

# ISO 37001: Anti-bribery Management Standard

## Why ? How ?

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# ISO 37001 – Anti-Bribery Management System Standard



Why ? How ?

- Corruption in all its forms
- Anti-corruption compliance program: overview of best practices
- What is ISO 37001, the Anti-Bribery Management Systems Standard
- Auditing the ISO 37001: principles and rules
- The added value of certification

# Scenario



You are the investment manager of a sovereign wealth fund.

You receive a phone call from the General Director of the Ministry of Finance, the public official with whom your company signed the investment advisory agreement 2 years ago.

He asks you to take on his son for a 3-month internship. His son is currently studying finance at the London School of Economics. He adds that his son doesn't need to be paid.

When you explain to him that it is not that easy, he interrupts you saying: "it would be important for your company to find a solution, otherwise...".

➤ **What would you do ?**



# Bank N (USA)/ USA– 2015



**Country:** unspecified in the Middle East

**Sector:** banking (management sovereign wealth funds)

**Bribe amount:** insignificant (internships less than 6 months in 2010/2011)

**Contract value:** Management of a fund worth \$55 billion

**Corruptor:** two subsidiaries of Bank N (Boston and London)

**Corrupted:** Fund managers

**Objective:** to win or retain contracts to manage/service the assets of sovereign wealth fund

**Method:** 3 internships following urgent then threatening requests by two fund managers.

Intern level pay for two and no pay for third.

**Discovery:** SEC investigation (2011) of the fund managers

**Plaintiff/ Defendant:** US SEC / Bank N

**Sanctions:** SEC: \$14.8 million + each employee must certify each year that he or she will not take any intern without following the normal procedures for recruitment

**Note:** Three major banks are being prosecuted for similar acts

⇒ *“Companies can hire the children of well-connected government officials if they have a transparent hiring process and scrutinize multiple candidates and resumes.”*  
*Assistant chief of the DoJ’s FCPA unit, Matthew Queler*

# Why was it considered an act of corruption?

## Definition:

Corruption is giving (or receiving) *anything of value* with a *corrupt intent*

### ▪ *Anything of value*

For he who receives ...  
... and not for he who gives!

#### Example:

- accepting the son for an unpaid internship **does not cost the bank anything**....
- ...mentioning an internship in that bank on his CV is **something of value** for the student's career

### ▪ *Corrupt intent*

Will to influence ...  
... by creating a conflict of interest

#### Example:

- accepting the son for an internship will **please the father**....
- ... and the father will please the company... using **his position as General Director of the Ministry!**

⇒ Behind every act of corruption there is a conflict of interest...  
*...which does not mean that every conflict of interest is an act of corruption.*

# Active corruption *Versus* Passive corruption



## Passive corruption (being corrupted)

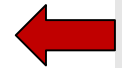
- a) is the act of asking or receiving
- b) an advantage:
  - For oneself (*ex: personal advantage*)
  - For another (*ex: influence peddling*)
  - For an organization (*ex: political party*)
- c) by anyone :
  - Public-sector agent (*ex: Government Official*)
  - Private-sector agent (*ex: Commercial Partner*)
- d) To violate his obligations:
  - Legal  
(*ex: in the attribution of a public contract*)
  - Professional  
(*ex: divulging confidential information*)

For the employee of a company receiving a bribe is almost undetectable...

- Preventing passive corruption =
  - Establishing strict procurement processes
  - + Relying on personal integrity

## Active corruption (corrupting)

- a) is an act (including an offer or a promise),
- b) made in an effort to obtain an undue advantage:
  - For oneself (*ex: personal advantage*)
  - For another (*ex: influence peddling*)
  - For the company (*ex: obtaining a contract*)
- c) by ensuring that someone:
  - Public-sector agent (*ex: Government Official*)
  - Private-sector agent (*ex: Commercial Partner*)
- d) fails to respect his obligations:
  - Legal  
(*ex: in the attribution of a public contract*)
  - Professional  
(*ex: divulging confidential information*)



As bribing is a crime and cannot be recorded as such in the company's books, it has to be based on a fraudulent act : fake contract with an intermediary, fake invitation of an official...

- Preventing active corruption =
  - Strong tone at the top
  - + Preventing fraud through processes and controls

# Key Takeaway



- *It is not sufficient to ban corruption : companies need to identify corruption risk and explain how to prevent it*



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# What is a Market-leading Global Anti-Corruption Compliance Program?



## Efficient

- A program that prevents corruption effectively throughout the company regardless of its countries of operation

## Legal Defense

- A program that offers a legal defense to the legal entity in the event of an always possible corrupt act committed by a rogue person

## Business-oriented

- A program that does not create an unnecessary administrative burden and which is well integrated with business decisions

## A Market-leading Global Anti-Corruption Compliance Program demonstrates:

- **That business is sustainable because it is based 100% on “sound” activities**
  - ⇒ Success is based on innovation and market relevance, not on bribes
- **That an always possible case of corruption will have limited impact on the company**
  - ⇒ An act of corruption will be considered as an “accident” contrary to the company’s rules
- **Compliance is not just an administrative process, but a way of doing business**
  - ⇒ People are always vigilant ... even in situations that have not yet been identified as “risky”

# Similarities between corruption... ... and accidents in the work place

## Similarities in risks

- Both are business specific
- Both present a risk that can never be excluded
- Both engage the liability of Management

## Similarities in policies

- Both require a risk-based policy
- Both call for the implementation of strict processes
- Both involve the mobilization of staff at all levels

## Similarities in preventative actions

### Accidents in the work place

- |                      |  |
|----------------------|--|
| <b>1.Information</b> | Top level commitment/communication to avoid accidents                          |
| <b>2.Training</b>    | Explaining accident risks at work place and the security organization & policy |
| <b>3.Tools</b>       | Adequate security organization and safety equipment and rules                  |
| <b>4.Control</b>     | Is equipment properly maintained and are safety rules properly enforced?       |

### Corruption in business transactions

- |  |
|--|
| Top level commitment and communication to avoid corruption                   |
| Explaining corruption risks and the compliance organization & program        |
| Adequate compliance organization and proportionate anti-corruption processes |
| Are compliance processes regularly updated and efficiently enforced?         |

# ETHIC Intelligence's Certification Benchmark against the Italian, US, UK and Russian Guiding Principles



ETHIC Intelligence Certification Benchmark (2006)	Italy Law decree 231 (2001)	US Federal Sentencing Guidelines 7 steps (2004)	UK Bribery Act Guidance 6 principles (2010)	Russia Law 273 – art. 13.3 (2013)
<b>Information</b>	6)1a. Commitment of Top Managt.	2. Commitment of Top Management	2. Commitment of Top Management	1. Mgt supported implementation of AC program
<b>Training</b>	6)2b. Anti-corruption training	4. Anti-corruption training	5. Anti-corruption communication & training	2.3 Training on anti-corruption procedures
<b>Tools</b>	6)1a. Supervisory body 6)2a. Risk assessment 6)2b. Internal procedures 6)2c. Adequate resources	1. Implementation of AC program 3. Due diligence 6. Promotion and update of AC program	1. Appropriate procedures 3. Risk assessment 4. Due diligence	2.1 Dpt AC dep't and/or compliance chief 2.3 AC procedures 2.4 Code of conduct
<b>Control</b>	6)1d. Vigilance Proactive 6)2d. Whistleblowing 6)2e. Sanctions	5. Program evaluation + whistleblowing 7. Appropriate response to illegal acts	6. Monitoring & evaluation	2.5 Control of conflicts of interest 2.6 Prevention of forgery 2.2 Cooperation with authorities

# ETHIC Intelligence's Certification Benchmark against the French, Spanish, Brazilian, Mexican ISO Guiding Principles



<b>ETHIC Intelligence Certification Benchmark (2006) and ISO 37001 (2016)</b>	<b>Spain</b>  Art 31bis & 33bis (July 2015)	<b>Brazil</b>  Decree 8 420 (22 Sept. 2015)	<b>France</b>  Sapin Law 8 Dec. 2016 (entry into force June 1 2017)	<b>Mexico</b>  New General Law of Admin. Responsibility (June 2017)
<b>Information</b>  <i>5 - Leadership</i>	(31 bis: no liability if) 1. Top Mgt has implemented an AC program	1. Commitment of Top Management	1. Code of conduct (internal rules)	2. Code of conduct
<b>Training</b>  <i>7.3 - Training</i>	3. Trained staff have broken rules/laws	4g. Communication and training	6. Training	5. Training
<b>Tools</b>  <i>4.5 - Risk assessment</i> <i>6 - Planning</i> <i>7 - Resources</i> <i>8 - Operations</i>	2 AC entity with sufficient authority  (33 bis 6 elements of an AC program) 1. Risk assessment 2. Appropriate procedures	2. Compliance body 3. Risk assessment 4. Tools & procedures (including whistleblowing)	3. Risk assessment 4. Third party due diligence	1. Planning  6. Due diligence on new employees
<b>Control</b>  <i>9 - Evaluation</i> <i>10 - Continuous improvement</i>	3. Financial controls for detection 4. Obligation of whistleblowing mechanism 5. Sanctions 6. Control of implementation	6. Control of implementation and efficiency	2. Whistleblowing 5. Financial controls 8. Program evaluation 7. Sanctions	3. Control & monitoring 4. Self-assessment mechanisms (internal & external)

# Key Takeaway



- *It is not sufficient to ban corruption : companies need to identify corruption risk and explain how to prevent it*
- *A compliance program is a set of rules designed to respond to legal obligations ...  
... and the expectations of best practices .*

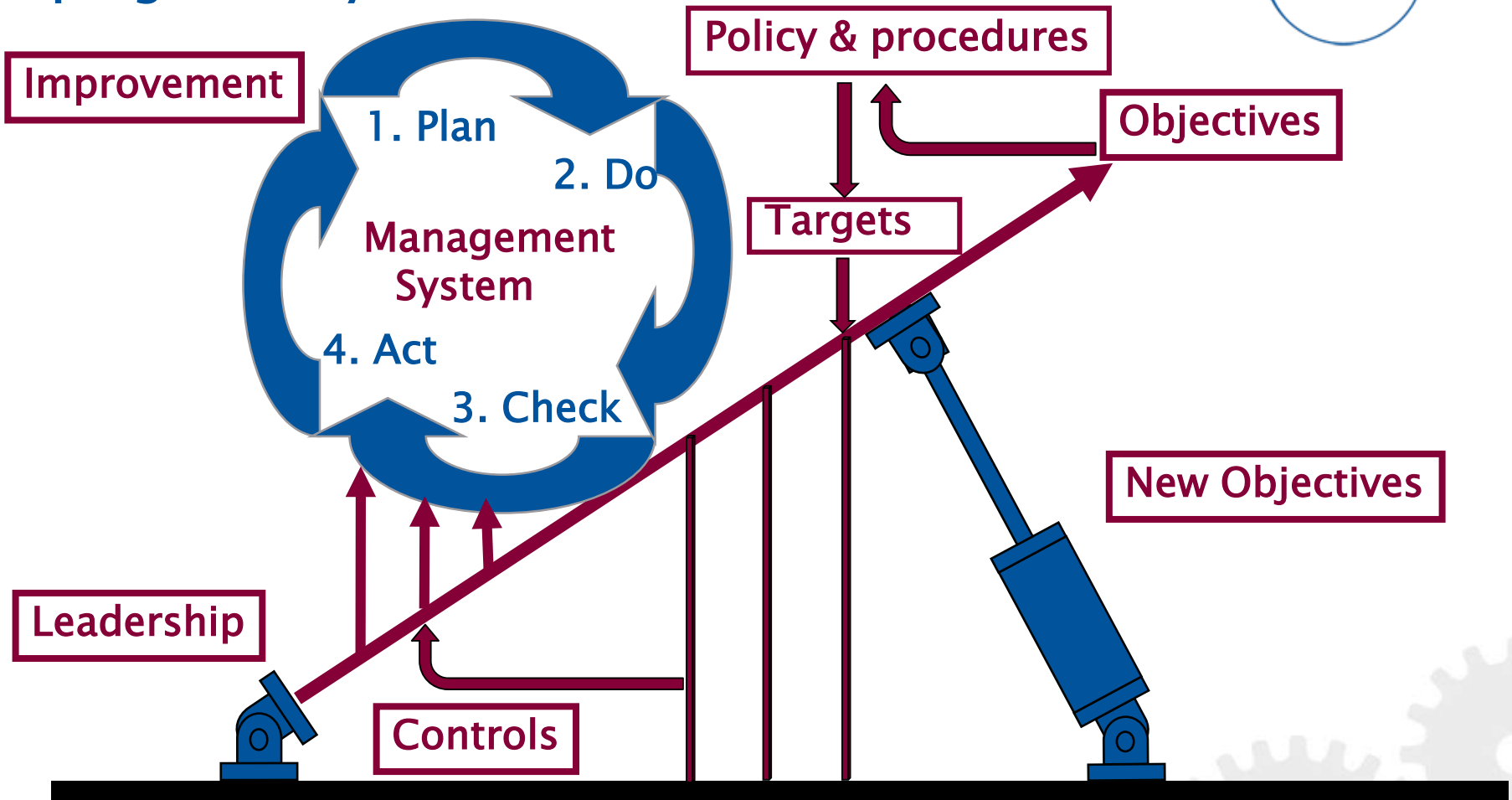
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# ISO benchmarks ... a process to improve the efficiency of the management system progressively



# ISO 37001 Anti-Bribery Management Systems (ABMS)



## 1. Scope

### Bribery

- in the public, private and not-for-profit sector
- By the organization (active corruption)
- By the organization's personnel acting on its behalf or for its benefit
- By the organization's business associates acting on its behalf or for its benefit
- Of the organization (passive corruption)
- Direct and indirect bribery

### But doesn't address

- Fraud
- Cartel
- Etc....

## 2. Normative reference

No normative reference



# ISO 37001 Anti-Bribery Management Systems (ABMS)



## 3. Terms & definitions

**Bribery:** offering, promising, giving, accepting or soliciting of an undue advantage of any value (which could be financial or non-financial) directly or indirectly and irrespective of location(s), in violation of applicable laws as an inducement or reward for a person acting or refraining from acting in relation to the performance of that person's duties

Note: the term "bribery" shall be defined by the anti-bribery law applicable to the organization and by the anti-bribery management system designed by the organization

**Public official:** person holding a legislative, administrative or judicial office, whether by appointment, election or succession or any person exercising a public function, including a public agency or public enterprise, or any official or agent of public, domestic or international organization, or any candidate for public office

Due diligence, third party, business associates, etc.

Etc....

# ISO 37001 Anti-Bribery Management Systems (ABMS)



## 4. Context of the organization

Understanding the organization and its context (incl. applicable laws...)

Ex: the organization's business model and bribery risks

Understanding the needs and expectations of stakeholders

Ex: Transparency International and the defense industry

Bribery risk assessment

Ex: Country risks, sector risks...

Determining the scope of the anti-bribery management system

Ex: definition of the applicability of the ABMS

Anti-bribery management system (which should be proportionate)

Ex: documents related to the ABMS

## 5. Leadership

Governing body

Ex: approving the ABMS

Top Management

Ex: Commitment of Business Leaders in the promotion of the ABMS

Anti-bribery policy

Ex: goals and means of the ABMS

Organizational roles, responsibility and authorities

Ex: the ABMS organization

Anti-bribery compliance function

Ex: The Chief Compliance Officer

Delegated decision making

Ex: the Compliance Officer network

# ISO 37001 Anti-Bribery Management Systems (ABMS)



## 6. Planning

Actions to address risks and opportunities

Ex: monitoring the effectiveness of the ABMS

Anti-bribery objectives and planning to achieve them

Ex: the yearly work plan for ABMS

## 7. Support

Resources

Ex: Resources allocated to the ABMS

Competence

Ex: Profiles of the compliance function

Employment procedures

Ex : Make sure the new employees comply to the AB policy

Awareness and training

Ex: training on the ABMS

Communication

Ex: ABMS requirements communicated to third parties

Documented information

Ex: ABMS documentation should be available and updated in appropriate languages

# ISO 37001 Anti-Bribery Management Systems (ABMS)



## 8. Operation

### Operational planning and control

Ex: ongoing and documented review of how the ABMS meets its objectives

### Due diligence

Ex: due diligence on third parties and business associates

### Financial controls

Ex: financial controls on bribery risks

### Control over controlled organizations and business associates

Ex: requiring that partners in consortia are mitigating bribery risks appropriately

### Anti-bribery commitments

Ex: requiring that business associates are committed to do business without bribery

### Gifts, hospitality, donations and similar benefits

Ex: Gifts and entertainment policy

### Managing inadequacy of anti-bribery controls

Ex : When Business Associates are unable to manage bribery risks, terminate a project or transaction

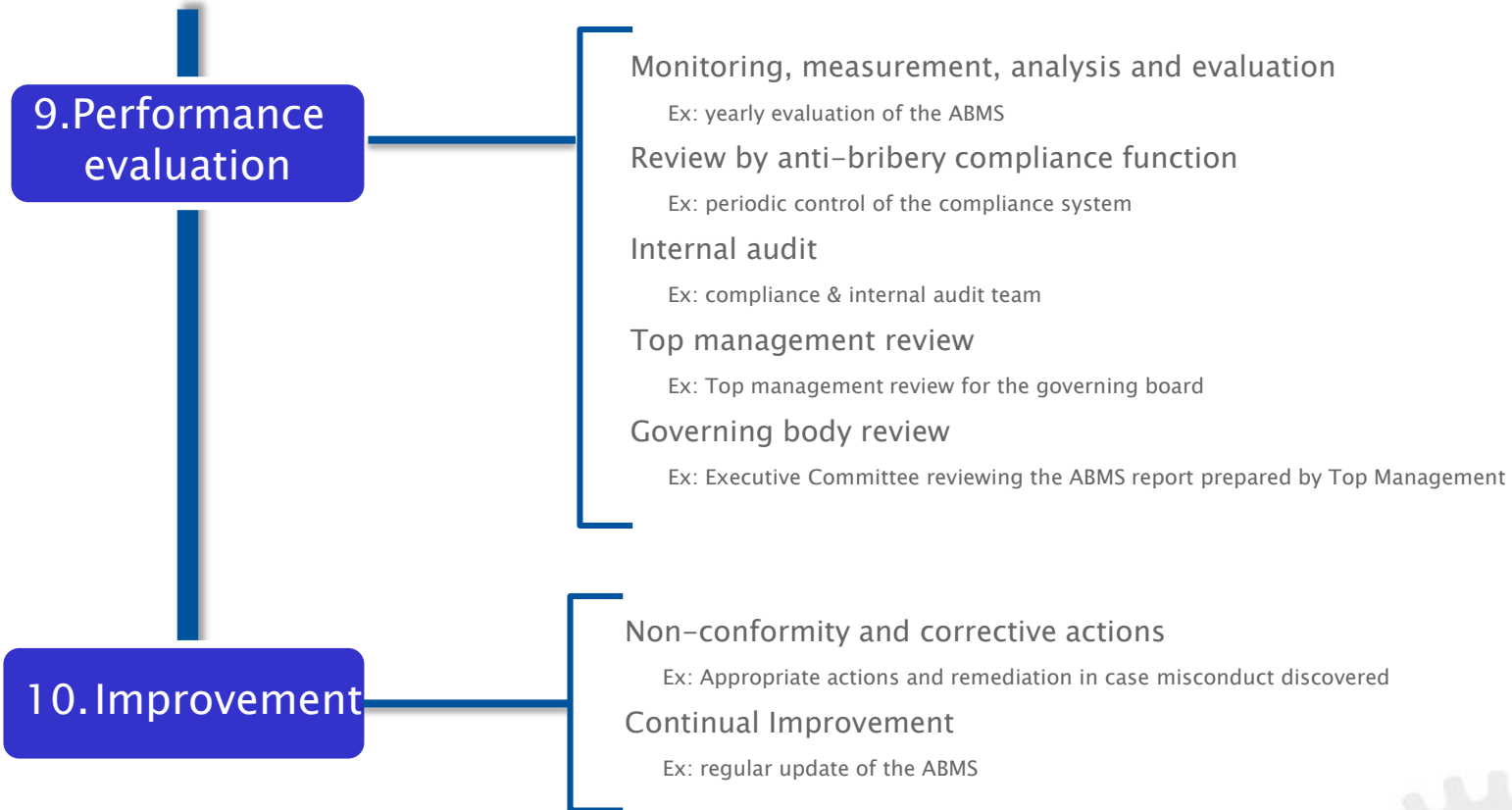
### Raising concerns

Ex: whistleblowing line

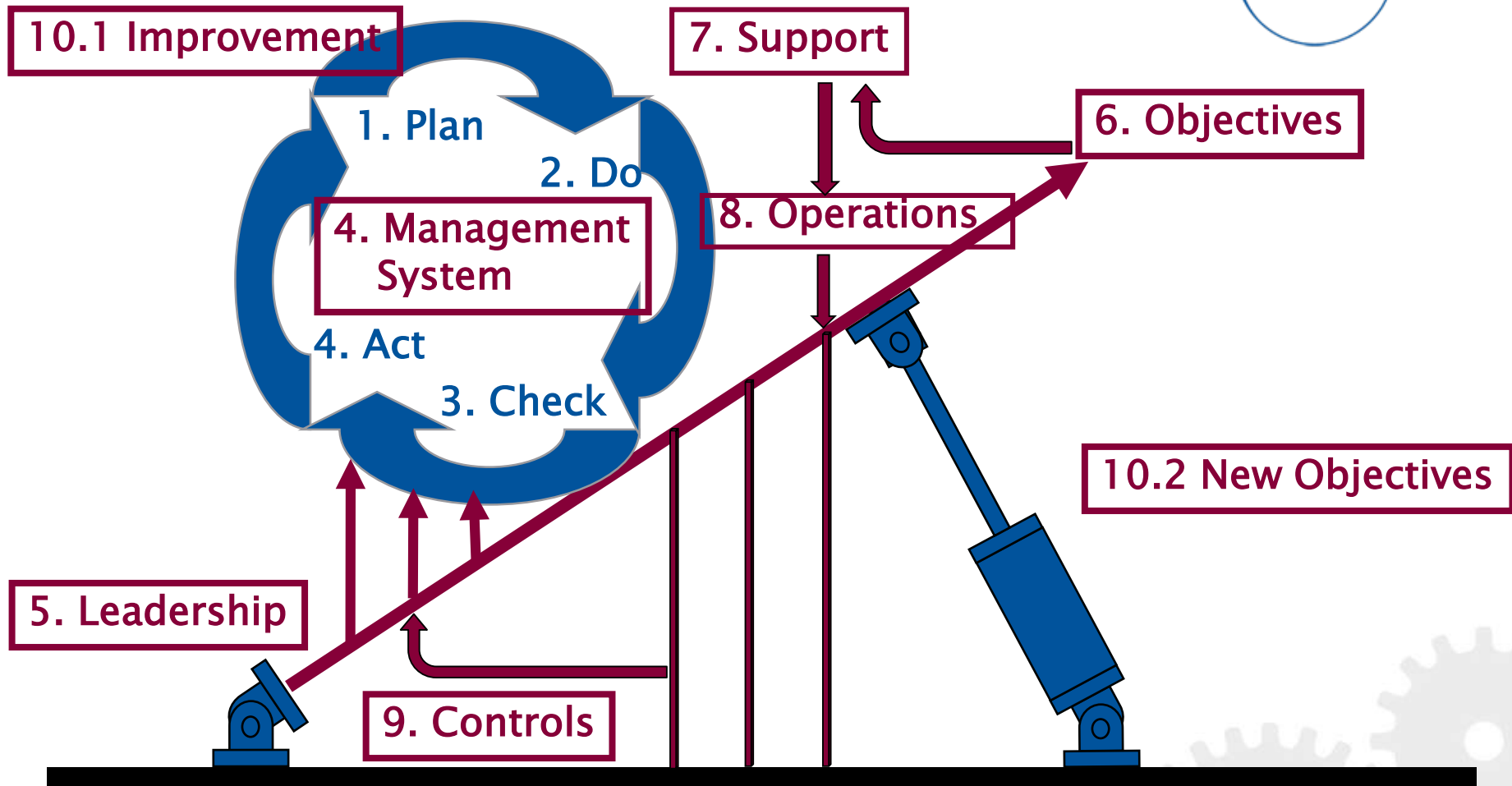
### Investigating and dealing with bribery

Ex : data-mining exercise

# ISO 37001 Anti-Bribery Management System (ABMS)



# ISO benchmarks ... a process to improve the efficiency of the management system progressively



# Key Takeaway



- *It is not sufficient to ban corruption : companies need to identify corruption risk and explain how to prevent it*
- *A compliance program is a set of rules designed to respond to legal obligations ...  
... and the expectations of best practices*
- *An Anti-Bribery Management System (ABMS) is a compliance program designed to ensure that it is tailor-made to the company and allows for continuing improvement.*

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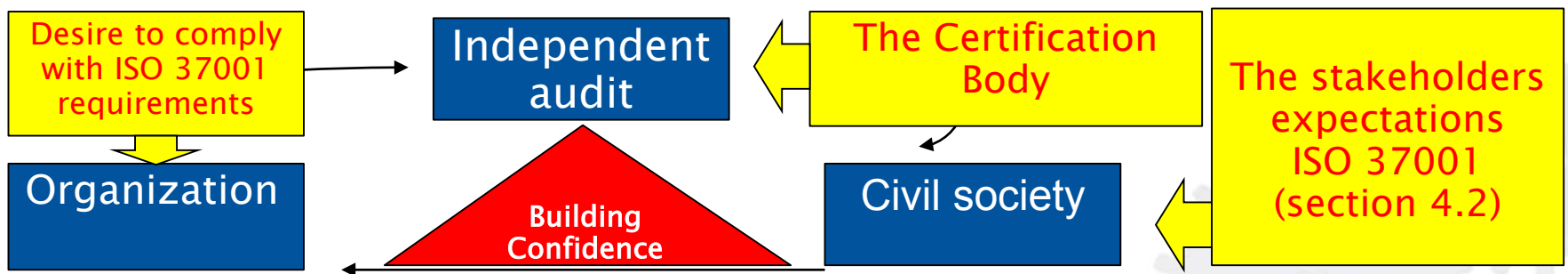
# HR Bowen and the auditor's responsibility



*“Auditing organizations shall be seen as a means to guide the activity of organizations towards the achievements of the objectives set by the civil society”*

*in* The social responsibilities of businessmen  
HR Bowen (1953)

HR Bowen defines the cycle of sustainable development through audit:



# What is an audit ?

An audit is a systematic, independent and documented process for obtaining facts and evaluating them objectively to determine the extent to which the audit criteria are fulfilled.

## Diagnostic

- ... Performed to analyze a process or system to identify weaknesses

## Evaluation

- ... Performed to evaluate, and improve through recommendations, an existing process or system

## Audit

- ... Verification that processes are implemented and respected

## First party audit

- ... performed internally within an organization

## Second party audit

- ... performed by an organization on another organization to verify that the second organization respects contractual rules established by first (cf suppliers audit)

## Third party audit (Certification)

- ... external audit performed by an independent organization against a defined set of criteria (cf ISO 37001 by a certification body)

# ETHIC Intelligence Audit and Certification Process



<p>Inquiry from the organization</p> <p>Definition of the size, structure of the company</p> <p>Definition of the ABMS</p> <p>➤ <b>Defining an audit Program for 3 years</b></p>	<p>Validation of the audit plan proposed by ETHIC Intelligence</p> <p>Validation of the required documents and persons to interview</p> <p>➤ <b>Planning of the audit (Year 1)</b></p>	<p>Review by the auditors of the documents given by the organization</p> <p>Adaptation of the audit questionnaires to match the AMBS</p> <p>➤ <b>Ensuring a tailored made audit</b></p>	<p>Interviews of the selected executives and employees and drafting of report</p> <p>Verification of the implementation of the AMBS</p> <p>➤ <b>Verifying that the AMBS is well implemented</b></p>	<p>Review by the certification board of the audit report</p> <p>Validation of the results according to the ISO rules</p> <p>➤ <b>Ensuring that audit respected ISO rules</b></p>	<p>Attribution of the ISO 37001 certification if no major non-conformity.</p> <p>Registration of the certificate on ETHIC Intelligence Website</p> <p>➤ <b>Allowing the company to communicate on its ABMS</b></p>	<p>Surveillance audit every year, one month prior to the anniversary</p> <p>Audit report and analysis on the previous reports (minor non-conformities)</p> <p>➤ <b>Monitoring the continuing progress of the ABMS</b></p>
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- *An Anti-Bribery Management System (ABMS) is a compliance program designed to ensure that it is tailor-made to the company and allows for continuing improvement.*
- *Auditing ensures that the ABMS is efficient : i) responds to legal obligations ii) meets stakeholders ' requirements iii) mitigates corruption risk appropriately*

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# The added value of ISO 37001 Certification



## 1. For Top Management

- Ensures that the Anti-Bribery Management System is efficient
- Demonstrates management's best efforts in the vent of a legal prosecution of the company

## 2. For employees

- Demonstrates that the company's compliance meets internationally recognized standards

## 3. For shareholders, banks and rating agencies

- Demonstrates that business development relies exclusively on innovation and market relevance
- Protection from damaging reputational risk in case of allegations

## 4. For clients

- B to B : Provides assurance that the company will not attempt to bribe their employees
- B to Gov : Mitigates corruption risk allegations

## 5. For Partners and suppliers

- Provides assurance against corruption allegations and reputational damages
- Allows a certified company to ask (some of) their third parties to be ISO 37001 certified

➔ ISO 37001 certification is increasingly a “differentiating” factor

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- *Auditing ensure s that the ABMS is efficient : i) responds to legal obligations ii) meets stakeholders' requirements iii) mitigates corruption risk appropriately*
- *An ABMS certification transforms the cost of compliance into an investment*

# Thank you for your attention



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