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# **FIGHTING CORRUPTION THROUGH COLLECTIVE ACTION**

**- A Guide for Business -**

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## The Guide was created as a joint effort of:

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Center for International Private Enterprise (US)



Transparency International USA



Global Advice Network (Denmark)



**SIEMENS**

Short profiles of these organizations are found at the end of the document

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- Microsoft (US)
- Pacto Ethico Commercial Paraguay
- Sanlam Limited (South Africa)
- The Prince of Wales International Business Leaders Forum (UK)
- ThyssenKrupp AG (Germany)

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# Collective Action Guide - Introduction

This Guide is designed to help companies meet the legal, competitive, economic and ethical challenges posed by corruption as they do business around the world. Information in this Guide is intended for use by business but may also be of interest to governments and other organizations concerned about reducing corruption.

Major advances are occurring in both the law and internal corporate practice to prevent corruption in business. Specifically, international conventions, new national laws, increased enforcement of existing laws, and voluntary initiatives against corruption all contribute to growing global support for anti-corruption measures.

Although most attention has focused on government enforcement and steps taken by individual companies to improve their internal systems and controls, important developments also are occurring in a third area commonly referred to as “collective action.” Innovative tools are being developed that allow companies to come together collectively and voluntarily to raise practice standards and to reduce corruption and competitive risks on a project and sectoral basis. These range from integrity pacts for individual procurements to codes of conduct and collective public policy initiatives.

Although a significant number of tools for collective actions are now available, and continue to evolve, many companies that want to be more proactive in fighting corruption have not known about

these tools or had enough practical information to consider them. A coalition of interested businesses and other experienced anti-corruption experts has therefore produced this Guide to support the global business community and other stakeholders by filling this information gap.

“Collective action” is a collaborative and sustained process of cooperation between stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors. Collective action can complement or temporarily substitute for and strengthen weak local laws and anti-corruption practices.

This Guide explains collective action, its benefits, and how to use it. It aims at demonstrating that the private sector can be part of the solution to prevent and fight corruption and provides incentives for companies to become more actively involved. It also shows how collective action can support SMEs in their fight against corruption by providing a broader alliance that can support smaller actors.

The Guide is intended primarily for use by anyone with responsibility for a major project or market, and who operates in an environment where corruption is, or may be present. Others who may benefit from this material include senior executives, company board members, government officials, civil society and others directly or indirectly affected by the adverse effects of corruption on business and society.

# Application areas and benefits of the Guide for different target groups

Why is this guide useful for me?

<b>Senior management</b>	Ability for regional and local managers to positively and proactively impact possible corruption situations – thereby reducing corporate risks of lost business, disputes and/or regulatory involvement
<b>Regional CEOs \ Division heads</b>	Practical strategies for proactive treatments of corruption risks
<b>Chief Compliance Officers</b>	Practical reference guide when faced with corruption dilemmas
<b>Business associations</b>	Guidance on how to get involved in various forms of collective action, and to positively impact membership
<b>Government</b>	Guidance to market participants on ways to supplement and strengthen existing governance framework to fight corruption and support competition
<b>NGOs</b>	Advice on ways to participate in and facilitate collective action while advancing their own respective goals
<b>SME</b>	Suggested ways to form and be part of a collective action, particularly through business associations, and to thereby directly improve the ability to compete with larger companies or to comply with larger companies' requirements for suppliers to have anti-corruption policies in place

## How to use the Collective Action Guide

There are several ways that readers can use the Guide:

If you are new to the threat of corruption, it may be useful to review the entire document. In particular, Chapters 1 (“Background”) and 2 (“How to Fight Corruption”) explain why it is critical for companies and others to actively promote uniform anti-corruption standards and practices in their business environments.

Readers with a primary interest in the different collective action approaches to anti-corruption may choose to go directly to Chapters 3 (“Fighting corruption through Collective Action”) and 4 (“How to implement Collective Action”).

Additional resources and background material are found in Chapter 5 (“Contact list and best practices.”)

The guide provides an overview on collective action; it is not intended to be comprehensive\* or dispositive. The facts and circumstances of a particular situation determine which possible form of collective action may be used, and how it can be implemented.

Please note that all processes in this guide are described from a company’s perspective. NGOs and governments could also benefit from this by better understanding the business view and how they could play a role in the process.

Please note that this document and the associated website (see [www.fightingcorruption.org](http://www.fightingcorruption.org) launched in [June 2008]) will be evolving resources for those interested in using collective action to combat corruption.

Members of the business and anti-corruption communities are encouraged to share their collective action observations, experiences and methodologies through the website – and to thereby contribute to making this resource more useful over time.

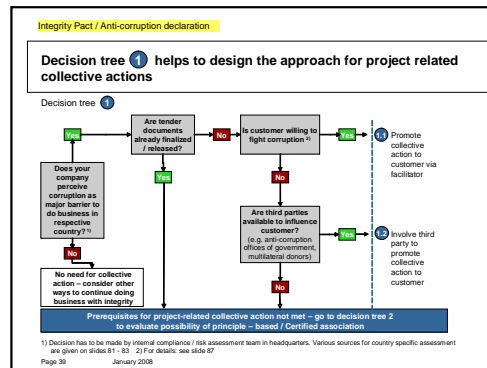
\* Specific legal rules, such as those covering facilitation payments, are not directly covered in the Guide, since they are treated differently in various countries. Please see [http://www.oecd.org/topic/0,3373,en\\_2649\\_37447\\_1\\_1\\_1\\_1\\_37447,00.html](http://www.oecd.org/topic/0,3373,en_2649_37447_1_1_1_1_37447,00.html) for country-specific and general anti-corruption information.

# Guide provides instruction on how to initiate a Collective Action and contains examples of the different possibilities

Content of the guide

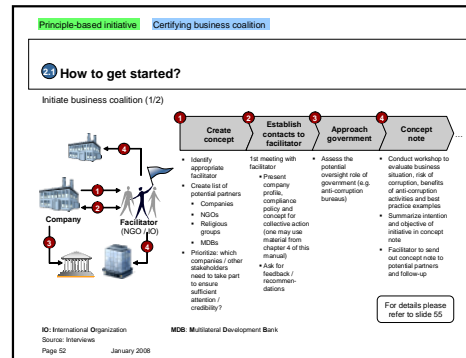
Examples

## Find the right approach for your situation



- Classification and definition of Collective Action
- Decision trees

## Follow detailed process steps



- Process steps
- Highlighted topics and issues to consider (e.g. anti-trust)

## Benefit from various real life examples and templates

Four Integrity Pact contract examples have to be adjusted to specific prerequisites of country and project

Integrity Pact contract examples

<ul style="list-style-type: none"> <li>• IP template from Transparency International</li> <li>• Specifically designed for contracts in the defense industry</li> </ul>	<ul style="list-style-type: none"> <li>• IP from project "Berlin airport"</li> <li>• Seen as best practice example</li> <li>• Available in German only</li> </ul>
<ul style="list-style-type: none"> <li>• IP contract used by ONGC India</li> <li>• Based on contract of Berlin airport</li> </ul>	<ul style="list-style-type: none"> <li>• IP contract from project "Hydroelectric power plant", Ecuador (English translation)</li> <li>• No "Social Witness"</li> <li>• Detailed description of Arbitration Tribunal</li> </ul>

- Contract templates
- Profiles of initiatives
- Contact list

Basis

- Definition of corruption, consequences of corruption
- Overview on various ways to fight corruption

Additional links and examples can be found on [www.fightingcorruption.org](http://www.fightingcorruption.org)

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# Corruption is the misuse of entrusted power for personal gain.

## Definition of corruption

**Corruption** is commonly defined as the misuse of entrusted power for personal or private gain. The primary focus of this Guide is on bribery used to obtain or retain business or for any other improper business advantage. Other forms of corruption include embezzlement, fraud, extortion, bid-rigging, political corruption and undue influence, and “state capture” (i.e., fixing rules of the game).

Common examples of **bribery** include cash or other payments to secure a contract, kickbacks, steered subcontracts, improper political or charitable contributions, excessive gifts, and illicit payments to obtain a license or other regulatory action.

Collective action initiatives typically emphasize the “supply” side of bribery, because that is where companies can have the greatest impact. Many of the tools described in this Guide also address bribery’s “demand” side, particularly those with a public advocacy component.

Bribery and other anti-corruption laws can be complicated and it is important to seek expert guidance to understand them.

A good practical rule of thumb for business operations is that if you wouldn’t want others to know about a payment, it probably shouldn’t be made.

# Corruption negatively impacts all levels of society

## The consequences of corruption

## Facts

### Individuals

- Triggers criminal, civil and employment sanctions
- Ruins careers & reputations

### Businesses

- Causes loss of reputation
- Increases cost of doing business
- Undermines innovation since bribes, instead of performance, determine project award
- Jeopardizes mergers & acquisitions and inhibits ability to conduct capital market transactions
- Debars firms/businesses from tenders (government, development banks)

### Governments / markets

- Hampers the development of markets and drives away investments
- Undermines the rule of law
- Leads to loss of confidence in institutions and the de-legitimization of government
- Increases costs of services/products and lowers the quality of services as contracts are not ordinarily awarded to the appropriate bidder



"...since 1990, the [U.S. Department of Justice] has brought over twice as many prosecutions against individuals as it has against corporations. The burden of responsibility continues to be borne by individuals alongside companies...." (*Shearman & Sterling*)

"Corruption adds as much as 25% to the cost of public procurement" (*UN Global Compact*)  
"31% of firms in Latin America had to pay bribes to 'get things done'" (*World Bank survey*)

The World Bank website contains a list of debarred firms and individuals which/who have been discovered through Bank investigations to have engaged in fraudulent, corrupt, collusive, or coercive practices. Listed firms and individuals are subject to restrictions concerning eligibility for future contract awards.  
<http://go.worldbank.org/G9UW6Y0DC0>

## Fighting corruption collectively with all stakeholders increases the impact of individual action

### Key characteristic

Collective action usually involves various stakeholders



### "Collective Action":

- Is a collaborative and sustained process of cooperation between stakeholders.
- Increases the impact and credibility of individual action.
- Brings vulnerable individual players into an alliance of like-minded organizations.
- Levels the playing field among competitors.
- May complement, or temporarily substitute for and strengthen, weak local laws and anti-corruption practices.



**BUT: Collective Action is not easy or quick, and requires patience, hard work and expertise.**

# Why should companies also engage against corruption collectively - as well as individually?

Businesses understand that corruption is both socially destructive and endemic in many areas. Society and business benefit where corruption is driven from markets – and where fair competition on the merits of goods and services, reduced costs and better value to the customer are therefore possible.

Smart businesses therefore apply **different anti-corruption practices and efforts**, including collective action, in a variety of ways. With the continuing and growing attention to corruption from the media, regulators, and society in general, companies are well advised to be proactive rather than passive in this area.

**Collective action is a proven method** of fighting corruption. Mexico, Indonesia, Ecuador and Germany (among many others) are locations where business and other stakeholders presently use various forms of collective action.

It is used in a **variety of industry sectors** (e.g. energy and construction) and conditions (in both emerging and in developed markets). Collective action also exists in a **variety of different forms** – from project-specific

“integrity pacts” \* containing specified non-compliance remedies, to business associations with more general consensus-building purposes, such as codes of conduct.

It **increases an individual company’s impact** by making fair business practices more common and elevating individual action or vulnerable individual players such as SMEs into an alliance of like-minded organizations.

**Operationally**, collective action can be incorporated into a company’s project management, corporate risk management, and compliance activities.

**Strategically**, using collective action is a tangible demonstration of a company’s commitment to many of the principles underlying corporate social responsibility and “effective” compliance program activities. Ancillary corporate benefits may develop from these practices as third party stakeholders (investors, non-governmental organizations and regulators) recognize a company’s emphasis on positive and sustainable business behavior.

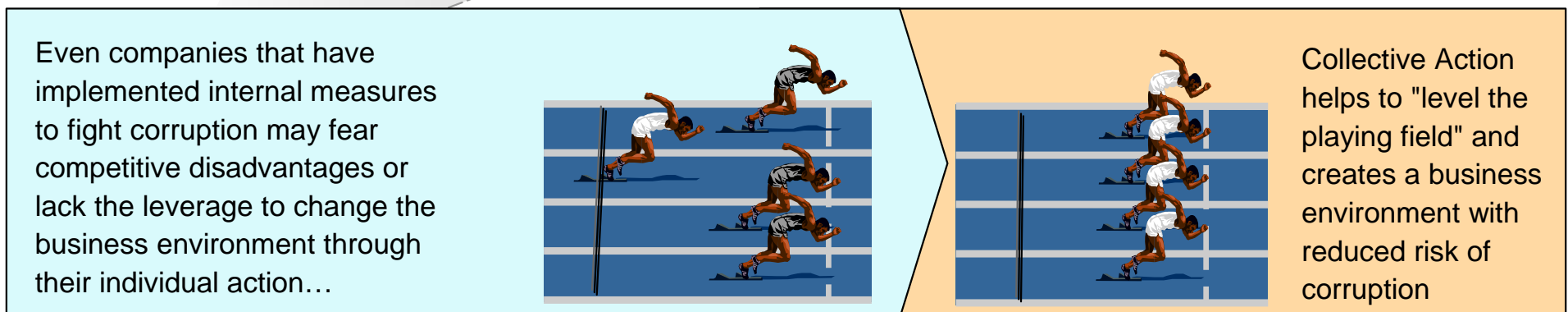
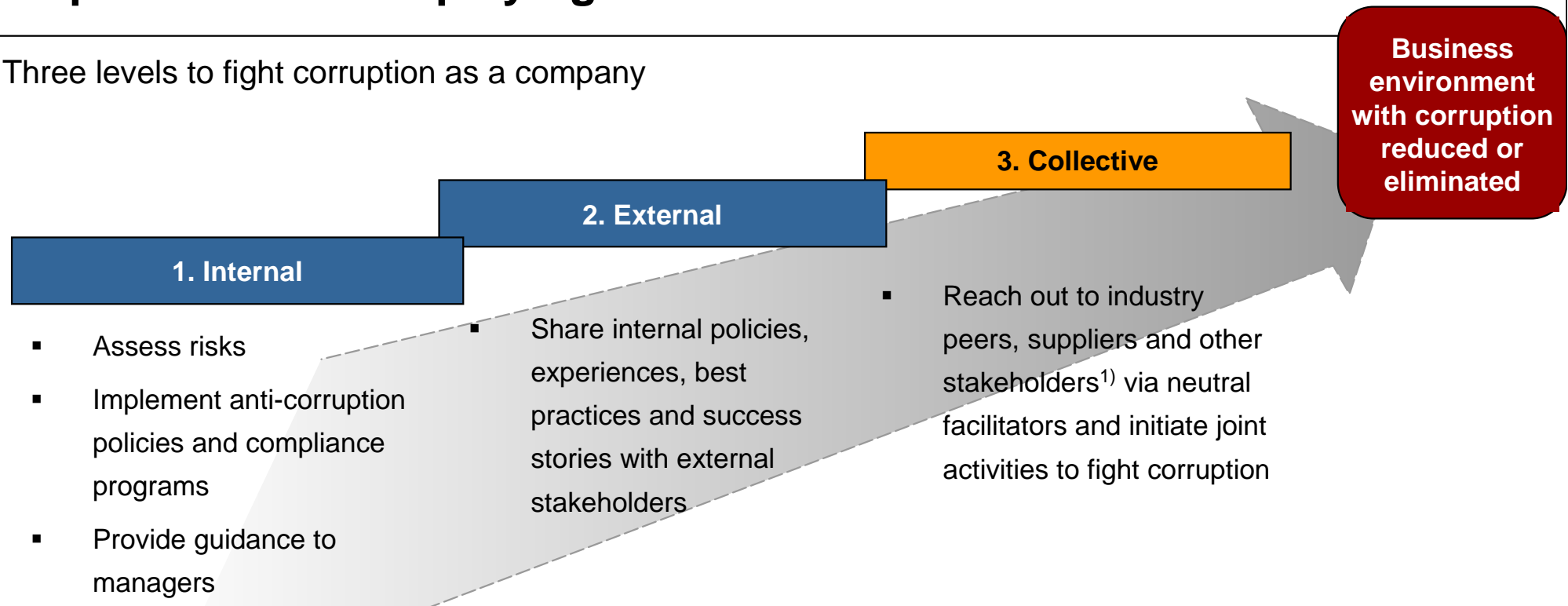
\* The integrity pact approach was originally developed and is still primarily used by Transparency International and its various national chapters, as a multi-stakeholder tool for promoting project integrity. Integrity pacts involve government, the private sector and civil society in substantive anti-corruption activities.

## **Small and Medium-sized enterprises (SMEs) can also benefit from and participate in Collective Action**

- SMEs are affected disproportionately by corruption and often lack the financial and human resources to install the necessary systems to prevent corruption or to resist corruption demands
- Corruption is a major reason for SME business failure – particularly in developing and emerging markets
- Collective action can be a way for SMEs to leverage influence and power to more effectively resist corruption
- Business & professional associations are often a primary support resource for SMEs and can support SMEs in implementing better anti-corruption systems and provide a platform for SMEs to engage against corruption collectively
- Some business & professional associations working with SMEs have already developed simple and efficient anti-corruption tools in various high risk situations\*

# Collective Action is an advanced step of fighting corruption and helps to “level” the playing field

Three levels to fight corruption as a company

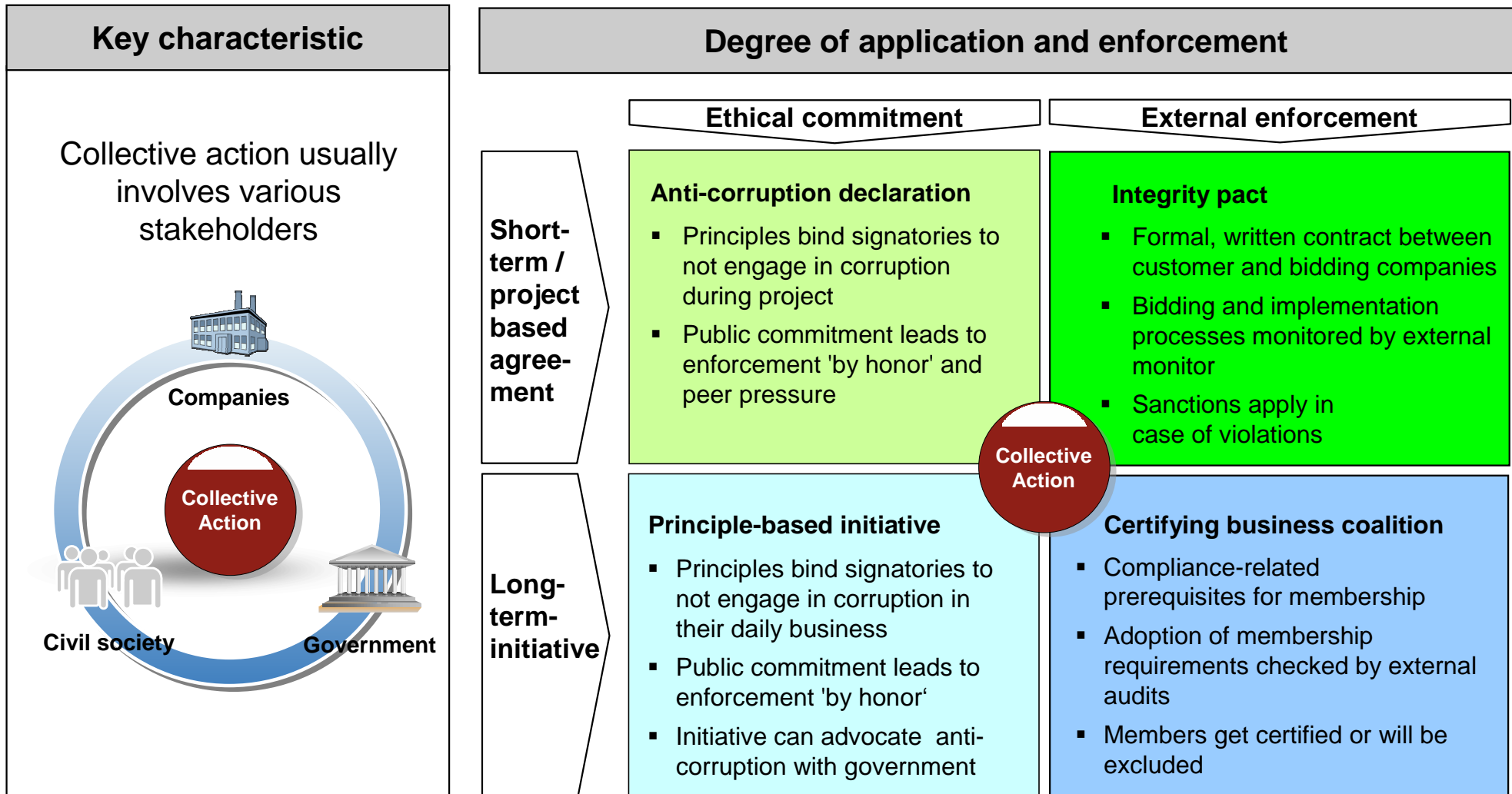


\* E.g. Non-Governmental organizations, business associations

Source: Global Compact – Business against Corruption, a framework for action, 2006

# Collective Action involves various stakeholders; the activities and degree of enforcement can vary

## Characteristics of collective action



# Collective Action can be applied in every region and sector, but it is especially relevant for high-risk regions and sectors

Direct relationship between strong governance and risk of corruption

High-risk regions	High-risk sectors	High-risk transactions
<p>The risk of corruption exists, to some degree, <u>in every region and country</u>.</p> <p>Country specific sources of information for assessment of specific risks are given on slides 62 - 64</p> <p><b><u>Good state governance</u></b> limits the risk of corruption. Governance includes the process by which national, regional and local governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions (including respect for a free and open media).</p>	<p>The risk of corruption exists in <u>every sector</u>.</p> <p>Information on sector specific corruption risks in selected countries can be found at <a href="http://www.business-anti-corruption.org">www.business-anti-corruption.org</a> under country profiles.</p> <p>Implementing <u>sectoral codes of conducts</u> or <u>industry specific anti-corruption standards</u> can limit the risk of corruption in high risk countries. The formation of industry focused anti-corruption alliances can also be an effective anti-corruption response. Examples and can be found at <a href="http://www.fightingcorruption.org">www.fightingcorruption.org</a> under resources.</p>	<p>The risk of corruption exists <u>in every transaction</u>.</p> <p>Information on high-risk transactions in selected countries can be found at <a href="http://www.business-anti-corruption.org">www.business-anti-corruption.org</a></p> <p>Bringing <u>transparency</u> to transactions related to public procurement, high value transaction or projects with many sub-contractors or involvement of intermediaries and agents can greatly reduce the risk of corruption. <u>Integrity pacts, policies on agents/ intermediaries</u> can support transparency in such transactions.</p>



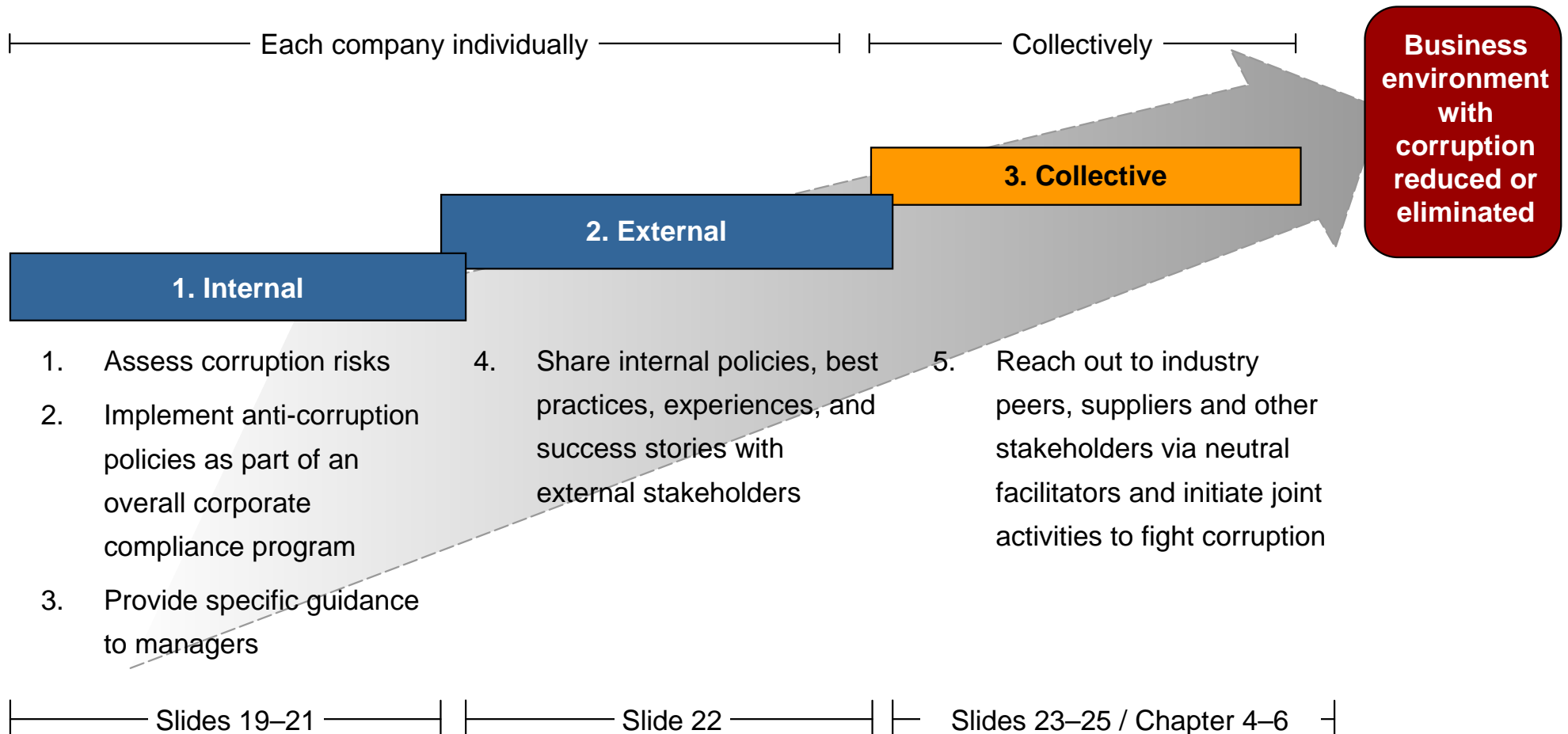
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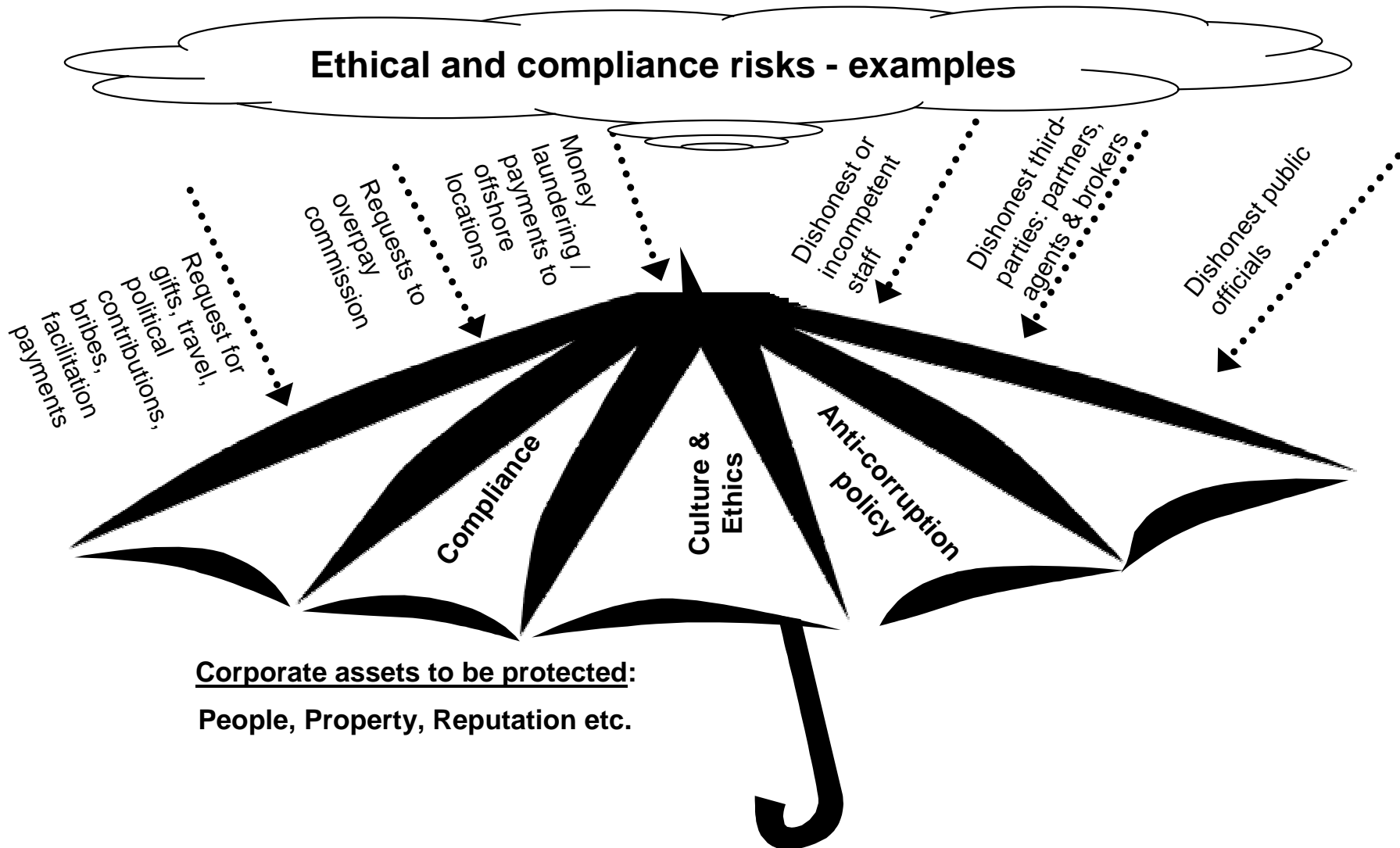
# There are three levels at which a company may fight corruption – Collective Action is an advanced step.

Three levels to fight corruption as a company:



Source: Global Compact – Business against Corruption, a framework for action, 2006

To deal with corruption risks, a company needs to establish an ethical corporate culture and implement a strong anti-corruption policy



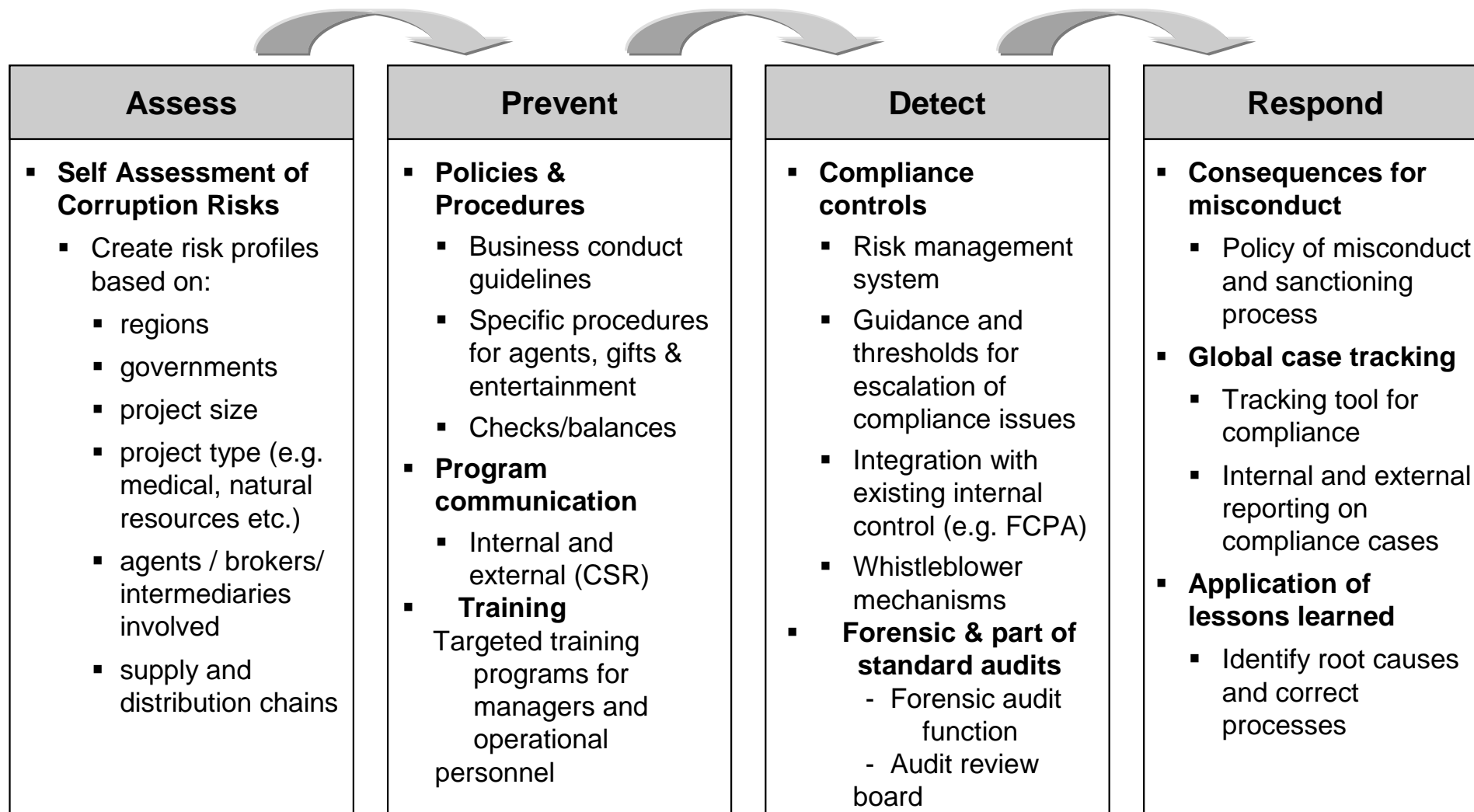
## 'Effective' corporate compliance programs start with leadership commitment and include a number of general accepted principles

Success factors and principles of corporate compliance programs

Success Factors	Principles *
<p><b>Strong 'tone from the top'</b></p> <p>Leadership, communications, <u>and actions</u> which visibly and consistently support the program and its underlying principles. Avoid any appearance of double standards in behavior</p>	<ol style="list-style-type: none"> <li>1 Standards and procedures to prevent and detect misbehavior – and specifically prohibiting bribery in any form</li> <li>2 Oversight from a knowledgeable Board of Directors</li> <li>3 Program management by senior personnel with operational responsibility and clear lines of authority</li> <li>4 Preventive operational safeguards consisting of conduct codes, internal controls and audit, anti-retaliation measures and background screening of candidates for substantial authority positions – among other activities</li> <li>5 Communications and training to support the program</li> <li>6 Reinforcement of appropriate behaviors through incentives and consistent discipline</li> <li>7 'Lessons learned' responses to discovered incidents – emphasizing root causes, process adjustments and accountability</li> <li>8 Engagement with other businesses and other stakeholders</li> <li>9 Separation of internal functions and responsibilities</li> </ol>
<p><b>A business culture which values 'good sales'</b></p> <p>Involving compliance in operations and recognizing it as supporting, not preventing, corporate sales – so that sales are more likely to have less corruption risk</p>	
<p><b>Practices and processes which are practical</b></p> <p>A program which is prioritized, well-communicated and focused on the particular facts and circumstances of the business</p>	

\* Both regulatory frameworks (OECD Convention on Combating Bribery, UN Convention Against Corruption, US Sentencing Guidelines, etc) and voluntary frameworks (TI Business Principles, among others) generally reflect many of these program principles.

**To continuously improve a compliance program\* a company should follow the practices of "Assess" - "Prevent" - "Detect" - "Respond"**



\* Additional compliance program information can be found at the websites of various anti-corruption and compliance related organizations.

**Publicly communicating company standards and policies will help employees and business partners to resist bribery, and encourage the reporting of bribe incidents**

External communication

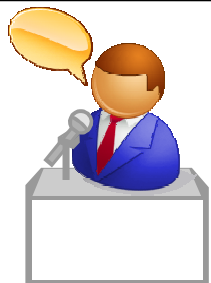
- Make a clear and unambiguous statement of principles and policy
- Set expectations that business partners and supply and distribution chain participants will conform to company policy
- Report to stakeholders on internal activities to fight corruption
- Share experiences and best practices



- Annual report
- CSR report
- Case studies



- Separate section on company website



- Presentations at anti-corruption and business conferences






- Press releases
- Round table discussion with journalists

**Benefits**

- Might trigger interaction with other organization that can give feedback, propose changes and share best practice examples
- Contributes to mitigate risk of corruption and will help employees to withstand potential demands for bribes and have confidence to report them
- Builds reputation of being an ethical company

## Collective Action can help to overcome corruption dilemmas by making compliance the norm and isolating bad actors

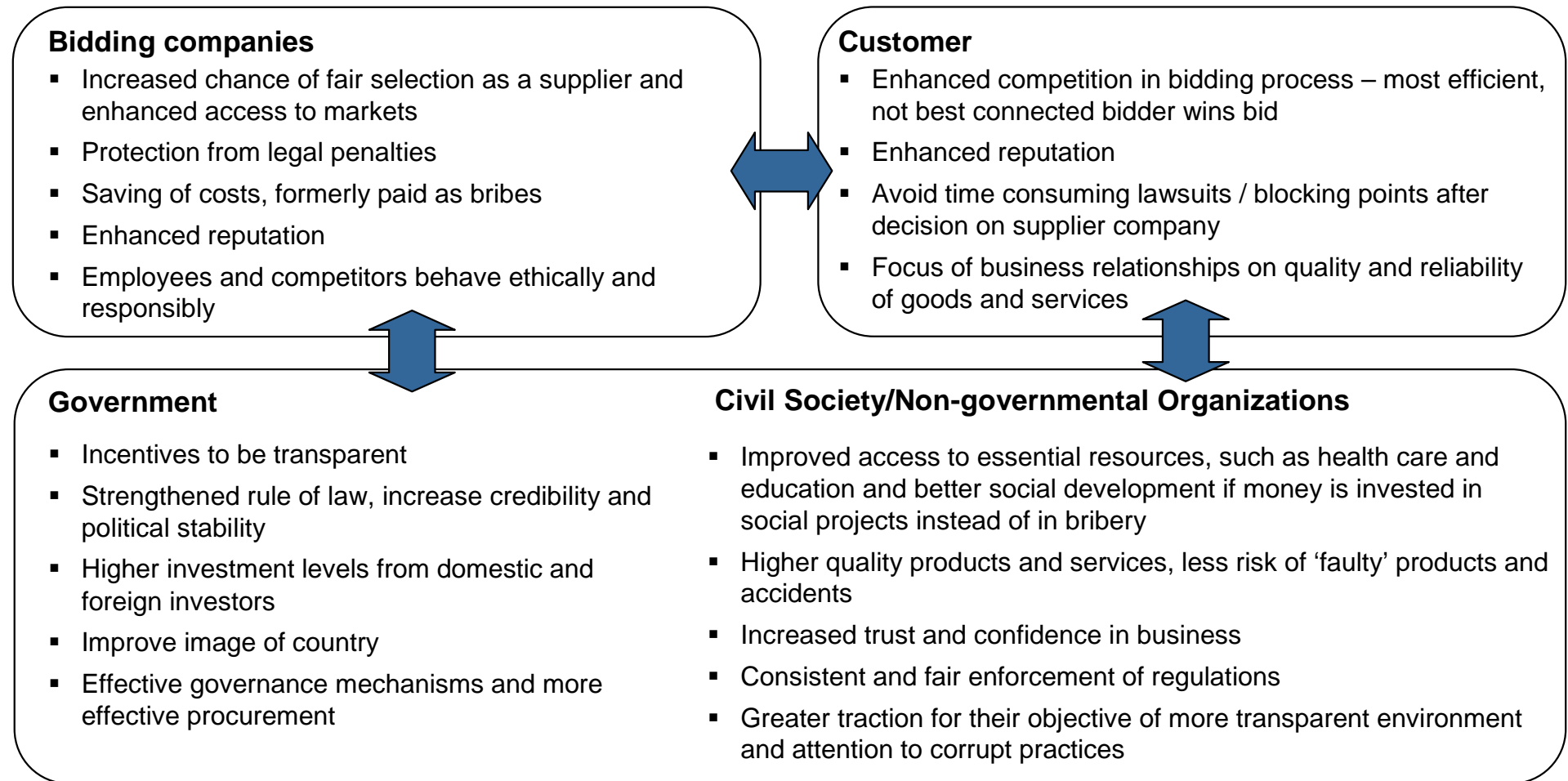
Corruption Dilemma		
<ul style="list-style-type: none"> <li>Corruption has a negative impact on companies, governments, societies, and economies</li> <li>Despite costs to some, certain individuals or groups benefit from corrupt transactions</li> <li>Efforts by one individual organisation might not be sufficient to change a corrupt environment</li> </ul>		
<p>Governments</p> 	<p>Companies</p> 	<p>Civil Society</p> 
<ul style="list-style-type: none"> <li>Officials often have discretionary authority</li> <li>Weak governance prevents monitoring and sanctioning of corrupt behavior</li> </ul>	<ul style="list-style-type: none"> <li>Sales employees are often paid extra salary or bonuses if they win contracts</li> <li>Companies with strong anti-corruption policies lose contracts to corrupt competitors</li> <li>SMEs lack resources to counter demands</li> </ul>	<ul style="list-style-type: none"> <li>Civil society often lacks access to information on public procurement transactions</li> </ul>



Collective Action
<ul style="list-style-type: none"> <li><b>Collective Action:</b> <ul style="list-style-type: none"> <li>Is a collaborative and sustained process of cooperation between stakeholders</li> <li>Increases the impact and credibility of individual action</li> <li>Brings vulnerable individual players into an alliance of like-minded organizations</li> <li>Levels the playing field between competitors</li> <li>May complement, or temporarily substitute for and strengthen. weak local laws and anti-corruption practices</li> </ul> </li> <li>The <b>central objectives</b> of Collective Action are to:           <ul style="list-style-type: none"> <li>Strengthen anti-corruption commitments between and among different stakeholders</li> <li>Create incentives for stakeholders to avoid bribery and corruption in transactions and eliminate violations by individual members</li> <li>Create incentives to avoid corruption by individuals <i>within</i> companies and governments</li> </ul> </li> </ul>

## All stakeholders benefit from Collective Action

Benefits of anti-corruption Collective Action from different stakeholders' perspective\*

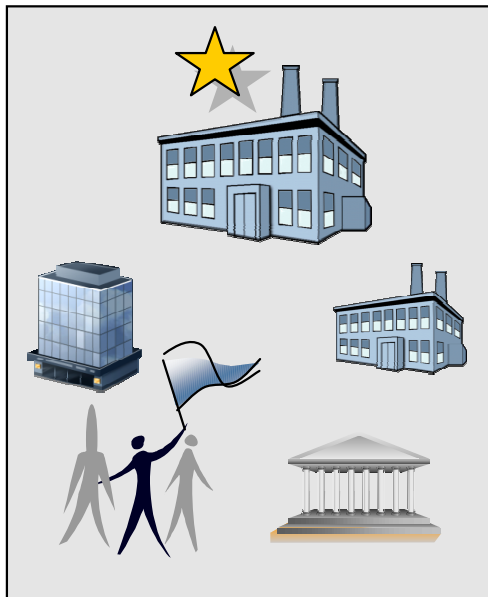


1) Furthermore, Collective Action indirectly supports the internal control over decision-making processes: if bribery occurs, that also normally means that the usual controls and chains of command within one or more organizations have been avoided or manipulated, and are therefore weakened.)



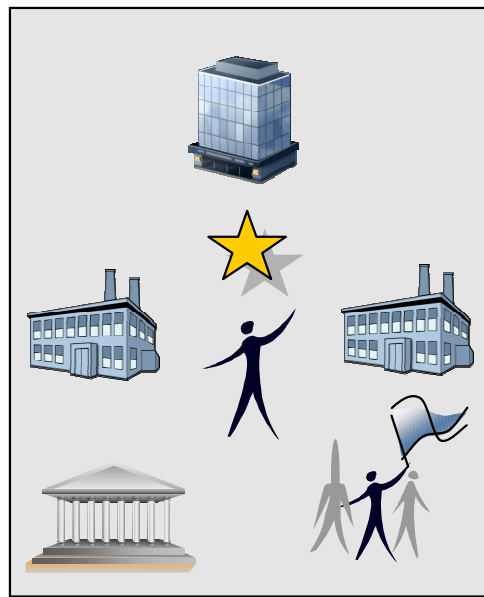
# Collective action tends to be more successful if convened and supported by a neutral facilitator

**Model 1. One or more companies convene collective action**



- May raise anti-trust concerns
- Leading role of one company may prevent other companies from participating
- If only companies participate in initiative, civil society may question the outcomes

**Model 2. Facilitator convenes collective action**



- Individual company can indirectly initiate Collective Action
- Facilitator has better opportunities to approach different stakeholders
- Increased credibility of initiative

**Role of facilitator**

- Bring stakeholders together and provide neutral platform
- Best-practice sharing / advice
- Nominate external monitor or auditor

**Role of company**

- "Make first move" and initiate action
- Act as champion

**Facilitator candidates**

- NGOs
- Credible individuals
- Business chambers

**List of potential facilitators on slide 65**



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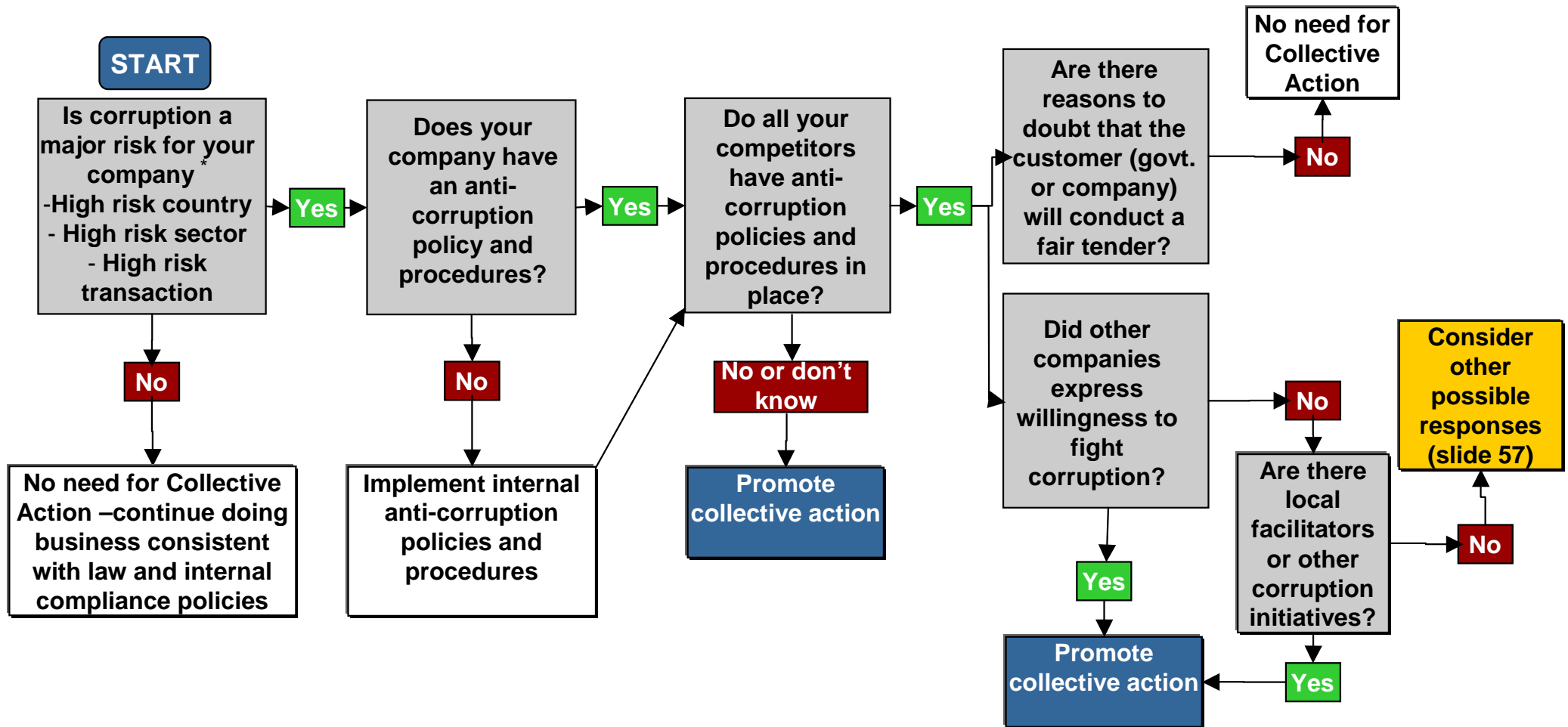
# Collective Action is more successful if key questions are asked at an early stage

## Key decisions

Is collective action the best way to address the problem?	Which type of collective action is appropriate?	Which factors are needed to sustain the collective action?
<ul style="list-style-type: none"><li>▪ Does the company have anti-corruption policies in place?</li><li>▪ Do competitors have anti-corruption policies</li><li>▪ Are there doubts about the clients behavior?</li><li>▪ Is the company operating in a high risk country / sector / or is this a high risk transaction?</li><li>▪ Could individual action be sufficient to address the problem?</li></ul> <ul style="list-style-type: none"><li>▪ Decision tree </li></ul>	<ul style="list-style-type: none"><li>▪ <u>Project-based:</u><ul style="list-style-type: none"><li>▪ Corruption problem exists only in one project?</li><li>▪ A bigger alliance of companies and stakeholders is not possible?</li><li>▪ Company wants to test collective action in a pilot project first</li></ul></li><li>▪ <u>Long-term initiative:</u><ul style="list-style-type: none"><li>▪ A broader change of behavior is required</li><li>▪ Project-based initiative is not possible</li><li>▪ A successful project-based initiative is expanded into a wider alliance</li></ul></li></ul> <ul style="list-style-type: none"><li>▪ Decision tree </li></ul>	<ul style="list-style-type: none"><li>▪ <u>Timeline:</u><ul style="list-style-type: none"><li>▪ Milestones for short-term deliverables and long-term goals</li><li>▪ Is there an end-point?</li></ul></li><li>▪ <u>Organization:</u><ul style="list-style-type: none"><li>▪ Who will be responsible to manage the project?</li><li>▪ Who will be the facilitator?</li><li>▪ Who will host the initiative physically?</li></ul></li><li>▪ <u>Funding:</u><ul style="list-style-type: none"><li>▪ Who will fund the initial stage (facilitator, monitor, auditor, other external parties required)</li><li>▪ How will the initiative be funded in the longer-run?</li></ul></li></ul>

# How can a company decide if Collective Action is appropriate for its particular situation?

Decision tree 1 “Collective action – yes or no?”



\* Decision should be made by, or with the involvement of, the internal compliance / risk assessment team in corporate headquarters. Various sources for country specific assessment are given on slides 62 - 64

# There are various types of Collective Action with different degrees of application and enforcement

Color-code used on following slides to show link to Collective Action forms covered in the guide

Types of collective action

## Applications

### Project / transaction based agreement



### Long-term initiative

#### Business coalition

Company A

Independent facilitator

Organization A

Company C

## Degree enforcement

### Ethical commitment

#### Anti-corruption declaration

- Anti-corruption principles bind signatories to not engage in corruption during project
- Public commitment leads to enforcement 'by honor' and peer pressure

(Details on slide 31)

### External enforcement

#### Integrity pact

- Formal, written contract between customer and bidding companies
- Bidding and implementation processes monitored by external monitor
- Sanctions apply in case of violations

(Details on slide 32)

#### Principle-based initiative

- Ethical principles bind signatories to not engage in corruption in the daily business
- Public commitment leads to enforcement 'by honor'
- Initiative can advocate anti-corruption with government

(Details on slide 33)

#### Certifying business coalition

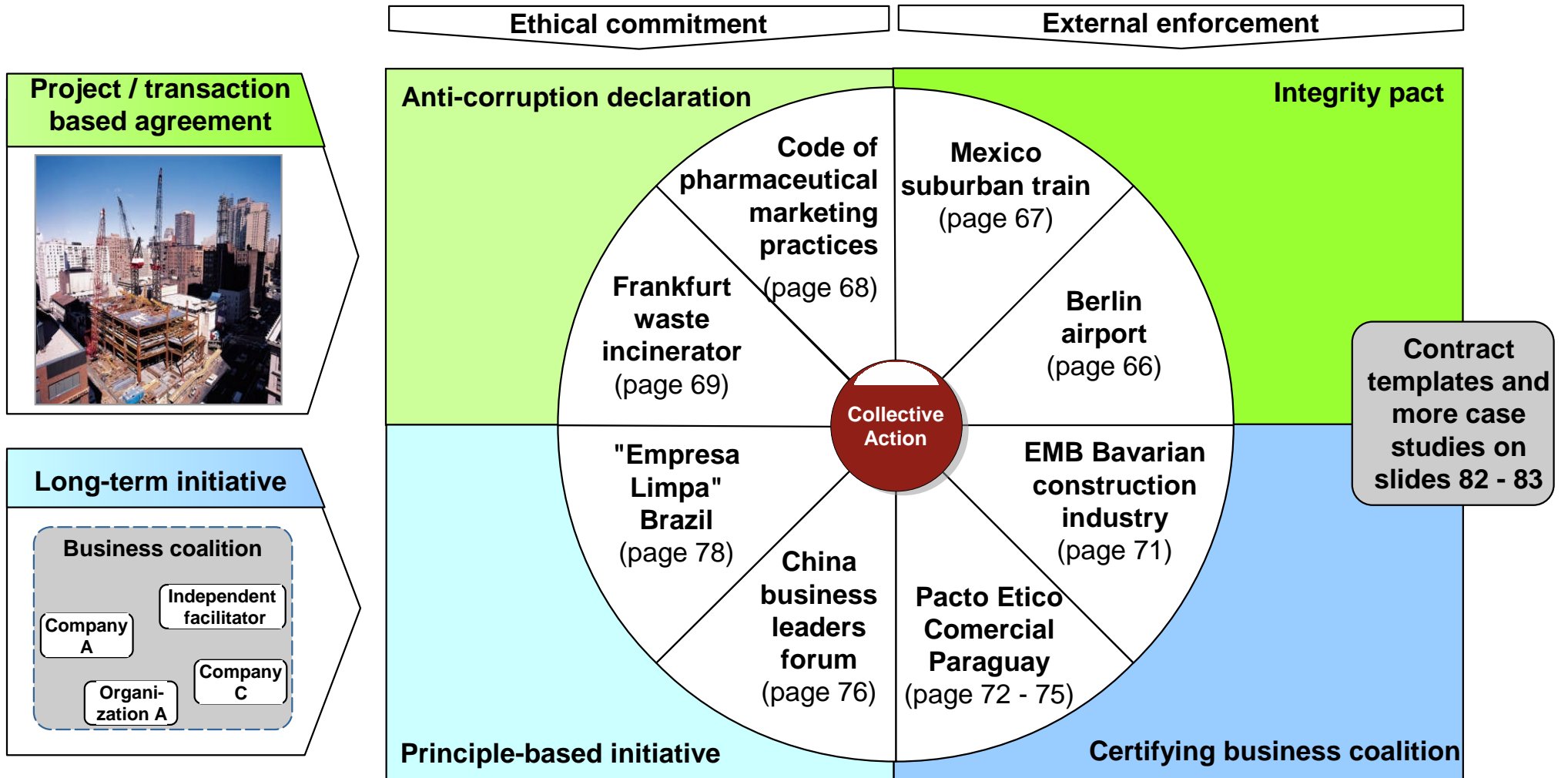
- Compliance-related prerequisites for membership
- Adoption of membership requirements checked by external audits
- Members get certified or will be excluded

(Details on slide 34)

Collective Action

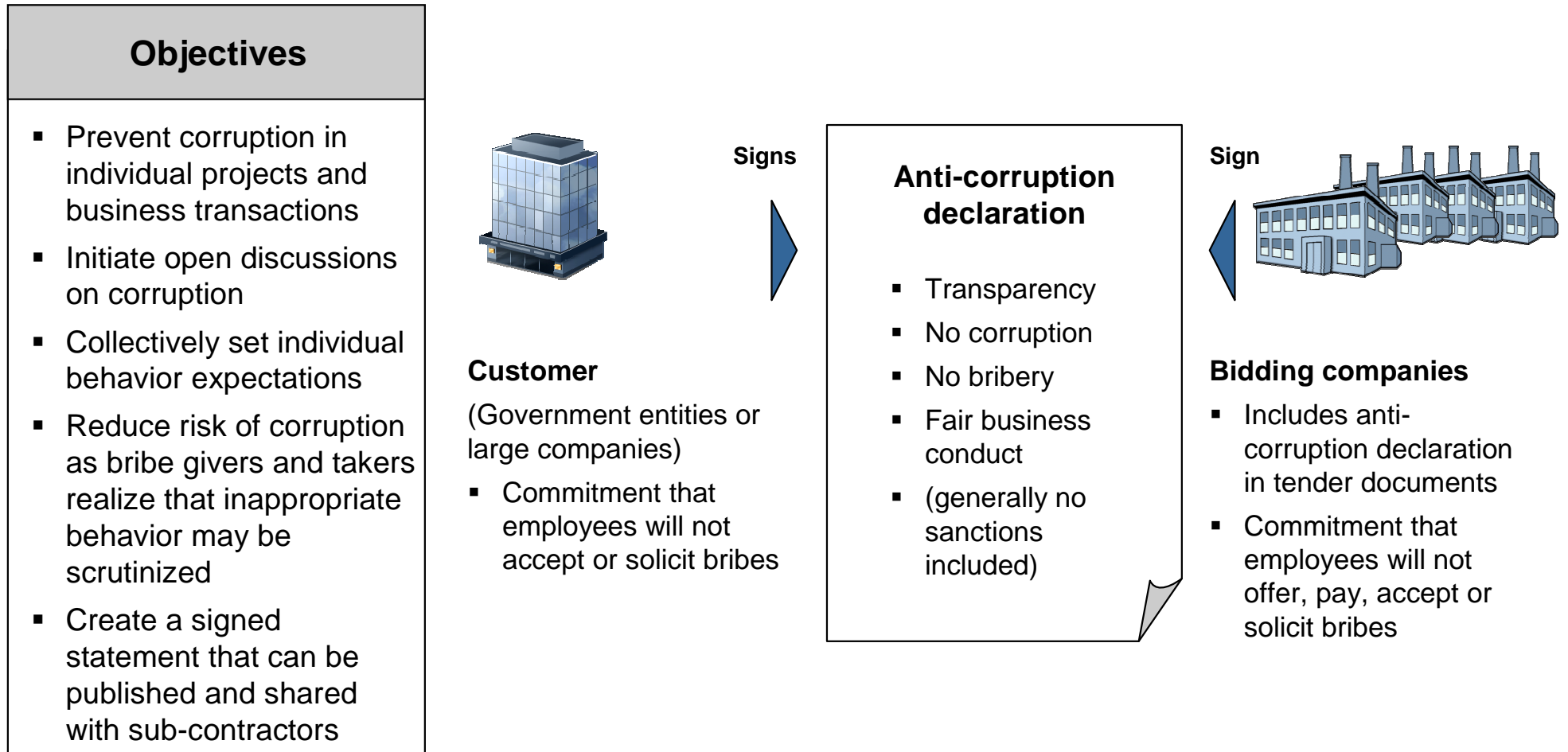
# Successful examples of Collective Action exist that can be used for guidance

References to detailed case descriptions



# Anti-corruption declarations are a public commitment, without external monitoring, to act appropriately during a project

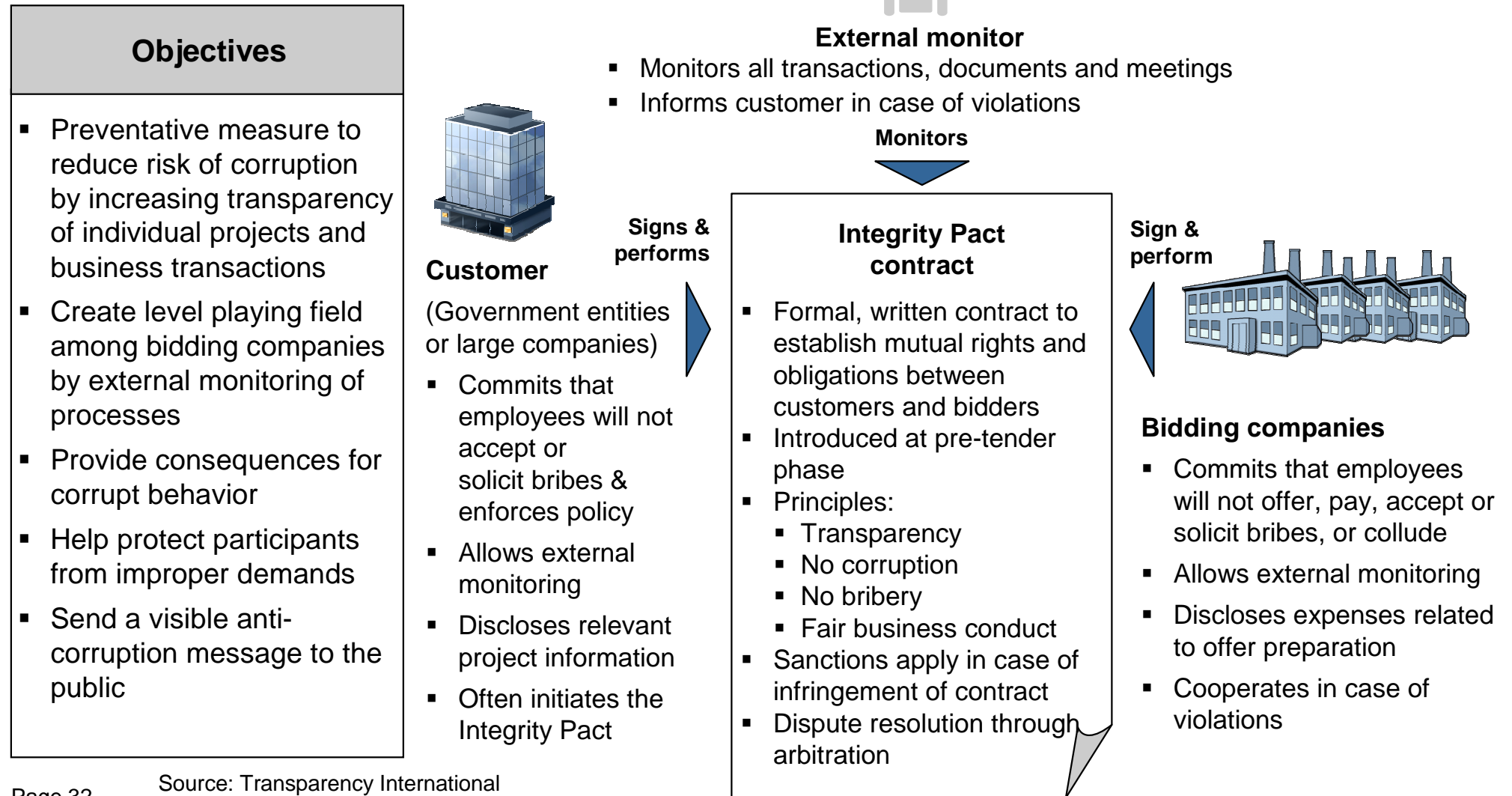
## Concept of anti-corruption declarations



# Integrity pacts are formal contracts which are externally monitored and help increase transparency in projects

Concept was developed by Transparency International in the 1990's

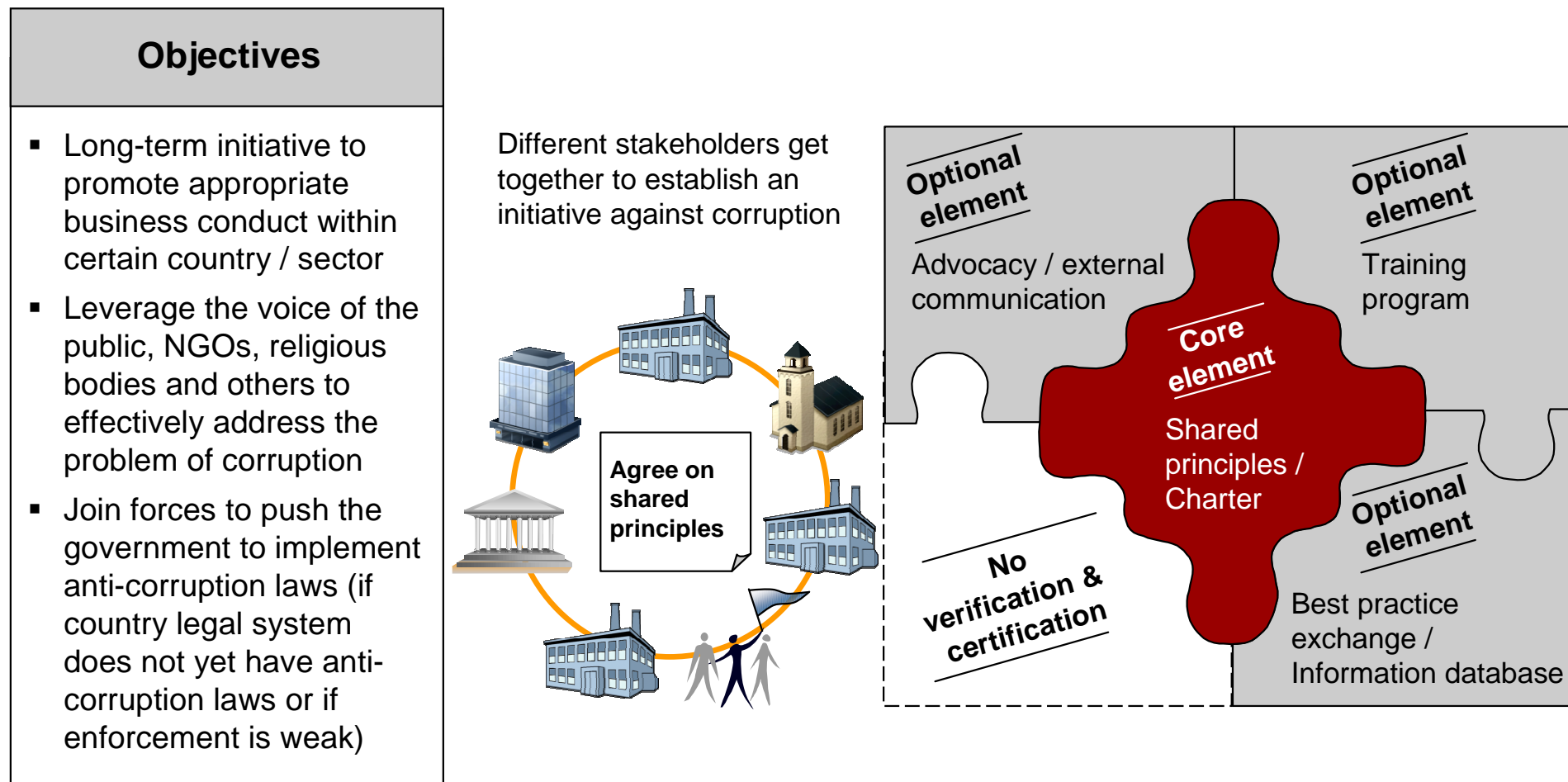
## Concept of Integrity Pacts





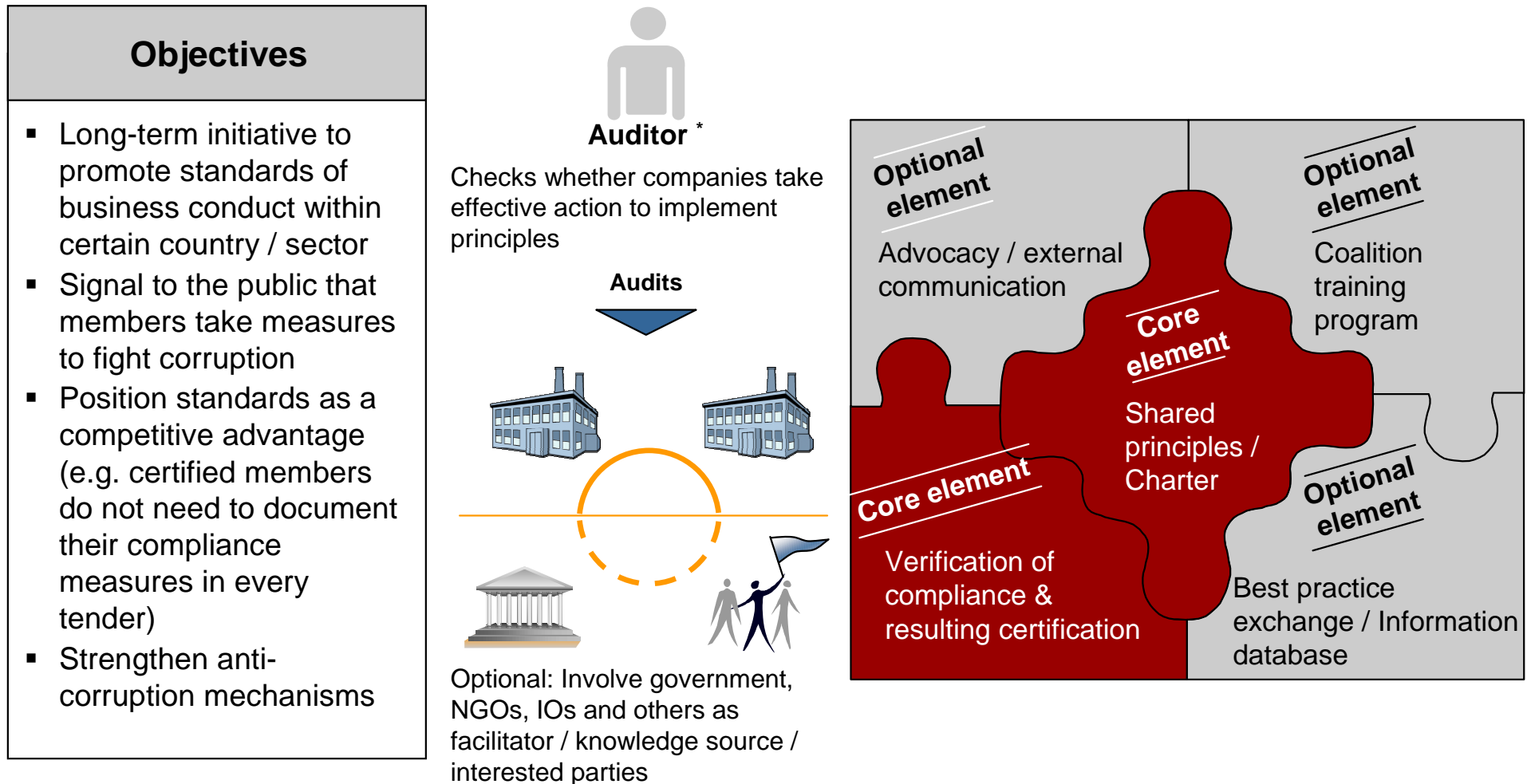
## Principle based initiatives against corruption engage various stakeholders to promote transparent business conduct

Concept of principle based initiatives



# Certifying business coalitions monitor and certify compliance of their members with core shared principles against corruption

Concept of Certifying business coalitions



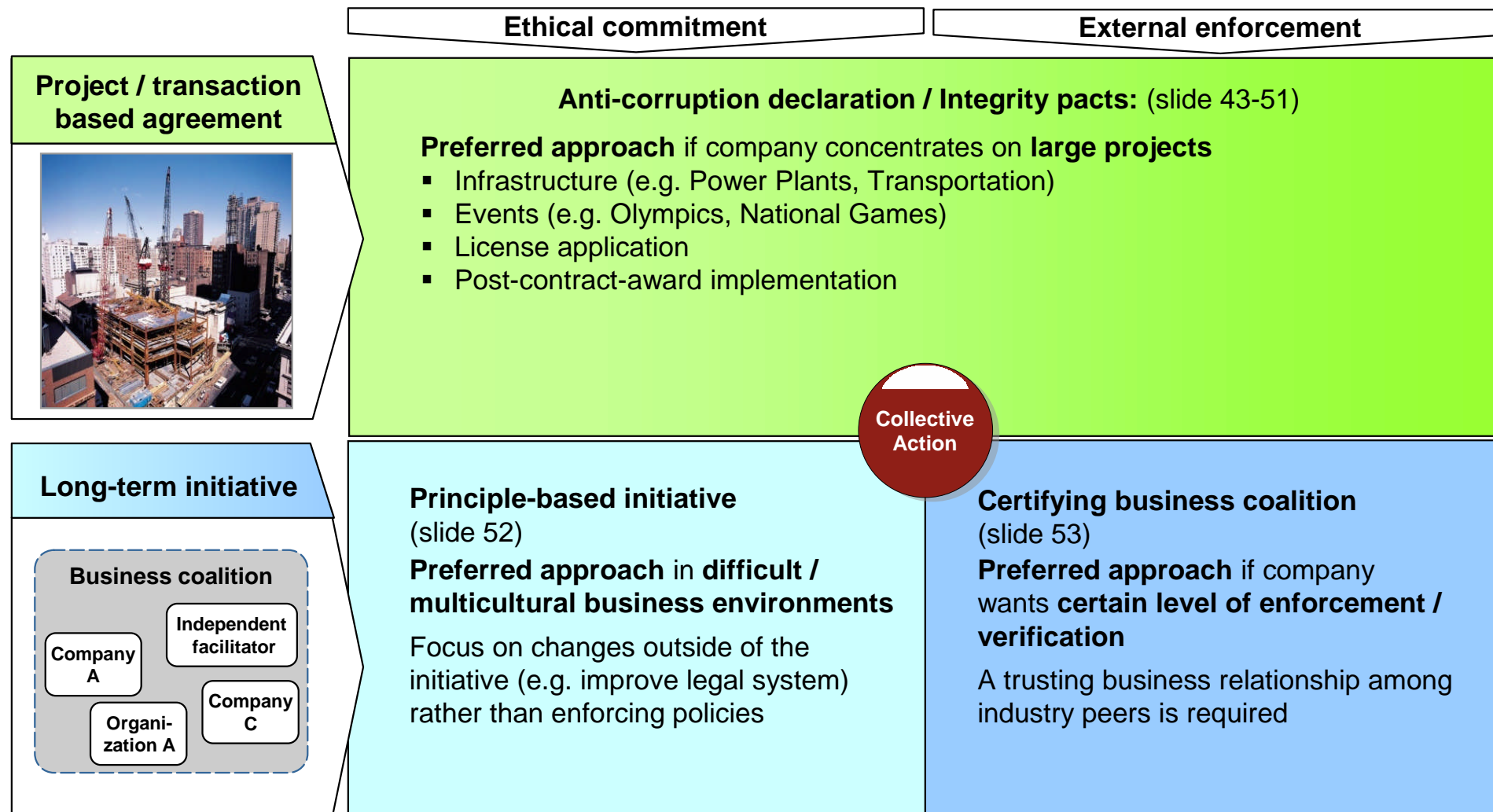
\* Independent accounting / auditing companies; trusted third parties (e.g. academic advisor, NGO or association)

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5. How to implement Collective Action?	35	<ul style="list-style-type: none"><li>▪ Decide whether collective action is project based or longer term<ul style="list-style-type: none"><li>▪ How to implement a project / transaction based initiative?</li><li>▪ How to implement a long-term initiative</li></ul></li><li>▪ Success factors</li><li>▪ How to avoid anti-trust issues</li></ul>
6. Contact list and best practices	61	

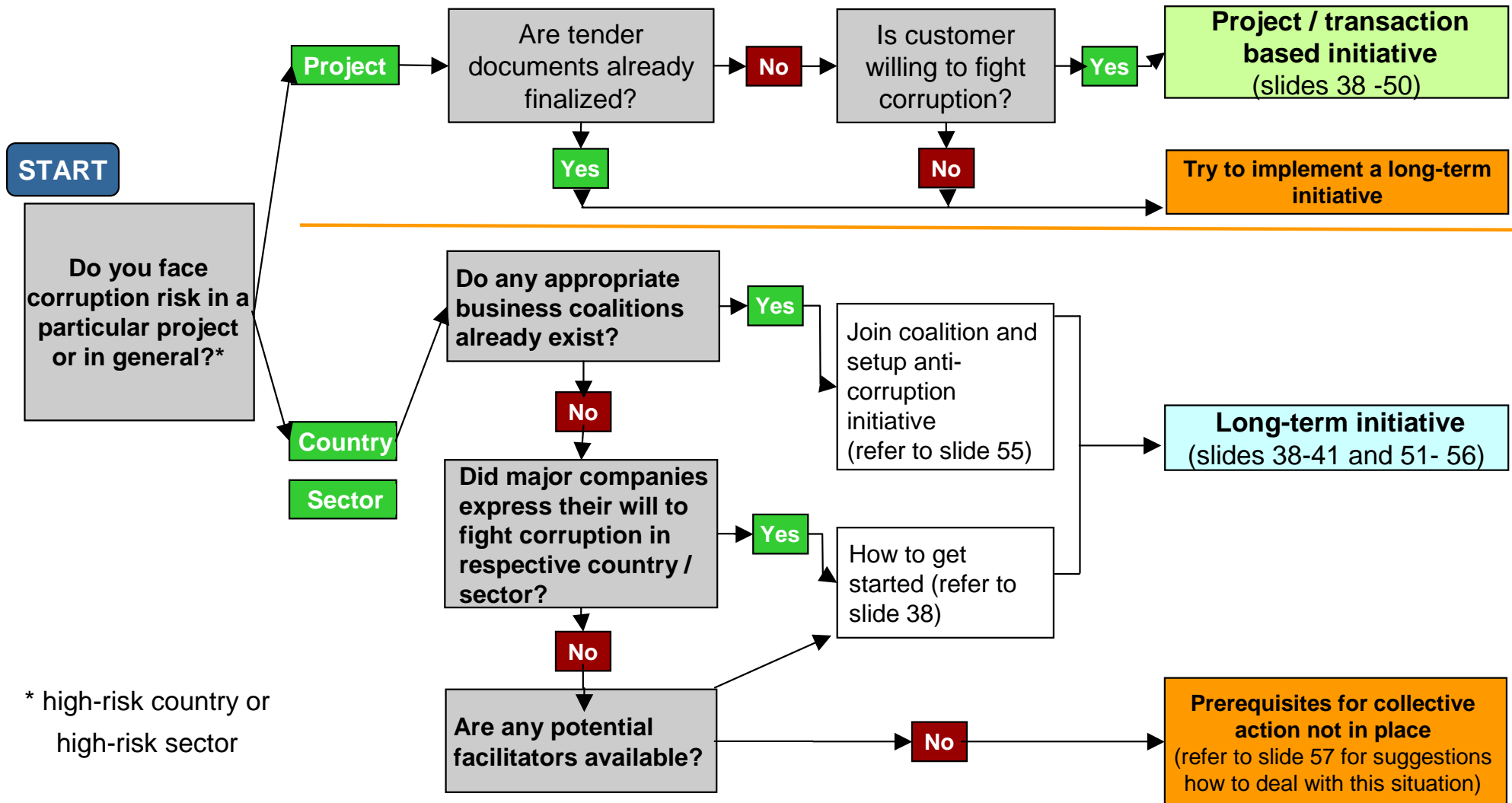
# Decide which type of collective action is the most appropriate form given the circumstances\*



\* The use of one form of collective action does not necessarily preclude the simultaneous use of other forms of collective action or other anti-corruption measures. Facts and circumstances will define what is appropriate to use in the given situation.

# Decision tree 2 helps to decide if stakeholders should engage in project based or long-term collective action initiatives

Decision tree 2 “Which type of collective action is appropriate for me?”

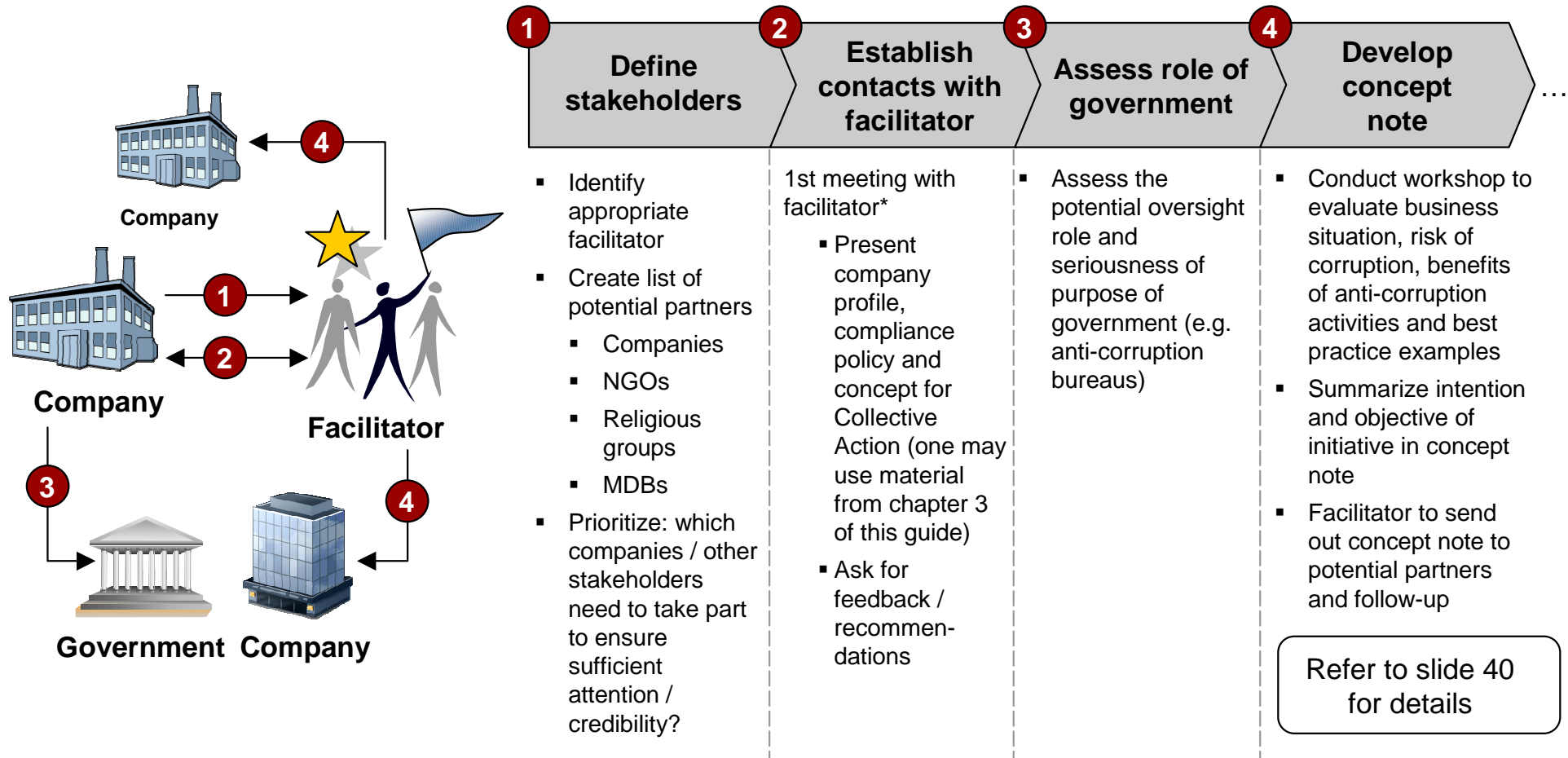


\* high-risk country or high-risk sector

# How to get started?

➔ The first steps are similar for both types of collective action

Initiate collective action (1/2)

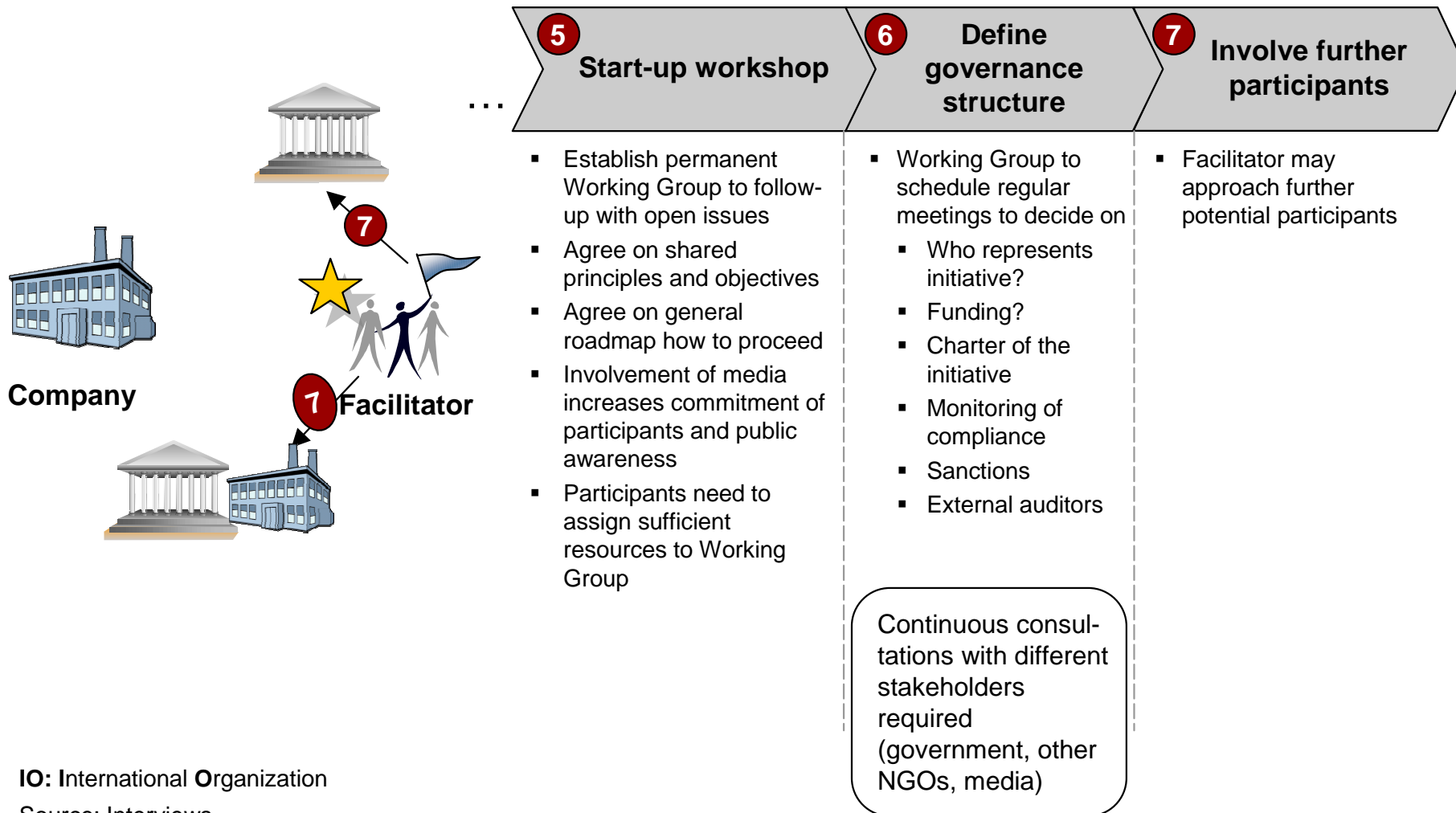


IO: International Organization      MDB: Multilateral Development Bank

★ \*Facilitator: ie. trusted third party (e.g. academic advisor, NGO or business association)

# How to get started?

Initiate collective action (2/2)



## The concept note should summarize the status of discussions - MDBs\* and Co-Investors can provide feedback and support

Key elements of concept note, potential role of MDBs and Co-Investors

### Key elements of concept note

- Motivation / need for action
- Downside risk of non-compliant behavior
- Key objectives of initiative and benefits for participants
- Introduction of facilitator
- Ways of participation / roles and obligations of participants /
- Current status and next steps

- **Wording should emphasize benefits and past experiences**
- **Concept note should not be too specific to allow other stakeholders to influence approach**

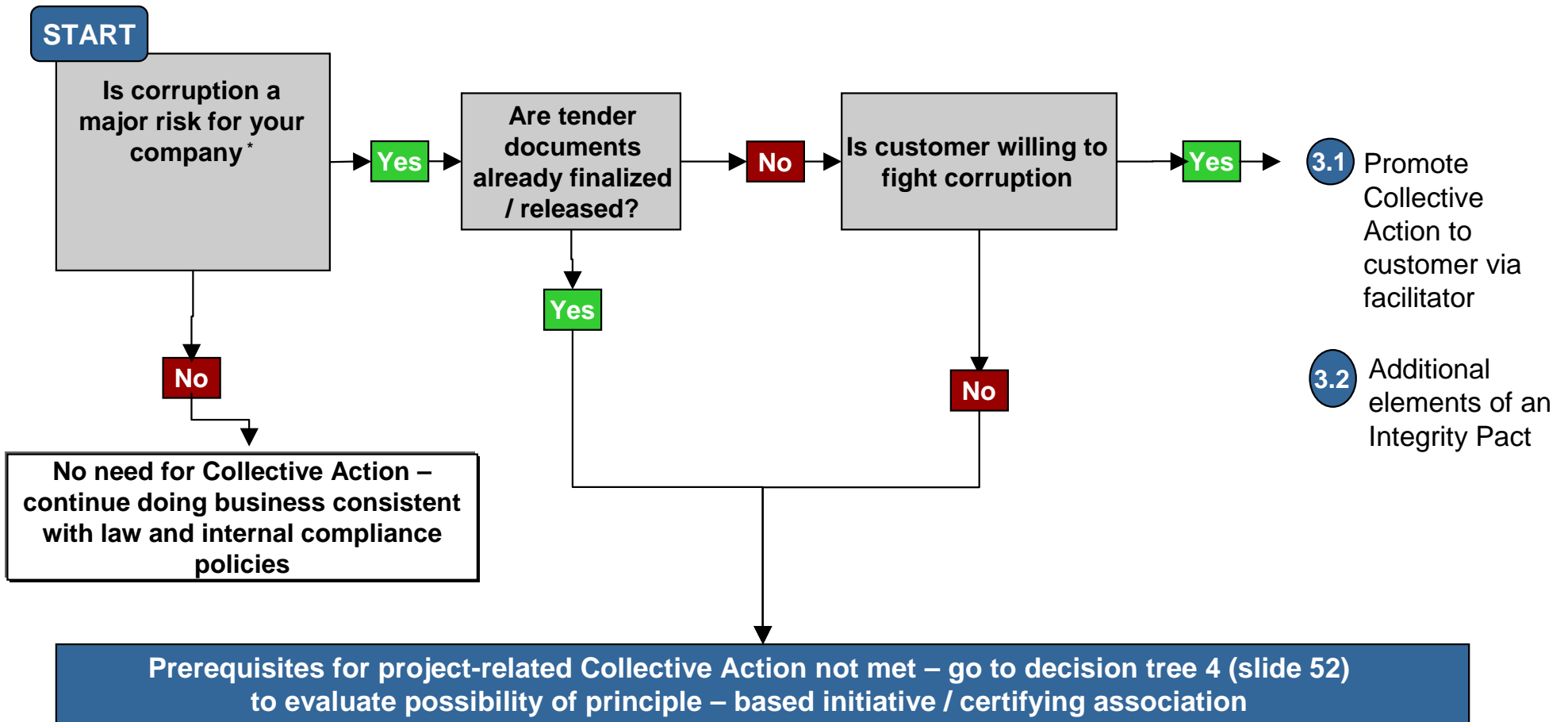
### Potential support from MDBs / Co-Investors

- Initiating company / group of companies may approach MDBs / Co-investors with concept note directly and ask for feedback / recommendations
- MDBs / Co-Investors can be a source of information and technical assistance in organizing and informing
- Frequently MDBs / Co-Investors support establishment of anti-corruption policies and legislation such as reforms in procurement laws



# Decision tree 3 checks whether prerequisites are in place for project / transaction-based action

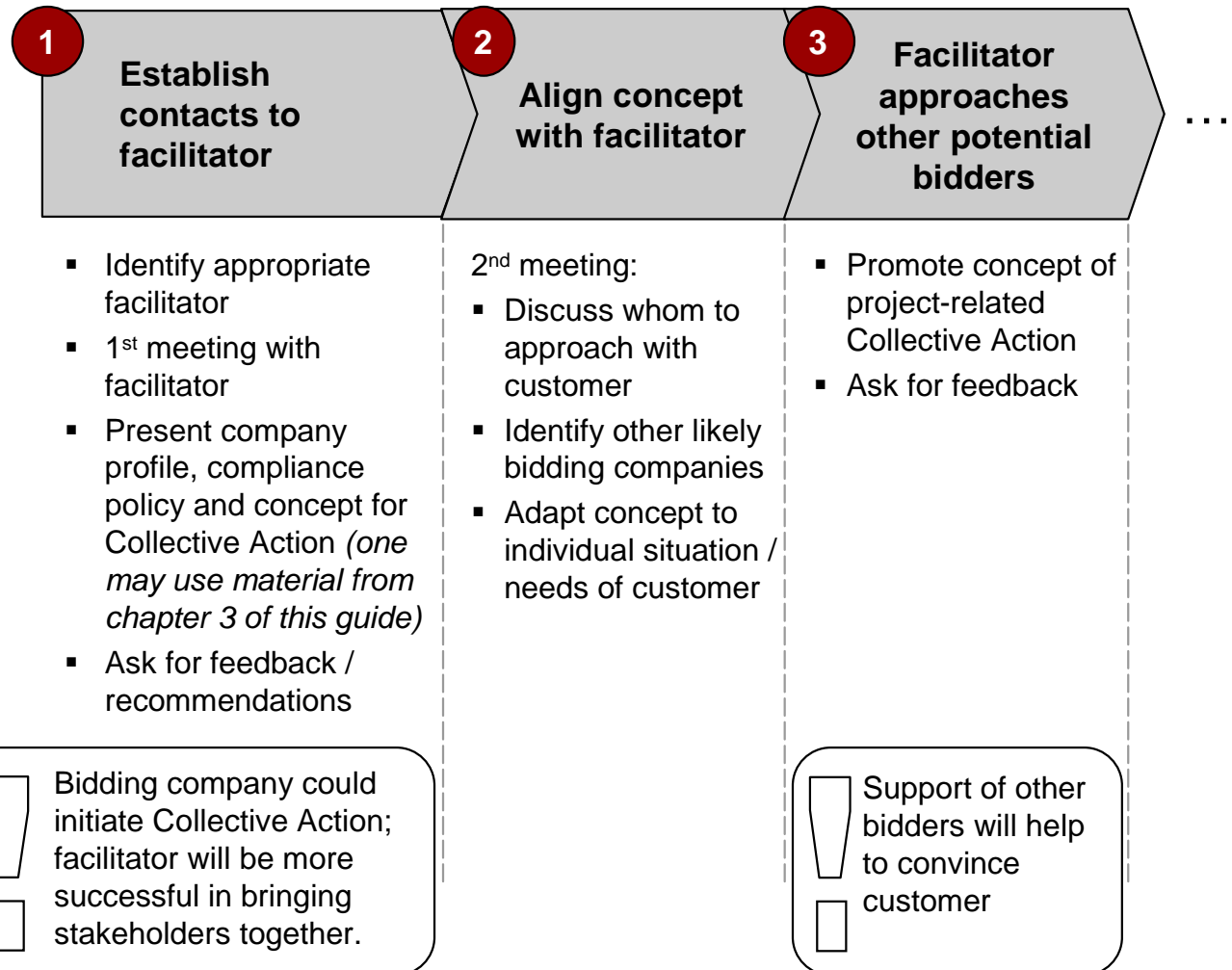
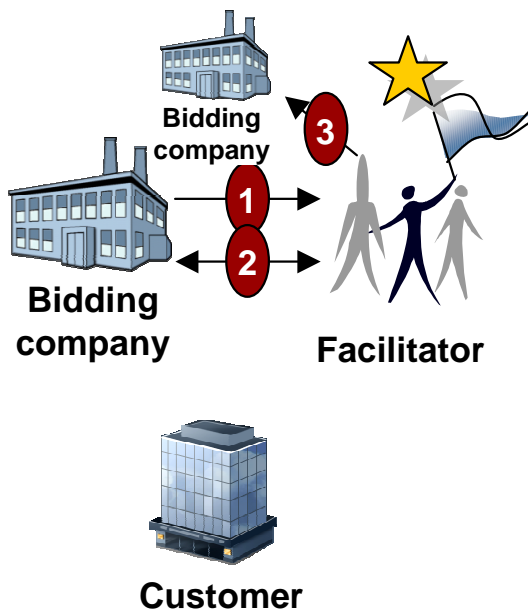
Decision tree 3



\* Decision should be made by, or with the involvement of, the internal compliance / risk assessment team in corporate headquarters. Various sources for country specific assessment are given on slides 62 - 64

### 3.1 Even where close customer relationships exist, it is advisable to involve an independent facilitator in project-based initiatives

Promote Collective Action to customer via facilitator (1/2)



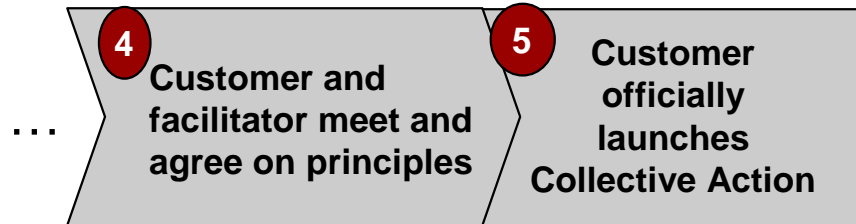
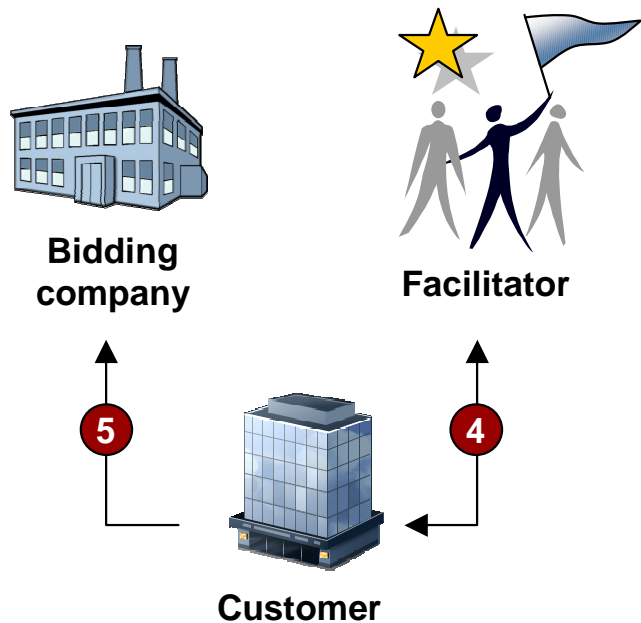
IO: International Organization

Source: Interviews

3.1

# Customer should be the official owner of project-related Collective Action

Promote Collective Action to customer via facilitator (2/2)

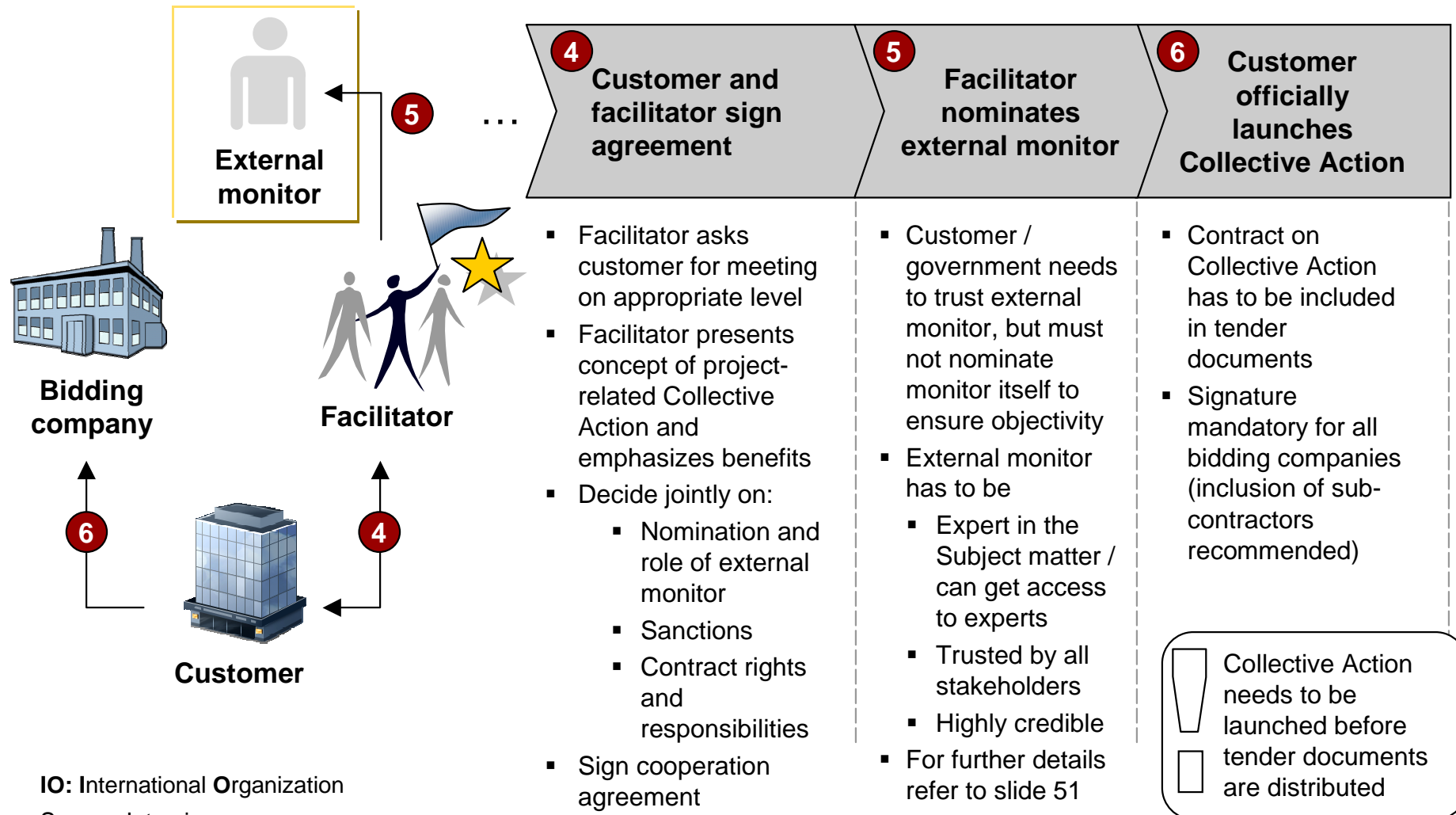


- Facilitator asks customer for meeting at appropriate level
  - Facilitator presents concept of project-related Collective Action and emphasizes benefits
  - Sign agreement of “agree in principle”
- Agreement on Collective Action to be included in tender documents
  - Signature recommended for all bidding companies (inclusion of sub-contractors recommended)

Collective Action needs to be launched before  
 tender documents are distributed

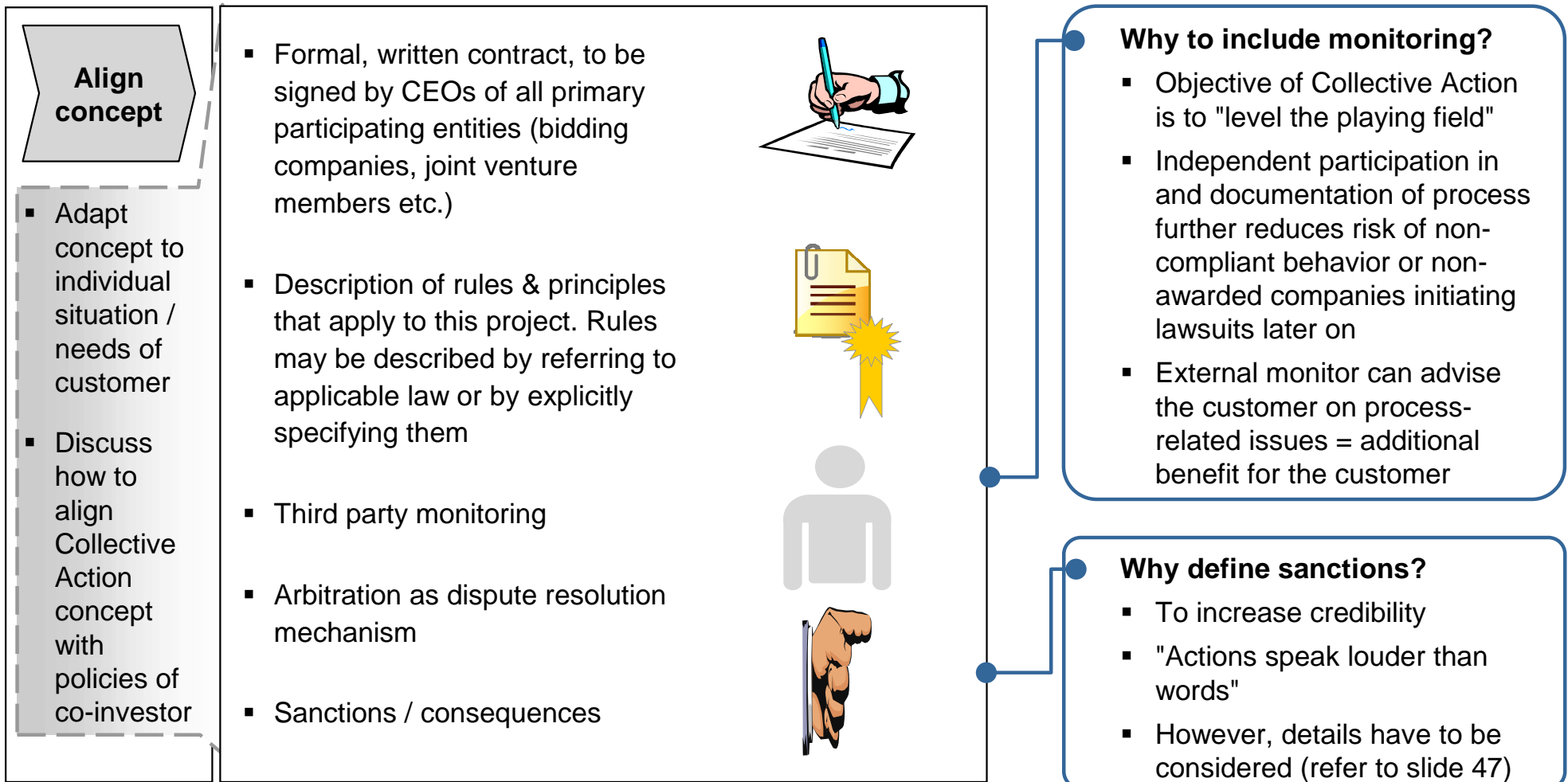
### 3.2 If project-based initiative takes the form of an integrity pact, additional elements have to be considered (contract, monitor)

Additional steps and elements of an integrity pact



## An Integrity Pact requires certain mandatory elements such as a formal contract, external monitoring and sanctions

### Mandatory elements of an Integrity Pact



Source: Based on Transparency International's Integrity Pact concept, Project team

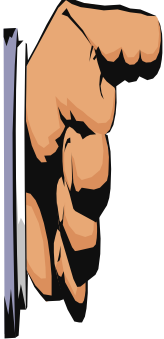
**The ideal external monitor is an expert in the subject matter, nominated by the facilitator, and paid by the customer**

Characteristics of an 'ideal' external monitor:

External monitor	Who nominates external monitor?	Tasks and authority
<div data-bbox="344 576 568 916" data-label="Image"> </div> <ul style="list-style-type: none"> <li>▪ Is subject matter expert or has access to experts</li> <li>▪ Has no conflicts of interest and is trusted by all stakeholders</li> <li>▪ Has good general reputation and credibility</li> <li>▪ Must not see role as opportunity to promote career</li> <li>▪ Does not seek high project visibility</li> <li>▪ Long-term availability</li> </ul>	<div data-bbox="768 564 1413 842" data-label="Text"> <p><b>Who nominates external monitor?</b></p> <ul style="list-style-type: none"> <li>▪ Facilitator, as independent third party, nominates external monitor</li> <li>▪ Customer / government needs to trust the nominated person, but must not nominate external monitor itself to ensure independence</li> </ul> </div> <div data-bbox="768 842 1413 1147" data-label="Text"> <p><b>Who pays?</b></p> <ul style="list-style-type: none"> <li>▪ Customer decides who pays and how</li> <li>▪ Monitor costs and expenses can be included in overall project cost</li> <li>▪ Costs are transparent and reasonable</li> </ul> </div> <div data-bbox="768 1147 1413 1455" data-label="Text"> <p><b>Where to find appropriate candidates?</b></p> <ul style="list-style-type: none"> <li>▪ NGOs / IOs</li> <li>▪ Universities (active or emeritus professors)</li> <li>▪ Independent institutions (e.g. Society of Civil Engineers)</li> </ul> </div>	<ul style="list-style-type: none"> <li>▪ Participates in all meetings (bilateral + multilateral) at all project stages</li> <li>▪ Receives tender documents and all offers for transparency-focused review (and not from general business perspective)</li> <li>▪ Participates in all communication (e.g. copied in emails as 'CC')</li> <li>▪ Issues final report documenting tender process / decisions</li> <li>▪ Asks questions for clarification ("Why...")</li> <li>▪ Informs customer about any irregularities and seeks changes/ remediation</li> <li>▪ As a possible consequence, external monitor could announce that he/she will withdraw from the project if transparency is not ensured</li> </ul>

**External monitor is "witness, not decision maker in the process"**

# Sanctions give Collective Action strength and credibility but must be carefully designed and enforceable

Sanctions / consequences	Forms of sanction possibilities for violations	Potential problems / pitfalls	Recommendation
 <p><b>Overall objective:</b></p> <ul style="list-style-type: none"> <li>▪ Ensure commitment of all signatory stakeholders</li> <li>▪ Increase credibility of Collective Action</li> </ul>	<ul style="list-style-type: none"> <li>▪ Exclusion from tender</li> <li>▪ Exclusion from future tenders for several years</li> <li>▪ Penalty (e.g. 3% of contract value has to be paid to customer)</li> <li>▪ Institute disciplinary measures to employees who have been suspected of corruption</li> <li>▪ External monitor can highlight issues in public, seek for remediation and finally resign from project (=&gt; bad publicity)</li> <li>▪ External monitor has obligation to inform law enforcement bodies</li> </ul>	<ul style="list-style-type: none"> <li>▪ Negotiating sanctions may be lengthy process, and involve lawyers rather than business people concerning issues such as defining violations and enforceable sanctions</li> <li>▪ Sanctions may have problematic consequences:               <ul style="list-style-type: none"> <li>▪ Exclusion of a company from project may lead to higher cost and time delay</li> <li>▪ Competition level may be weakened if one bidder is excluded from tender</li> </ul> </li> <li>▪ External monitor may feel intimidated if a violations needs to be reported</li> <li>▪ Lawsuits or prosecutions may be unavoidable</li> </ul>	<ul style="list-style-type: none"> <li>▪ External monitor needs to have the right to report infringements and publicly resign from project</li> <li>▪ Penalty may be agreed upon in advance (declared as compensation payment or liquidated damages)</li> </ul>

# Sanctions must be fact-based, and should not rely on mere suspicion

Possible approaches to establish violations	Arbitration	Process	Legal basis / permanent arbitration committee
<ul style="list-style-type: none"> <li>▪ Employees of accused company confess</li> <li>▪ Application of contractual standard, e.g: 'Sanctions apply if, in light of available evidence, no reasonable doubt is possible'</li> </ul>	<ul style="list-style-type: none"> <li>▪ Without involvement of state / country</li> <li>▪ Based on agreements of involved parties</li> </ul>	<ul style="list-style-type: none"> <li>▪ Each party nominates independent arbitrator</li> <li>▪ Arbitrators nominate chairman</li> <li>▪ Specific processes and involved institutions have to be described and nominated in contracts</li> </ul>	<ul style="list-style-type: none"> <li>▪ 'Convention on the recognition and enforcement of foreign arbitral awards' ("New York Convention", 1959)</li> <li>▪ ICC Arbitration Court</li> </ul>
<ul style="list-style-type: none"> <li>▪ Arbitration</li> </ul>			

ICC: International Chamber of Commerce

Sources: Transparency International, Berlin Airport and ONGC India



## Involvement of Co-Investors / Multilateral Development Banks\* (MDBs) can help to reduce the risk of corruption

Possible involvement of Co-Investors and MDBs, examples

### Involvement of multilateral donors may deter corrupt practice

- Co-Investors / MDBs <sup>1)</sup> generally require borrowers and bidders to observe good business practices and high standard of ethics
- Co-Investors / MDBs may require a provision in the bidding documents whereby bidders, suppliers and contractors agree to permit the co-investor / MDB to inspect all accounts, records, and other documents relating to the bid submission and contract performance, and to have them audited by auditors appointed by the co-investor / MDB
- In case of accusations of corruption, MDBs undertake thorough investigations and publish the names of companies sanctioned for wrong-doing
- Sanctioned companies / individuals may face cross-debarment across MDBs

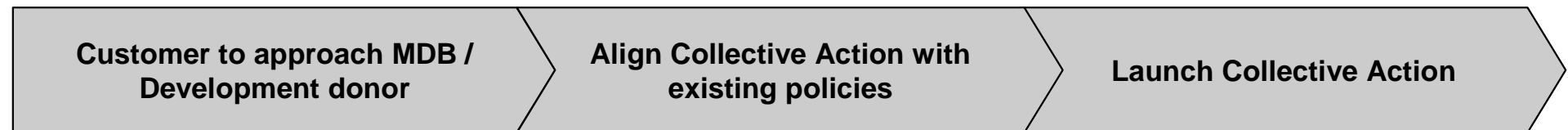
### Selected Co-Investors / MDBs

- African Development Bank
- Asian Development Bank
- Canadian International Development Agency
- Department for International Development
- European Bank for Reconstruction and Development
- Export-Import Bank
- Kreditanstalt für Wiederaufbau
- World Bank

\* Many MDBs are currently reviewing their respective anti-corruption safeguards. Certain of these requirements may be strengthened in the future.

## MDBs and other Development Donors can be a resource to support project / transaction based collective actions

How to involve MDBs / other development donors

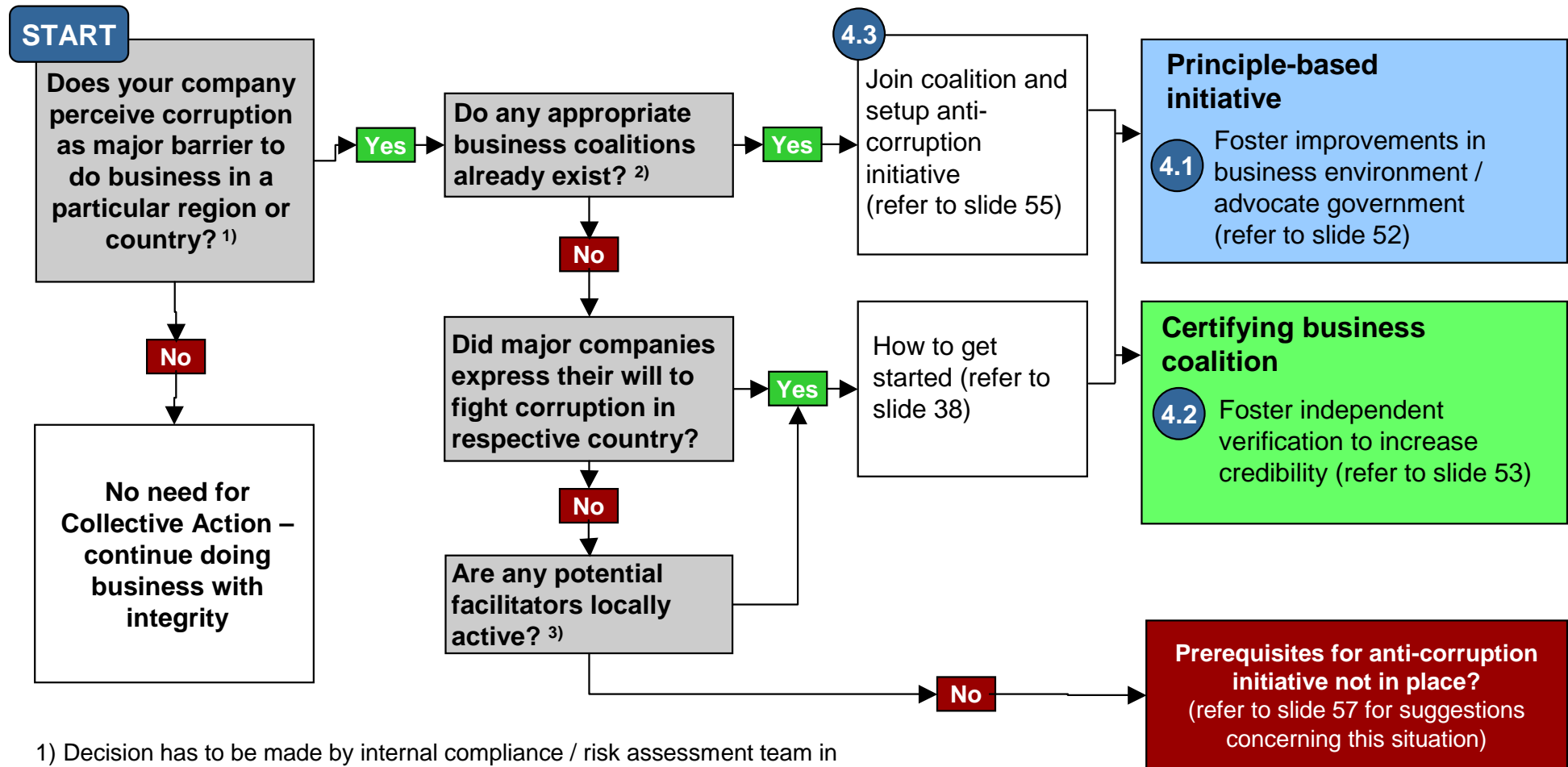


- A bidder may approach its customer, who will in turn approach the MDB / Co-Investor and ask to include an Integrity Pact or similar safeguard
- This could enhance the existing anti-corruption policies of the Co-Investor/MDB
- MDBs usually already have own anti-corruption policies
- Discuss how to align collective action concept with those policies
- Contract on collective action has to be included in tender documents
- Signature mandatory for bidding companies (inclusion of sub-contractors recommended)

Co-Investors/MDBs may incorporate specific Collective Action elements such as Integrity Pacts, if the government agrees. Once there is agreement with the government, Co-Investors/MDBs can be a resource to provide details and organizational support.

# Decision tree 4 helps you evaluate the possibility to setup or join a long-term anti-corruption initiative

Decision tree 4 “long-term initiatives”



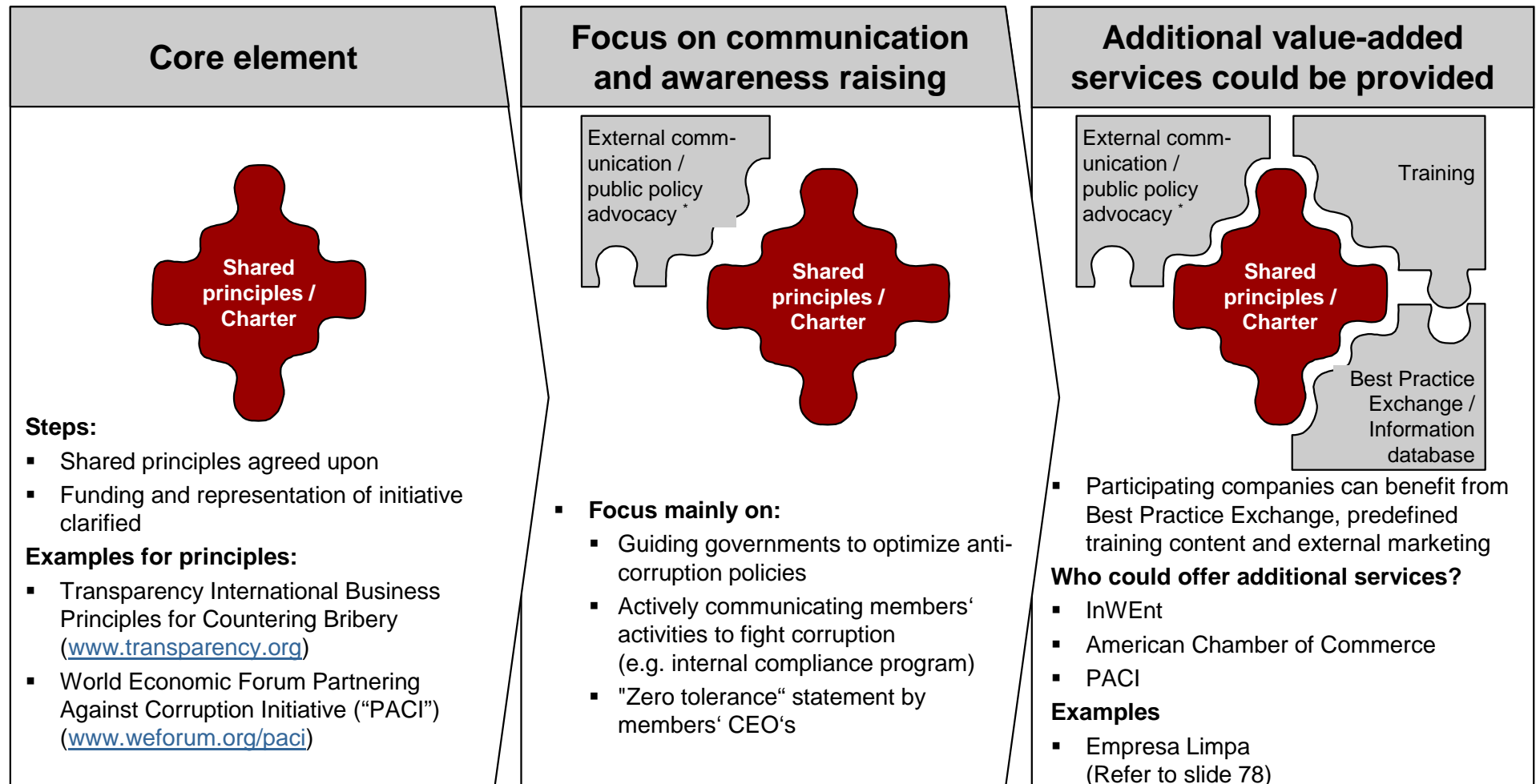
1) Decision has to be made by internal compliance / risk assessment team in headquarters. Various sources for country specific assessment are given on slides 62-64

2) Criteria to assess coalitions can be found on slide 56

3) E.g. local anti-corruption NGOs, local offices of global anti-corruption NGOs, international organizations, Multilateral Development Banks

## 4.1 Principle-based initiatives focus on urging governments to adjust anti-corruption policies and promote anti-corruption efforts

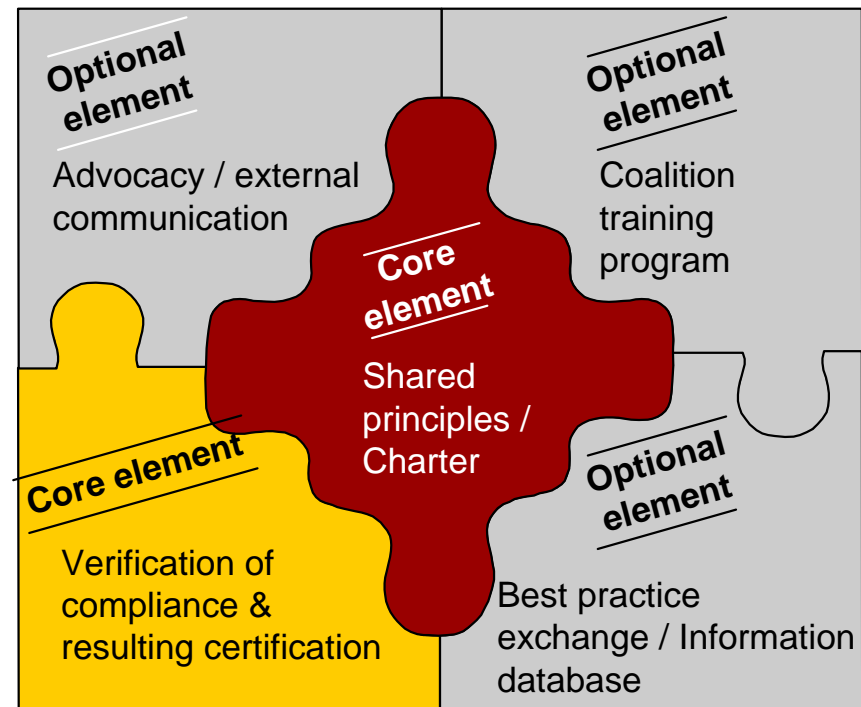
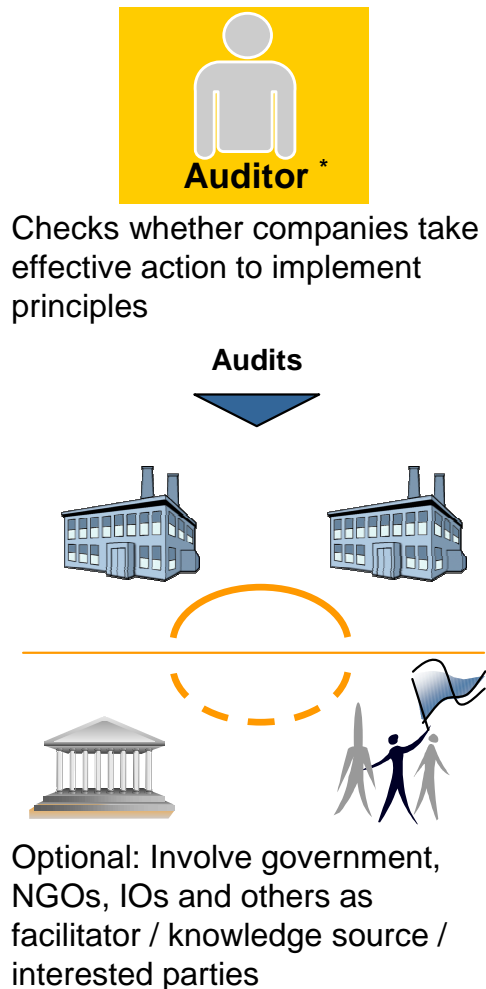
Key steps of Principle-based initiative:



\* Sponsorship and support of public policy issues, consistent with local legal requirements

**4.2 A certifying business coalition adds credibility by verifying compliance with its principles and/or certifying eligibility of members**

Certifying business coalition – additional elements



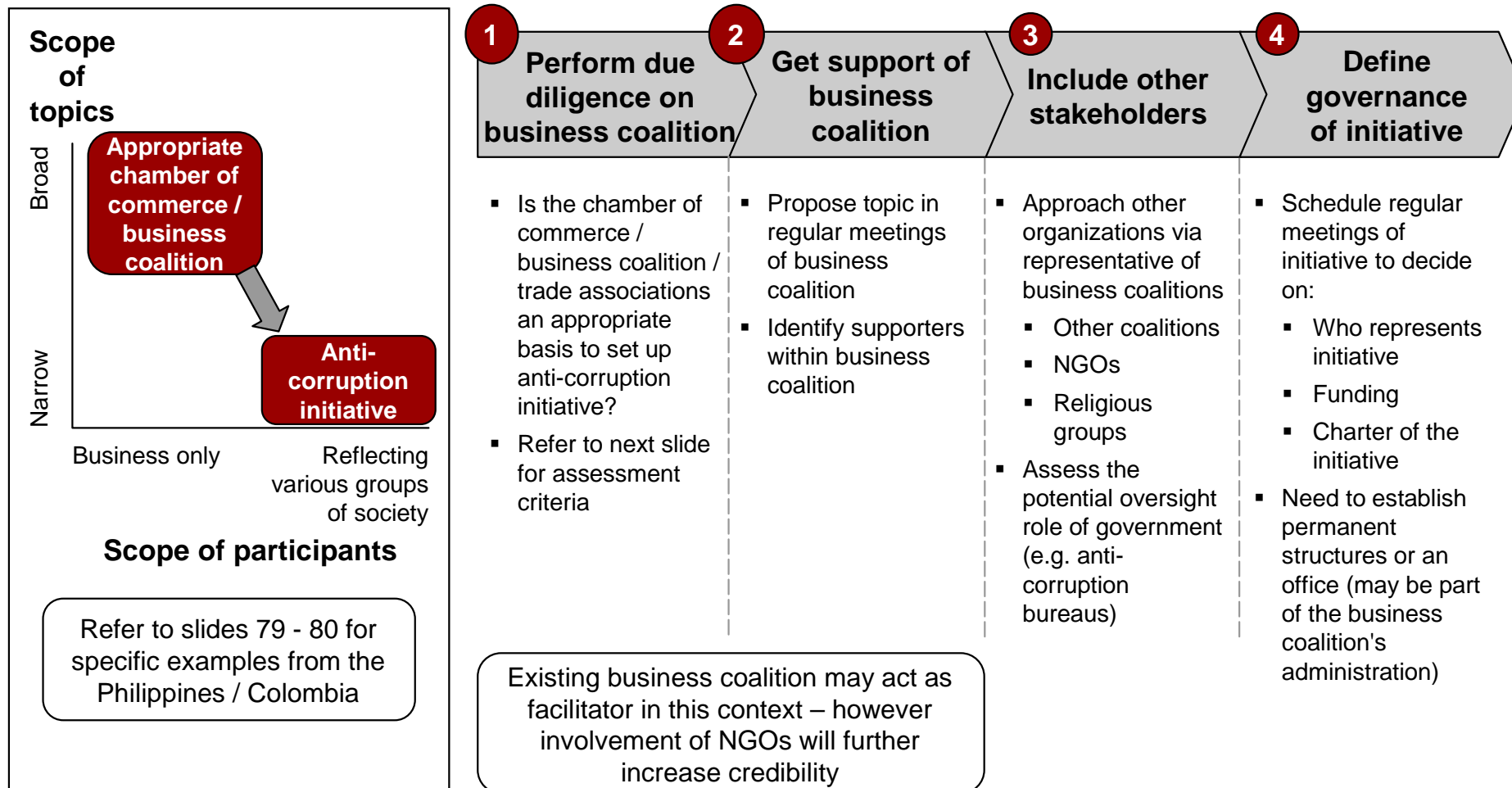
\* Independent accounting / auditing companies; trusted third parties (e.g. academic advisor, NGO or association)

## 4.2 Key elements of an independent audit / verification

### Independent verification

	Independent verification	Incentives for verification / certification
<b>What is audited</b>	<ul style="list-style-type: none"> <li>▪ Successful implementation of internal compliance program based on checklist / agreed upon principles</li> <li>▪ Association has to clearly define minimum requirements for certification</li> </ul>	<p><b>Company meets audit standards</b></p> <ul style="list-style-type: none"> <li>▪ Company is awarded certification by initiative</li> <li>▪ Initiative publicizes list of certified companies</li> <li>▪ Initiative promotes certificate with customers and government to achieve certain benefits for certified companies (e.g. simplified supplier qualification process)</li> <li>▪ Increased trust in company's policies</li> <li>▪ Audits can be the basis to showcase areas for improvement</li> </ul> <p><b>Company rejects audit or does not meet standards</b></p> <ul style="list-style-type: none"> <li>▪ Exclusion from initiative</li> <li>▪ Potential publication of exclusion from initiative</li> <li>▪ Previously issued certificates are no longer valid</li> </ul>
<b>Typical process</b>	<ul style="list-style-type: none"> <li>▪ Company has to fill in questionnaire</li> <li>▪ Auditor interviews company management, reviews training material &amp; other documents</li> <li>▪ Random interviews with employees</li> <li>▪ Written report to audit committee</li> <li>▪ Audit council confirms successful audit</li> </ul>	
<b>Frequency</b>	<ul style="list-style-type: none"> <li>▪ Frequency to be decided by association</li> <li>▪ Periodic re-audits required to ensure sustainability of anti-corruption program</li> </ul>	
<b>Auditor</b>	<ul style="list-style-type: none"> <li>▪ Independent accounting / auditing companies</li> <li>▪ Trusted third parties (e.g. academic advisor of association)</li> </ul>	

## 4.3 Steps to set up a Collective Action against corruption with an existing business coalition



## 4.3 How to assess whether a particular business association is a good partner?

Similar criteria apply when assessing potential facilitators for Collective Action

Assessment criteria for business coalitions

### Assessing the partnership potential of associations

#### Internal considerations

- History of organization's establishment
- Autonomous of any particular commercial or political interest, espouse open market competition and rule of law
- Mission-driven and have a track record of promoting ethical business / accountable government and experience with public policy advocacy and has demonstrated facilitation skills
- Proper accounting and disclosure of its own operations, proper governance mechanisms, and a strong certification process
- Local knowledge and credibility
- Duties and responsibilities to members
- Broad representation of business community
- Stable and diversified funding sources
- Sufficient capacity, technical expertise, strong leadership and professional staff

#### External considerations

- Association's standing in the community - through conversations with the media, public officials, civil society groups, members, etc
- Credibility among other NGOs and business associations

### An association could be an inappropriate partner if it

- Represents narrow interests or does not have a large membership base
- Has actual or perceived ethical issues because of its members' questionable dealings with government officials
- Is poorly managed financially or poorly governed
- Cannot effectively mobilize its membership

A poorly governed association may be a liability and weaken the legitimacy of the Collective Action effort



## What to do if prerequisites for collective action against corruption are not in place?

Possible company responses\* to minimize the risk of corruption under the circumstances

- Strengthen and improve internal compliance and anti-corruption programs
- Engage in outreach programs with the public and media, e.g. develop and disseminate issue paper on negative consequences of corruption for companies / sector and society in general
- Continue to actively seek / create window of opportunity, e.g. political changes, economic reforms and/or advocate for less sensitive topics, such as transparency and accountability
- Join regional/global anti-corruption initiatives, such as UN Global Compact, TI, PACI, etc.
- Work with recognized anti-corruption champions, such as the World Bank, TI local chapters, UN Global Compact and join their anti-corruption programs and activities
- Publicly exit from a project / sector / country where corruption is problematic, and communicate the reasons why the company believed that this action was necessary

\* More than one response at the same time may be possible and desirable.

## **Conclusion: collective action is not easy and requires patience, but considering certain factors can increase the probability of success**

### Success factors

Involve a facilitator as a neutral party in the process when initiating and implementing a Collective Action

Be patient. Do not rush for success. Building trust and confidence among stakeholders takes time

A well defined and narrow scope (specific sector, specific country) increases credibility and allows easier monitoring and audit

Clarify funding of initiative at the early stages of the project

Focus on achievable results and improvements to provide the foundation upon which to build more challenging initiatives later on

Get the top-management commitment of participating companies

Create public awareness / initiate broad communication campaign

Establish certification as positive incentive for participants


Agree upon clear consequences in case of violations

Source: Global Compact: Business against Corruption - case stories (page131), Business against Corruption – a framework for action (page16, experience from IBLF), interviews

# Companies need to be careful not to violate anti-trust laws / competition laws\* when initiating Collective Action

## Anti-trust / competition law issues



- Communicating or sharing of competitive information is generally inappropriate and may be illegal
  - Non-public meetings of different companies / competitors may raise suspicion of violation of competition / anti-trust laws
- 
- It is advisable to have legal counsel present at any competitor meetings – to ensure legal compliance

## Special areas of concern

1. Relating to companies launching a Collective Action program, e.g.
  - Limiting the number of participants
  - Presence of self-regulatory regimes
  - Geographical barriers
  - Requirements on disclosing key business information
2. Relating to specific procurement projects, e.g.
  - Limiting the number of participants
  - Presence of specific licenses or permits
  - Costs of entry or exit
  - Price controls
  - Restrictions on advertisement
  - Biased standards

## Steps to consider to help avoid possible violation of anti-trust regulations/ competition laws

- Many countries have their own competition policies which can differ from one another – consult both your home country regulations as well as project-related country laws
- Do not approach competitors directly, avoid bi-lateral meetings with competitors without a facilitator being present
- Legal counsel should carefully document content and outcome of meetings
- Avoid communication or other disclosure of actual or perceived competitive information
- Focus on processes which are applicable to all participants, not involving specific competitive information
- Central principle underlying anti-trust regulations: avoid restricting competition by using measures that are not supported by objective business reasoning

For more information consult the  
OECD Competition Assessment  
Toolkit at [www.oecd.org](http://www.oecd.org)

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5. How to implement Collective Action?	35	
6. Contact list and best practices	61	<ul style="list-style-type: none"><li>▪ Information resources for country assessment</li><li>▪ List of potential facilitators</li><li>▪ Project profiles<ul style="list-style-type: none"><li>▪ Integrity Pact</li><li>▪ Certifying business coalitions</li><li>▪ Principle based initiatives</li></ul></li><li>▪ Detailed examples</li><li>▪ Integrity Pact templates</li><li>▪ Case stories</li></ul>

## Potential sources to assess the risk of corruption in specific countries

<b>WB - Doing business indicator and simulator</b>	Benchmarks on business regulations by the World Bank Group. Country Rankings available, topic specific and country assessments available; custom comparisons and country snapshot available	<a href="http://www.doingbusiness.org">www.doingbusiness.org</a>
<b>WB - enterprise surveys</b>	Business perceptions on the investment climate, including corruption, by the World Bank Group. Regional and country assessments available; custom query available; country snapshots available	<a href="http://www.enterprisesurveys.org">www.enterprisesurveys.org</a>
<b>WB - Business Environment Snapshots</b>	Present measurable indicators across a wide range of business environment issues and over time. This new web-enabled tool compiles many data on the business environment for each country in an easily accessible, consistent and usable format	<a href="http://rru.worldbank.org/besnapshots">http://rru.worldbank.org/besnapshots</a>
<b>WBI Governance and Anti-corruption indicators</b>	Data on six dimensions of governance (Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, Control of Corruption) by the World Bank Institute, comparisons across dimension, countries and time available	<a href="http://www.worldbank.org/wbi/governance/data">www.worldbank.org/wbi/governance/data</a>
<b>OECD country reports</b>	Reports on bribery by the OECD, reports of selected countries available	<a href="http://www.oecd.org">www.oecd.org</a>

**WBI:** World Bank Institute

**WB:** World Bank

Source: WBI

## Potential sources to assess the risk of corruption in specific countries

### Resources for country analysis (2/2)

<b>TI bribery indices and other tools</b>	Corruption Perception Index (ranking countries), and Bribe Payers Index (ranking supply side), National Integrity Systems (country studies and surveys) tool, topic-specific Global Corruption Reports and other materials	<a href="http://www.transparency.org/">www.transparency.org/</a>
<b>Business anti-corruption portal</b>	Assessment of state of corruption in selected countries and industries	<a href="http://www.business-anti-corruption.com">www.business-anti-corruption.com</a>
<b>World Economic Forum</b>	Benchmarks on competitiveness, including corruption by the World Economic Forum. Country rankings available	<a href="http://www.weforum.org/gcr">www.weforum.org/gcr</a>
<b>Control risks analysis</b>	Business perceptions on corruption in selected countries, benchmarks available	<a href="http://www.crg.com">www.crg.com</a>
<b>Global integrity index</b>	Benchmarks on effectiveness of anti-corruption mechanisms in selected countries by Global Integrity, country rankings available. Country reports on government and corruption in selected countries	<a href="http://www.globalintegrity.org">www.globalintegrity.org</a>
<b>Maplecroft maps</b>	Maps on corruption perceptions by the World Economic Forum. World, regional and country maps available	<a href="http://forum.maplecroft.com/loadmap?template=map&amp;issueID=22">http://forum.maplecroft.com/loadmap?template=map&amp;issueID=22</a>

Source: WBI

▪ TI: Transparency International

## **Business Against Corruption portal provides practical information on corruption in 50 Countries**

Information to be found via: [www.business-anti-corruption.com/](http://www.business-anti-corruption.com/)

### **Type of information to be found on the portal**

- Political climate, regulation & treaties
- Current corruption status in the country
- Public and private anti-corruption initiatives
- Links to resources for detailed country information and research
- Links to organizations (e.g. NGO's) to fight corruption in the country

### **Country profiles for 50 countries available**

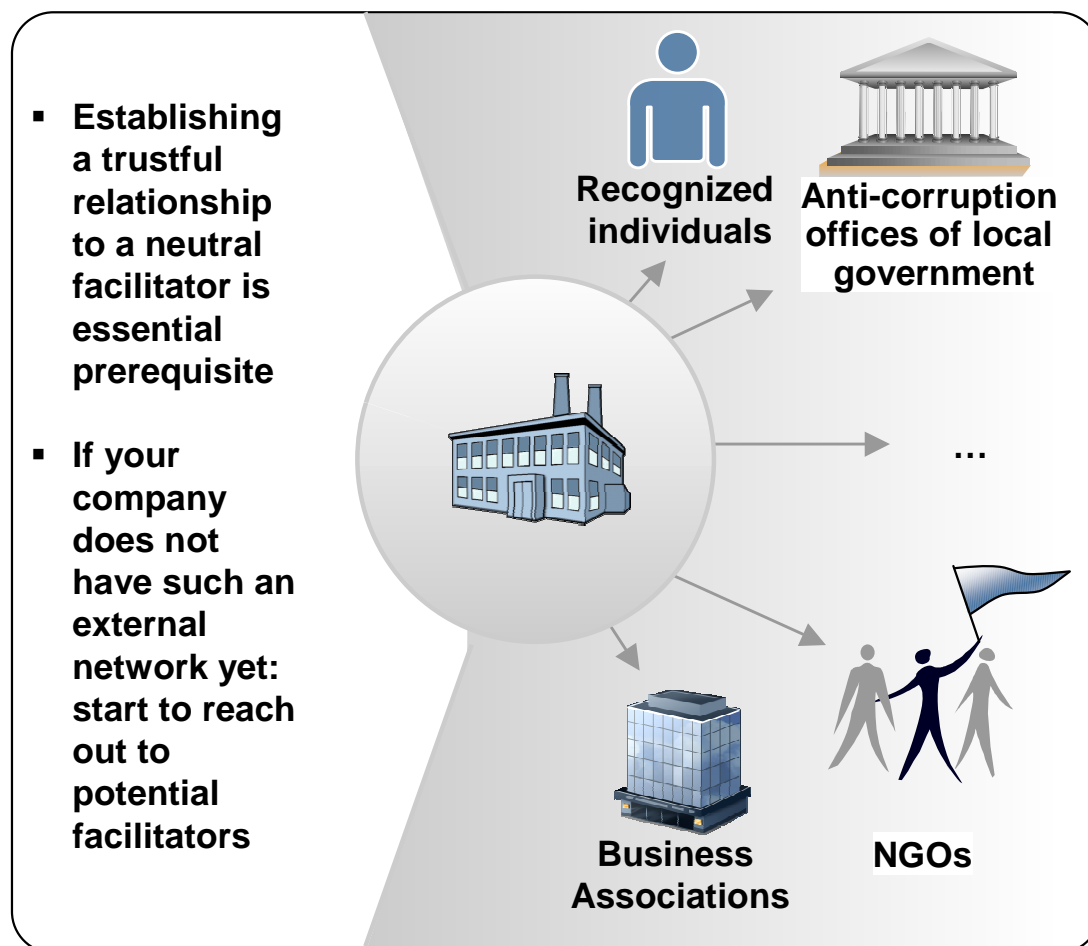
- Profiles available for the dark colored countries





# Reaching out to potential facilitators is an advisable practice for Collective Action

Examples of potential facilitators



- Establishing a trustful relationship to a neutral facilitator is essential prerequisite
- If your company does not have such an external network yet: start to reach out to potential facilitators

## Examples

Transparency International	<a href="http://www.transparency.org">www.transparency.org</a>
AmCham (American Chamber of Commerce)	Only local sites, e.g. <a href="http://www.amcham.de">www.amcham.de</a>
FIDIC (International Federation of Consulting Engineers)	<a href="http://www.fidic.org">www.fidic.org</a>
ICC (International Chamber of Commerce)	<a href="http://www.iccwbo.org">www.iccwbo.org</a>
International Business Leaders Forum	<a href="http://www.iblf.org">www.iblf.org</a>
CIPE (Center for International Private Enterprise)	<a href="http://www.cipe.org">www.cipe.org</a>


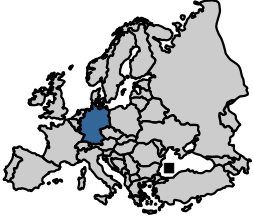

**Additional facilitators can be found on [www.fightingcorruption.org](http://www.fightingcorruption.org)**



Refer also to [www.business-anti-corruption.com](http://www.business-anti-corruption.com) for country specific lists of potential facilitators (see under "country profiles")



# The Integrity Pact implemented in Berlin is considered a best practice example

Case example: Integrity Pact at Berlin airport

 <p><b>Berliner Flughäfen</b></p>	<p><b>Customer / Principal</b></p>	<ul style="list-style-type: none"> <li>▪ Flughafen Berlin Schönefeld GmbH</li> </ul>	<p><b>Main achievements</b></p> <ul style="list-style-type: none"> <li>▪ <b>The involvement of external monitors helped to re-start the tender process, which had been stopped due to the high amounts of the originally submitted bids.</b></li> </ul>
	<p><b>Project description</b></p>	<ul style="list-style-type: none"> <li>▪ Construction of a new state-of-the-art airport south of Berlin to replace the existing ones</li> </ul>	
	<p><b>Specific characteristics of Integrity Pact</b></p>	<ul style="list-style-type: none"> <li>▪ Large project volume of 2 billion EUR</li> <li>▪ First case in Germany where third party is monitoring tendering process</li> <li>▪ Bidding companies have to make sure that their suppliers adhere to the principles and also sign the contract</li> </ul>	

# External monitor increased confidence of participants and public that processes were transparent and objective



Case example: Integrity Pact for Suburban Train project in Mexico (2005)

	<b>Description</b>	<ul style="list-style-type: none"> <li>Participants signed declarations of integrity stating under oath that they would abstain from any conduct that could affect evaluation of bids submitted</li> <li>Independent monitor assigned by TI Mexico – was present at all events (&gt;80) related to the bidding</li> </ul>	<b>Key Learnings</b> <ul style="list-style-type: none"> <li>Funding by government to avoid misinterpretations</li> <li>Monitor must be known and recognized in his field</li> <li>Integrity Pact should be simple and easy to understand (no legal complexity)</li> <li>Main instrument for pressure is public withdrawal from tender</li> <li>No recourses or complaints</li> </ul>
	<b>Mission</b>	<ul style="list-style-type: none"> <li>Observe every stage and act of the bidding process</li> <li>Ensure rules and norms are respected</li> <li>In case of deviations make sure that the process is transparent and fair</li> <li>Publish a report on what was witnessed in local press</li> </ul>	
<b>Participants</b> <ul style="list-style-type: none"> <li>~8 companies</li> </ul>	<b>Costs</b>	<ul style="list-style-type: none"> <li>Integrity Pact caused additional cost of ~100.000 USD (Total Project 600 million USD)</li> <li>Monitor was paid based on spent hours (~160 hours for initial tender, 80 for sub-sequent tenders)</li> </ul>	



*Customer: "I think the Integrity Pact is a tool to move forward in fighting corruption in our country. We need the tool today, the Independent Monitor, project by project, but if we add up these experiences, consistently over time, it will become something structural that guides our behavior."*

# Federation of Pharmaceutical Manufacturers created an industry wide "Code of marketing practices"

Case example: Code of pharmaceutical marketing practices

 <p>International Federation of Pharmaceutical Manufacturers &amp; Associations</p>		<p><b>Description</b></p> <ul style="list-style-type: none"> <li>▪ The “promotion and support of ethical practices” was one of the principles on which the IFPMA was founded in 1968.</li> <li>▪ In 1981 the first version of a "Code of Pharmaceutical Marketing Practices" was created. The latest revision of the IFPMA Code came into effect in January 2007.</li> <li>▪ Key elements include more restrictive provisions on travel, gifts and scientific events, plus the establishment of a Code Complaint Procedure and a Code Compliance Network, bringing together code experts from all over the world.</li> </ul>	<p><b>Key Learning</b></p> <ul style="list-style-type: none"> <li>▪ <b>A principle-based initiative can also be created and published in a sector-wide effort</b></li> <li>▪ <b>IFPMA shows that it is possible to bring together companies from developed and developing countries to agree on shared principles</b></li> </ul>
		<p><b>Participants</b></p> <ul style="list-style-type: none"> <li>▪ The International Federation of Pharmaceutical Manufacturers &amp; Associations is a non-profit, non-governmental Organization (NGO) representing national industry associations and 25 research-based pharmaceutical, biotech, and vaccine companies from both developed and developing countries</li> </ul>	

# Anti-corruption declaration among contractors at AVA GmbH (Frankfurt) forms basis to conduct discussions on compliance topics – no external monitor involved

	<b>Description</b>	<ul style="list-style-type: none"> <li>Contract signed by direct contractors in execution phase only – no involvement of all bidding companies in tender phase</li> <li>Direct contractors did not want to include sub-contractors</li> <li>No external monitoring</li> </ul>	<b>Key Learning</b> <ul style="list-style-type: none"> <li>Open and continuous discussion of issue is seen as constructive step to reduce risk of corruption</li> <li>Important that contract is signed by top-management in headquarters <u>and</u> actively communicated to workers on site</li> </ul>
	<b>Mission</b>	<ul style="list-style-type: none"> <li>The document emphasizes the importance of the laws and is a good basis to discuss corruption issues.</li> <li>The fact that the topic is discussed openly is seen as major step towards environment free of corruption</li> </ul>	
<b>Participants</b> All direct contractors for execution phase (>10 companies and individuals)	<b>Costs</b>	<ul style="list-style-type: none"> <li>Costs were limited - AVA GmbH took over costs</li> </ul>	

Source: Interview with Managing director of AVA GmbH

# Transparency International Provides Global Multi-Stakeholder Approaches to Developing and Promoting Anti-Corruption Tools



## Driving Local Systemic Approach Across Global Network

- Since 1993, mobilizing a global network of business, government and civil society leaders in 95 countries to promote anti-corruption efforts and increase transparency.



## Partnering with Private Sector

- Creator of Integrity Pacts and provider of credible, independent third party monitors.
- Facilitator of multi-stakeholder initiative to develop model anti-bribery codes and programs -- “Business Principles for Countering Bribery”; “SME Edition” for small- and mid-sized enterprises, Guidance Document; Self-Evaluation Tool and external assurance (under development.)
- Convenor of industry sectors (Wolfsberg international banks, defense industry sector, World Economic Forum PACI)

## Promoting Policy Reform


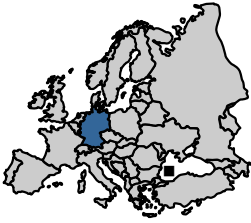
- Monitor of agreements to prohibit foreign bribery and increase regulatory transparency, particularly for procurement.
- Contributor of anti-corruption and governance expertise to development assistance providers.

# World Economic Partners Partnering Against Corruption Initiative (PACI) is a global anti-corruption initiative of the private sector

	<b>History</b>	<ul style="list-style-type: none"> <li>▪ Founded by member companies of the World Economic Forum in partnership with Transparency International and the Basel Institute on Governance in 2004 to level the playing field among industry</li> </ul>	<b>Main achievements</b> <ul style="list-style-type: none"> <li>▪ <b>Global and multi-industry recognition and coverage</b></li> <li>▪ <b>Increasing membership</b></li> <li>▪ <b>Actively providing anti-corruption support to members</b></li> </ul>
	<b>Mission</b>	<ul style="list-style-type: none"> <li>▪ To create a common language on corruption and bribery valid for all industries</li> <li>▪ To provide platform for top-level commitment from companies</li> <li>▪ To support companies in developing and implementing anti-corruption programs</li> </ul>	
<b>Members</b>	<b>Enforcement</b>	<ul style="list-style-type: none"> <li>▪ Companies have to support PACI principles publicly</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Signed by over 140 mostly multi-national companies</li> </ul>		<ul style="list-style-type: none"> <li>▪ CEO has to sign principles as prerequisite for membership</li> <li>▪ External verification / certification process currently in elaboration</li> </ul>	

# The Bavarian construction industry has established an association with far-reaching enforcement mechanisms

Case example: Ethics management system of the Bavarian construction industry

 <p><b>BAUINDUSTRIE BAYERN</b></p>	<p><b>History</b></p>	<ul style="list-style-type: none"> <li>Initiated by Bavarian construction industry association in 1996 after a series of scandals related to corruption</li> </ul>	<p><b>Main achievements</b></p>
	<p><b>Mission</b></p>	<ul style="list-style-type: none"> <li>Foster integrity in the construction sector</li> <li>Preserve industry reputation</li> </ul>	<ul style="list-style-type: none"> <li><b>German Rail accepts certification as proof of anti-corruption measures for qualification of bidders</b></li> </ul>
<p><b>Members</b></p>	<p><b>Enforcement</b></p>	<ul style="list-style-type: none"> <li>Members must have their compliance program audited by external auditor</li> <li>Members can be excluded if they do not receive or lose certification</li> </ul>	<ul style="list-style-type: none"> <li><b>Concept is currently rolled out to whole Germany</b></li> <li><b>Initiative helped to restore reputation of industry</b></li> </ul>
<ul style="list-style-type: none"> <li>33 construction companies of different size (as of 2002)</li> </ul>			

Source: Bavarian construction industry association



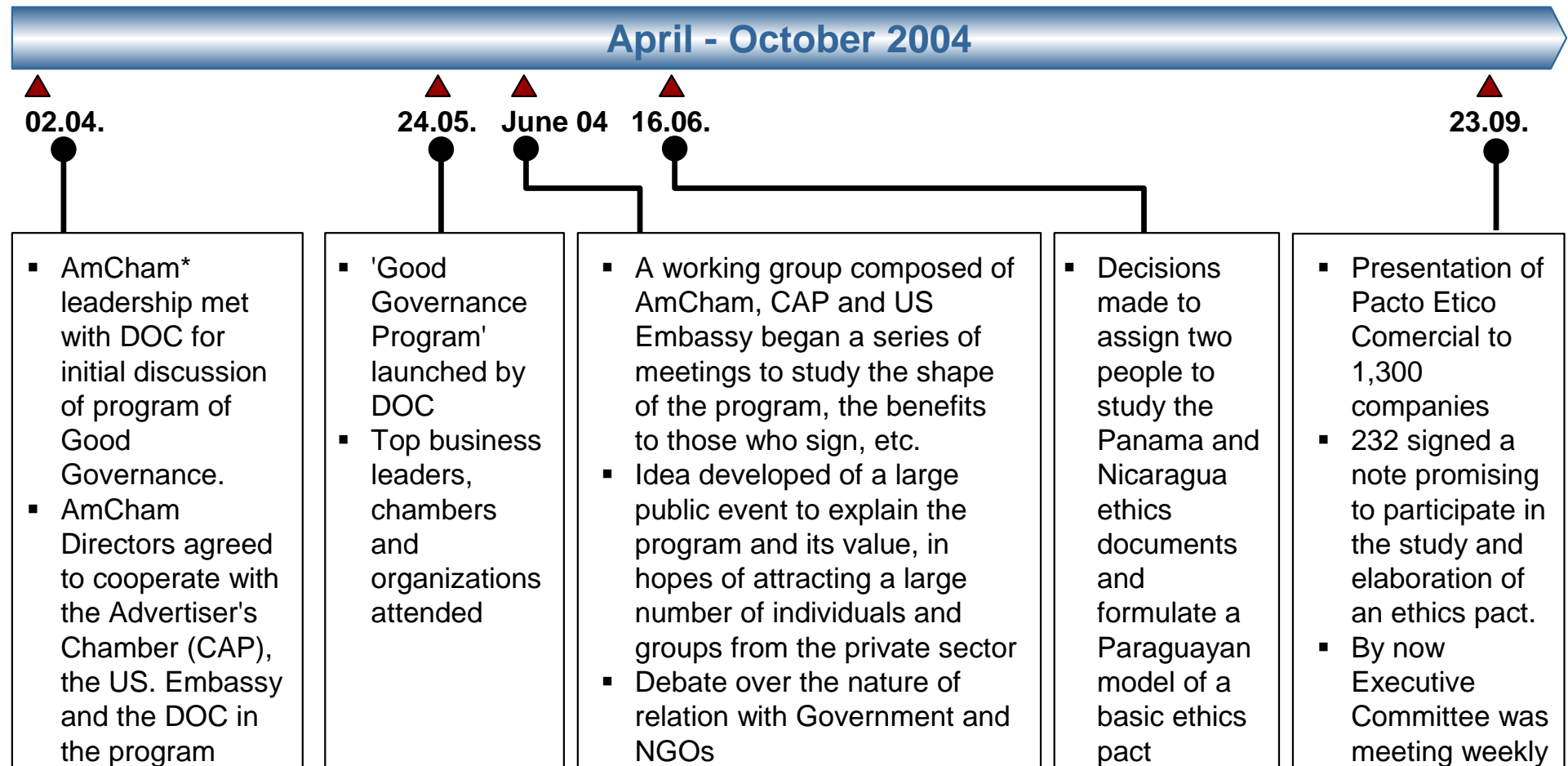
# A successful coalition against corruption started in 2005 in Paraguay

Case example: Pacto Etico Comercial (PEC) Paraguay

	<p><b>History</b></p>	<ul style="list-style-type: none"> <li>▪ Founded in 2005 on initiative of the US ambassador and Paraguayan American Chamber of Commerce</li> <li>▪ A leading ethics program in South America</li> </ul>	<p><b>Main achievements</b></p>
	<p><b>Mission</b></p>	<ul style="list-style-type: none"> <li>▪ Promote business principles based upon fulfillment of current laws, ethics principles, quality management, honesty and transparency</li> <li>▪ Gather most important private business representatives covering all sectors</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>150 members signed the pact and there are currently 100 additional applicants</b></li> <li>▪ <b>The PEC seal is becoming a branding tool in Paraguay, which is labeled one of the most corrupt countries in the world</b></li> </ul>
<p><b>Members</b></p>	<p><b>Enforcement</b></p>	<ul style="list-style-type: none"> <li>▪ Certification process for members</li> <li>▪ Members commit themselves to obey to the values and rules</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Several national and multi-national companies</li> </ul>		<ul style="list-style-type: none"> <li>▪ Moral enforcement due to publicity</li> <li>▪ Random audits</li> <li>▪ Trainings and workshops</li> </ul>	

# Establishment of Pacto Etico Comercial in Paraguay gives a real life example of process 2.1

## Pacto Etico Comercial (PEC) Paraguay (1/3)



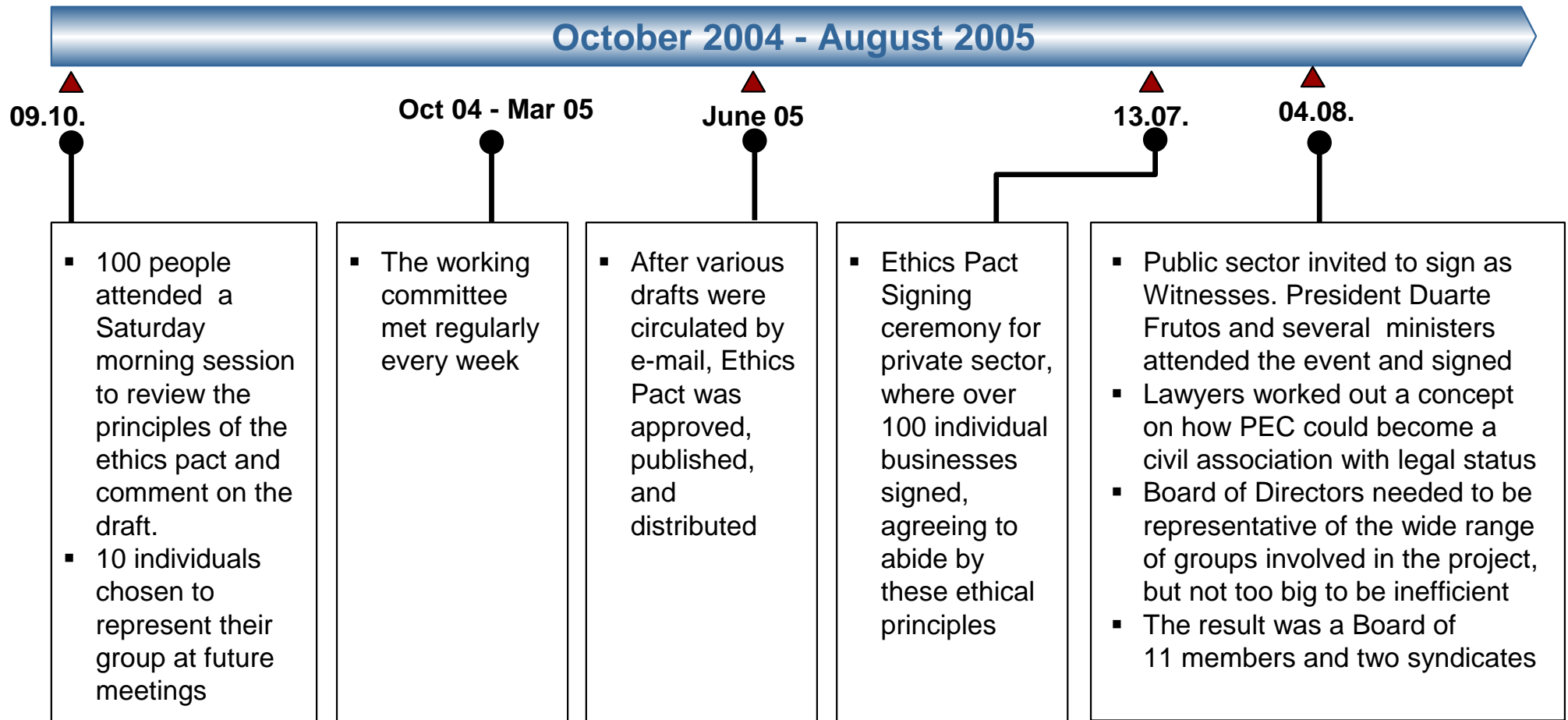
AmCham: American Chamber of Commerce

DOC: US Department of Commerce

Source: PEC Paraguay

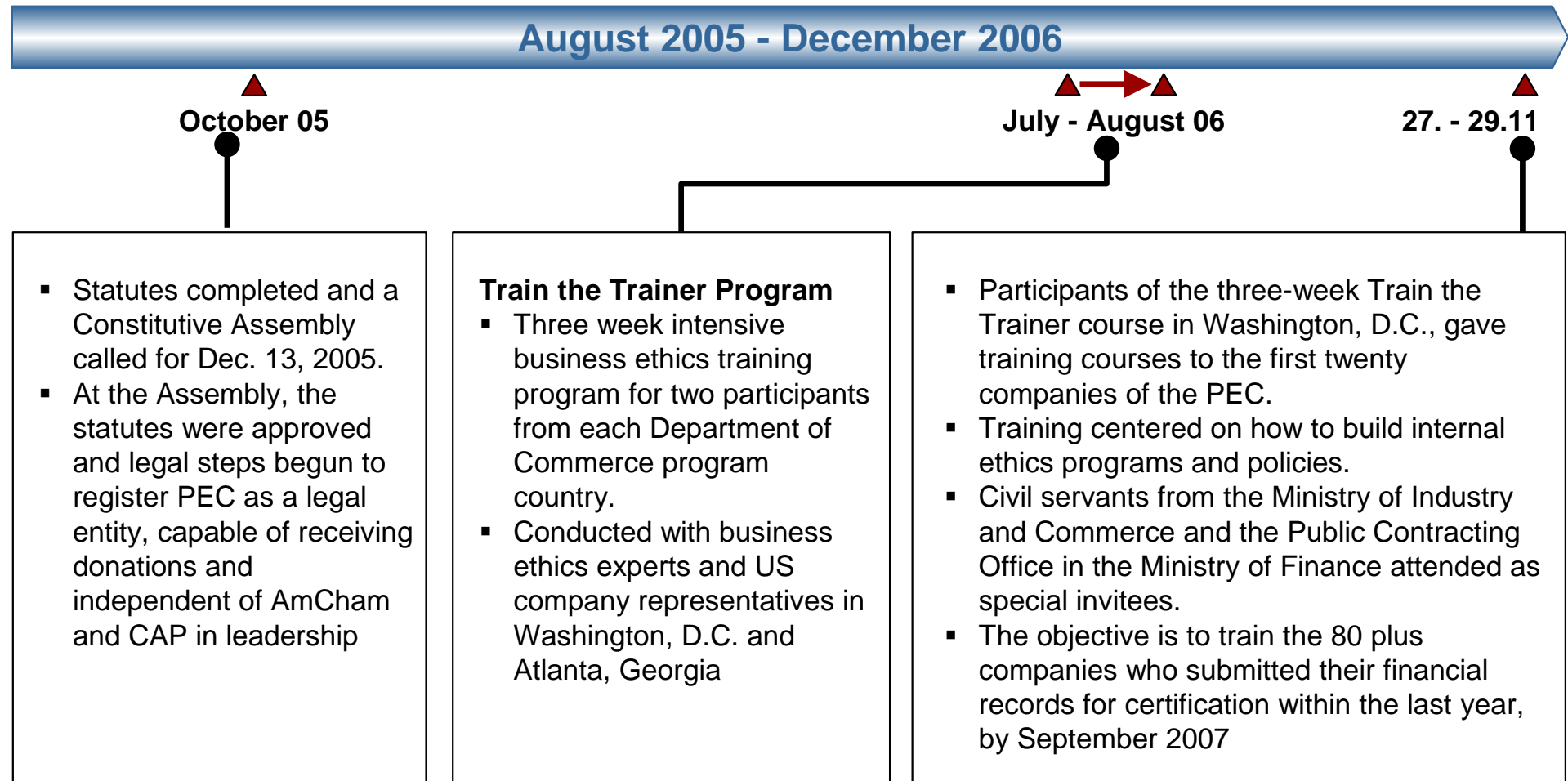
# Establishment of Pacto Etico Comercial in Paraguay gives a real life example of process 2.1

## Pacto Etico Comercial (PEC) Paraguay (2/3)



# Establishment of Pacto Etico Comercial in Paraguay gives a real life example of process 2.1

Pacto Etico Comercial (PEC) Paraguay (3/3)



AmCham: American Chamber of Commerce

DOC: US Department of Commerce

Source: PEC Paraguay

# CBLF provides platform to discuss topics related to anti-corruption – however, there are no shared principles and enforcement to date

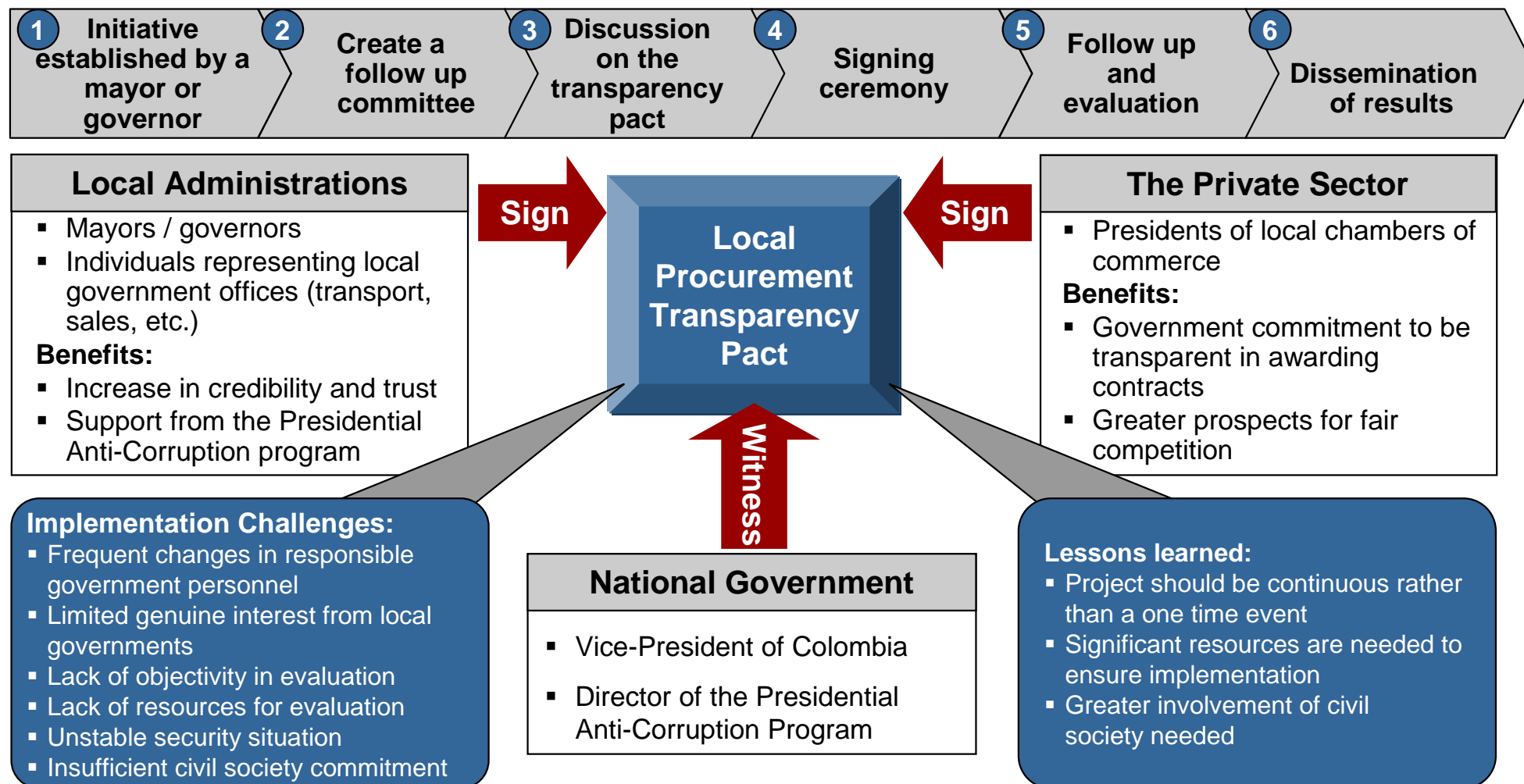
Case example: China Business Leaders Forum

	<b>History</b>	<ul style="list-style-type: none"> <li>Launched in 2005 by the International Business Leaders Forum (IBLF) in partnership with the Renmin University of China</li> </ul>	<b>Main achievements</b> <ul style="list-style-type: none"> <li><b>Funding ensured to establish permanent office</b></li> <li><b>Several events and discussion round held on topics related to anti-corruption</b></li> </ul>
	<b>Mission</b>	<ul style="list-style-type: none"> <li>Provides a regular quarterly Forum for Chinese and foreign business leaders to discuss the improvement of business standards both in China and internationally</li> <li>Initially funded by the UK Foreign &amp; Commonwealth Office, BP, Shell, BHP Billiton, Siemens and GSK</li> <li>Being developed into the China Centre for International Business Standards</li> </ul>	
<b>Members</b>		<ul style="list-style-type: none"> <li>No enforcement</li> </ul>	
<ul style="list-style-type: none"> <li>GSK</li> <li>Shell</li> <li>Siemens</li> </ul>	<b>Enforcement</b>	<ul style="list-style-type: none"> <li>Program with 3 key components:             <ul style="list-style-type: none"> <li>Knowledge exchange</li> <li>Research &amp; Information</li> <li>Training</li> </ul> </li> </ul>	

Source: CBLF website, interview with Siemens representative

# "Transparency pacts" in Colombia are a form of principle-based initiative with a focus on continuous projects

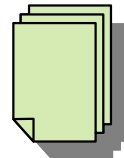
Case example: "Transparency Pacts" on local and municipal level in Colombia



# A pact for integrity and against corruption (Empresa Limpa) was initiated in Brazil to fight against illegal practices in business

## Business Pact for Integrity and Against Corruption

### Key Facts



#### **Organization:**

Ethos Institute; Eniethos, Patri, United Nations; United Nations Office on Drugs and Crime – UNODC; Brazilian Committee of the Global Compact.

#### **Location:**

Sao Paulo, Brazil

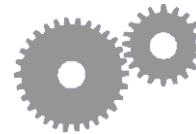


#### **Members:**

> 400



### Mechanism



#### **Mission:**

- fighting against illegal business practices, especially those involving public agent relationships

#### **Objective:**

- To disseminate good practices of business ethics that can eradicate corruption.

#### **Enforcement:**

- Members have to support the written principles publicly;
- Members have to implement internal rules that clearly prohibit any form of bribery.

### Benefits

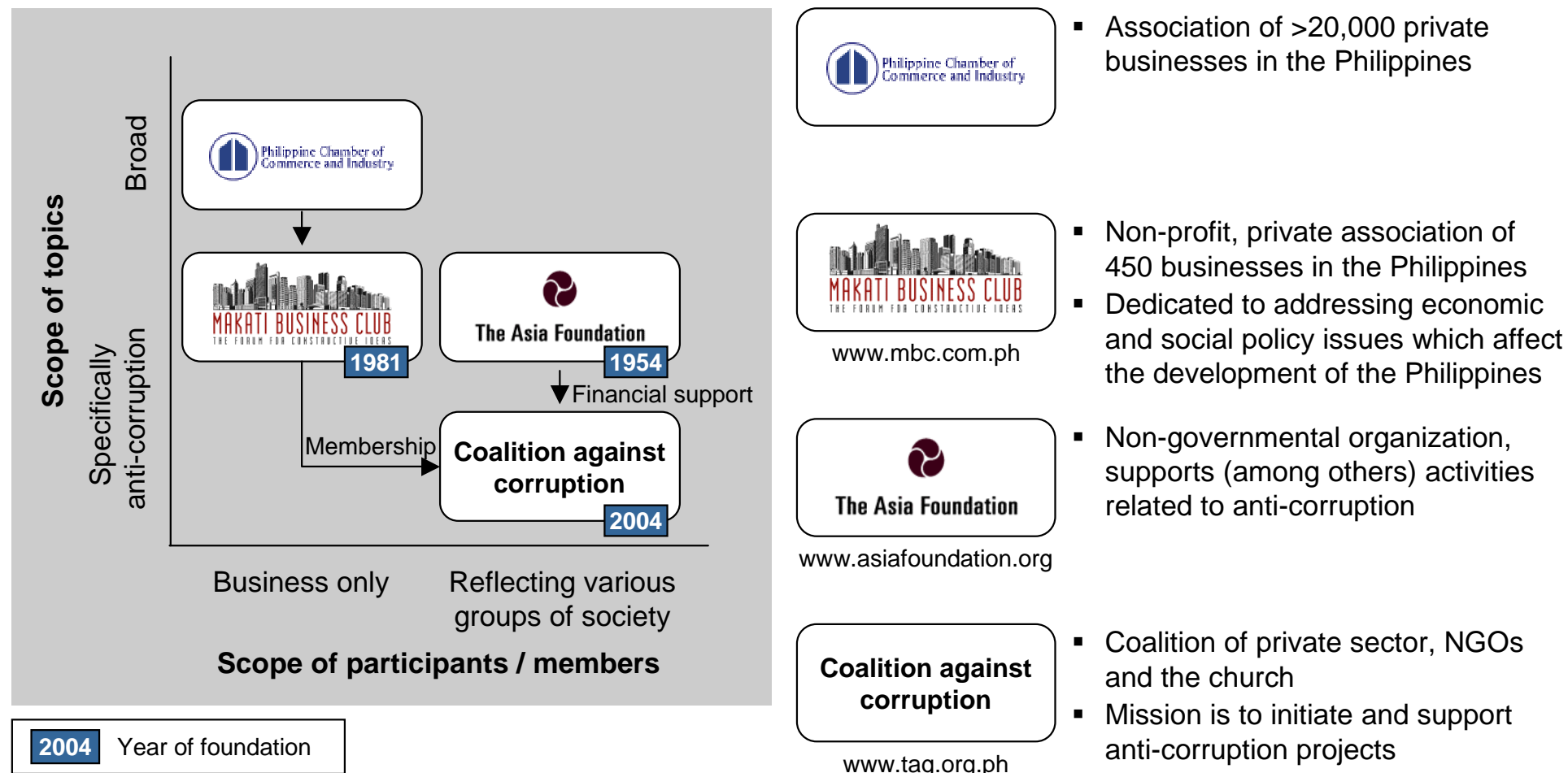


#### **Key achievements:**

- Good practices of business ethics are widespread in Brazilian business;
- More than 400 members;
- Sufficient success of media campaigns.

# Example from the Philippines shows how a specific anti-corruption initiative evolved from existing organizations

Coalition against corruption within the network of other organizations, Philippines

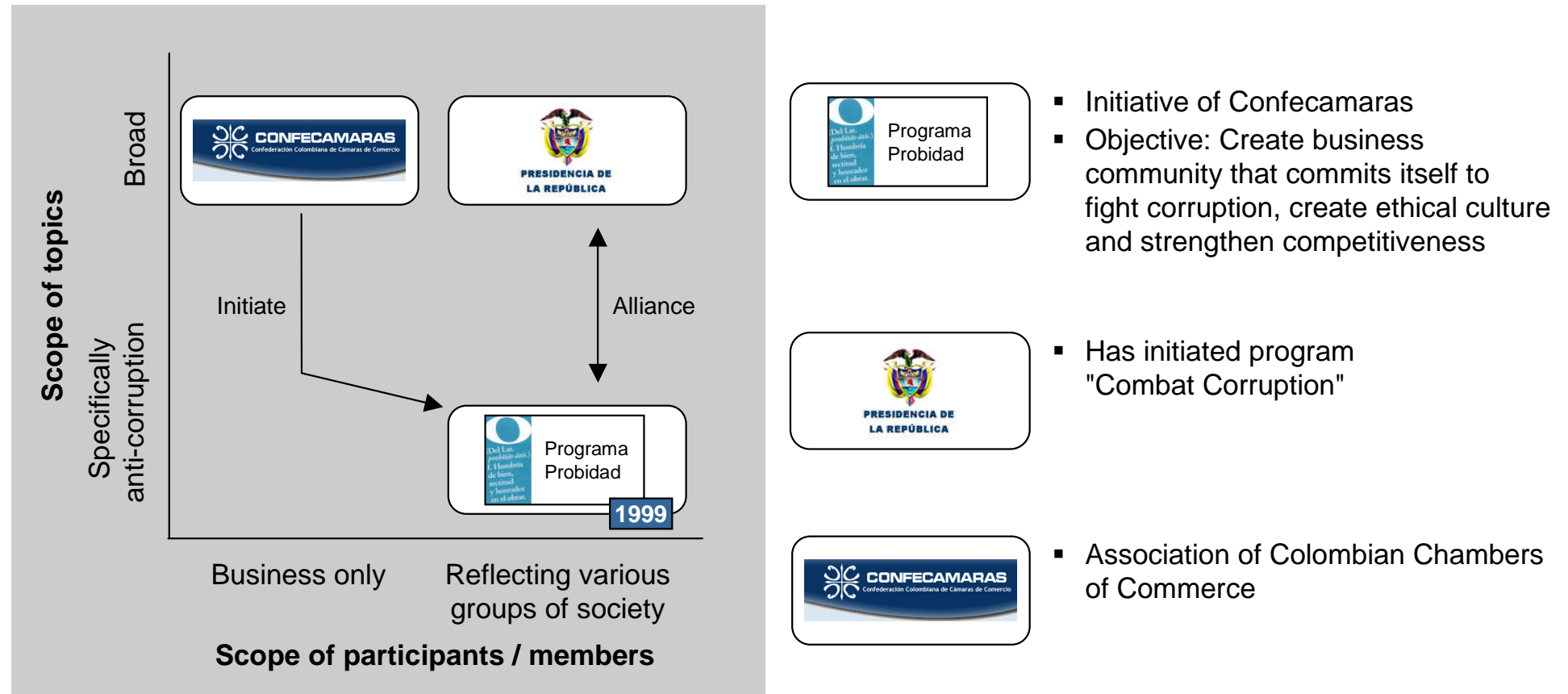


Source: Internet research, CIPE



# Programa Probidad Colombia is another example of anti-corruption initiative that was launched by existing organizations

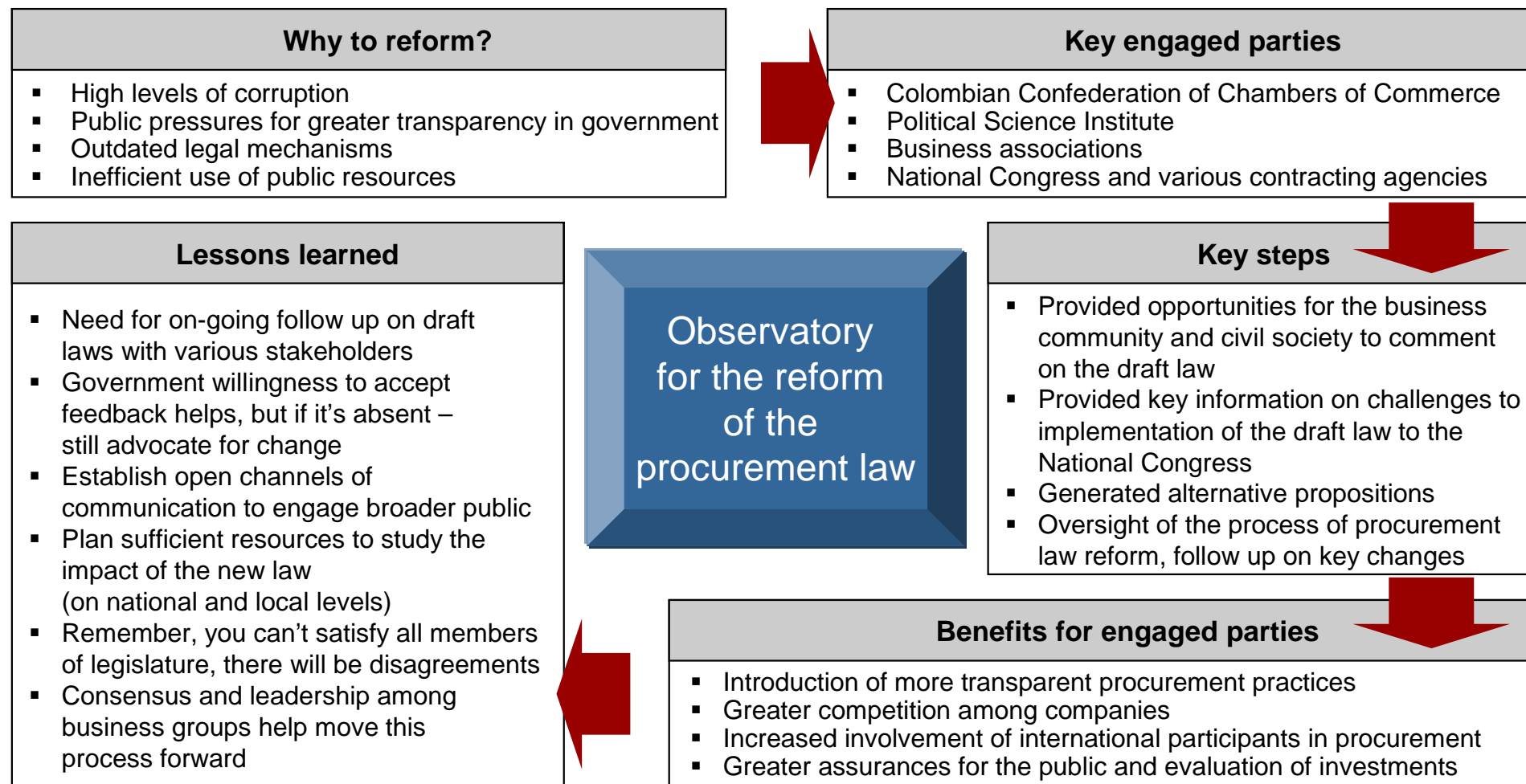
## Programa Probidad, Colombia



**1999** Year of foundation

# Confecamaras is an example where a Collective Action is focused on changes in the legal system of a country

Collective Action related to the procurement law reform in Colombia

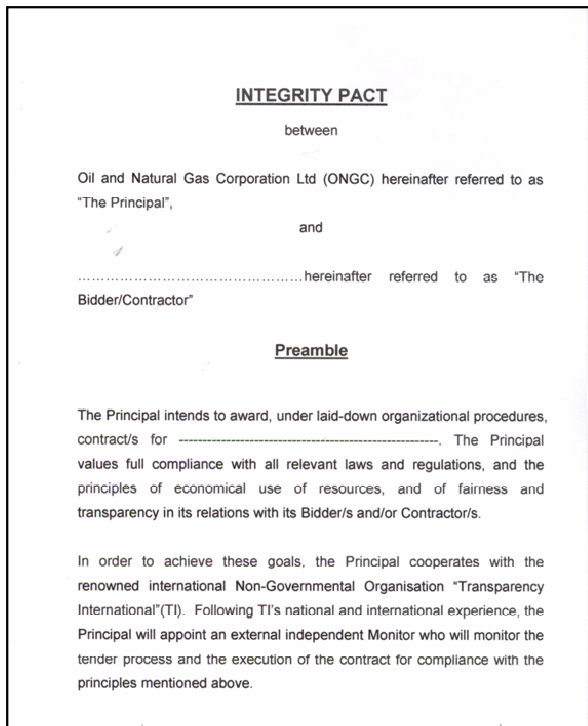


# Transparency International Integrity Pact (IP) examples

## BERLIN

## ECUADOR

## DEFENCE SECTOR



- TI IP from project "Berlin airport"
- Seen as best practice example
- Available in German only



Integrity Pact Berlin airport

- TI IP contract from project "Hydroelectric power plant", Ecuador (English translation)
- No "External monitor"
- Detailed description of Arbitration Tribunal



IP Ecuador Hydroelectric

- TI IP template
- Specifically designed for contracts in the defense industry






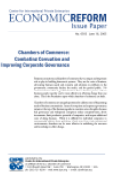



Integrity Pact template defence industry

Contact TI for details related to integrity pacts

# Various case stories are available to get more vivid impressions from real-life examples

case stories

Mexico suburban train	Colombia Procurement Reform	Russian Business Associations	Latvia national library
<p>Integrity Pact application</p> <p>Report by customer and external party</p>  <p>Mexico_report_by_ministry</p>  <p>Mexico_report_by_social_witness</p>	<p>Report by CIPE</p> 	<p>Report by CIPE</p> 	<p>Integrity Pact application</p> <p>Report by Transparency International</p>  <p>Latvia_library_report_by_TI</p>
Bulgarian Coalition	Chambers of Commerce combating corruption	Exposing Corruption in Serbia	
<p>Report by CIPE</p> 	<p>Report by CIPE</p> 	<p>Report by CIPE</p> 	

Source: Internet, Interviews

# Several elements in a country's legal environment promote transparency, integrity, accountability and efficiency

## Positive elements contributing to a transparent legal system

The following elements in the legal and governance structure of a country support transparency, accountability, and efficiency in public procurement and general commerce:

- An independent judiciary that can resist improper political influence through checks and balances.
- Impartial, consistent enforcement of the rights and obligations of all firms.
- 'Sunshine' laws that require the government to publish all laws and regulations and inform the public of any proposed changes.
- Clear laws and regulations that limit officials' discretionary power.
- Regulations that prevent monopoly power and facilitate the formation and operation of private businesses.
- Administrative and judicial efficiency – because inefficiency creates incentives to bribe and opportunities to conceal corruption.
- Rules regarding conflict of interest for the public sector.
- Respect for due process - firms should not be excluded from participating in procurement without a fair hearing based on clear criteria.
- Alternative dispute resolution is an option - if used, decisions should be binding.


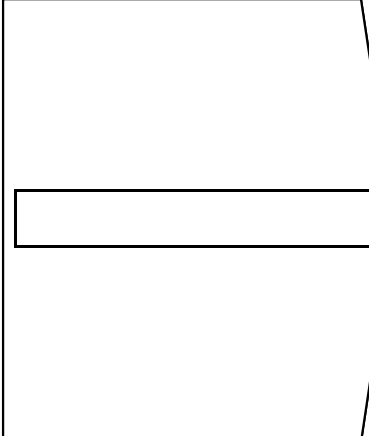
## Additional considerations

- Appropriate procurement laws – emphasizing transparency, integrity accountability and efficiency - may not be present
- Procurement laws may be present “on paper” but viable supporting institutions are missing
- Procurement laws may be present, as are the supporting institutions, but public officials do not enforce the laws and are not held accountable

**Refer to slides 62 - 64 for country specific analyses**

## Guide was created by Working Group with participants from different sectors and regions

### Core members of Working Group

 <p>WORLD BANK INSTITUTE <i>Promoting knowledge and learning for a better world</i></p>	<p>The World Bank Institute (WBI) is the capacity building arm of the World Bank Group. Combining participatory Action-oriented learning, technical assistance, and the power of data, WBI, in collaboration with other units in the World Bank Group, supports countries in improving governance and controlling corruption. With regards to the private sector, WBI facilitates the growing efforts of companies and business associations to integrate anti-corruption measures into their corporate governance and strategy, and engage more actively in the fight against corruption both as advocates for good governance and through Collective approaches.</p>	<p><a href="http://www.worldbank.org/wbi">www.worldbank.org/wbi</a></p>
	<p>Launched in 2000, the UN Global Compact brings business together with UN agencies, labor, civil society and governments to advance ten universal principles in the areas of human rights, labor, environment and anti-corruption. Through the power of collective action, the Global Compact seeks to mainstream these ten principles in business activities around the world and to catalyze actions in support of broader UN goals. With over 3,600 participating companies and hundreds of other stakeholders from more than 20 countries, it is the world's largest voluntary corporate citizenship initiative.</p>	<p><a href="http://www.unglobalcompact.org">www.unglobalcompact.org</a></p>

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The Center for International Private Enterprise is a non-profit affiliate of the U.S. Chamber of Commerce and one of the four core institutes of the National Endowment for Democracy. CIPE has supported more than 1,000 local initiatives in over 100 developing countries, involving the private sector in policy advocacy and institutional reform, improving governance, and building understanding of market-based democratic systems. CIPE provides management assistance, practical experience, and financial support to local organizations to strengthen their capacity to implement democratic and economic reforms.

[www.cipe.org](http://www.cipe.org)

[Changes to be made to reflect TI – Berlin participation]





TI-USA is the U.S. chapter of Transparency International (TI), the global civil society organization working to combat corruption and increase accountability in government and international business. With national chapters in more than 90 countries, TI is widely recognized for its unique global reach, high-level engagement with policymakers and the private sector, practical tools and surveys, and extensive experience and credibility in combating corruption and promoting transparency. TI-USA priorities include advancing major international conventions against bribery and corruption, mobilizing development assistance organizations to mainstream anti-corruption initiatives, and strengthening anti-corruption standards and practices in business.

[www.transparency-usa.org/](http://www.transparency-usa.org/)

## Guide was created by Working Group with participants from different sectors and regions


### Core members of Working Group

	<p>Global Advice Network is an international consultancy based in Copenhagen, Denmark. Global Advice Network is specialized in advising on environmental and corruption issues. Global Advice Network is the initiator and developer of the <a href="http://www.Business-Anti-Corruption.com">www.Business-Anti-Corruption.com</a> portal, a web-based tool which combines in depth country analysis with generic tools for due diligence and integrity systems.</p>	<p><a href="http://www.globaladvice.dk">www.globaladvice.dk</a></p>
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