



ForensicFocus

Understanding International Organization for Standardization 37001 Anti-bribery management systems

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Today's reality

- On October 13, 2016, the International Organization for Standardization (ISO), a worldwide federation of national standards, released the first international standard designed to help organizations prevent and detect bribery.
- ISO 37001, the standard for anti-bribery management systems (the Standard), creates a framework that includes the steps associated with the implementation of an anti-bribery and corruption compliance program, including, but not limited to, the elements of an anti-bribery policy, internal financial controls, compliance-related record-keeping and reporting, and the performance of risk-based third-party due diligence.
- For many years, companies had to seek anti-bribery and corruption guidance from various sources that were considered to be the "international good practices," like the Department of Justice's "FCPA¹ Guide" or the "Bribery Act 2010 – Guidance."
- This new standard brings a unified approach for what should be considered "good practices" in compliance and could become the new benchmark for grading anti-bribery and corruption compliance systems.

Main changes brought by the Standard

The ISO 37001 Standard applies to all organizations (or parts of an organization), regardless of type, size, industry, or whether they are public, private, or not-for-profit. The Standard was developed through the joint efforts of experts from 45 countries and 7 liaison organizations, such as the Organization for Economic Co-operation and Development. The Standard is a business-oriented management system that has the potential of becoming the anti-bribery and corruption "common language."

The main difference brought by the Standard is that companies can now certify their anti-bribery and corruption programs.

Companies can be certified when they prove that they have developed and implemented an effective anti-bribery management system "designed to help an organization to prevent, detect, and respond to bribery and comply with anti-bribery laws and voluntary commitments applicable to its activities."² However, the Standard cautions that the certification is not a guarantee that "no bribery has occurred or will occur in relation to the organization, as it is not possible to completely eliminate the risk of bribery."³

¹ United States – Foreign Corrupt Practices Act

² ISO 37001, Article 1, page 1

³ ISO 37001, Introduction, Page vi



With regard to the certification process, the Standard departs from the perceived subjectivity of other guidelines and ensures that an anti-bribery and corruption compliance program is auditable. In addition, the Standard contains a level of detail not covered in existing guidelines.

In contrast with existing U.S. guidelines, the Standard also addresses private bribery—in a manner similar to the U.K. Bribery Act—and prohibits facilitation payments, also limiting the instances in which extortion payments are allowed.

Of particular interest for large corporations is that the Standard addresses both “bribery of the organization” and “bribery of the organization’s personnel/business associates” as it relates to the organization’s activities.

Depending on the size of the organization and the level of bribery risk the organization faces, the Standard also requires dedicated personnel be allocated to an “anti-bribery compliance” function. Further, the Standard makes it clear that anti-bribery and corruption compliance should be the main focus and responsibility of these personnel, otherwise their effectiveness may be compromised.

Realizing the role and benefits of the new Standard

The Standard can serve as a checklist for companies to use in verifying their existing anti-bribery and corruption compliance programs or for the rollout of a new program. External parties can also use the Standard’s detailed guidance as a scorecard to evaluate companies’ anti-bribery and corruption programs.

Companies seeking ISO 37001 certification may derive added benefit, such as:

- Additional assurance to stakeholders, including potential investors, that they are performing their business in an ethical way, especially in light of the rising number of corruption cases around the world.
- Better informed decisions when vetting business partners. If a company has been ISO 37001 certified, it shows commitment to prevent, detect, and address the risk of bribery in its own businesses.
- A competitive advantage in the market, as it will help illustrate a threshold of ethical business conduct. This is especially relevant for companies operating in countries or industries most prone to corruption.

- An easier means of assessing their existing compliance programs and responding appropriately to correct gaps, thus reducing the risk of future bribery- or corruption-related incidents. Given the fines and other business costs associated with corruption-related incidents around the world, this preventive exercise may help reduce a company's costs associated with this risk.
- A reduction of costs through the implementation of appropriate controls and policies to ensure corporate funds and other assets are not being used for illegal, bribery-related purposes.

Although not stipulated, ISO 37001 certification could indicate to regulators that a company has taken "reasonable and proportionate" measures to mitigate the risk of bribery within their organizations.

Action items

The Standard identifies the measures an organization may take in its efforts to prevent and detect bribery:

- Understand the context of the organization: Establish, implement, maintain, and continually review an anti-bribery management system (system) that includes criteria designed to identify, evaluate, and respond to the risk of bribery.
- Ensure that leadership demonstrates commitment to the anti-bribery policy and system through proper oversight, assignment of resources, communication, and promotion.
- Identify a compliance function or person to monitor the program.
- Communicate the anti-corruption policy to associated persons (e.g., joint venture partners, subcontractors, suppliers, consultants, etc.).
- Provide adequate and appropriate awareness and training to employees on a regular basis, including topics such as the potential consequences of bribery, how to recognize and respond to solicitations, and the appropriate channel to report concerns.
- Monitor benefits provided by the organization (e.g., gifts, hospitality, donations, etc.) to understand the true intent.
- Implement and control processes needed to meet the anti-bribery and corruption system requirements as outlined by the standard, including, but not limited to, (1) conducting due diligence on certain transactions, business associates and employees, and (2) implementing financial and nonfinancial controls that manage bribery risk.
- Establish procedures to investigate bribery or violations of the anti-bribery policy, take appropriate action when bribery is identified, and report findings to the anti-bribery compliance function.
- Implement whistle-blowing procedures.
- Monitor, measure, analyze, and evaluate the effectiveness of the system through internal audits, top management review, and governing body review.

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