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ISO 37001 is being developed as a “requirements standard.” As such, companies will be able to obtain certification from accredited third parties that their anti-bribery management systems meet the standard’s criteria. As happened with the ISO 9001 – Quality management systems standard, many businesses will likely place a high value on ISO 37001 certification, and may look for their value chain participants to do the same.

The standard builds on guidance from various organizations, such as the International Chamber of Commerce, the Organization for Economic Cooperation and Development, Transparency International and various governments representing a global consensus on anti-bribery leading practices. It is intended to apply to organizations of all sizes, wherever they may do business.

Significantly, ISO 37001 is written in plain English, not “legalese,” largely by business people for use by business people. With its operational emphasis and risk-based approach, it fills an existing void by specifying a series of required anti-bribery measures and controls—reasonable and proportionate to the organization and its risks—and also provides practical guidance on how to design and implement the system. Notably, it contains a level of detail not covered in existing guidance.

What it is not

It is important to understand that ISO 37001 is not an anti-bribery “silver bullet” or panacea. Adherence to ISO 37001 will not be a bar to liability, but it can provide some evidence that an organization has taken reasonable steps to prevent wrongdoing, and may be taken into consideration by prosecutors should a bribery-related event occur. Enforcement authorities regularly emphasize the importance of having an effective anti-bribery program. Several countries have recently passed laws requiring or incentivizing organizations to adopt effective anti-bribery compliance programs as well.

Similarly, certification under ISO 37001 is not a guarantee that bribery has never occurred or will never occur. Humans are creative and even the strongest standards can be circumvented at times, or “gamed.” But where competent, credible independent third parties review a company’s design and implementation of its ISO 37001-based anti-corruption management system, the chances of bribery should be reduced. A subcommittee of

A NEW STANDARD

A preview of ISO 37001 - Anti-Bribery Management Systems

Written by Leslie A. Benton and Worth D. MacMurray

A noteworthy new business tool designed to fight bribery is nearing completion: the ISO 37001 - Anti-bribery management systems standard. Designed by businesses and other stakeholders from around the globe, this standard, when it is formally adopted by the International Organization for Standardization (ISO), has the potential to reduce corporate risk and costs related to bribery by providing a manageable business framework for preventing, detecting and addressing bribery.

Among the new and positive aspects of 37001 are its business-oriented ‘management systems’ approach, its transparency and its non-legalistic language.

the ISO 37001 committee is developing detailed auditor competence requirements applicable to those conducting the certification activity.

In addition, the standard should not be viewed as the “same old, same old,” nor as a mere repetition of what exists elsewhere. Among the new and positive aspects of 37001 are its business-oriented “management systems” approach, its transparency and its non-legalistic language.

Business advantages

Business people are naturally more comfortable with business terms like “revenue,” “costs” and “financial statement impact” than they are with the arguably less precise legal references to matters related to anti-bribery such as “regulatory priorities,” “legal grey areas” or “potential successor liability.” This is one of ISO 37001’s great benefits: It provides companies with a framework that is in the context of key business drivers—revenue growth, cost reduction and corporate responsibility.

- **Revenue growth and cost savings:** Larger companies, for their own anti-bribery risk management reasons, are increasingly placing anti-bribery management obligations on their value chain participants. These obligations, which are costly to both the large organization and the value chain partner, take a variety of forms (e.g., certifications, verification audits, independent agent due diligence and/or the wholesale adoption of the requesting company’s anti-corruption policy) and their scope often makes it difficult for other companies, particularly small and medium-sized businesses, to accept them and therefore be eligible to be a business partner.

Because draft ISO 37001 is a business-oriented management system, it has the potential to be viewed and used as an anti-bribery “common language.” Companies can then use the standard to engage business partners or to simplify or enhance their existing individual requirements, thus reducing their

costs and making it easier for others also applying ISO 37001 to participate in that value chain. At the early stages, standard adoption by a company can also be a marketing differentiator, with certification demonstrating that the entity has gone the extra mile to affirmatively address anti-bribery risk.

- **Cost avoidance and risk reduction:** When a company has an enhanced ability to prevent and detect bribery, there is less risk that inappropriate behavior will occur, and an increased likelihood that if it takes place, it will be identified and managed at earlier stages than would otherwise be the case. In addition to the potential benefits related to revenue and profit, noted above, there are direct and indirect cost benefits. Directly, corporate funds and other assets are less likely to be applied to illegal bribery-related purposes. Indirectly, with less risk of governmental investigations related to bribery allegations, expensive outside service providers (e.g., lawyers, forensic accountants and e-discovery specialists) may not be needed to help determine what went wrong and negotiate a resolution. And identification and mitigation of issues at the early stages is typically less complex, time-consuming and costly than time-pressured and cost-is-no-obstacle late-stage responses.
- **Corporate social responsibility:** In addition to reducing risk and potential liability, anti-bribery programs are an integral component of a company’s commitment to good corporate citizenship or “corporate social responsibility (CSR).” In today’s global economy, companies are accountable to a wide range of stakeholders. Calls for increased disclosure of both financial and non-financial information, pressure from investor communities, increased customer scrutiny and the desire to create sustainable business models are all driving the CSR movement. By aligning with ISO 37001, a company can demonstrate to stakeholders that

it embraces the standard’s operational emphasis and a commitment to ethical practices.

The standard has wide application and applies to public entities and non-profits as well, as they face many of the same bribery risks as do businesses.

Draft ISO 37001’s path forward

Experts from companies, governments and non-governmental organizations, drawn from 34 participating countries, 18 observer countries and seven liaison organizations, comprise the committee drafting the standard. Publication of the standard is expected in September 2016.

In conclusion

Many companies have already invested significant time and resources into developing internal systems and processes for preventing bribery. The new ISO standard is designed to support and broaden those efforts, while providing transparency and clarity on the measures and controls that companies should be putting in place and how to implement them most effectively and efficiently.

ISO 37001 has the potential to be a powerful new tool for all organizations to combat bribery risk in their own operations and throughout their global value chains. To learn more, we encourage you to read about the standard on the ISO website:

www.iso.org/iso/catalogue_detail.htm?csnumber=65034.

Author Biographies

Leslie A. Benton is the Vice President of Advocacy and Stakeholder Engagement of the Center for Responsible Enterprise And Trade (CREATe.org), a non-governmental organization dedicated to helping companies prevent corruption and protect intellectual property. Ms. Benton previously led the anti-corruption and compliance communications practice at Levick Strategic Communications and was the Senior Policy Director for the US chapter of Transparency International.

Worth D. MacMurray is the Senior Vice President - General Counsel & Chief Compliance Officer of GAN Integrity Inc. in McLean, Virginia. Previously, he consulted on anti-corruption and cyber-governance matters at PwC and served as general counsel and chief compliance officer of several technology sector public companies.