia Business for the Rule of Law Workshop,
Kuala Lumpur, Malaysia, March 2015

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¹⁶ For more details on the kinds of steps businesses have said they would like to see governments take to improve the rule of law see: Hogan Lovells, Bingham Centre for the Rule of Law and British Institute of International and Comparative Law Investment Treaty Forum, *Risk and Return: Foreign Direct Investment and the Rule of Law (2015)*. The research mentions stronger laws for the enforcement of investor rights; better trained judiciary, police, security and legal professionals; and improved transparency in legal and administrative law making as the top three steps businesses would like to see governments take.

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GETTING STARTED

As a first step, it is critical for business leaders to recognize that there is a compelling business case for respecting and supporting the rule of law. Relevantly, by virtue of their profession, lawyers are

particularly in a unique position – both internally and externally to the business – to mobilize business efforts supporting the rule of law.

The following recommendations provide guidance for businesses to engage responsibly and sustainably in efforts to support the rule of law:

RESPECT AND SUPPORT THE RULE OF LAW

It is important for businesses to understand the distinction between “respect” and “support” so that they are clear on what they must do and what they have the opportunity to do. Businesses must respect the rule of law consistent with national laws, and wherever possible, international standards. Businesses can also go beyond “respect” for the rule of law by making a positive contribution to help strengthen the rule of law. Such efforts to “support” the rule of law – whether through core business, strategic social investment/philanthropy, public policy engagement/philanthropy, or partnerships/collective action – can be a complement to, but not a substitute for, actions to respect the rule of law.

COMPLEMENT GOVERNMENT ACTION

Business action in support of the rule of law cannot be a substitute for government’s primary duty for the

rule of law. Rather, businesses are encouraged to engage responsibly with ministries of justice, commerce and other relevant government departments, to align their respective efforts to strengthen the rule of law. This includes assisting in capacity building efforts, particularly within government and the judiciary.

PARTNER WITH OTHERS

Businesses are encouraged to work with experienced others. They can support rule of law efforts by partnering with the government, bar and industry associations, industry peers, international organisations (including the United Nations, World Bank Group, International Development Law Organisation, International Chamber of Commerce and Organisation for Economic Cooperative Development) and other non-government organisations. Partnerships may be more effective and legitimate, particularly in providing sufficient distance to

engage an otherwise business-sensitive host government. Partnerships can also avoid duplication of effort, and instead, enable pooling of resources and expertise for maximum impact.

ENGAGE IN OPEN DIALOGUE AND TRANSPARENT PROCESSES

Businesses are encouraged to engage in open dialogue. This provides clarity and transparency around commercial interests and social goals, and builds trust between partners. Transparency of processes also assists in addressing possible concerns by government and other social actors about legitimacy or perceptions of inappropriate corporate influence. Sharing experiences also helps to inspire other businesses to join the effort.

TAKE A LONG-TERM VIEW

While short-term, one-off investments can make a difference, business planning should take into consideration the need for strategic investment supporting efforts to build legal institutions, draft/reform laws, develop local capacity, and ultimately strengthen legal frameworks. Such long-term investment assists in creating more peaceful and stable markets in which responsible businesses are able to operate.

INCORPORATE INTO STRATEGIC DECISION-MAKING

Businesses will be able to be more impactful and sustainable when their actions in support of the rule of law are aligned with and/or they leverage their values, strategies, priorities and areas of expertise.

UNDERSTAND THE IMPACT OF EFFORTS TO SUPPORT THE RULE OF LAW

When considering what activities to pursue in support of the rule of law, businesses are encouraged to carefully assess the impact such activities may have on themselves and society. There may be instances where, despite best intentions, their activities can have a negative impact. Partnering with experienced others and seeking expert advice are key ways to mitigate the risk of unintended consequences.

“The next step is to have a discussion with your Boards and CEOs to raise awareness about how businesses can support the rule of law, and promote collective action in engaging governments to advance the rule of law.”

Ruth Sebatindira, President, Uganda Law Society Business for the Rule of Law Workshop, Kampala, Uganda, March 2015

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The Ten Principles of the United Nations Global Compact

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption:

HUMAN RIGHTS

- Principle 1 Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2 make sure that they are not complicit in human rights abuses.

LABOUR

- Principle 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4 the elimination of all forms of forced and compulsory labour;
- Principle 5 the effective abolition of child labour; and
- Principle 6 the elimination of discrimination in respect of employment and occupation.

ENVIRONMENT

- Principle 7 Businesses should support a precautionary approach to environmental challenges;
- Principle 8 undertake initiatives to promote greater environmental responsibility; and
- Principle 9 encourage the development and diffusion of environmentally friendly technologies.

ANTI-CORRUPTION

- Principle 10 Businesses should work against corruption in all its forms, including extortion and bribery.

