



ПРАВОВАЯ НЕОПРЕДЕЛЕННОСТЬ И КОРРУПЦИЯ В БИЗНЕСЕ

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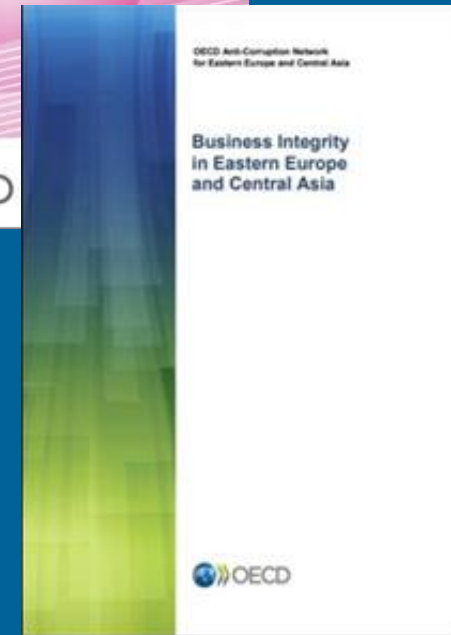
План выступления

- Правовая неопределённость, политики и правосудие – основные риски для коррупции (второй обзор)
- Бизнес омбудсмены – переходные вне-судебные механизмы или специализированные формы защиты (исследование)
- Независимость и честность судебной системы и фокус правительств на честность в бизнесе (мониторинг)

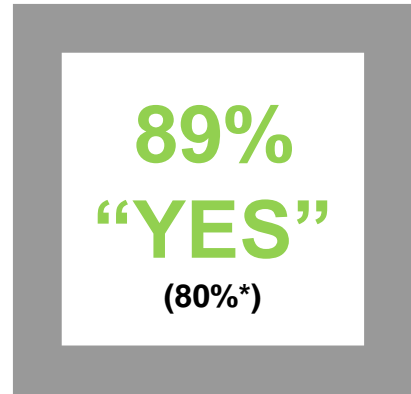


Региональная группа по честности в бизнесе

- Четвертый итоговый доклад за 2016-2019
<http://www.oecd.org/corruption/acn/OECD-Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-RUS.pdf>
- Первый доклад о честности в бизнесе 2016
<https://www.oecd.org/corruption/acn/Business-Integrity-in-Eastern-Europe-and-Central-Asia-RUS.pdf>
- Встреча группы по честности в бизнесе 12 мая 2021
 - **Второй доклад о честности в бизнесе**
 - **Новый обзор о бизнес омбудсменах**
 - **Учебные семинары по приглашению стран**



Предварительные итоги нового обзора : ответы правительств (сколько сообщений получено и правовых мер принято)



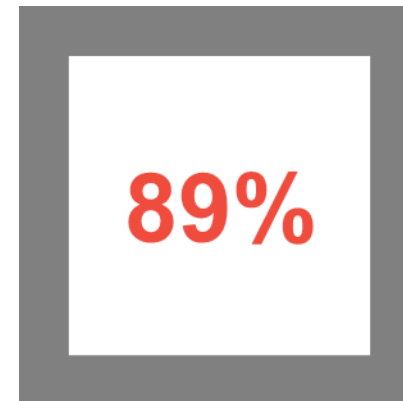
Can companies be punished for bribery?

Note: corporate liability for corruption is required by UNCAC, but does not exist in most Central Asian countries



Are there channels such as hot lines, ombudsman office, other for businesses to report when they have been asked for bribes?

Note: dysfunctional justice system gave rise to BOs in the region



“Never or “N/I collected””

* 2016 survey results

Бизнес ассоциации

Самые важные риски для ведения честного бизнеса

Legal uncertainty and selective application of the law by the law-enforcement and judiciary

1
(1*)

2
(7*)

Insufficient development of competitive environment

State capture by business, including illegal lobbying and other forms of influencing the state decisions in favour of business interests

4
(3*)

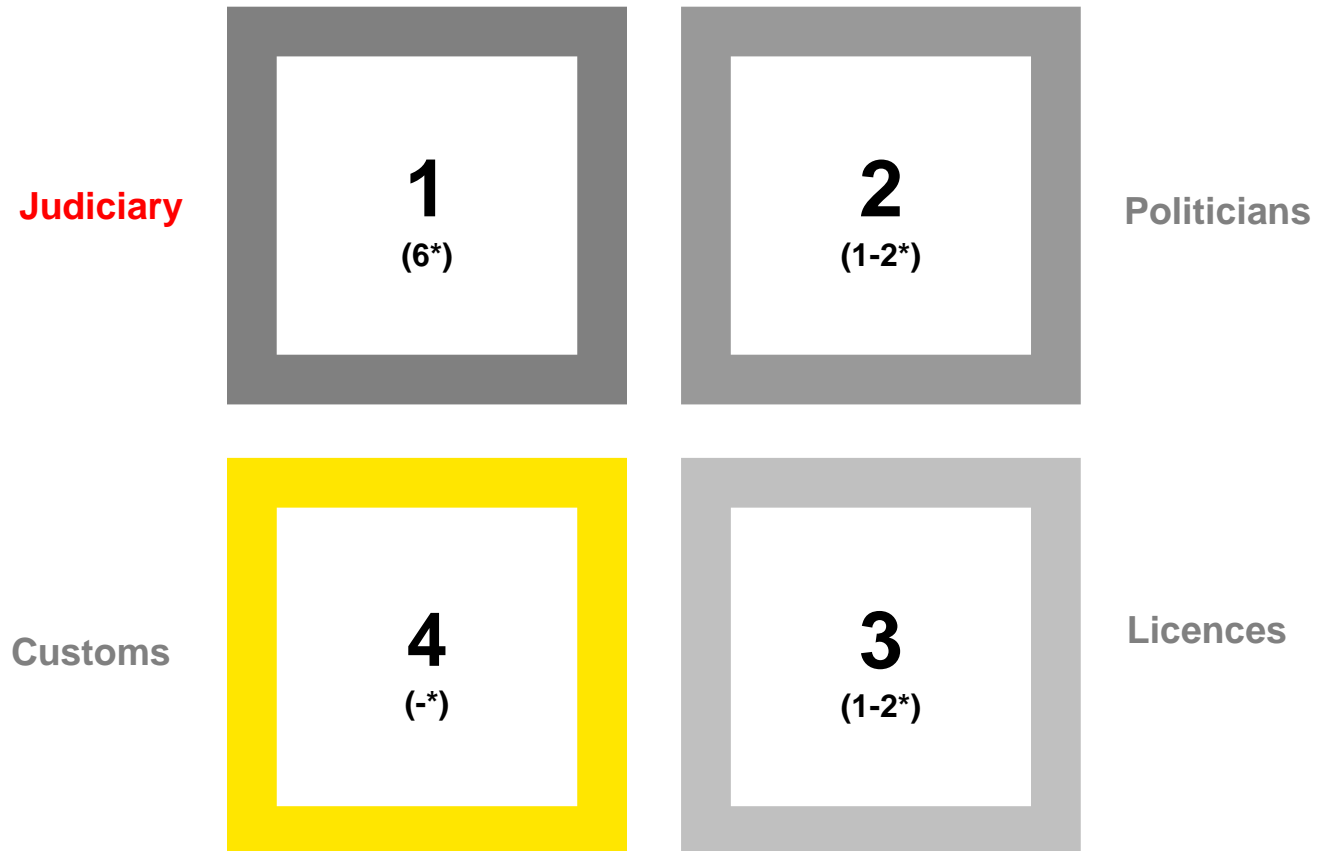
3
(-)

Obstruction of justice

* 2016 survey results

Бизнес ассоциации

Госорганы, представляющие высокий риск для честности бизнеса

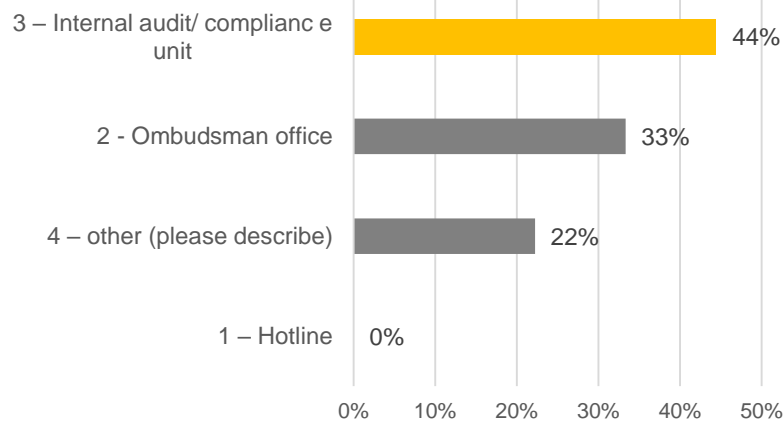


Followed by: public procurement bodies, tax, permits, police

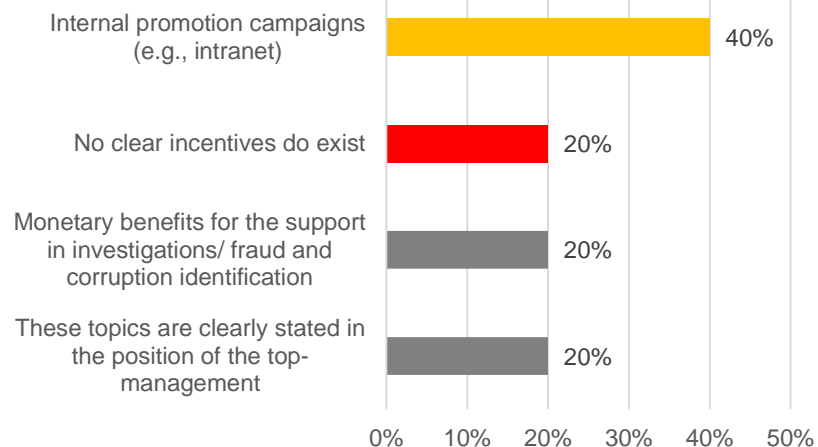
Частные предприятия

меры, которые предприятия самостоятельно применяют для защиты честности бизнеса

What are the common compliance tools implemented?



What are common incentives for compliance in your association/ industry?



How would you evaluate the effectiveness of these channels?

2,3

Companies

Effectiveness-type of questions

How many investigations did your company conduct against your employees involved in integrity breaches during the past 2 years?

36%
“Never”

57%
“Never”

How many times has your company taken legal actions against other companies for integrity breaches during the past 2 years?

* 56% evaluated enforcement of ABAC laws as weak or moderate in 2016

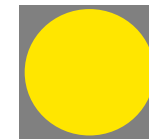
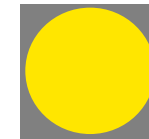
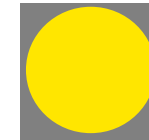
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How would you rate the impact of below mentioned laws with regards to integrity and compliance promotion?

* 2016 survey results

Comparing our insights from 2016

- ▶ Anti-corruption being too declarative (lack of enforcement)
- ▶ Lack of cooperation
- ▶ Distrust atmosphere between government and business
- ▶ Clash of interests and understanding about:
 - ▶ Roles and responsibilities
 - ▶ Level of investment needed
 - ▶ Primary initiative and leadership re business integrity



Business Ombudsman institutions

- ▶ 2020 ACN reports identified BOs as one of regional trends
- ▶ Study on BOs, together with EBRD and CoE:
 - ▶ Reasons for creation, legal basis
 - ▶ Mandate and powers
 - ▶ Independence and resources
 - ▶ Operational procedures
 - ▶ Systemic recommendations
 - ▶ Performance and impact
- ▶ Mutual learning, recommendations for strengthening, promotion and training
- ▶ Other non-judiciary mechanisms, e.g. High Level Reporting Mechanisms
- ▶ Transitory nature or specialization of ombudsman?



Новая методика мониторинга: PERFORMANCE INDICATORS

при поддержке ЕС и США

PERFORMANCE AREAS (PAs)

PA-1 Anti-Corruption Policy

PA-2 Conflict of Interests

PA-3 Asset and Interest Disclosure

PA-4 Protection of Whistleblowers

PA-5 Independence of Judiciary

PA-6 Independence of Prosecution Service

PA-7 Integrity in Public Procurement

PA-8 Business Integrity

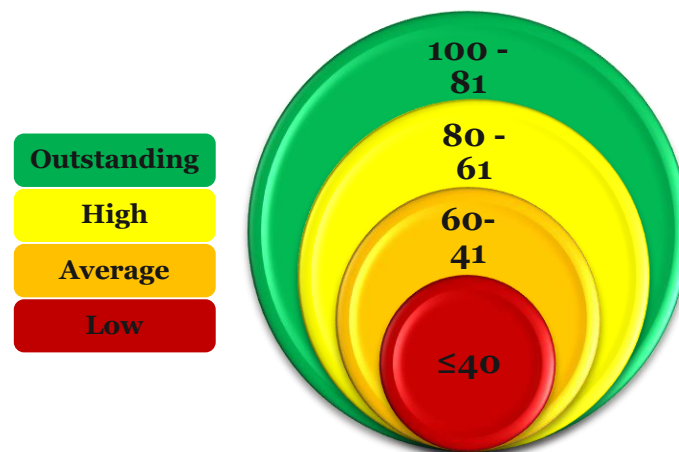
PA-9 Enforcement of Corruption Offences

PA-10 Enforcement of Liability of Legal Persons

PA-11 The Recovery and Management of Corruption Proceeds

PA-12 Investigation and Prosecution of High-Level Corruption

PA-13 Specialised Investigative and Prosecutorial Bodies





PA-8 Business Integrity : Indicators 1 and 2

INDICATORS	BENCHMARKS	Score (if “Yes”)
1. Boards of directors of listed/publicly traded companies are responsible for oversight of the management of corruption risks Weight = 7	1.1. Corporate Governance Code establishes the responsibility of boards of directors of listed companies to oversee the management of corruption risks as a part of integrated risk management	2
	1.2. Securities regulators or other relevant authorities regularly monitor how boards of directors of listed companies oversee the management of corruption risks	5
2. Public disclosure of beneficial ownership of all companies registered in the country is ensured Weight = 15	2.1. Information about beneficial owners is registered and publicly disclosed online in a central register	3
	2.2. Public disclosure of beneficial ownership information is ensured in machine-readable (open data), searchable format and free of charge	3
	2.3. Beneficial ownership information is verified routinely by public authorities	3
	2.4. Financial institutions, designated non-financial businesses and professions and other obligated entities under the anti-money laundering legislation have an obligation to identify and verify the beneficial ownership and report discrepancies	3
	2.5. Dissuasive administrative and criminal sanctions are applied routinely for violations of regulations on registration and disclosure of beneficial ownership	3



PA-8 Business Integrity : Indicators 3 and 4

3. There are incentives for all types of companies to improve integrity of their operations Weight = 5	3.1. Government have implemented incentives for companies to improve the integrity of and prevent corruption in their operations.	5
4. There are mechanisms to address concerns of all companies related to corruption and bribe solicitation by public officials Weight = 33	4.1. There is a designated institution responsible for receiving complaints from companies about bribe solicitation by public officials and related corruption-related matters, providing protection or helping businesses to resolve legitimate concerns	10
	4.2. There is a wide perception among the main stakeholders that the institution operates independently and impartially without political or other undue interference in its work	6
	4.3. This institution has powers and resources that are sufficient to review individual complaints, to provide protection and help businesses resolve their concerns in another legal way	5
	4.4. This or another institution analyses systemic problems and prepares policy recommendations to the government	6
	4.5. At least half of policy recommendations regarding systemic problems related to business concerns about corruption, bribe solicitation and related matters have been implemented or otherwise properly addressed by the government	6



PA-8 Business Integrity: Indicator 5

5. State fulfils its role of an active and informed owner of SOEs and ensures the integrity of their governance structure and operations Weight = 40	5.1. Government ensures that supervisory boards in at least 10 largest SOEs are established through a merit-based and transparent nomination process, including a minimum one-third of independent members	7
	5.2. Boards of at least 10 largest SOEs established integrated risk management systems that include internal controls, ethics and compliance measures that address SOE integrity and prevention of corruption	7
	5.3. CEOs of at least 10 largest SOEs are appointed through a merit-based and transparent nomination process and report to the boards	6
	5.4. At least 10 largest SOEs conduct annual external audits in line with international accounting standards	5
	5.5. The boards of 10 largest SOEs routinely deliberate about and decide on the findings of internal audit committees and external audit reports regarding integrity issues	5
	5.6. 10 largest SOEs disclose at least: <ul style="list-style-type: none">• company objectives and activities carried out in the public interest;• financial and operating results;• material transactions with other entities;• remuneration of board members and key executives	10

+ PA-10 Enforcement of Liability of Legal Persons, non-trial resolutions



Обучающие семинары, проект с ЕБРР

- Tailor-made, on-demand technical trainings
- Menu of possible subjects, e.g. liability of legal persons (guidelines, non-trial resolutions, mentorship, etc.), integrity in SOEs (for ownership entities, anti-corruption bodies and compliance officers), integrity in SMEs, etc.
- OECD and EBRD will develop programme, identify and bring experts; host will specify training needs and audience, and provide local logistics
- Applications will be opened soon – **we will inform you!**



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