

Voluntary ethic code of behavior and state ethic of conduct

It is necessary to take immediate actions in order to improve the ethics of behavior and decency of the government as a whole. In this connection an appropriate system and procedures for prevention and suppression of corruption in Kazakhstan should be worked out taking into consideration International experience. Approval and observance of the ethics of behavior of civil servants and private enterprises will contribute in prevention of damages of state interests caused by corruption and in increase in quality of official decisions taken.

- to promote opened discussions of the most significant problems faced by the government and to establish the priorities of the reforms in order to make the government's activities public and accountable;
- to provide appropriate control of fulfillment by the governments of their functions by means of extension of internal control mechanisms concerning the corruption activities including investigation and enforcement bodies and assurance of public access to information needed to perform detailed audits from outside;
- to establish the norms of identifying of abuse of power of civil servants and also to take efficient actions to prevent illegal enrichment including drastic penalties applied to those who use official position for selfish ends;
- to call the world governments to take and to toughen measures against corruption in International financial and commercial activity in the hemisphere;
- to work out the mechanism of co-operation in legal and banking fields in order to assure prompt and effective response during International investigation of corruption cases;
- to consider strengthening of governmental decrees and assurance of tax collection as well as justice, legislation and election management to be the priorities;
- based on current agreements and national legislation to work out general approach to corruption both in governmental and private sectors that will cover extradition and prosecution of the accused by means of working out of new overall agreements or tools within present International co-operation.

Operating within the legislation of the country of company's residence is fundamental principle of any private enterprise's activity. Nevertheless, while the activity of, for instance, American companies is managed by the Law on Foreign Corruption of the year 1977, those companies who broke a law of foreign countries different from their state's one are presently in vague position.

Numerous debates were caused by recommendations and a convention putting bans on bribery approved by OECD.

Today the investors in Kazakhstan can be divided into two types:

1. companies forbidden to bribe foreign state officials by national legislation as well as by the OECD convention
2. companies belonging to countries where bribery of foreign officials is not considered as an offence and the OECD anti-corruption conventions are not ratified.

No doubt that this is serious problem that can be partially solved in case if Kazakhstan join the OECD conventions and bring its legislation into compliance with the International Anti-corruption legislation.

Nevertheless, the companies' managers should realize and bear responsibility for their entities concerning observance of legislation of countries of their residence. Corruption in the International operations contradicts the procedures of International Trade Organization (ITO) as well as affects competition and restricts trade.

Though widely believed, there is no difference between large- and small-scale corruption. While the bribery in International operations are still practiced and the role is not yet stipulated by the criminal and civil legislation the voluntarily approved codes of companies' behavior contribute a lot into establishing moral rules for their personnel and providing a third party with the norms regulating the company's activity. Companies' codes differ in their efficiency:

The least use can be made by declarative codes. The most efficient ones are the codes that specify clearly all actions, which an employee is not allowed to take on company's behalf.

The best codes not only specify the points, but also require the head of the company to sign them annually or once a two quarters in order to acknowledge their comprehensive revision.

The best voluntary code is widely thought to be as effective as this efficiency is controlled by the company's management. The heads of the companies should be responsible for control of realization and observance of the company's code as well as for maintaining of legal and moral norms within the company.

In present conditions of widely spread corruption and vague legislation many companies aimed to enter into International contracts have a risk of losing business because of bribers. The anti-corruption pacts ratified by separate countries and applied to all applicants of tenders for large governmental contracts significantly reduce the risk of bribery.

Ethic codes of Many large International professional associations and federations contain compulsory corruption clauses that provide for expelling from the organization of the person for non-observance of the code's requirements. In case this organization is the member of the global association its personnel is exposed to less danger of corruption than that of not member organization. For example, the financial organizations are expected to provide assistance to the members of appropriate professional bodies rather than to companies not included into these institutions.

Private enterprises should admit that large-scale corruption affects high standards and efficiency as well as fair competition.

In many cases company's private interest are the insurmountable obstacle for control of its unethical behavior. Simultaneously, the companies that allows corruption of their abroad staff are at risk. This is dangerous phenomenon. The company's finding out that it has become a victim of such behavior of its staff is just matter of time

There is question of even more importance: what will be the company's position in case the violation of the law by its staff resulted in court trial. In those cases when the facts of giving illegal remuneration to public officials is hidden by the company it is very difficult to convince the judge in the company's unawareness irrespective of was the Board of directors aware of it or not.

The legislation is needed to stipulate the internal control procedures for every company. By establishing these procedures the companies apply the best practice of corporations.

Good example for Kazakhstan can be presented by the US experience where, beginning from 1991 the Federal principles of judgment are applied. The panel responsible for observance of these principles was initially aimed to control of giving judgments to private persons, but study of corporations' status has become its biggest contribution into the Criminal Law. This study proved that the fine imposed on companies comprises in average only 20 % of the losses caused by their activity. This provided the ground for the panels resolution that the judgment on the given questions should be given to these companies only after taking into consideration their reputation or, otherwise, the so called "positive corporate citizenship" should be evaluated. This resolution is aimed to award good behavior rather than to punish companies for corporate misbehavior. In case of company's infringement the fine is usually thrice more than the damages made. Nevertheless, if company succeeds to prove that its effective ethic programs are in place, the fine can be reduced by 95 %.

The federal principles of judgment of 1991 indicate as follows:

The criteria for efficiency of the law breaks detection and prevention program is represented by audits of financial status of organization in order to detect and prevent offences of other companies' employees. The Convention of Financial Status Audit comprises seven steps:

- 1) The employees are obliged to observe the company's norms and procedures. This will decrease significantly the possibility of misbehavior;
- 2) One or more employees must be appointed in order to control observance of the rules mentioned in clause 1;
- 3) The corporation should prevent providing people known to have tendency to misbehavior with the authority of making decisions;
- 4) The corporations must have programs on acquaintance with internal norms and preparation of personnel to observance of these norms and procedures;
- 5) The corporations' staff is obliged to take crucial actions in order to achieve compliance of the corporation's norms with all-state ethics of behavior;
- 6) The norms must be continuously strengthened by the appropriate mechanism of disciplinary measures including cases when the personnel is responsible for misbehavior detection failure;
- 7) After the misbehavior is detected the corporation must take crucial actions in changing its system in order to avoid recurrences.

The above mentioned principles and the criteria for strengthening of ethical behavior norms and self-defense in corporate sector stipulated by them are strongly needed to be introduced in Kazakhstan.

The aim of the large-scale research carried out by the European Institute of Business Ethics was to answer the question: are the companies that observe the ethic norms able to take part in competition in corrupted market? Are they competitive in this market?

This research showed that the work in any field having separate unethical features can be justified by the business as a whole where:

- these features are inevitable at least at the moment;
- the company runs fair business pursuing the positive social objectives;
- company is working on changes in present unethical points. These arguments point out cases of official claims issued by some corporate companies, which have changed the practice of bribery in some countries and thus proved their activity to be more efficient than efforts of single companies.

Besides, large corporations' experience also proves the fact that the government deals with company known for its observance of ethic norms can become the crucial point in obtaining the contract even in the market operating beyond ethic principles. "Deal with us, - the corporation says, - and your people will be aware of your honesty". The marketing experts also agree that, having the opportunity to refer to Law on Foreign corruption, any talks on bribes and "pies" will be expelled from agenda.

Nevertheless, it would be too simplified to suggest obtaining profits in business only by those who strictly observe these norms. The evidences are obvious: the companies have won the big business in unethical way that turned the advantages in competition into competitive bribery. Consequently, it would not be reasonable to ignore the influence of the Law on Foreign Corruption upon large US corporations or upon their willing to meet the same ethic behavior of their competitors.

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