M.Sc. BLC Business & Development Studies 2018

Master's Thesis:

Corporate Compliance and Anti-Corruption in Peru

Masías Carrère, Alonso
Student Number: 105186
alma16ad@student.cbs.dk
Submission date: 15th May 2018
STU's: 167,004

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List of Abbreviations:

ACFE	Association of Certified Fraud Examiners
CAN	High-level Commission Against Corruption
CO	Corrupt Organization
CPI	Corruption Perception Index
DOJ	U.S. Department of Justice
EITI	Extractive Industries Transparency Initiative
GCB	Global Corruption Barometer
GCI	Global Competitiveness Index
L.D.	Legislative Decree
FCPA	Foreign Corrupt Practices Act
GPD	Gross Domestic Product
INACAL	Peruvian Institute for Quality
ISO	International Organization for Standardization
MACN	Maritime Anti-Corruption Network
MNE	Multinational Enterprise
NTP	Peruvian Technical Norm
OCI	Organization of Corrupt Individuals
ONPE	National Office of Electoral Processes

PPP	Purchasing Power Parity
ROP	Rationalization, Opportunity and Person
SEC	U.S. Securities and Exchange Commission
SOX	Sarbanes-Oxley Act
SUNARP	National Superintendence of Public Registries
TI	Transparency International
UKBA	United Kingdom Bribery Act

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Abstract

In this master's thesis project, I address the question ""How are Corporate Compliance & Anti-Corruption programmes perceived by Peruvian companies?" by exploring the different motivations of implementation, as well as benefits, challenges and general effects that may be perceived by Peruvian companies, or companies operating in Peru. Additionally, I seek explanations and effects for the identified perceptions.

For this, I employ a qualitative research design with a constructivist worldview, in which I use Peru as a critical case to study these programmes. I gather data about the Peruvian context, corruption, Corporate Compliance & Anti-Corruption programmes and the perceptions about these programmes from primary and secondary sources, including interviews with local subject-matter experts. The gathered perceptions are explained by applying different theories and supporting secondary sources.

I conclude the following: First, the motivation behind implementing Corporate Compliance & Anti-Corruption programmes seem to come out from perceived coercive isomorphisms that make companies believe that, if they do not implement them, they are risking legal liability despite of the voluntary nature of these regulations. Institutional dualities further attribute to the perception that one needs to have these programmes in paper, but not in practice. Second, due to the perceived coercive pressures and institutional dualities, Corporate Compliance & Anti-Corruption programmes are often perceived as just mechanisms to mitigate legal risks, which affects the programme's controls effectiveness. This is further shown in the perceived lack of adequate resource allocation and might be explained through Peruvian executives creating their own institutions that tolerate corruption to avoid uncertainty. Third, the perceived ongoing corporate corruption in Peru is facilitated by the design of Corporate Compliance and Anti-Corruption programmes, which are based on principal-agent relationships, perhaps because the Fraud Triangle theory is often used as starting point. Finally, even if Corporate Compliance & Anti-Corruption programmes would be designed addressing corruption as a structural and relational issue, they might still not necessarily be effective.

1. Introduction

1.1. Problem Statement

Anti-Corruption efforts in the Latin American region have been increasing during the last years. What started with local subsidiaries of multinational enterprises (MNEs) complying with international anti-corruption laws such as the Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act (UKBA), has expanded to local companies pursuing similar Corporate Compliance & Anti-Corruption efforts in an attempt to attract investors and reduce their reputational risks (EY, 2014b).

Simultaneously, Latin American nations, including Peru, have started drafting and implementing their own anti-corruption laws (which mainly attribute corporate liability to companies that engage in public corruption and exempt them if they have a Corporate Compliance & Anti-Corruption programme[1] in place), in an attempt to enter the Organisation for Economic Co-operation and Development (OECD), which requires joining member countries to have such laws (Gallo, 2016).

However, recent corruption scandals in Latin America show rather an ambiguous picture:

On one hand, the Odebrecht scandal in Brazil has been an example on how the Latin American region is trying to eradicate corruption, with the arrest of corporate executives, impeachment of government officials (including Brazil's president) and investigations expanding to other Latin American countries. In Peru, the Brazilian scandal led to investigating local construction company Graña y Montero, as well as three of Peruvian former presidents (Faiola, 2018).

On the other hand, corruption is still perceived as a latent risk in the region, despite of the aforementioned efforts. A survey conducted by Transparency International in 2016 indicates that 62% of Latin America's population has perceived an increase in corruption levels during

[1] These programmes are also known as "prevention models", "corporate compliance programmes", "corporate ethics and compliance programmes", "integrity and compliance programmes", among others (DOJ & SEC, 2014; EY, 2014a; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Weber & Wasieleski, 2013). Given the focus of this work, which lies in mandatory and voluntary anti-corruption efforts, they will hereinafter be referred as "Corporate Compliance & Anti-Corruption programmes".

the last 12 months prior to the survey. In Peru the results are even less promising, with a 79% of the population claiming they have perceived an increase of corruption levels during the last year (Transparency International, 2017). For instance, a common practice in Peru is that for every public tender, a 10% of the total project cost should be paid as a bribe in order to win the contract (Salazar, 2016). This further complicates the problem, since different anti-corruption practices do not have a common stand on facilitation payments.

In that context, there is limited research on whether recent anti-corruption efforts in Latin America actually fulfil their purpose, or if they are just perceived by companies as something they need to comply with in paper, but not in practice. In my personal and professional experience as a consultant in business integrity & corporate compliance services, I have seen different companies (and also executives within the same company), that see corporate compliance as either a) a restricting regulatory requirement that only means further costs to a company, b) as good initiative that boosts ethical behaviour and mitigates corruption risks or, c) a combination of both.

The problem is further intensified since there might not really be a way to prove the effectiveness of Corporate Compliance and Anti-Corruption programmes. While most of the best practices and professionals in the compliance field have developed tools to measure the effectiveness of compliance programmes, these mostly consist of auditing checklists that companies need to go through in order to assess the effectiveness of each individual control or programme element (e.g. United Nations Global Compact, 2010), without addressing the overall effectiveness (Centonze, 2014).

For instance, a standard Corporate Compliance and Anti-Corruption programme consists of preventive, detective and reactive measures and controls (EY, 2014a). If a company detects a corrupt practice thanks to its controls, it could be argued that its detective measures were effective, whereas its preventive measures were not. However, what happens if no corrupt conducts are detected? Does it mean that the preventive measures were effective? Or does it rather mean that its detective measures were defective? What happens if local authorities and media do not detect and expose the wrongdoings and the perpetrators simply “get away

with it"? Whilst grand corruption scandals may probably be exposed eventually, the possibilities are slimmer in everyday petty corruption transactions.

1.2. Purpose of the Study

Given the dichotomic positions towards Corporate Compliance and Anti-Corruption programmes I have experienced, and the difficulty associated with ensuring the effectiveness of these programmes, this research intends to explore the different perspectives and attitudes towards the implementation of such systems in companies located in Peru. Specifically, it will address the following research question:

RQ: "How are Corporate Compliance and Anti-Corruption programmes perceived by Peruvian companies"

Understanding these perceptions is relevant, especially considering that many of the Corporate Compliance and Anti-Corruption standards have been developed in western countries, and thus might face additional challenges when implemented in the institutional context of the developing world (see DiMaggio & Powell, 1983; North, 1990; Scott, 1995).

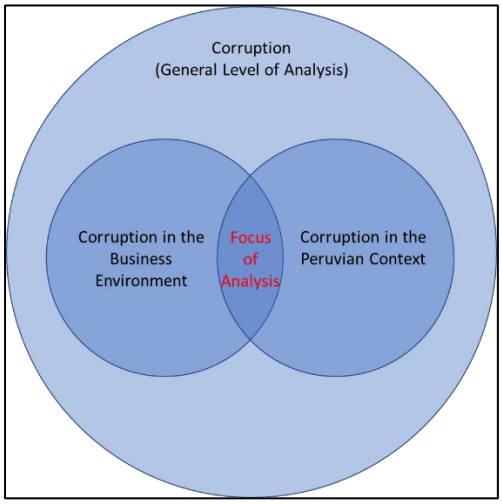
Given the broad nature of research questions associated with qualitative research (Creswell, 2014), this work will be supported by follow-up sub-research questions, that shall help associate the gathered perceptions with previous academic work:

- SRQ1: "Why are Corporate Compliance & Anti-Corruption programmes perceived that way?"
- SRQ2: "How do such views affect the way Corporate Compliance and Anti-Corruption programmes are received in Peru, taking into consideration the influence of its specific institutional context"

The results of this work should help further researchers in bridging the interplays between corruption theories and anti-corruption research in specific institutional contexts. Conducting further similar research in other countries and regions, as well as on a larger scale (i.e. more interviewees from more industries) might contribute in understanding if perceptions on

Corporate Compliance & Anti-Corruption programmes differ between countries and regions, or whether they rather differ due the company's industry or other factors (e.g. company culture, size, number of applicable compliance laws, etc.). The results might also have potential significance for a) policy makers attempting to design realistic and context specific Anti-Corruption laws and systems, and b) for Chief Compliance Officers (or equivalent) designing and implementing such systems tailored to their companies. I will delimit the investigation to medium and large Peruvian companies, while drawing comparisons to international hard and soft laws and standard, applying the following framework:

Figure 1: Delimitation of Investigation



Source: Own work

This work is structured as follows:

The second section lays down the theoretical framework employed in this research by introducing neo-institutionalism, different approaches to address corruption and presents the fraud triangle. The third section describes the applied methodology which consists of qualitative research designs under a constructivist worldview. The fourth section presents the collected data and analyses it; including data on the Peruvian context, definitions of corruption, Corporate Compliance & Anti-Corruption programmes and the perceptions of Peruvian subject matter experts on these programmes. The fifth section discusses the collected data by explaining them with different theories and other related research. The sixth section concludes.

2. Theoretical Framework

In this section I present the theoretical framework applied in this work, which is based in neo-institutionalism, different approaches to corruption and the fraud triangle.

Neo-institutionalism was chosen as a theoretical starting point given the nature of this research, which intends to explore Corporate Compliance & Anti-Corruption programme in the Peruvian institutional context (see DiMaggio & Powell, 1983; North, 1990; Scott, 1995). Using other theoretical frameworks like transaction costs economics would have limited the results, as it would have only been able to explain why Peruvian companies implement these programmes but failed to address their shortcomings in the specific Peruvian context.

While institutions influence the actions of individuals, neo-institutionalists do acknowledge that individuals have certain degree of agency within the societal boundaries (DiMaggio & Powell, 1983; North, 1990; Scott, 1995). For this reason, I will not only be presenting a structural approach to corruption, but also a rational-actor approach, as well as relational approach to corruption (see Jancsics, 2014). Additionally, due to the same reasons, I will employ the fraud triangle (see Cressey, 1953), which is commonly used by different public and private organizations in the Corporate Compliance industry to describe why "good people" might engage in corruption (see ACFE, 2016; EY, 2014b; United Nations Global Compact, 2013).

2.1. Neo-Institutionalism

New Institutionalism or Neo-Institutionalism can be seen as a response and progression to the now called Old-Institutionalism which was commonly used in political science to study and compare government structures and their relationship with individual behaviour (Peters, 2005). Old-Institutionalism also emerged in organizational studies, with sociologists like Max Weber proposing that organizational bureaucracy was the result of individual rational decisions creating bureaucracies to survive in a free market place (DiMaggio & Powell, 1983).

Departing from their old counterpart, Neo-Institutionalists go a little further and widen the scope of institutions by including, besides the previously acknowledged formal institutions such as laws and regulations, a new set of informal institutions such as social and cultural

norms and values of a given society (North, 1990). In that context, North defines institutions as "*the humanly devised constraints that structure human interactions*" (North, 1990, p. 3).

Other Neo-Institutionalists see institutions as "*regulative, normative and cognitive structures and activities that provide stability and meaning to social behaviour*"(Scott, 1995, p. 33). While being different from North's (1990) definition, Scott's approach to institutions is not necessarily exclusive, but rather provides a different taxonomy to the same subject. Regulative institutions are what North (1990) defines as formal institutions, meaning official laws and rules set by the government or another entity with the ability to establish mandatory statues to a given set of individuals (e.g. a company to its employees). Normative and cognitive institutions are what North (1990) defines as informal institutions, the normative being the "unwritten" rules of society that might provide legitimacy to one's actions in a given environment; and the cognitive being the way of how certain actions are perceived by certain actors (North, 1990; Scott, 1995).

Another way institutions are seen by Neo-Institutionalists is as isomorphic forces or pressures that influence the individual's behaviour. These can be categorized as coercive, normative and mimetic forces (DiMaggio & Powell, 1983). While a parallel to Scott's (1995) regulative, normative and cognitive institutions can be drawn by matching coercive forces to regulative institutions, normative forces to normative institutions, and mimetic forces to cognitive institutions, this is not always the case and could be misleading to readers. DiMaggio & Powell's (1983) isomorphisms approach gives room to different scenarios, since e.g. coercive isomorphism can result "*from both formal and informal pressures*" (DiMaggio & Powell, 1983, p. 150).

Despite of the similarities among the different approaches to neo-institutionalism, one key difference is the degree on which institutions influence the actions of individuals. North (1990) and Scott (1995) argue that formal and informal institutions constrain individual actions through incentives and disincentives, thus channelling human behaviour to a direction that reduces uncertainty and ultimately shape society. However, while both scholars contend that institutions merely "set the rules of the game" and individuals act freely within that

framework, Scott (1995) is less deterministic since the idea of cognitive institutions gives room to intersubjectivity and individual interpretations (Friel, 2017).

DiMaggio and Powell (1983), on the other hand, argue that institutions exert isomorphic pressures on individuals, thus determining the actions of individuals and influencing the degree in which they execute rational decisions at free will. Additionally, as opposed to North (1990) who claims that institutions are consciously designed by humans, DiMaggio and Powell (1983) contend that these have less human influence, since they just evolved from a given historical and cultural context (Friel, 2017).

For the purpose of this thesis, which focuses on anti-corruption efforts of medium and big companies in the Peruvian institutional context, an integrative approach of neo-institutionalism will be used, meaning that the approaches of North (1990), Scott (1995) and DiMaggio and Powell (1983) will not cancel each other out, but rather complement one another. The idea behind this decision is to have a theoretical framework with certain degree of flexibility when analysing the decision-making process of individuals behind non-compliant or corrupt activities. This should allow to support different findings with different interpretations of neo-institutionalism.

2.2. Corruption

Discussing corruption among different actors from different backgrounds can be a challenge, especially considering the fact that the term has many different definitions that vary depending on the situational context. Given this challenge, it is important to first conceptualize the phenomenon of corruption. I am basing my research on Jancsics' (2014) work, which by cross-referencing different disciplines, finds four conceptual commonalities regarding corruption and subsequently addressed three different approaches to study it.

First, "*corruption is an informal / illegal and secret exchange of formally allocated resources (…) and occurs in a formal organizational context"* (Jancsics, 2014, p. 359). This means that either money, goods or any kind of resource (including the promise of giving it) that belongs

to any sort of organization or is somehow collectively owned is clandestinely exchanged to benefit one or more persons that are not the formal proprietor.

Second, "*at least one corrupt party has to have formal membership / affiliation or at least a contractual relation with the organization from which the resources are extracted*" (Jancsics, 2014, p. 359). This conceptual delimitation excludes other criminal activities such as bank robberies performed by random non-employees.

Third, "*corruption happens between two or more corrupt parties*" (Jancsics, 2014, p. 359). Similar to the second point, this delimitation draws the line between the concept of corruption and other forms of internal fraud schemes such as asset misappropriation or financial statement fraud.

Fourth "*a corrupt act is always a deviation from social rules or expectations of some kind*" (Jancsics, 2014, p. 359). As formal laws may be different in different jurisdictions, this statement widens the scope from not complying with local rules and laws, to any kind of activity that deviates from what is expected in any given institutional context. In that sense, for the purpose of this thesis, even though facilitation payments (i.e. payments made *"by a citizen to a public servant to make him or her do his duty*" (Hansen, 2017, p. 407)) are not prohibited in some legislations (e.g. FCPA) (DOJ & SEC, 2014), they will still be perceived as corrupt activities as they are in violation of social expectations and, aligned to the other three conceptual delimitations, are secretly performed by a member of the organization with another corrupt party (Jancsics, 2014).

Having established these four common elements involving the phenomenon of corruption, it is now possible to understand and study it. Different social sciences have had different contributions to understand this phenomenon, but these have been mainly been isolated from one another (Jancsics, 2014). However, by drawing from social anthropology, economics, political science, social psychology, sociology, and organization studies, Jancsics (2014) found three major approaches for understanding corruption:

2.2.1. Corruption as utility maximization: a rational-actor approach

The rational-actor approach employs a micro-level perspective and treats corruption as a strict (but illegal) market transaction, in which two actors engage in corruption as a result of a personal cost/benefit analysis that yields in the rational choice in which they maximize personal profit (Jancsics, 2014). This approach views individuals as "under-socialized" actors, meaning that they act out of pure rationality, with minimal influence of their social relations (Granovetter, 1985).

Under this model, some scholars contend that corruption might be a particular case of the principal-agent dilemma, in which an employee or public official (agent) puts his personal interests before the ones of the company or governmental entity (principal). When analysing corruption under principal-agent theory, researches argue that a proper punishments and incentives system (e.g. more enforcement, higher wages of public officials) might reduce corruption (Jancsics, 2014).

Critiques of using principal-agent theory to address corruptions includes the fact that it neglects the scenario in which the principal itself becomes corrupt and stops acting in the interest of the organization or the public good, making it difficult to find individuals to enforce a punishment / incentive system on such actors (Jancsics, 2014; Persson, Rothstein, & Teorell, 2010; Rothstein, 2011). In other words, an employee that bribes a public official is not putting his interests above the ones of the company, if the company itself expects its employees to engage in such activities.

Other scholars that employ a rational-actor approach, see corruption as a "bad apples vs. bad barrels dichotomy". As opposed to the principal-agent problem, where all employees are potential bad apples if the punishment-incentive systems are poorly structured, bad apples theorists argue that corrupt employees are an exception to the rule; but have the ability to contagion other employees until the whole organization can be deemed a "bad barrel" (Andersson & Pearson, 1999; Felps, Mitchell, & Byington, 2006; Misangyi, Weaver, & Elms, 2008; Trevino & Youngblood, 1990). Psychologists argue that bad apples have psychological differences to their peers and show certain traits, "*such as high irresponsibility, hedonism, and narcissism, as well as low self-control, integrity, and conscientiousness, that substantially*

correlate with white-collar criminal activities" (Jancsics, 2014, p. 361). Similarly, to the principal-agent problem, the bad apples view on individuals puts the focus on the actor itself, neglecting, for instance, company culture and local social norms and values. However, one could argue that one bad apple (e.g. the CEO) could create a company culture of corruption, turning the whole company in a bad barrel.

2.2.2. Corruption as social constraint: a structural approach

The structural approach employs a macro and middle perspective in which corruption is not regarded as the result of an individual decision, but rather as an institutionalized phenomenon within social structures such as nations or organizations, depending on the level that it being analysed (Anders & Nuijten, 2007). Structuralists offer two main explanations for corruption: Normative explanations and material structural explanations (Jancsics, 2014):

Normative explanations refer to the influence of social norms on shaping human behaviour, as individuals internalize common attitudes to gain the approval of their group (Granovetter, 1985). For instance, at a macro level of analysis, empirical studies show that corruption is more common in high religious countries where power differences cause a lack of trust due to such power inequalities (Jancsics, 2014). At a middle / small group level of analysis, particularistic norms of the small group may trump the universalistic norm of the nation (Schweitzer, 2004). In that sense, people may engage in corruption to take care of their family and close friends, even if corruption is ill-perceived at a macro societal level. This is also perceived at the organizational level, where non-corrupt individuals tolerate or participate in corrupt activities due to a company culture of silence and cover-up (Katz, 1977). Finally, in "New Institutional Economics", it is contended that corrupt individuals create their own institutions that reduce uncertainties. This is exemplified in corrupt deals that are made secretly and repeatedly, thus reducing the transaction costs and uncertainty usually involved in public tenders (Lambsdorff & Taube, 2004).

Material structural explanations refer to influence of macro-level structural factors such as economic competition, economic growth, inequality and tax collection in the materialization of corruption (Jancsics, 2014). Under this approach, it is argued that economic growth and competition are negatively correlated to corruption (Treisman, 2000), while other structural

factors such as inequality are positively correlated (You & Khagram, 2005). However, at a middle / organizational level it is contended that intense competitive environments might drive corrupt activities, since it puts pressure on executives and employees to achieve their goals. The difference between country- and firm level of analysis are not necessarily contradictory, since corruption might be high in certain specific industries (e.g. construction, mining) or types of company structure, management or culture (e.g. companies with low supervision, result oriented compensations), but low at a country level (Jancsics, 2014).

2.2.3. Corruption as social exchange: a relational approach

The relational approach focuses on social relations and has as point of departure the idea that individuals relate with one another because they might profit from such relation. This approach distinguishes itself from the rational model approach because a) corruption is seen as more than mere market transactions, since certain corrupt exchanges do not necessarily imply an immediate return; b) corrupt exchanges are not only between two actors, but rather within a wider network; and c) corruption is not treated as a pathology, since certain relationships (e.g. gift giving, patronage and loyalty) might be seen as corrupt from the outside, but as important social functions from the inside (Jancsics, 2014).

These relations can be taxonomized in horizontal corrupt relations (i.e. close relationships between actors) and vertical corrupt relations (i.e. unequal actors with certain power dynamic) (Jancsics, 2014).

The former deals with helping members of one's group in dealing with inadequate formal institutions through favours such as giving licenses or certificates, and nepotism. These practices are somewhat legitimized around the world and are known as "pull" in the United States, "blat" in Russia, "guanchi" in China and "compadrazgo" or "palanca" in Latin America. The latter deals with using one's power to get someone to do their "dirty work". This practice, also known as "patronage" can be seen in e.g. managers over employees, politicians over their staff or contractors, and other kinds of unequal power relations in which the one with less power seeks the approval of the one with more power in order to advance in his personal or professional life (Jancsics, 2014).

The following table summarizes the three approaches described in sections 2.2.1, 2.2.2 and 2.2.3.

Table 1: Main approaches to address corruption

	Rational-actor approach	Structural approach	Relational approach
Level of analysis	Micro	Macro, and middle	Middle
Motivation/constraint to participate in corruption	Maximize monetary rewards and minimize costs	Forced by structural constraints	Profit from the associations with others
Exchange form	Economic/market	Driven by norms and material structural constraints	Reciprocal, often non-material
Relationship form	Impersonal, short term	Relationship between individual and collective entities	Interpersonal, long term
Corruption from an organizational perspective	Corruption is an exceptional problem within the organization: bad apple	Corruption is systematic products of collective processes: bad barrel	Corruption is an informal exchange network behind formal organizational structures

Source: Jancsics (2014), p. 365

2.2.4. Corruption as a multivariate result: a holistic approach

While Jancsics (2014) proposes to focus on the relational approach since it "*has the potential to link rational actors with structural elements, or in other words, to bridge agency with structure in corruption research*" (Jancsics, 2014, p. 366), this work will not focus on just one approach, but rather will acknowledge the validity and applicability of all the three approaches, depending on what is being analysed. The reason for this is twofold:

- While corruption could be seen as a structural problem, people performing corruption might still be acting as rational actors within institutional boundaries (North, 1990; Scott, 1995). As stated by Dequech (2001): "*Institutions do perform an informational function (in addition to influencing the very perception people have of reality), but this does not imply that the only rational option is to behave in accordance with institutions. People may use their knowledge, including their knowledge of institutions, to be partly unconventional, to boldly go against the stream*" (Dequech, 2001, p. 923).
- This work focuses on Corporate Compliance and Anti-Corruption programmes, which can only influence the corporate culture of such company (which limits the structural

approach to the firm level) and the rewards and punishments that individuals take into account when making the rational decision of engaging in corruption (rational actor approach) (Krambia-Kapardis, 2016).

2.3. The Fraud Triangle

As discussed in the previous section, Corporate Compliance & Anti-Corruption programmes can only influence the company's culture and the individual's rationalization (Krambia-Kapardis, 2016). This might be because most of these programmes are based on something called the Fraud Triangle, a model that attributes the cause of occupational fraud to the rational decision of the employee (Lokanan, 2015)

I make the argument that most Corporate Compliance & Anti-Corruption programmes are based on the Fraud Triangle, because it is explicitly used by different international organizations and management consulting & accounting firms as a model to identify causes of occupational fraud (including corruption) and thus serves as a base to design compliance programmes. Examples include the UN Global Compact in their guidance to mitigate corruption risk; the Association of Certified Fraud Examiners (ACFE) and several consulting firms that offer Corporate Compliance & Anti-Corruption services like Deloitte, KPMG, EY and PwC (ACFE, 2016; Deloitte, 2016; EY, 2014b; KPMG, 2013; PwC, 2011; United Nations Global Compact, 2013).

The fraud triangle was first introduced by American penologist, sociologist and criminologist Donald Ray Cressey in his book "Other people's money; a study of the social psychology of embezzlement". There, he proposes that everyone might potentially commit occupational fraud if the following elements are present: pressure, opportunity, rationalization (Cressey, 1953).

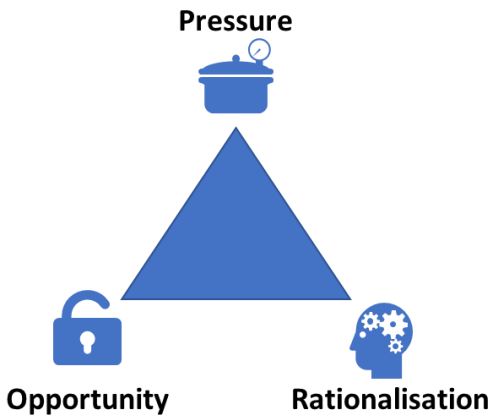
Pressure to commit occupational fraud refers to non-sharable financial pressures perceived by the individual. Since the financial pressures are non-sharable, the individual is not able to communicate his strain with others and serves as a motivation to break social rules and expectations to solve his problems. These pressures also include work related pressures (e.g.

unfair treatment related to promotion and salary), problems with gambling and drug addiction, and the need to live a lifestyle beyond one's means (Cressey, 1953; Lokanan, 2015).

Opportunity to commit occupational fraud refers to the situation when the individual abuses his position of trust within an organization in order to benefit and solve his non-sharable financial pressures. This is often associated with weak internal controls in the corporate compliance context, but other scholars contend that opportunity also includes some kind of social support (Cressey, 1953; Lokanan, 2015).

The rationalization of occupational fraud refers to the lack of feelings and indifference of the individual when committing the misconduct. Here, the individual deems his actions as "okay" and not as a deviation from social expectations (Cressey, 1953; Lokanan, 2015).

Figure 2: The Fraud Triangle



Source: Own work based on Cressey (1953)

3. Methodology

3.1. Philosophical assumptions

Given the nature of the research question "How are Corporate Compliance and Anti-Corruption programmes perceived by Peruvian companies and why?", seeking an answer to it under a positivist worldview would not yield the desired outcomes, since its philosophical assumptions intend to find cause-effect relationships and study the causes that influences outcomes (Creswell, 2014).

Whilst quantitative research methods, usually associated with this positivism, might be an appropriate approach to study the causes of corrupt activities in large- and middle sized Peruvian companies (Creswell, 2014), it is not my intention to focus on single elements tested in controlled environments. Rather, this research intends to seek understanding on how corrupt practices are perceived and interpreted in the Peruvian local context, and how such views do affect the way Corporate Compliance and Anti-Corruption programmes are received in Peru, taking into consideration the influence of its specific institutional context.

In that sense, this research will employ a social constructivist approach, which seeks to understand how the individuals involved in the study see, interpret and give meaning to the world, including the phenomenon that is being studied (Creswell, 2014). This paradigm should provide a more holistic approach for understanding corruption (and Anti-Corruption programmes), since the subjective meanings that might be retrieved from the research are balanced between personal experiences, local history and social realities (Creswell, 2014).

Some of the main social constructivist assumptions include (Crotty, 1998):

1. Individuals build meanings as they interact with the world they are interpreting.
2. Individuals engage with their world and give meaning to it based on their historical and social views and experiences.
3. The generation of meaning arises from social interactions with the individual's community.

Whilst the social constructivist worldview provides the main philosophical assumption for conducting this research for methodological reasons, ultimately, I will also be employing a pragmatic worldview, since my intention with this work is to help policy makers and Compliance Officers in the future. This is possible because pragmatists are not committed to any specific research methods, resulting in them using either quantitative, qualitative or mix-methods approaches. They acknowledge both post-positivist and constructivists worldviews and argue that they do not cancel each other out, but rather complement themselves. Finally, their ultimate concern is regarding whatever works and the solutions to problems (Creswell, 2014).

In that sense, complementing this research with a pragmatic worldview is possible since it does not enter in conflict with the qualitative approaches of constructivists. While still trying to understand how the individuals understand and give meaning to the phenomenon being studied, I do wish that my findings find a pragmatic applicability by helping thought leaders, policy makers and compliance officers with relevant information for the design and implementation of future Corporate Compliance and Anti-Corruption programmes.

3.2. Qualitative research design

Qualitative research designs are useful when the researcher does not know the exact variables to examine regarding the study of a phenomenon that still needs to be explored (Creswell, 2014). Given the complex nature of corruption and the different attitudes, perceptions, tolerance levels and enforcement capabilities towards it in different institutional contexts, using this kind of designs is appropriate. I might have been biased in picking specific variables if I had chosen a quantitative research design. This could have led the research to start with wrong assumptions that may consequently lead to questionable or refutable outcomes.

Specifically, this work will employ a single case study research design. In single case study research, the researcher studies an issue which is explored through one single case, i.e. a bounded system (Creswell, 2007). While most cases studied in business schools are typically company cases, this work will widen the scope and use the Peruvian context as the bounded system being studied. Also, it must be noted that while some scholars argue that cases need

to be context-independent, others argue that knowledge might be even more valuable if it is practical and context dependant (Flyvbjerg, 2006).

The reason behind choosing the Peruvian national level as a case is because relying on company cases when exploring corruption has its limitations. When asked about their critical views on Corporate Compliance and Anti-Corruption programmes, the interviewees might potentially have a sense of loyalty towards the company they are representing and thus give only positive answers. If the focus of the study is not the company itself, but rather Corporate Compliance and Anti-Corruption programmes at a national level, the interviewees will be discussing national practices and not their employers.

The reason for choosing Peru as the case to be studied, is because it represents a critical case in which previous work related to Corporate Compliance and Anti-Corruption programmes might be supported or challenged (Yin, 1994), because a) Peru has recently published its own Anti-Corruption law and thus the perceptions of more local companies can be included other than the ones subject to foreign Anti-Corruption laws (Melzi, 2017; Ministerio de Justicia y Derechos Humanos - Perú, 2017), and (b) international indicators suggest that perceived corruption should be declining when it is not (The World Bank, 2018b; Transparency International, 2018b; Treisman, 2000; You & Khagram, 2005).

I don't believe the Peruvian case to be an extreme or unique case, since perhaps applying this research to other countries in the region might yield in similar results. Additionally, I doubt the Peruvian case might be deemed as a revelatory case, because, despite the fact that the Peruvian Anti-Corruption law was published last year (Ministerio de Justicia y Derechos Humanos - Perú, 2017), other laws like the FCPA and UKBA have been applied in Peru for years. However, the Peruvian case, as a critical one, might help refocus future similar research projects on a larger scale (e.g. other countries or regions) in the future (Yin, 1994).

While it could be argued that any country or geographic context are critical cases to further understand Corporate Compliance and Anti-Corruption programmes, a second reason for choosing Peru is my personal experience as a Peruvian citizen and former employee, which grants me access to corporate compliance networks and subject matter experts. Thus, this

study might be also considered a "convenience case study research" (Lunenburg & Irby, 2008).

It must be noted that given the nature of the research question, the design also has traits of phenomenological research. In phenomenological research, the researcher "*describes the lived experiences of individuals about a phenomenon as described by participants. This description culminates in the essence of the experiences for several individuals who have all experienced the phenomenon*" (Creswell, 2014, p. 42). In the Peruvian Corporate Compliance and Anti-Corruption context, this involves collecting the views and experiences of individuals directly involved with either the design, implementation or regulation of Corporate Compliance and Anti-Corruption programmes; and explore the similarities, differences and critical views regarding their experiences with these programmes in order to hopefully find contextualized improvement opportunities.

3.3. Role of the researcher

As stated in section 3.1 "Philosophical assumption", this work is performed under a constructivist paradigm. This means that a), ontologically speaking this research acknowledges reality as a social construction conformed by the way individuals engage in the world they are interpreting, and b), epistemologically speaking, the research takes into consideration "*how the researcher knows what she or he knows*"(Creswell, 2007, p. 16). In that sense, it is important to make a few statements about my role as researcher, my background and my connection to the participants of the study to help the readers gain contextual understanding (Creswell, 2014).

After obtaining my bachelor's degree in International Business from HS Pforzheim University, I chose to gain work experience before deciding to pursue a master's degree. Working in management consulting gave me the chance to explore many fields before finding, and consequently specializing in my passion: fighting corruption and helping businesses in achieving their goals by "doing the right thing". My work included designing and facilitating

the implementation of Corporate Compliance and Anti-Corruption programmes for different Peruvian companies and local subsidiaries from international companies.

In the spirit of pursuing my dreams whilst acknowledging my experience in business, I enrolled in September 2016 in the M.Sc. Business & Development Studies Degree Programme at the Copenhagen Business School. The programme focuses on International Business Management and its implications on Global and Local Development. Specifically, besides firm level strategies on international business, foreign direct investment and international human resource management, it addresses governance and development issues, such as: Anti-corruption, Human Rights, Indigenous Peoples' Rights, Labour, Gender Equality and the Environment.

Given the complementary nature of my work experience and the master's degree I'm currently pursuing, I decided to perform academic research on my past practical experiences in the hope of finding some enlightenment regarding how Peruvian individuals in the Corporate Compliance and Anti-Corruption industry feel about such programmes. As stated in the problem statement section of this work, I have seen professionals that have strong positive feelings towards these programmes, and also professionals that do not. While this issue did not bother me before (probably due to personal positive biases towards these programmes), learning about different theories throughout my study programme triggered a sense of curiosity for re-addressing my stance towards Corporate Compliance and Anti-Corruption programmes in Peru.

It must be noted that I do have personal relationships with the people that have been interviewed. However, these relationships helped me generate a safe and friendly environment where they can express their true opinions. For this, one interviewee chose to remain anonymous.

3.4. Data collection procedures

Data has been collected from both secondary and primary data. The collected secondary data consists of a review of literature on corruption, corporate compliance and anti-corruption. This is complemented with literature related to different theories such as institutional theory

(see DiMaggio & Powell, 1983; Scott, 1995), different theoretical approaches to corruption (Jancsics, 2014) and literature on human behaviour and corporate criminology (ACFE, 2016; Cressey, 1953; Lokanan, 2015).

Primary data has been collected from semi-structured interviews with open-ended questions via Skype with individuals with experiences with the design, implementation and regulation of Corporate Compliance and Anti-Corruption programmes. Different subject matter experts have been approached, including one currently elected congressman that focuses on corruption issues, compliance consultants and compliance officers or equivalent in Peruvian companies. Finally, given the availability of the approached individuals, only the following people have been interviewed:

- **Erick Contreras, Compliance & Control Manager at Repsol Perú**: Erick is a lawyer from Universidad de San Martín de Porres, with a master's degree in Corporate Law from Universidad de Lima and a specialization degree in Compliance and Good Corporate Practices from Universidad del Pacífico. He joined Repsol Perú as a legal advisor in 1997 and became Compliance & Control Manager of the same company in 2014 (information extracted from his LinkedIn public profile). We met in 2015 when EY assisted Repsol Perú in a Corporate Compliance related project, in which he was the project's sponsor and I the lead consultant. Before initiating the interview, Erick stated that all of his views and opinions are of his own as a subject matter expert, and do not reflect the views and opinions of Repsol Perú or any other organization. Given the fact that he was the only Compliance Officer interviewed, Erick may hereinafter be referred as either Erick Contreras or "The Compliance Officer".
- **Senior Consultant at Peruvian Big 4 firm[2] specialized and trained in Corporate Compliance & Anti-Corruption:** The interviewee chose to remain anonymous and will hereinafter be referred as "the Consultant". The Consultant has years of experience helping Peruvian companies in designing and implementing Corporate Compliance & Anti-Corruption programmes, as well as participating in occupational fraud

[2] Big 4 firms refer to the Management Consulting & Accounting firms EY, PwC, KPMG & Deloitte.

investigations. The reason of the chosen anonymity is the conflict of interests between his/her willingness to participate in this study, and his/her employers interest of selling Corporate Compliance & Anti-Corruption programmes. Being granted anonymity created a safe space, in which the consultant could express his/her own critiques of the product that he/she sells as a Big 4 employee. Despite of this, the consultant's views and opinions are of his/her own and do not reflect the views and opinions of the employer or any other organization.

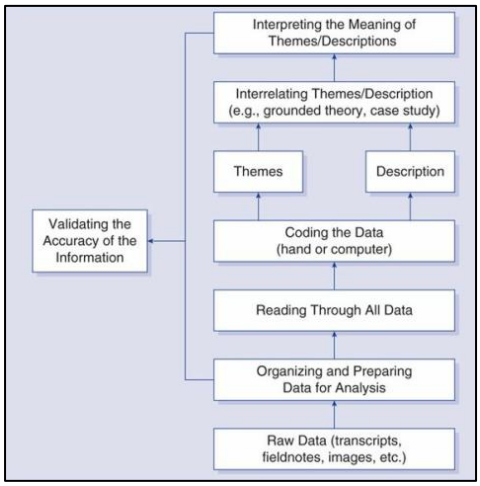
All interviews have been conducted using Skype for Windows PC to call the local Peruvian phones of the interviewees. The calls have been recorded using the default Voice Recorder App of my phone. The Voice Recorder App, when set in Interview Mode, uses the top and bottom phone's microphones to equally record my voice, and the interviewees' voices that came out from my PC's speakers as audio output. All interviewees consented to the interviews to be recorded.

The purpose of having semi-structured interviews is to let the individuals speak freely and let the interviewer explore potential additional observations and findings in a inductive way aligned to the constructivist paradigm (Creswell, 2014).

3.5. Data analysis procedures

The data collected from secondary sources (i.e. literature review) and primary sources (i.e. the interviews) has been contrasted and manually analysed. As usual with qualitative research designs under a social-constructivist paradigm, my own observations and subsequent interpretations of the obtained data might influence the outcome of the analysis (Creswell, 2014). However, knowing that my personal interpretations might have helped shaping the results, explicit description of the rationale behind the selection of particular themes and categorizations are explained throughout the analysis. As such, the following data analysis flow has been followed:

Figure 3: Data Analysis



Source: Creswell (2014), p. 247

3.6. Strategies for validating findings

Validating findings might be a challenge due to the nature of qualitative research designs. However, some strategies suggested by Creswell (2014) have been employed:

- Triangulation of data sources to find common themes and thus build a coherent justification for them.
- Using rich descriptions to portray findings in order to help the reader find the results more realistic and richer.
- Personal and interviewee bias clarification to make findings neutral and transparent.

3.7. Anticipated ethical issues

Interviewing people about corruption and anti-corruption might be challenging considering the sensitivity of the issue, especially if they have negative experiences that they are reluctant to share (Elmir, Schmied, Jackson, & Wilkes, 2011). For this, all interviewees have been asked prior the interview if they wish to remain anonymous and have been reminded of that option throughout the interview when addressing sensitive topics, even if they initially stated they did not want to stay anonymous.

Additionally, I attempted to create a comfortable environment for the individuals (Elmir et al., 2011), which included conducting the interviews in Spanish and adding small talk prior beginning the interview, which is a kind of personal communication that is important in Latin America (Davila & Elvira, 2005).

4. Data & Analysis

In the previous sections of this work, it has been established that this research project studies the perceptions of Peruvian companies regarding Corporate Compliance & Anti-Corruption programmes using a qualitative research design under a constructivist worldview and discusses the reasons and effects of such perceptions in an institutional context.

In order to have sufficient information to be able to discuss the research questions within the chosen theoretical framework with the chosen methodology, this section will describe and analyse data from primary and secondary sources.

First, section 4.1 will present the Peruvian context, including Peru's history regarding corruption and anti-corruption efforts, international indicators on economic performance and perceived corruption levels, and describe and analyse its current legal framework. Section 4.2 will address some of the most commonly used definitions of corruption in a Corporate Compliance context. Section 4.3 will describe and compare different hard and soft laws that establish how a Corporate Compliance & Anti-Corruption programme should be designed like. Finally, section 4.4. will present the results of the interviews undergone with a Compliance Officer and a Consultant that has worked with many different companies from different industries in designing and implementing Corporate Compliance & Anti-Corruption programmes.

4.1. The Peruvian context

Establishing the Peruvian context is important, as it help in contextualizing the interviewees answers, as well as giving the reader enough information to understand Corruption in the specific Peruvian setting. For this, I first introduce Peru's history regarding corruption and then move on to the current setting, including international indicators and perception levels on corruption, as well as the applicable legal framework on corruption in an organizational setting.

4.1.1. Review of Peru's history with corruption

Corruption in Peru can be dated back to colonial times, and its history is closely linked to patron-client relationships (a.k.a. patronazgo), which is what Jancsics (2014) describes a vertical relational approach to corruption. Patronazgo in Peru allowed a network of politicians and entrepreneurs to use the system in order to undertake illegal activities for profit. This common practice led to bureaucrats to believe that illegal enrichment to be standard activity (Horna, 2016; Jancsics, 2014; Alfonso W Quiroz, 2014).

In the colonial era, viceroys used to demand percentages of the illegal profits earned by the bureaucrats within their jurisdiction. For instance, it is estimated that the elites of Lima, Peru's capital, managed to smuggle around 100 million silver pesos in collusion with French smugglers (Horna, 2016; Alfonso W Quiroz, 2014).

After Peru's independence, mining exports fell, and consequently fiscal revenues fell as well. This yielded in less sources of illicit enrichment and forced Peruvian elites to look for alternate sources of income, such as foreign loans. It is believed that financiers, speculators and Peruvian elites colluded in order to benefit from these loans, by lending exaggerated amounts that ended up in the wrong pockets. These mechanisms stopped for a while once Peru went bankrupt in 1825 and wasn't able to repay its loans (Horna, 2016; Alfonso W Quiroz, 2014).

In the 1840's the period known as "the guano boom" started, in which Peru was able to start consolidating its exaggerated debts thanks to guano exports. However, in 1869 Peruvian President Nicolás de Piérola deemed the public debt as "unmanageable" and made a deal with French company Dreyfus Frères et Cie, in which they would be granted the exclusive right to market Peruvian guano in Europe in exchange of repaying Peruvian debts. This ultimately resulted in De Piérola misusing the newly acquired "easy" money to construct one of the most expensive railroads in the world, which ultimately led to Peru's bankruptcy once again (Horna, 2016; Alfonso W Quiroz, 2014).

The continuous misuse of public office repeated itself throughout history. It seems like, instead of the president's office being occupied by corrupt presidents, the president's office itself is corrupt due to these patron-client relationships that have endured over the years. For

instance, presidents like Alan Garcia (president from 1985 - 1990; and from 2006 - 2011) and Alberto Fujimori (president from 1990 – 2000) started their presidential terms promising to end corruption and ended up being caught up in corrupt activities themselves. In fact. Fujimori, who's presidency is known to be one of the most corrupt presidencies in Peruvian history, inherited the corruption networks from Garcia through his advisor and unofficial chief of intelligence Vladimiro Montesinos. Montesinos even managed to give Fujimori a monthly salary from illicit revenues, that were channelled out of the country with the help of Fujimori's brother-in-law and ambassador to Japan Víctor Aritomi (Horna, 2016; Alfonso W Quiroz, 2014).

Today, all of Peruvian former presidents from 1985 to 2018 (with the exception of interim president Valentin Panigua, who took office from November 2000 until July 2001 after Fujimori resigned his presidency and fled the country) are being investigated for corruption and / or money laundry, including: Alberto Fujimori, Alejandro Toledo, Alan Garcia, Ollanta Humala and Pedro Pablo Kuczynski. The latter, after surviving one impeachment attempt in December 2017, decided to resign before a further impeachment attempt in 2018 due to presumed connections with the Odebrecht scandal (Faiola, 2018; Long, 2018).

4.1.2. Recent Anti-Corruption efforts

After Fujimori's resignation in 2001, Peru has shown efforts to fight corruption by applying several reforms that yielded in relevant progress in enhancing its integrity system (OECD, 2017). One of these efforts resulted in the creation of the High-level Commission against Corruption (Comisión de Alto Nivel Anticorrupción, CAN) by supreme decree 016-2010-PCM in 2010 (Composition of the CAN can be seen in Appendix 01). The CAN is a space made up of public and private institutions and civil society, which purpose is to articulate efforts, coordinate actions and propose medium and long-term policies aimed at preventing and combating corruption in the country. The CAN was later elevated to "law" status by law 29976 in 2013, which was later regulated by supreme decree 089-2013-PCM (CAN, n.d.).

Peru launched a National Anti-Corruption Plan 2012-2016, proposing a better inter-institutional articulation and coordination for the fight against corruption and specified that this needed to be done by consolidating the process of interoperability between institutions

fighting corruption, strengthening the CAN, and creating local anti-corruption platforms. (OECD, 2017). Despite of the interinstitutional efforts mentioned in the National Anti-Corruption Plan, the OECD's Integrity Review of Peru of 2017 found the following issues:

- While CAN has been able to bring different actors from the private and public sector, as well as civil society, it still needs to bring additional relevant actors to increase its impact. Additionally, CAN needs to strengthen its secretariat to be more effective and communicate the status of the National Anti-Corruption Plan (OECD, 2017).
- Ethics and conflict of interest policies are fragmented, sanctions for integrity violations are not well formulated and whistle-blower policies have been adopted but are not being implemented effectively (OECD, 2017).
- Despite of lobbying regulations, Peru still faces policy capture risks because the National Office of Electoral Processes (ONPE), responsible for the electoral processes, and the National Superintendence of Public Registries (SUNARP), responsible for the lobbying registry, are not empowered and lack resources for effective enforcement (OECD, 2017).
- There are two different administrative disciplinary regimes for Peruvian public officials, creating the risk of lack of effective and equal prosecuting activities. Also, there is a lack of independence in the justice system, given the ongoing use of provisional prosecutors and judges. Additionally, enforces lack expertise in accounting and public procurement (OECD, 2017).

The OECD, in its Integrity Review for Peru 2017, proposes a set of recommendations that are supposed to be addressed in the Peruvian National Anti-Corruption Plan 2018-2021, which was approved and published on the 26th April 2018 by supreme decree N° 044-2018-PCM (CAN, 2018; OECD, 2017).

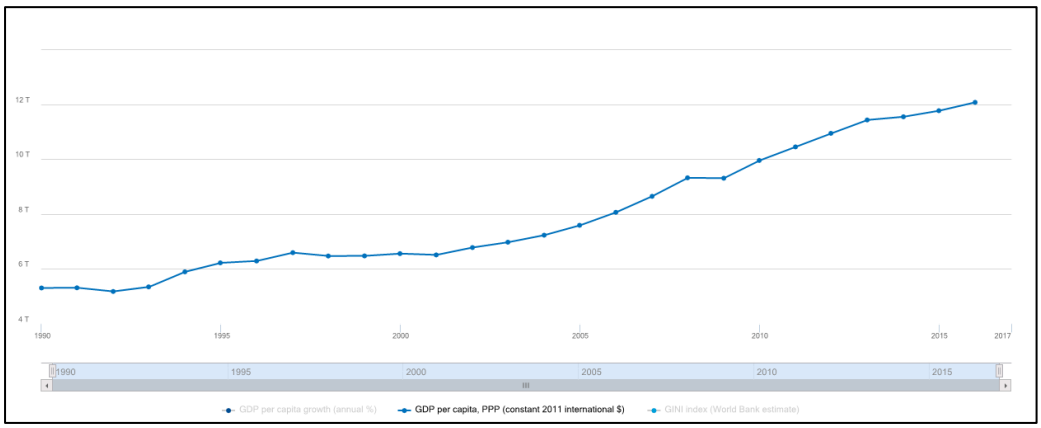
4.1.3. International indicators

Due to the fact that corruption is negatively correlated with economic performance, and positively correlated with inequality levels (Treisman, 2000; You & Khagram, 2005), this

section presents Peru's international indicators in terms of economic performance, inequality and corruption.

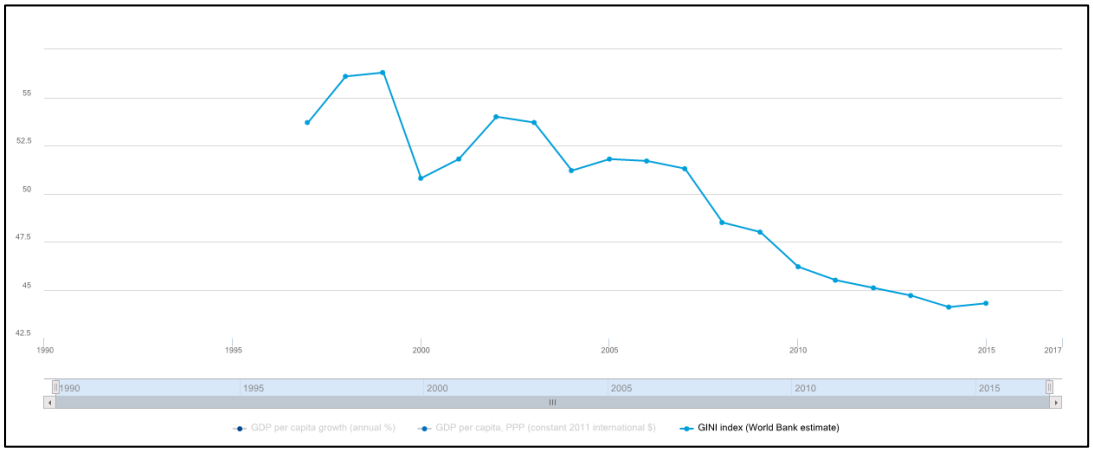
During the last years, Peru has gone through a socio-economic development process, in which it managed to double its income per capita since 1990. Additionally, its return to democratic elections in 2001 further contributed to macroeconomic stability, growth, and thus reduction of poverty and inequality (OECD, 2017). The following figures show i) Peru's GDP per capita under purchasing power parity (PPP) over the years, and ii) the evolution of its GINI coefficient that measures Peru's wealth distribution and thus inequality gap.

Figure 4: GDP per capita, PPP (constant 2011 international $)



Source: The World Bank (2018)

Figure 5: GINI index (World Bank estimate)



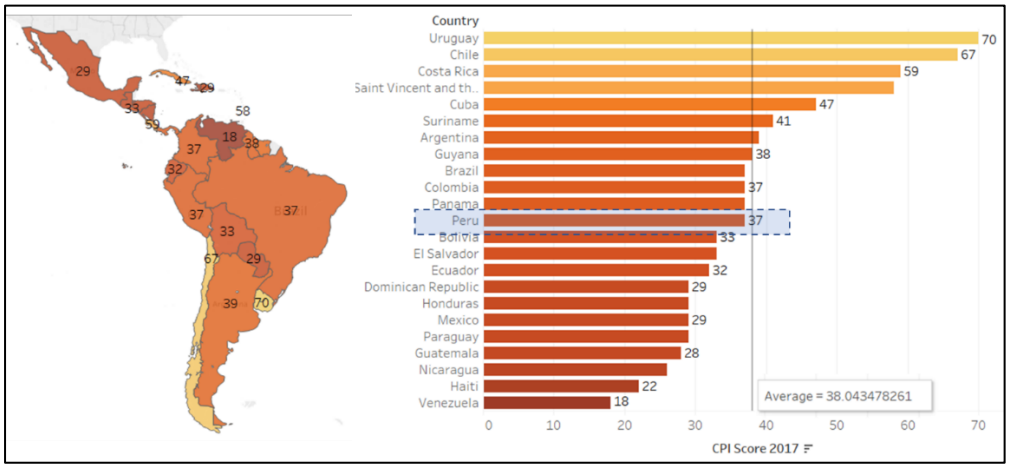
Source: The World Bank (2018)

Despite of Peru's growing growth rates, increase in GDP per capita and decrease of inequality levels, its progress might not be sustainable if its governance system does not address and mitigate corruption risks. So far, Peru has benefited from a healthy international economic environment but has failed to focus on deep structural reforms to address the informal sector, poverty and underemployment, which could help to mitigate corruption (OECD, 2017).

Currently, Peru ranks 96 out of 180 countries in Transparency International's Corruption Perception Index (CPI). The CPI scores countries in a scale of 100 (no perceived corruption) to 1 (most perceived corruption) by aggregating data from various different sources that provide perceptions of subject matter experts and local citizens regarding the corruption level in the public sector of the given country. In 2017's CPI, New Zealand ranked first with a CPI score of 89 and Somalia ranked last with a CPI score of 9. Peru got a CPI score of 37, tying with Brazil, Colombia, Indonesia, Panama, Thailand and Zambia in place 96. The global CPI average is 43.07 (Transparency International, 2018b).

The CPI also provides regional insights, however North-, Middle-, and South America were bundled in a single category with an average CPI score of 44.19, putting Peru below the regional average (Transparency International, 2018b). By downloading the dataset and running it through a data analytics software, it was possible to filter and visualize the CPI scores of just the Latin American countries. This yielded in Peru being just below the local average of 38.04, as shown in the following figure:

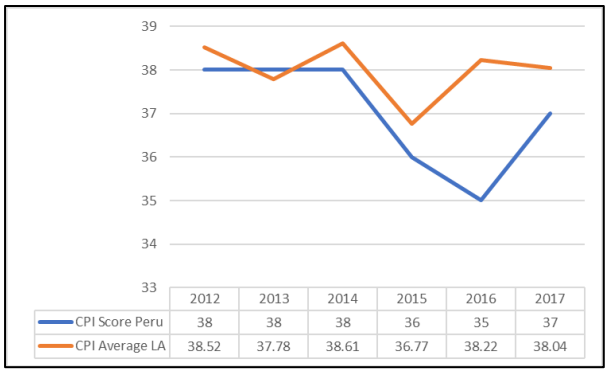
Figure 6: Corruption Perceptions Index 2017 - Latin America



Source: Own work based on Transparency International (2018b)

From the available CPI data (2012 – 2017), Peru's CPI score has not changed that much, fluctuating between 38 and 35 over the studied years. However, despite of its above average economic performance (The World Bank, 2018b), it has shown below average CPI scores over the years.

Figure 7: Peru's CPI Score 2012-2017 vs. the Latin American Average



Source: Own work based on Transparency International (2018b)

It must be noted that measuring corruption across countries based on local perception levels should be seen with certain degree of critical thinking. Measuring perceptions of corruption does not equal measuring corrupt practices (of which only the detected cases are known of). Also, people from different countries giving their view on local corruption might have different standards for describing it. Consequently, if we assume that two countries have the exact same amount of corruption (if even possible), but their citizens have different threshold levels of corruption perception, the CPI will not be the same for these two countries (León, Araña, & de León, 2013). Moreover, the sources employed by Transparency International have changed over time and are not the same across countries, making it not suitable for an objective comparison over time (Moiseeva, 2018).

Despite its shortcomings, the CPI does offer interesting insights for analysis. While it might not be the best comparative tool, it does give an idea on how each country perceives itself in levels of corruption. In the Peruvian case, it shows a somewhat negative trend during the last years (despite the last increase in 2017, which is still lower than in 2012-2014) (Transparency International, 2018b).

4.1.4. Public perception on corruption

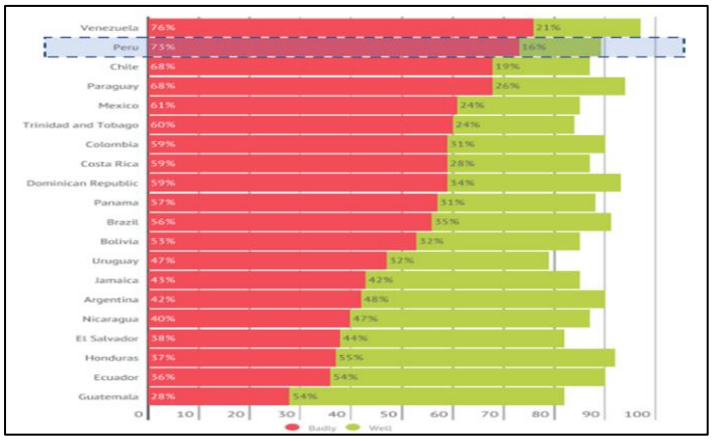
A similar study conducted by Transparency International is the Global Corruption Barometer (GCB). In contrast to the CPI, the GCB does not attempt to give aggregate scores on corruption perceptions to different countries in a comparative manner, but rather it directly surveys the citizens opinions and perceptions on corruption to show how people feel about the phenomenon (Transparency International, 2017, 2018b).

The 2016 GCB survey for Latin America showed that more than three quarters of Peruvian citizens felt like corruption had been risen during the last 12 months (Transparency International, 2017). Interestingly, these results conflict with the ones of the CPI, where Peru mildly improved in corruption perception by one point (Transparency International, 2018b).

It should be noted that the perceptions of subject matter experts and average citizens might differ depending on what they see and how each one constructs their own reality (Crotty, 1998), especially considering the media attention to the Brazilian corruption scandal that resulted in the investigations of all former Peruvian presidents elected since 2001 (Faiola, 2018).

As for Anti-Corruption efforts, 73% of Peruvian respondents claimed their government was doing badly at fighting corruption, being the second most negative response after Venezuela in the region. Interestingly, Chile, being one of the less perceived corrupt countries in Latin America (Transparency International, 2018b) had the third most negative answer towards the local Anti-Corruption efforts (Transparency International, 2017).

Figure 8: Perceived governmental performance at fighting corruption



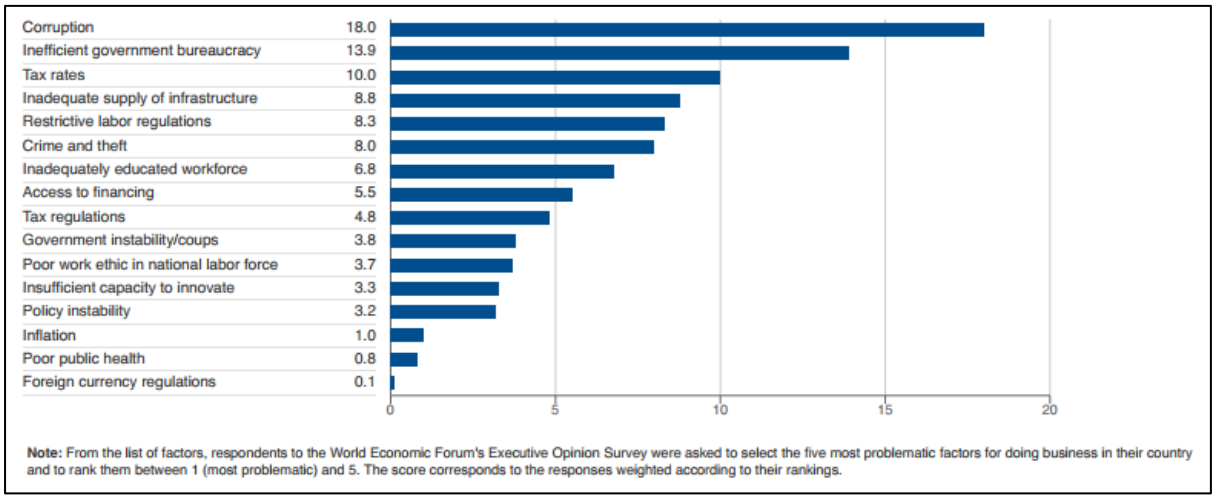
Source: Transparency International (2017)

4.1.5. Business leaders' perceptions on corruption

The Global Competitiveness Report from the World Economic Forum surveys business leaders and executives from around 140 countries in order to assess and determine what they call the Global Competitiveness Index (GCI): an index comprising of scoring 12 pillars, including institutions, the macroeconomic environment, education, among others (World Economic Forum, 2017).

According to the 2017-2018 edition of the report, Peruvian business leaders perceived that Peru's global competitiveness had declined, putting the country in 72nd place (out of 137) (World Economic Forum, 2017). In the previous report, Peru ranked 67th place (out of 138) (World Economic Forum, 2016). They attribute Peru's less favourable assessment to the recent regional corruption scandals that yielded in loss of trust in both public and private spheres. This is seen in the following figure depicting the most problematic factors when doing business in Peru (World Economic Forum, 2017).

Figure 9: Most problematic factors for doing business in Peru 2017-2018



Source: World Economic Forum (2017)

It must be noted, that in the previous 2015-2016 report, corruption was not the top problem, being it situated below "inefficient government bureaucracy" and "restrictive labour regulations" (World Economic Forum, 2016). Similar to the general public perception, which contradicts the CPI's latest results, the increased concern towards corruption might have been triggered by the increased media attention to the phenomenon which initiated with the Brazilian corruption scandal (Crotty, 1998; Faiola, 2018).

4.1.6. Peruvian legal framework for crimes related to corruption and Corporate Compliance & Anti-Corruption programmes

a) <u>General context</u>

So far section 4.1 "The Peruvian Context" has addressed Peru's history in terms of corruption, its current national anti-corruption efforts, and has presented snapshots and historic figures of its economic performance and perceived corruption levels. However, given the focus on Corporate Compliance & Anti-Corruption programmes of this work, it is important to present the applicable laws that govern the design and implementation of these programmes.

Peru, while being one of the signatory countries of the United Nations Convention Against Corruption (Tovar, 2015), to this date does not have a "flagship" anti-corruption law targeted to the private sector like the American FCPA or the British UKBA that establishes the guiding principles of setting up a Corporate Compliance & Anti-Corruption programme (DOJ & SEC,

2014; Ministry of Justice - UK, 2010). However, bribing public officials is criminalized in the Peruvian Criminal Code (Ministerio de Justicia y Derechos Humanos - Perú, 2016) and there are certain laws and regulations that are relevant in the Corporate Compliance & Anti-Corruption (Tovar, 2015, 2017), mainly:

- Peruvian Criminal Code – Legislative Decree N° 635. Articles 397 to 398[3]
- Law that regulates the liability of legal entities for the crime of active foreign bribery – Law No. 30424.
- Legislative Decree that modifies Law No. 30424 by extending the liability of legal entities – Legislative Decree No. 1352.
- Law that regulates lobbying in the Public Administration – Law No. 28024, and its complementary norm approved by Supreme Decree No. 099-2003-PCM.
- Law of the effective battle against Money Laundering and other crimes related to Illegal Mining and Organized Crime – Legislative Decree No. 1106

In addition to the aforementioned local laws, companies from the U.S. or U.K. operating in Peru (themselves or through subsidiaries), as well as local companies that are publicly listed in either the U.S. or U.K. stock exchange markets might be subject to the FCPA and / or UKBA given the extraterritorial nature of these laws (DOJ & SEC, 2014; Ministry of Justice - UK, 2010).

The Anti-Corruption standard ISO-37001:2016, which is a voluntary international soft-law that "*specifies requirements and provides guidance for establishing, implementing, maintaining, reviewing and improving an anti-bribery management system*" (ISO, n.d.), might also apply as a voluntary soft law in relation to the Peruvian law that extends liability to legal entities (Legislative Decree No. 1352, regulated by law No. 30424), but this is yet to be officially announced by the government (Abad, 2017). However, the ISO-37001:2016 standard is likely to be recognized by the Peruvian government as a standard for Corporate Compliance and Anti-Corruption programmes, since a) the Peruvian National Quality Institute (INACAL) has

[3] There are other articles in the Criminal Code that address corruption, however articles 397 to 398 are the ones targeted at non-public officials and are covered in the law that extends the liability of legal entities.

already published the Peruvian Technical Norm NTP-ISO-37001:2017, which is the translation and adaptation of the ISO-37001:2016 (INACAL & ISO, 2017) , and b) certain executive-branch bodies (e.g. The Peruvian Development and Social Inclusion Ministry) have already started implementing it themselves (Andina, 2017).

The FCPA, UKBA and ISO-37001 will be described in greater detail in section *4.3. "The Corporate Compliance & Anti-Corruption context"*.

b) Peruvian Criminal Code (Legislative Decree No. 635)

Given the fact that there is no "flagship" Anti-Corruption law as mentioned earlier, there also isn't a single definition of corruption and all of its forms. Nevertheless, the Peruvian Criminal Code considers "*peculation of public funds, misuse of public assets, influence peddling and illicit enrichment*" as "*emblematic forms of corruption*" (Ministerio de Justicia y Derechos Humanos - Perú, 2016, p. 9).

These forms of corruption used to describe what corruption entails focuses primarily on the actions of the public official and omits one of the most popular forms of corruption: bribery. Moreover, the mentioned forms of corruption do not necessarily imply a secret exchange between two or more parties as suggested by the literature on corruption (Jancsics, 2014), since peculation and the misuse of public goods could be performed by a single individual and could thus be seen as the form of internal fraud "asset misappropriation" (ACFE, 2016) but in a public office.

Despite of the statement regarding the emblematic forms of corruption, the Peruvian Criminal Code does see bribery as a criminal offense and is included in section IV "*Corruption of Officials (Corrupción de Funcionarios)*". This section describes the different acts of bribery that are considered criminal offenses, distinguishing i) passive bribery (requesting or receiving a bribe) from ii) active bribery (offering or giving a bribe) (Ministerio de Justicia y Derechos Humanos - Perú, 2016).

Additionally, it further distinguishes both active and passive bribery in i) general bribery, ii) specific bribery (bribery involving specific public officials like auditors and arbitrators) and iii)

transnational bribery (bribery of foreign public officials) (Ministerio de Justicia y Derechos Humanos - Perú, 2016).

Finally, it also makes the distinction between “proper (propio in spanish)” and “improper (impropio in spanish)” bribery. The former refers to offering or requesting a bribe to violate the functions of the public official, and the latter refers to offering or requesting a bribe to make the public official perform an action that lies within his duties. This is also known as facilitation payments or grease money in other laws like the FCPA (which allows such payments if properly reported) and the UKBA (which doesn’t allow them). In the Peruvian case, such payments are seen as criminal offenses that are punishable by law (DOJ & SEC, 2014; Ministerio de Justicia y Derechos Humanos - Perú, 2016; Ministry of Justice - UK, 2010).

In addition to bribery, section IV of the Criminal Code also includes “influence peddling” as criminal offense (Ministerio de Justicia y Derechos Humanos - Perú, 2016).

A list of all criminal offenses that the Peruvian Criminal Code deems as “*emblematic forms of corruption*”, as well as the offenses regarding bribery (given their obvious connection to corruption) can be found in Appendix 03. The list includes the definitions of each offense (and the given penalties in the full version in Appendix 03), which have been translated to English for the reader’s ease. Additionally, the list includes an analysis in which the four common elements found in corrupt activities proposed by Jancsics (2014) are tested against each offense. Finally, an additional analysis is performed to find which of the offenses are targeted also at non-public officials.

As result of such analysis, it can be found that the forms of corruption included in the Criminal Code that fits Jancsics’ (2014) conceptualization, are the ones shown in the following table (the full list that includes offenses that do not fit Jancsics’ (2014) conceptual common elements can be found in in Appendix 03):

Table 2: Peruvian Criminal Offenses related to Corruption according to Jancsics (2014)

Criminal Offense	Definition	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Concussion[4] (Economic Extorsion)	The official or public servant who, abusing his position, compels or induces a person to give or unduly promise, for himself or for another, a property or a patrimonial benefit.	✔	✔	✔	✔	✘
Improper collection (Economic Extorsion)	The official or public servant who, abusing his position, demands or makes someone pay or deliver contributions or emoluments not owed or in an amount that exceeds the legal rate.	✔	✔	✔	✔	✘
Collusion	The civil servant or public servant who, intervening directly or indirectly, by reason of his position, in any stage of the modalities of acquisition or public contracting of goods, works or services, concessions or any operation at the expense of the State arranges with the interested parties to defraud to the State or entity or body of the State.	✔	✔	✔	✔	✘
Illegal patronage / sponsorship	Whoever, using his capacity as official or public servant, sponsors interests of individuals before the public administration.	✔	✔	✔	✔	✘
Passive Bribery (proper)	The official or public servant who requests, accepts or receives a donation, promise or any other advantage or benefit, to perform or omit an act in violation of their obligations or who accepts them as a result of having failed to do so; and the official or public servant that conditions his functional behaviour derived from the position or employment to the delivery or promise of donation or advantage.	✔	✔	✔	✔	✘
Passive Transnational Bribery (both proper and improper, a.k.a. facilitation payment)	The official or public servant of another State or official of public international body that accepts, receives or requests, directly or indirectly, donation, promise or any other advantage or benefit, to perform or omit an act in the exercise of his official functions, in violation of their obligations, or accept them as a consequence of having failed to obtain them, to obtain or retain a business or other undue advantage, in the performance of international economic activities.	✔	✔	✔	✔	✘
Passive Bribery (improper) (a.k.a. facilitation payment)	The civil servant or public servant who requests, directly or indirectly, or accepts or receives donation, promise or any other advantage or undue advantage to perform an act proper to his position or employment, without breaching his obligation, or as a consequence of having already performed them.	✔	✔	✔	✔	✘
Passive Specific Bribery	The Magistrate, Arbitrator, Prosecutor, Auditor, Administrative Court Member or any other analogous to the foregoing, who under any modality request, directly or indirectly, or accepts or receives a donation, promise or any other advantage or benefit, knowing that it is done in order to in fluence the decision regarding something that is subject to his knowledge.	✔	✔	✔	✔	✘
Generic active bribery (both proper and improper, a.k.a. facilitation payment)	Whoever, under any modality, offers, gives or promises to a civil servant or public servant a donation, promise, advantage or benefit to perform or omit acts in violation of their obligations. Whoever, under any modality, offers, gives or promises a donation, advantage or benefit for the official or public servant to perform or omit acts specific to the position or employment, without violating his obligation.	✔	✔	✔	✔	✔

[4] "Concussion" comes from the Spanish translation for "Concusión". However, in English Concussion is mostly used in the medicine field to describe a brain injury caused by heavy blow that makes the brain shake and hit the inside skull. In Latin languages (e.g. Spanish, French and Italian), concussion refers to any kind of heavy shaking and is thus also used in the criminal field to describe economic shake-downs or economic extorsions.

Criminal Offense	Definition	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Transnational active bribery (both proper and improper, a.k.a. facilitation payment)	Whoever, under any modality, offers, grants or promises directly or indirectly to an official or public servant of another State or official of an international public organization a donation, promise, advantage or improper benefit that results in their own benefit or that of another person , for said server or public official to perform or omit acts specific to his position or employment, in violation of his obligations or without breaching his obligation to obtain or retain a business or other undue advantage in carrying out international economic or commercial activities.	✔	✔	✔	✔	✔
Specific active bribery	Who, under any modality, offers, gives or promises a donation, advantage or benefit to a Magistrate, Prosecutor, Auditor, Arbitrator, Member of the Administrative Tribunal or similar for the purpose of influencing the decision of a matter submitted to his knowledge or competence.	✔	✔	✔	✔	✔
Incompatible negotiation or improper use of public office	The official or public servant who unduly directly or indirectly or by simulated act is interested, for his own benefit or that of a third party, in any contract or operation in which he intervenes due to his position.	✔	✔	✔	✔	✘
Influence peddling	Who, invoking or having actual or simulated influences receives, gives or promises for himself or for a third party, donation or promise or any other advantage or benefit with the offer to intercede before an official or public servant who has to know, is knowing or has known a judicial or administrative case.	✔	✔	✔	✔	✔

Source: Own work based on Jancsics (2014) & Ministerio de Justicia y Derechos Humanos - Perú (2016)

It must be noted that seeing "concussion" and "improper collection" (which are commonly known as forms of shake-downs, economic coercion and economic extorsions) as forms of corruption is debatable. One of the four consensual conceptual elements in the literature on corruption is that "*corruption happens between two or more corrupt parties*" (Jancsics, 2014, p. 359). In the case of economic extorsion, one of the parties is not necessarily corrupt, but rather corrupted by force. In other words, one of the parties is not performing the corrupt activity willingly. I chose to leave these cases as forms of corruption, because:

- The consensual conceptual elements proposed by Jancsics (2014) do not explicitly imply that both parties need to do it willingly ("two corrupt parties" might be one willingly corrupt party and another coercively corrupt party).
- Moreover, the Occupational Fraud and Abuse Classification System proposed by ACFE, also depicts economic extorsion as a form of corruption, without implying that the party being extorted is guilty (ACFE, 2016).

- Additionally, the FCPA's resource guide also tackles this issue and makes a clear distinction between economic extortion (payer is under imminent threat of physical harm) and economic coercion (payer is not under imminent threat of physical harm). In that sense, the FCPA exempts economic extortion from FCPA liability, but considers economic coercion as a bribe and is thus punishable by law. Economic coercions are not necessarily considered facilitation payments (which the FCPA allows if properly reported), since it depends on whether the public official demanded the payment for a discretionary act or not (DOJ & SEC, 2014).
- Finally, these cases might be seen as examples of when a structural approach to corruption might explain this phenomenon better than the rational actor approach (Jancsics, 2014), and distinguish the cases when facilitation payments are suggested by the briber to speed up a process, or by the public official to enable a process (e.g. customs agent demanding a payment to clear a process that should be granted clearance).

c) Peruvian Anti-Corruption Law

While it seems that the criminal code covers many forms of corruption, including conflicts of interests, economic extorsion and bribery, which itself includes giving, receiving, requesting and promising illegal gratuities, donations, money and any kind of favours to make a public official perform, or omit, actions that violates, or not, his duties; (Ministerio de Justicia y Derechos Humanos - Perú, 2016), the range is much narrower in the Corporate Compliance context.

It was stated before that Peru, unlike the U.S. and U.K., does not have a "flagship" Anti-Corruption law similar to the FCPA and UKBA. However, in an attempt to enter the OECD as a member country, the Peruvian government did publish an Anti-Corruption law, namely Law No. 30424: Law that regulates the liability of legal entities for the crime of active foreign bribery (Tovar, 2017).

Before Law No. 30424, only natural individuals could be punished by law for committing crimes. However, this law attributed legal and criminal liability to legal entities (i.e. companies, corporations, firms, etc.) in case they committed one specific crime: active

transnational bribery. This law was published by congress in 2016 and modified by the executive branch in 2017 with the Legislative Decree (L.D.) 1352, which extends the criminal liability to more crimes, namely (Ministerio de Justicia y Derechos Humanos - Perú, 2017):

Table 3: Offenses which legal entities are subject to in Peru

Offenses which legal entities are subject to
Active generic bribery (L.D. 635: Criminal Code Art. No. 397) Whoever, under any modality, offers, gives or promises to a civil servant or public servant a donation, promise, advantage or benefit to perform or omit acts in violation of their obligations, and whoever, under any modality, offers, gives or promises a donation, advantage or benefit for the official or public servant to perform or omit acts specific to the position or employment, without violating his obligation.
Transnational active bribery (L.D. 635: Criminal Code Art. No. 397-A) Whoever, under any modality, offers, grants or promises directly or indirectly to an official or public servant of another State or official of an international public organization a donation, promise, advantage or improper benefit that results in their own benefit or that of another person , for said server or public official to perform or omit acts specific to his position or employment, in violation of his obligations or without breaching his obligation to obtain or retain a business or other undue advantage in carrying out international economic or commercial activities
Active specific bribery (L.D. 635: Criminal Code Art. No. 398) Who, under any modality, offers, gives or promises a donation, advantage or benefit to a Magistrate, Prosecutor, Auditor, Arbitrator, Member of the Administrative Tribunal or similar for the purpose of influencing the decision of a matter submitted to his knowledge or competence
Acts of Conversion and transfer (L.D. 1106: Legislative Decree of the effective fight against Money Laundering, Article 1) The one who converts or transfers money, goods, effects or profits whose illicit origin he knows or must presume, in order to avoid the identification of his origin, his seizure or confiscation.
Acts of concealment and possession (L.D. 1106: Legislative Decree of the effective fight against Money Laundering, Article 2) Whoever acquires, uses, saves, administers, custody, receives, conceals or keeps in his possession money, goods, effects or profits, whose illicit origin he knows or should presume, in order to avoid the identification of his origin, his seizure or confiscation.
Transportation, transfer, entry or exit through national territory of money or securities of illicit origin (L.D. 1106: Legislative Decree of the effective fight against Money Laundering, Article 1) The one that transports or transports within the national territory money or securities whose illicit origin he knows or should have presumed, with the purpose of avoiding the identification of his origin, his seizure or confiscation; or enter or leave the country such goods with the same purpose.
Terrorism financing (L.D. 25475: Law that establishes penalties for crimes of terrorism, Article 4-A) Who by any means, directly or indirectly, within or outside the national territory, voluntarily provide, contribute or collect funds, financial or economic resources or financial services or related services for the purpose of committing any of the

crimes provided in this decree law, any of the terrorist acts defined in treaties of which Peru is a party or the realization of the aims of a terrorist group or individual terrorists.

Source: Ministerio de Justicia y Derechos Humanos - Perú (2012, 2016, 2017)

In short, Peruvian companies can be fined and even dissolved for any kind of active bribery, money laundering and terrorism financing. Other forms of corruption like collusion and conflict of interest are not applicable at the corporate level (Ministerio de Justicia y Derechos Humanos - Perú, 2017).

In order to be exempt of the aforementioned crimes, L.D. 1352 stipulates that companies need to have adopted a "prevention model" (in this thesis also referred as Corporate Compliance & Anti-Corruption programmes) prior committing the offense. Such programme must have at least the following elements (Ministerio de Justicia y Derechos Humanos - Perú, 2017):

- A person in charge of the programme with the ability of exercising his role autonomously (i.e. a compliance officer), appointed by the highest administrative body of the legal entity (e.g. board of directors). In the case of micro, small and medium enterprises, the role of prevention manager can be assumed directly by the administrative body (e.g. general manager).
- Identification, assessment and mitigation efforts to prevent risks associated with active bribery (generic, transnational and specific), money laundering and terrorism financing.
- Implementation of a whistleblowing processes.
- Training & Communication activities.
- Continuous assessment and monitoring.

Currently, the Peruvian Anti-Corruption law does not give any more details or guidance regarding how or what exactly the aforementioned elements need to entail. However, it stipulates that the specific contents of the "prevention model" are described in the regulation of the law (Ministerio de Justicia y Derechos Humanos - Perú, 2017), which has not yet been developed and published (Melzi, 2017).

In February 2018 the government published a working paper which is a draft of the aforementioned regulation through the Ministerial Resolution RM-N°061-2018-JUS. In this document, additional voluntary elements have been added including (Ministerio de Justicia y Derechos Humanos - Perú, 2018):

- Specific policies for risk areas, including policies and internal controls that address:
    - Facilitation payments
    - Gifts & Entertainment
    - Contributions of political campaigns
    - Conflicts of interest
- Registry of activities and internal controls.
- The integration of the prevention model in the organization's commercial processes.
- Designation of an internal audit person or body.
- Continuous improvement of the prevention model.

Interestingly, while the Peruvian Anti-Corruption law does not include Conflict of Interests as a form of a corrupt criminal offense (Ministerio de Justicia y Derechos Humanos - Perú, 2016, 2017), it does suggest policies addressing them (Ministerio de Justicia y Derechos Humanos - Perú, 2018). For analytical purposes, this thesis will not be addressing the specifics of the proposed Ministerial Resolution RM-N°061-2018-JUS, since it is still subject to changes until its final approval.

Given the fact that current Peruvian legislation, unlike the FCPA and UKBA, does not provide guidance on how to design and implement the prevention model yet, the Peruvian National Institute for Quality (INACAL), in association with the International Organization for Standardization (ISO), has prepared the voluntary technical norm "NTP-ISO 37001:2017 Anti-Bribery management systems, Requirements with guidance for use" which is the translation and adaptation of the ISO 37001:2016 of the same name (INACAL & ISO, 2017; Tovar, 2017).

4.2. Defining Corruption

While section 4.1. focused on the Peruvian context, this section will briefly address some of the most commonly used definitions of corruption. This is important to address, because a) the theoretical conceptualization of corruption did not offer one, b) Peruvian legislation has not a clear definition either and c) definition employed in Corporate Compliance & Anti-Corruption programmes influence the understanding of employees and executives towards corruption.

When looking up the term corruption in the Oxford English Online Dictionary one can find many definitions, including "*1. Dishonest or fraudulent conduct by those in power, typically involving bribery*"; "*2. The process by which a word or expression is changed from its original state to one regarded as erroneous or debased*"; and "*3. The process of decay; putrefaction*" (Oxford University Press, 2018). The multiple definitions offered in dictionaries might present practical problems when applying them in a corporate compliance context, especially considering that one needs to know what activity to avoid. However, this is a greater challenge than expected.

When discussing corruption in a socio-political and business context, the challenge of defining corruption can be seen during the negotiations of the United Nations Convention Against Corruption (UNCAC), where it was concluded that *" (…) any attempt at a comprehensive definition would inevitably fail to address some forms of corruption*"(United Nations Office on Drugs and Crime, 2013, p. 33). This might be why, as seen in the previous section, Peruvian legislation addresses different forms of corruption but does not offer an overall umbrella definition for it.

Also, the conceptualization of corruption discussed in the theoretical framework only offers common elements of corrupt activities, but does not propose a definition to be used in practice (Jancsics, 2014). For this reason, it is still important to address the most commonly used definitions for corruption used in the Corporate Compliance and Anti-Corruption programmes.

The World Bank defines corruption as "*the abuse of public office for private gain*" (The World Bank, 1997). This definition is aligned to the ones in the Oxford Dictionary, since it implies a "*dishonest conduct*" and something that "*changed from its original state*" (i.e. an activity intended for the public gain used for private gain), while at the same time contextualizing the concept in a legal / criminal framework (Oxford University Press, 2018).

However, this commonly used definition also comes with criticisms regarding its applicability for the analysis of corruption. It bundles together different social practices that, depending on the social context in which they occur, might be legitimate or not. For instance, nepotism and lavishing gift-giving might be socially accepted in certain cultures that give different nuances to these practices that are deemed as corrupt in western countries, showing thus a western bias (Hansen, 2017; Jancsics, 2014). In the Peruvian context however, the Peruvian Criminal Code defines active bribery (which is one of the many forms of corruption), as "*Whoever, under any modality, offers, gives or promises to a civil servant or public servant a donation, promise, advantage or benefit to perform or omit acts in violation of their obligations*" (Ministerio de Justicia y Derechos Humanos - Perú, 2016, p. 230). This tacitly includes gifts and other social practices that might be considered legitimate social exchanges like "compadrazgo" in Latin America (Jancsics, 2014).

Hansen (2017) also argues that the term "misuse" implies some kind of norm breaking and might therefore be based on what Jancsics (2014) describes as the "rational actor approach", which is often associated with the principal-agent dilemma. While this proposition makes sense, I argue that it doesn't necessarily exclude other approaches to corruption. Misusing public office for private gain might be often seen the result of a rational decision-making process to obtain additional benefits, but the achieved "private gain" could also be obtaining the necessary means to a decent life due to poor local wages. In that sense, the World Bank's definition could also be used to study corruption under a structural approach.

Another criticism to the definition is that it focuses only on passive bribery, ignoring the corrupt behaviour associated with active bribery. This too shows a western bias since, by restricting corruption to the public sector, western companies can argue that the corruption

problem lays in the foreign public officials accepting bribes, but not on the western companies offering them (Hansen, 2017).

Another often used definition of corruption, which was first used by the NGO Transparency International (TI), is "*The abuse of entrusted power for private gain*" (Transparency International, 2018a). This definition widens the scope of corruption, eliminating the constraint to the public sphere and expanding it to the private sphere as well and allowing to include active bribery as a form of corruption. However, it still faces the same western bias of bundling together certain social exchanges that might be accepted depending on the social context (Hansen, 2017).

Despite of its criticisms and the fact that it doesn't address all four common elements proposed by Jancsics (2014) (1. Informal exchange, 2. Affiliation, 3. Two or more parties and 4. Deviation from social rules), TI's definition is still commonly used in Peruvian Corporate Compliance & Anti-Corruption context and is the one I have chosen for this thesis. The rationale behind choosing TI's definition over the World Bank's is the following:

First, whilst Peruvian legislation focuses on public corruption, it does penalize private actors that actively engage in corruption with public officials (Ministerio de Justicia y Derechos Humanos - Perú, 2016). This means that, besides the public official abusing his role in public office or the private actor making the public official abuse his role in public office, the private perpetrator might also be abusing his entrusted power for private gain as well (e.g. paying bribes to meet sales quota).

Second, Peruvian companies that are subject to the UKBA can be prosecuted if they engage in private-to-private corruption (Ministry of Justice - UK, 2010), making thus sense to remove the constraints to the public sphere.

Third, while private-to-private corruption is only legally penalized to companies subject to the UKBA (Ministerio de Justicia y Derechos Humanos - Perú, 2016; Ministry of Justice - UK, 2010), medium and large Peruvian companies do have self-regulating CSR initiatives such as a Codes of Conduct stating they'll conduct their business ethically and avoiding corruption. This trend has been boosted as companies acknowledged the reputational and financial risks associated

with corrupt practices, and as other voluntary initiatives such as the 10th Principle of the UN's Global Compact of 2004 which states that "*businesses should work against corruption in all its forms, including bribery and extorsion*" (Hansen, 2017).

Finally, when analysing corruption in a micro or personal-behavioural level in an institutional context, the term "*abuse of the entrusted power*" might have significant relevance when attempting to draw the line between local values and corruption. While helping out the ones in your inner circle, also known as "compadrazgo", is a common and socially acceptable practice in Latin America (Jancsics, 2014), it can still be seen as an abuse of entrusted power when the perpetrator puts his personal interests above the interests of the people entrusting him with such power (e.g. the owners / shareholders of a company).

Despite of defining corruption as "*the abuse of entrusted power for private gain*" (Transparency International, 2018a), it is important to remark that this definition is only a umbrella term that covers many forms of corruption, including but not limited to bribery, facilitation payments and conflict of interest.

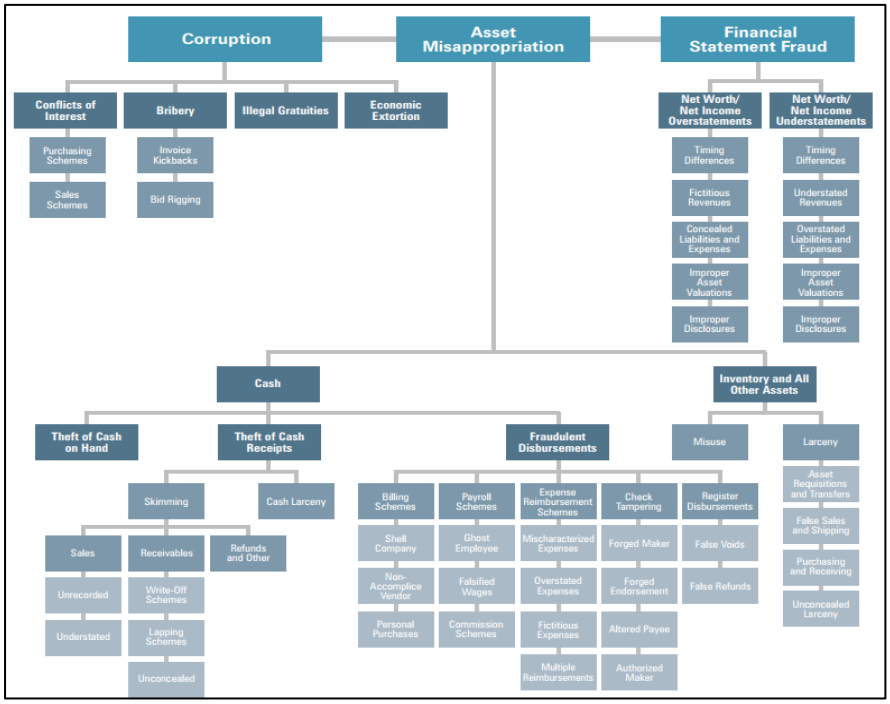
It is also important to note that, while it does not cover all of the common conceptual elements proposed by Jancsics (2014), in the Corporate Compliance context, these elements are often not mentioned in the chosen definition but applied in practical terms. For instance, the Association of Certified Fraud Examiners (ACFE) defines corruption as "*a scheme in which an employee misuses his or her influence in a business transaction in a way that violates his or her duty to the employer in order to gain a direct or indirect benefit*" (ACFE, 2016, p. 90).

This definition does not imply the involvement of two or more corrupt parties, just like TI's definition "*the abuse of entrusted power for private gain*" (Transparency International, 2018a). Both definitions could also be covering internal fraud schemes. However, in ACFE'S occupational fraud and abuse classification system, a.k.a. "the fraud tree" (ACFE, 2016, p. 11), they do depict corruption, asset misappropriation and financial statement fraud as three different categories of occupational fraud and not as different forms of corruption.

This indicates that the ACFE also acknowledges that the conceptual element of "having two or more corrupt parties involved" distinguishes corruption from other forms of fraud.

Moreover, the fraud tree decomposes corruption in conflicts of interest, bribery, illegal gratuities and economic extortion, all of which imply the involvement of two or more parties (ACFE, 2016, p. 11). Interestingly, economic extortion was included just like in the Peruvian Criminal Code, perhaps because it fits the conceptual elements despite of the fact that one party does not do it willingly (ACFE, 2016; Jancsics, 2014). In that sense, it can be argued that even though some definitions do not include Jancsics' (2014) conceptual delimitations, they are tacitly implied when used in practice.

Figure 10: Occupational Fraud and Abuse Classification System (Fraud Tree)



Source: ACFE (2016), p. 11

4.3. Corporate Compliance & Anti-Corruption programmes

This section will present the core elements found in Corporate Compliance & Anti-Corruption programmes, by comparing the different hard and soft regulations that govern the design of these programmes. This should lay the foundation for understanding what these programmes entail to further understand the gathered perceptions towards them during the interviews in section 4.4 and be able to discuss them in section 5.

As stated in the previous sections, the main laws and standards applicable to Peru that establish what a Corporate Compliance and Anti-Corruption programme should entail are the FCPA and the UKBA due to their extraterritorial jurisdiction applicable to local subsidiaries and Peruvian companies listed in their given stock exchange markets (DOJ & SEC, 2014; Ministry of Justice - UK, 2010), as well as the NTP-ISO 37001:2017 which can be seen as a voluntary standard or as a benchmark (INACAL & ISO, 2017). Additionally, the United Nations Global Compact also offers self-assessment tools with what they see as the minimum requirements for complying with the Anti-Corruption principle of the United Nations Global Compact (United Nations Global Compact, 2010).

4.3.1. The FCPA

The enactment of the FCPA by U.S. congress in 1977 is considered to be the first building block of global corruption governance (Hansen, 2017). The FCPA addresses international corruption with two main approaches: The anti-bribery provisions and the accounting provisions. The anti-bribery provisions forbid individuals and businesses from bribing foreign public officials to obtain or retain businesses. The accounting provisions set mandatory requirements for transparent record keeping and internal controls and forbids companies from knowingly falsifying the company's books and records in order to hide bribes. The latter can be acknowledged as a complementary law to the Sarbanes-Oxley Act of 2002 (SOX) and thus, as specific internal control mechanisms that need to be part of a Corporate Compliance & Anti-Corruption programme (DOJ & SEC, 2014).

One distinct characteristic of the FCPA is that it makes an exemption for facilitation payments, which are allowed and not criminalized if documented and reported. However, for a facilitation payment not to be considered as a bribe, the official receiving the payment needs to be performing a routine governmental action without any discretionary characteristics. In that sense, if for example an environmental inspector demands money or any other type of gift or favour just for him to perform his duty as inspector, such payment will be considered as bribe and is not exempt from the FCPA (DOJ & SEC, 2014).

The DOJ and SEC (enforces of the FCPA) do not offer specific requirements for Corporate Compliance & Anti-Corruption programmes, but rather employ a "common sense approach"

when assessing its effectiveness and suggest certain basic elements or "hallmarks" that compliance programmes should have (DOJ & SEC, 2014). These are:

- **Commitment from Senior Management and a clearly articulated policy against corruption**: This is what is often referred as "tone at the top", a top-down approach in which the board of directors and senior executives lead by example and act as advocates and speakers of the company's culture of compliance. (DOJ & SEC, 2014).
- **Code of Conduct and Compliance Policies & Procedures**: Codes of conduct are often seen as the foundation of a Corporate Compliance & Anti-Corruption programme. Depending on the size, nature and operating model of the company, detailed policies and procedures should be developed regarding some of the clauses of the Code of Conduct related to corruption or that address corruption risk. (DOJ & SEC, 2014).
- **Oversight, Autonomy, and Resources**: The company needs to have appointed one or more senior executives responsible for the oversight and implementation of the Corporate Compliance & Anti-Corruption programme. These executives need to have autonomy from management and sufficient resources to ensure an effective implementation of the programme (DOJ & SEC, 2014).
- **Risk Assessment**: One-size-fit-all solutions are considered to be time consuming, costly and ineffective. A risk-based approach to compliance allows the opportunity to allocate resources strategically in the most exposed areas. (DOJ & SEC, 2014).
- **Training and Continuing Advice**: Companies need to ensure that all anti-corruption related policies and procedures have been properly communicated and that the staff has undergone training activities (DOJ & SEC, 2014).
- **Incentives and Disciplinary Measures**: Disciplinary procedures should be applied in a reliable, prompt and proportionate manner. Likewise, incentives mechanisms are to reward a compliance culture and good ethical behaviour are encouraged and expected (DOJ & SEC, 2014).
- **Third Party Due Diligence and Payments**: Whilst third party due diligence efforts and resource allocation should be tailored to the company employing a risk-based approach, there are three main guiding principles that should always apply. First, the company needs to understand the qualifications and associations of the third party,

including reputational issues. Second, companies should have a clear understanding on the role and need of hiring third parties. Third, companies should undertake continuous monitoring activities of the third party (DOJ & SEC, 2014).

- **Confidential Reporting and Internal Investigation**: Corporate Compliance & Anti-Corruption programmes need to include confidential reporting mechanisms, in which employees and third parties have the possibility to report suspected or actual misconduct in an anonymous and retaliation-free manner. Once an allegation is handed in through any of the chosen mechanisms, companies should have properly documented procedures to perform investigation and document its outcomes (DOJ & SEC, 2014).
- **Continuous Improvement – Periodic Testing and Review**: When assessing Corporate Compliance & Anti-Corruption programmes, the DOJ and SEC also assess the company's efforts in periodically testing the programme and improving it (DOJ & SEC, 2014).
- **Mergers and Acquisitions – Pre-Acquisition Due Diligence and Post-Acquisition Integration**: Pre-acquisition due diligence activities should also include corruption-related issues. Any findings are not necessarily deterrents of the acquisition but should be properly documented. Additionally, the company needs to show efforts in rapidly integrating the newly acquired company into its internal control system (DOJ & SEC, 2014).

4.3.2. The UKBA

Even though UK legislation against bribery dates back to the 19th century, it was the scandal involving a British architect John Poulson in 1973 that triggered the need to draft and enact the UKBA. However, resistance to change the status quo regarding how business is done delayed its enactment until 2010 (Kochan & Goodyear, 2011).

The UKBA applies to natural individuals, as well as legal entities with ties to the UK. In that sense, similar to the FCPA, it has transnational jurisdiction and can enforce its principles to UK citizens and companies situated abroad, as well as foreign companies either publicly listed in

the UK, incorporated in the UK or incorporated outside the UK but doing commercial activities within the UK (Ministry of Justice - UK, 2010).

Individuals and commercial organizations can be prosecuted for engaging in active bribery, passive bribery and bribery of foreign officials (the latter includes both active and forms of bribery, but it's treated as a separate offense). Additionally, commercial organization can also be prosecuted for failing in preventing acts of bribery performed by a person associated to it. The UKBA defines "associated person" as any kind of individual or legal entity that "*performs services for or on behalf of the organization*" (Ministry of Justice - UK, 2010, p. 16). This means, that if an employee of a given organization is guilty of bribery, but there is not enough proof that the organization itself was behind it, it could still be facing charges for failing in preventing the bribe committed by its employee (Kochan & Goodyear, 2011).

Similar to the FCPA, the UKBA also acknowledges that hospitality, promotional and other business expenditures are an important part of doing business. However, these may be considered as bribes if they are not proportionate and are meant to gain financial advantages, retain businesses or influence a decision. For this, a "common sense approach" is recommended (Ministry of Justice - UK, 2010).

It must be noted however that, unlike the FCPA, the crimes of active bribery, passive bribery and failure to prevent bribery, all apply in both public and private spheres. The crime of bribing a foreign official remains restricted to public officials and is treated separately in order to reflect the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Kochan & Goodyear, 2011; Ministry of Justice - UK, 2010). Additionally, unlike the FCPA but similar to the Peruvian Criminal Code, the UKBA does not make an exemption for small payments to facilitate routine government action, a.k.a. facilitation payments (Ministerio de Justicia y Derechos Humanos - Perú, 2016; Ministry of Justice - UK, 2010).

In order for a commercial organization to prevent bribery, it should develop a Corporate Compliance & Anti-Corruption programme. However, given the fact that there is no one-size-fit-all solution for Corporate Compliance & Anti-Corruption programmes, the UKBA

establishes six principles on which companies should base their programmes on (Ministry of Justice - UK, 2010). These are:

- **1. Proportionate Procedures:** The policies and procedures to prevent acts of bribery must be proportionate to the risk level, nature of business, scale of operations and complexity of commercial activities of the company. To implement the anti-bribery policies, these should trigger the development of specific documented procedures that address the identified bribery risks. (Ministry of Justice - UK, 2010).
- **2. Top Level Commitment:** The owners or Board of Directors (depending on the nature of the organization) need to show and communicate the organization's commitment in preventing bribery, as well as be involved in key-decision making relating to corruption risk (Ministry of Justice - UK, 2010).
- **3. Risk Assessment:** The company should periodically identify, diagnose and assess its bribery risks (including third party risk), and inform & document its results (Ministry of Justice - UK, 2010).
- **4. Due Diligence:** By employing a risk-based approach, the company needs to perform third party due diligence to active or potential business partners that perform services for, or on behalf of, the company. The depth of the due diligence activities are proportionate to the risk level that the third party poses to the company (Ministry of Justice - UK, 2010).
- **5. Communication (including training):** The company needs to make an internal and external communication campaign that includes training activities proportionate to the bribery risk it faces (Ministry of Justice - UK, 2010).
- **6. Monitoring and Review:** As bribery risks and certain company circumstances may change over time, the company needs to continuously monitor and review its anti-bribery policies and procedures and make necessary improvement when applicable (Ministry of Justice - UK, 2010).

4.3.3. The NTP-ISO 37001:2017

The NTP-ISO 37001:2017 was developed and published in 2017 by INACAL, which is a formal member of ISO. As such, it was in charge of the official translation and adoption of the

international voluntary standard "*ISO 37001:2016 for Anti-bribery management systems*" (INACAL & ISO, 2017).

In its guidance document, the NTP-ISO 37001:2017 specifies requirements and guidance for establishing, implementing, maintaining, revising and improving an Anti-Bribery system. These systems may be independent or be integrated to other management systems or standards, such as the "*ISO 19600:2014 for compliance management systems*" (INACAL & ISO, 2017).

Being a voluntary standard, it does not criminalize any kind of action related to bribery. However, its proposed system does address and attempts to prevent any form of active and passive bribery in both public and private spheres committed by either the organization itself, its employees and any related third parties that act on behalf of the organization. In that sense, the NTP-ISO 37001:2017 excludes money laundering and terrorism financing activities as covered by the Peruvian Anti-Corruption law L.D. 1353, but it adds passive forms of bribery which are not covered in that law (INACAL & ISO, 2017; Ministerio de Justicia y Derechos Humanos - Perú, 2017).

The core elements of an Anti-Bribery system proposed by the NTP-ISO 37001:2017 are:

- **Context of the organization:** This includes understanding the organization, its context, needs and expectations, as well as determining the scope of the Anti-Bribery system. Under this element the general design of the Anti-Bribery system is included, as well as performing Bribery Risk Assessments to focus Anti-Bribery efforts and resources where they are most needed (INACAL & ISO, 2017).
- **Leadership:** This includes establishing the commitment of upper management, as well as the roles and responsibilities of the systems governing body and all compliance functions. Designing an anti-bribery policy and allocating the necessary resources for its compliance is also part of this core element (INACAL & ISO, 2017).
- **Planning:** This includes actions to manage risks and opportunities, as well as setting Anti-Bribery compliance objectives and planning these activities (INACAL & ISO, 2017).

- **Support:** This includes allocating the right resources and competencies to the system, as well as performing training and communication activities and properly managing all anti-bribery related documentations (INACAL & ISO, 2017).
- **Operation:** This includes performing due diligence activities, implementing anti-bribery controls, establishing the organization's commitment to anti-bribery, and having documented and auditable procedures related to gifts & hospitality, donations, speak-up activities (i.e. whistleblowing) and for conducting investigations (INACAL & ISO, 2017).
- **Performance Evaluation:** This includes continuous monitoring, measuring and auditing of the Anti-Bribery system by the owners / board of directors, top-management, governing body and compliance officer (depending of the company's size and structure, some roles might not be applicable) (INACAL & ISO, 2017).
- **Improvement:** This includes addressing non-conformities that resulted from the performance evaluations, as well as taking corrective actions to any bribery related activities (e.g. disciplinary actions, internal investigations) (INACAL & ISO, 2017).

4.3.4. Principle 10 of The United Nations Global Compact (Anti-Corruption)

The United Nations Global Compact has developed 10 principles that are encouraged to be incorporated by companies into their strategies, policies and procedures in order to promote sustainable development (United Nations Global Compact, n.d.). These are:

Table 4: Ten Principles of the UN Global Compact

Category	Principle
Human Rights	**Principle 01:** Businesses should support and respect the protection of internationally proclaimed human rights; and
	Principle 02: make sure that they are not complicit in human rights abuses.
Labour	**Principle 03:** Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
	Principle 04: the elimination of all forms of forced and compulsory labour;
	Principle 05: the effective abolition of child labour; and
	Principle 06: the elimination of discrimination in respect of employment and occupation.
Environment	**Principle 07:** Businesses should support a precautionary approach to environmental challenges;
	Principle 08: undertake initiatives to promote greater environmental responsibility; and

Category	Principle
	Principle 09: encourage the development and diffusion of environmentally friendly technologies.
Anti-Corruption	**Principle 10:** Businesses should work against corruption in all its forms, including extortion and bribery.

Source: United Nations Global Compact (n.d.)

Whilst Principle 10 does not give specific guidance on how businesses may work against corruption, the United Nations has developed a self-assessment tool depicting specific features companies should have in place. The tool is in a questionnaire format, similar to an auditing checklist (United Nations Global Compact, 2010).

Even though there is no specific mention of implementing a Corporate Compliance & Anti-Corruption programme, having all of these elements in place would yield in having a Corporate Compliance & Anti-Corruption programme implemented due to the similarity to the elements mentioned in other Anti-Corruption hard and soft law (DOJ & SEC, 2014; INACAL & ISO, 2017; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Ministry of Justice - UK, 2010; United Nations Global Compact, 2010). These are:

- **Clear stance against corruption:** The company's highest authorities have declared that that they will not engage in corruption at any time, thus setting the tone at the top. Moreover, the company has developed an anti-corruption policy prohibiting corruption-related activities (United Nations Global Compact, 2010).
- **Anti-Corruption Risk Assessment:** The company conducts risk assessments, has developed action plans to mitigate the identified corruption risks and has defined the roles and responsibilities for addressing them (at least for the higher risks) (United Nations Global Compact, 2010).
- **Awareness raising:** The company ensures that its workers are properly trained by informing them about its anti-corruption commitment, providing regular anti-corruption training for exposed staff, informing all staff about disciplinary procedures for violating the anti-corruption policies, seeking active worker feedback and dialogue about anti-corruption initiatives, and by promoting the use of a mechanism to safely

report suspicions of corrupt activities (i.e. whistle-blower programme) (United Nations Global Compact, 2010).

- **Anti-Corruption procedures:** The company's internal procedures support its anti-corruption commitment by assigning different individuals to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments, among other activities (United Nations Global Compact, 2010).
- **Agents and other associates:** The company's anti-corruption initiatives need to cover agents, intermediaries and consultants. For this, the company should perform due diligence for its agents, intermediaries and consultants; have all agreements with them be fully documented, signed and have an anti-corruption clause; have their selection criteria and terms of references approved by senior management; provide them with the company's anti-corruption material; ensure that all payments are conducted with the company's standard procedures and that they are never paid in cash (United Nations Global Compact, 2010).
- **Joint Actions:** The company should take joint actions with others to engage and promote anti-corruption initiatives. For this the company should share its anti-corruption experiences with other organizations; participate in other company's initiatives to promote fair business environment; stimulate multi-stakeholder dialogue on corruption; and encourage its local business community to fight corruption (United Nations Global Compact, 2010).

The complete checklist can be found in Appendix 04.

4.3.5. Bringing Corporate Compliance & Anti-Corruption standards together

By comparing the core elements of Corporate Compliance & Anti-Corruption programmes proposed by different hard and soft laws and standards, it becomes noticeable that they share similar characteristics. Even though each one of them might have different scopes (public vs private corruption; stance towards facilitation payments and economic extortion, etc...), it seems that most of them agree that:

- Top management needs to set the tone at the top by sending out their clear stance against corruption.
- This stance needs to be reflected on the company's code of conduct and be further specified in their policies and procedures.
- These policies and procedures need to be proportionate and in context of the organization, which should be achieved by employing a risk-based approach by conducting a Corruption Risk Assessment.
- The policies and procedures should include due diligence procedures (including third parties that act for or on behalf of the organization, as well as merger & acquisition activities), incentives and disciplinary measures for non-compliance and a safe and retaliation-free whistle-blower system.
- Additionally, the whole programme should have autonomy from management and sufficient resources, as well as be continuously monitored and improved.
- Finally, all staff needs to be properly communicated and trained regarding the anti-corruption programme, with tailored content appropriate to their exposure to corruption risk.

  (DOJ & SEC, 2014; INACAL & ISO, 2017; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Ministry of Justice - UK, 2010; United Nations Global Compact, 2010).

The following matrix lists all of the aforementioned core elements found on the FCPA, UKBA, NTP-ISO 37001:2017, Principle 10 of the UN Global Compact and the Peruvian Anti-Corruption law L.D. 1353; and depicts under which title they can be found within each one of those laws and standards. The reason for adding L.D. 1352 even though it was already mentioned that the full model will probably follow NTP-ISO 37001:2017, is because currently the ISO norm seems to be structured quite differently to the core elements stipulated on L.D. 1352.

Table 5: Core Elements of Corporate Compliance & Anti-Corruption Programmes vs. Hard & Soft laws and regulations

Standards / Core Elements	FCPA	UKBA	ISO 37001	Principle 10 UN Global Compact	L.D. 1352
Tone at the Top	Commitment from Senior Management and a clearly articulated policy against corruption	2. Top-level commitment	Leadership	Signalling a non-corrupt environment	17.2.1 High Authority in charge of the programme with sufficient resources and autonomy
Code of Conduct, Policies & Procedures	Code of Conduct and Compliance Policies & Procedures	1. Proportionate procedures 5. Communication (including training)	Operation	Anti-Corruption procedures Awareness raising	Not specified but could be a result of 17.2.2 Risk Assessment (mitigation efforts) and is included in proposal RM-N°061-2018-JUS
Autonomy & Resources	Oversight, Autonomy, and Resources	2. Top-level commitment	Leadership Support	Signalling a non-corrupt environment Awareness raising	17.2.1 High Authority in charge of the programme with sufficient resources and autonomy
Risk Assessment	Risk Assessment	3. Risk Assessment	Context of the Organization Planning	Anti-Corruption risk assessment	17.2.2 Risk Assessment
Training & Communication	Training and Continuing Advice	5. Communication (including training)	Support	Awareness raising	17.2.4 Communication & Training
Disciplinary Measures & Incentives	Incentives and Disciplinary Measures	1. Proportionate procedures	Improvement	Awareness raising	Not specified but could be a result of 17.2.2 Risk Assessment (mitigation efforts) and is included in proposal RM-N°061-2018-JUS
Due Diligence	Third Party Due Diligence and Payments Mergers and Acquisitions – Pre-Acquisition Due Diligence and Post-Acquisition Integration	4. Due diligence	Operation	Agents and other associates	Not specified but could be a result of 17.2.2 Risk Assessment (mitigation efforts) and is included in proposal RM-N°061-2018-JUS
Whistle-Blowing System	Confidential Reporting and Internal Investigation	1. Proportionate procedures 2. Top-level commitment 5. Communication (including training)	Operation	Anti-Corruption procedures	17.2.3 Whistleblowing procedures

Standards / Core Elements	FCPA	UKBA	ISO 37001	Principle 10 UN Global Compact	L.D. 1352
Monitoring & Review	Continuous Improvement – Periodic Testing and Review	6. Monitoring and review	Performance evaluation Improvement	Anti-Corruption procedures	17.2.5 Continuous monitoring and evaluation
Other distinct Core Elements	Nothing Further	Nothing Further	Nothing Further	Joint Actions	Nothing Further

Source: Own work based on DOJ & SEC (2014); INACAL & ISO (2017); Ministerio de Justicia y Derechos Humanos - Perú (2017); Ministry of Justice - UK (2010); United Nations Global Compact (2010)

It can be seen from the matrix above that, while structured differently, most of the hard and soft laws and standards include the same core elements. The Peruvian Anti-Corruption law seems to be the less complete one, but the Peruvian government still needs to publish the law's regulation, in which all elements will be described in greater detail and may serve as a manual for complying companies (Ministerio de Justicia y Derechos Humanos - Perú, 2017).

Another noticeable difference is the inclusion of "Joint Actions" by the UN Global Compact, which goes beyond implementing the Corporate Compliance & Anti-Corruption programme at just the company level, and expands it beyond it by involving different stakeholders (United Nations Global Compact, 2010). This difference will be further discussed in section "5. Discussion" of this paper.

4.4. Perception of local subject matter experts on Corporate Compliance & Anti-Corruption programmes (Results from the conducted interviews)

The previous section addressed the composition and core elements of Corporate Compliance & Anti-Corruption programmes, by comparing different hard & soft laws and standards that are applicable in the Peruvian context. This section presents the views and perceptions of the interviewees (one Compliance Officer and one Compliance Consultant) regarding the motivation of implementation, challenges, benefits, and additional effects of implementing these programmes.

When asked about the main factors behind the decision of implementing a Corporate Compliance & Anti-Corruption programme, the Compliance Officer stated that Peruvian companies perceive the implementation of these programmes as mandatory, even if they are not. Not having one is an unnecessary exposure to legal risks. According to him, this view on Corporate Compliance & Anti-Corruption programmes is a threat because compliance should be promoted as a "culture", in which business integrity is put forward as a way to give back to the community, and not as a "fear policy" in which "*if you don't have it, you go to prison*" (E. Contreras, phone interview, April 26, 2018). Moreover, he stated that a "compliance culture" can endure the test of time and be long-lasting, as opposed to a "fear policy" that only is complied with when being under surveillance. Finally, he mentioned that the mitigation of legal risks should be an added bonus and not the main reason for having compliance programmes.

The consultant had similar opinions. He/she said that most clients are reaching out to consulting firms seeking advice in order to comply with the laws they are subject to. In the case of companies that only want to comply with the Peruvian Anti-Corruption law L.D. 1352, they seek to implement the minimum requirements. For instance, they do not wish to include Anti-Corruption statements in their Code of Conduct (if they even have one) nor implement dedicated Anti-Corruption policies and procedures because it is not explicitly mentioned as a minimum requirement (Ministerio de Justicia y Derechos Humanos - Perú, 2017). The consultant also mentioned that Peruvian companies see these programmes as "insurance policies" rather than programmes to boost ethical behaviour, and that consulting firms are using a "compliance approach" as sales-pitch in order to sell their services (similar to the "fear policy" mentioned by the Compliance Officer).

When asked about the main challenges of implementing Corporate Compliance & Anti-Corruption programmes, the Compliance Officer stated that it can be difficult, costly and complicated. For him, the programmes should be self-regulated. I made the clarification that they indeed are self-regulated and that they are all based on the risk levels of each company. However, he then claimed that they are not self-regulated because "*the regulations of each*

law include details on how to implement these programmes. If you don't do it exactly how they say, then you are exposing yourself" (E. Contreras, phone interview, April 26, 2018).

The consultant perceived different challenges to implementing Corporate Compliance & Anti-Corruption programmes. Besides the usual resistance of employees when implementing change in a company, the consultant stressed that "*there is fear of admitting that corruption has occurred before*" and that "*they do make facilitation payments*" (The Consultant, phone interview, April 27, 2018). In his/her personal experience, the consultant has encountered cases while conducting corruption risk assessments in which "old managers" denied the existence of certain corruption-related risks validated by "newer managers"

When asked about the main benefits of implementing Corporate Compliance & Anti-Corruption programmes, the Compliance Officer stated that it helps mitigating risks, not only legal but also reputational ones, and that it is a great tool to generate an ethical culture and to ensure the organizations sustainability over time. The Consultant said that, while it might not be the ultimate solution to end corruption, it does help. Whistle-blowing mechanisms are great tools in which any employee at any organizational level can express and elevate their concerns.

When asked about additional effects or changes that have resulted as a consequence of implementing Corporate Compliance & Anti-Corruption programmes, the Compliance Officer claims to have perceived that some employees (not everyone) are more aware of the dangers of corruption. Additionally, he claimed that more red flags are being reported than before. He also pointed out that sometimes employees go beyond compliance and make reports of things that they needn't to report. The Consultant, in contrast, didn't have much to say since consultant's leave the organization once the programmes are implemented. However, he/she claimed that many organizations resume contact with his/her firm because they do not finish implementing them.

Finally, both were asked if they felt that Corporate Compliance & Anti-Corruption programmes help in reducing corruption. The Compliance Officer said that it does help by creating a space in which people can react to corrupt activities. He also claimed that perception of corruption has increased not because there are more corrupt people, but

because people are more indifferent to it. Compliance Programmes can help in reducing that indifference. However, he also stated that it only works if there is an actual commitment from upper management and made the example of Odebrecht that had a solid Compliance Programme and still perpetuated corrupt activities. The Consultant claimed that these programmes do not reduce corruption at a national level. They serve as an insurance policy but that doesn't impede people from being corrupt.

The following table summarizes the results of the interviews by identifying common themes proposed by both interviewees and categorizes them by general interview topic (motivation, challenges, benefits, additional effect) and source of the mentioned factor or issue (exogenous and endogenous).

Table 6: Main Interview Themes Identified

	Exogenous Factors	Endogenous Factors
Motivation	- Mandatory compliance	- Mitigation of legal risk (insurance policy)
Challenges	- Perceived lack of self-regulating nature	- Costs & lack of resources - Easy non-compliance / Override by Management
Benefits	- Increased chances to expose wrongdoings	- Mitigation of not just legal risks, but reputational, operational and other risks as well. - Generation of ethical culture - Assurance of company's sustainability
Additional Effects	- Increased compliance awareness (national level)	- Increased compliance awareness (firm level) - Overcompliance (non-corruption related reports) - Failure to complete programme implementation
Ends Corruption?	- It helps, but fails if public officials demand corruption	- It helps, but only if management walks the talk (easy to override controls by upper management)

Source: Own work

5. Discussion

The conducted interviews show that Peruvian companies see the benefits of implementing Corporate Compliance & Anti-Corruption programmes, as they mitigate legal and reputational risk, and help generating an ethical culture. I purposely make the generalization to Peruvian companies because a) the Compliance Officer did not base his answers on his own personal experience, but also on the ones he got to see in different Peruvian Corporate Compliance forums, trainings, and seminars and b) the views shared by the consultant reflect the reaction of many of his/her firms clients, at different organizational levels. Also, while the gathered perception might still not be representative for Peruvian companies, generalizations of single experiences can be central to scientific development as they serves as a form of example, especially in social sciences (Flyvbjerg, 2006).

While both interviewees stressed the positive reception of having safe whistle-blowing mechanisms, they were also critical about the overall effect these programmes might have.

First, the motivation behind the decision of implementing Corporate Compliance & Anti-Corruption programmes in Peruvian companies seems to come out from perceived mandatory compliance reasons. Despite the voluntary nature of adopting these programmes (DOJ & SEC, 2014; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Ministry of Justice - UK, 2010), Peruvian companies perceive the design and implementation of Corporate Compliance & Anti-Corruption programmes as mandatory.

This perception might be explained by using Institutional Theory. From an Institutional Isomorphism perspective (see DiMaggio & Powell, 1983), it seems that Peruvian Companies are actively seeking to design and implement Corporate Compliance & Anti-Corruption programmes due to perceived coercive pressures imposed by the government. I'd like to emphasize the word "*perceived*" from the previous statement, because L.D. 1352, the FCPA and the UKBA all indicate that Corporate Compliance & Anti-Corruption programmes are voluntary and are only useful for a companies if they are charged for corruption and would like to have the sentence reduced or be exempt from it (DOJ & SEC, 2014; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Ministry of Justice - UK, 2010).

In that sense, due to the voluntary nature of these programmes, some people could argue that Peruvian companies might be implementing Corporate Compliance & Anti-Corruption programmes because they feel that it is the socially expected thing to do (normative pressures), or simply because everybody else is doing it (mimetic pressures). However, since individuals construct their own reality according to their own experiences and perceptions, Peruvian companies implement them because they perceive that "*if you don't have it, you go to prison*" (E. Contreras, phone interview, April 26, 2018), making the main motive of implementation coercive pressures (Creswell, 2014; Crotty, 1998; DiMaggio & Powell, 1983).

By looking at corruption scandals over time, some scholars also argue that Anti-Corruption laws are getting stricter because regulators think that organizations can't or won't govern themselves adequately (Ashforth, Gioia, Robinson, & Treviño, 2008). Perhaps this could indicate that, despite of the voluntary nature of Anti-Corruption laws, regulators might be actively trying to make companies perceive coercive isomorphisms.

Another reason that can be attribute the perception that Corporate Compliance & Anti-Corruption programmes are mandatory might be explained due to conflicting formal and informal Peruvian institutions. As described by North (1990), formal and informal institutions are "*the humanly devised constraints that structure human interactions*" (North, 1990, p. 3). Here, the Peruvian Anti-Corruption law, the Peruvian Criminal Code and other formal institutions like the Peruvian National Anti-Corruption Plan and the CAN clearly demonstrate a clear stance against corruption in all of its forms (CAN, 2018; Ministerio de Justicia y Derechos Humanos - Perú, 2016, 2017).

Interestingly, informal institutions do consider certain corrupt practices like favouritism, nepotism and lavishing gift giving or "compadrazgo" as socially accepted and even socially expected practices (Jancsics, 2014; Kochan & Goodyear, 2011). Additionally, Peru's highest authorities that are supposed to represent the will of the citizens and be advocating against corruption, are all facing charges or being investigated for engaging in the very same thing they promised to eradicate (Faiola, 2018; Long, 2018).

What is one to do when local institutions (North, 1990; Scott, 1995) enter in conflict with local legislation? How is an organization to react when coercive pressures pushes a company in one

direction, and normative pressures in the opposite direction (DiMaggio & Powell, 1983)? In the case of bribery, this issue is even more complicated. While bribery is legally and normatively forbidden (Nichols, 2012), it is still somehow expected by some public authorities.

Acknowledging these questions highlights one of the points made by the Consultant during the interviews. On the one hand, the government is publishing Anti-Corruption laws that companies need to comply with, but on the other hand, the government and its public institutions are still corrupt and demands illegal payments to companies (The Consultant, phone interview, April 27, 2018).

These conflicting attitudes towards corruption could be seen as form of "institutional dualities". Usually, institutional dualities are used in International Business literature and serve to describe when the institutions of a MNC's home country enter in conflict with the institutions of the host country in which a MNC has a subsidiary is (Hillman & Wan, 2005; Kostova & Roth, 2002). But, what happens when the institutional duality is within the same country?

Institutional dualities can be a reason why Peruvian companies see Corporate Compliance & Anti-Corruption programmes as something they just need to comply with, but not really believe in. If Peru declares that it will not tolerate corruption, but has had institutionalized corruption since before its independence (Horna, 2016; A W Quiroz, 2006), Peruvian companies can also "declare" that they will not tolerate corruption, but continue doing business in a corrupt manner.

In that sense, the perceived coercive pressures to implement Corporate Compliance & Anti-Corruption programmes and the given institutional dualities regarding corruption in the Peruvian context might explain why the interviewees claimed that most Peruvian companies are seeing these programmes as an "*insurance policy*" (The Consultant, phone interview, April 27, 2018) that helps "*only to mitigate legal risks*" (E. Contreras, phone interview, April 26, 2018).

Second, the fact that Peruvian companies are implementing Corporate Compliance & Anti-Corruption programmes "*only to mitigate legal risks*" (E. Contreras, phone interview, April 26, 2018) and see them as an "*insurance policy*" (The Consultant, phone interview, April 27, 2018), might have implications on how these are designed, and consequently on their effectiveness. As stated by Laufer (1999) "*precisely because they are "insured" (against legal risk) corporations appear to pay much less attention to actually preventing unlawful conduct within the organization (hence the moral hazard), with the obvious potential consequence of a (paradoxical) increase in wrongdoing*" (Laufer, 1999, p. 1405).

According to the interviews, implementing these programmes are costly and usually not enough resources are allocated to them. Also, Peruvian companies seem to always ask consultancy firms to help them achieve the minimum required by the law. This is also a paradoxical issue since Corporate Compliance & Anti-Corruption programmes indicate that top-management need to set the tone at the top and do everything they can to stop corrupt activities by allocating enough resources (DOJ & SEC, 2014; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Ministry of Justice - UK, 2010). However, they want to achieve this by "*doing the bare minimum required*" (The Consultant, phone interview, April 27, 2018).

This puts the effectiveness of the programme at risk because, on the one hand "*controls are designed more on the basis of how they can be audited than on the basis of their actual effectiveness*" (Centonze, 2014, p. 49), and on the other hand, top-management is apparently not "walking the talk". While this doesn't necessarily mean that organization that ask for the minimum compliance requirements are corrupt, it doesn't mitigate corruption risk.

Interestingly, in terms "Autonomy & Resources", which is one of the core elements of Corporate Compliance & Anti-Corruption programmes (DOJ & SEC, 2014; INACAL & ISO, 2017; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Ministry of Justice - UK, 2010; United Nations Global Compact, 2010), a parallel can be drawn between the responses of the interviewees and the OECD's Integrity Review of Peru 2017 regarding the CAN:

Table 7: Parallel between OECD's Integrity Review of Peru 2017 regarding the CAN and the collected perception from the interviews in terms of "Autonomy & Resources"

	OECD's Integrity Review of Peru	Perceptions collected from Interviews
Autonomy	- Lack of independence from political interference	- While compliance offices are functionally autonomous from management (e.g. legal department), it is easy for controls to be overridden by management
Resources (staff)	- Lack of specialised and trained staff	- The compliance function is usually "tossed" to the company's general counsel
Resources (budget and power)	- Inadequate resources and powers at CAN's disposal	- Lack of resources

Source: Own work based on OECD (2017) and the conducted interviews

Despite of compliance offices and the CAN being two different things on different contextual levels of analysis, the table above shows that there are strong similarities between how Peruvian Companies perceive Corporate Compliance & Anti-Corruption programmes to be, and how the OECD perceives the CAN. It must be noted, that CAN is *"the body officially mandated to guide the public integrity system*" (OECD, 2017, p. 27), and thus has the same function as a Compliance Officer (or ethics committee in which the compliance officer is part of, depending on the company) just on a larger level.

Perhaps one of the reasons why Anti-Corruption efforts in Peru are not given the necessary amount of resources is because executives (and also politicians if seen outside the firm level) are creating their own institutions where corruption is allowed to deal with uncertainty (Lambsdorff & Taube, 2004). As seen in "the Peruvian context" section of this work, Peru's GDP per capita PPP has been increasing over time, while its GINI coefficient has been declining (The World Bank, 2018b). Usually, economic growth and competition are negatively correlated to corruption, and inequality positively correlated to it (Treisman, 2000; You & Khagram, 2005). However, Peruvian perceptions on corruption and corruption control are still low despite of its increased GDP per Capita PPP and lower GINI coefficient (Transparency International, 2017, 2018b, World Economic Forum, 2016, 2017).

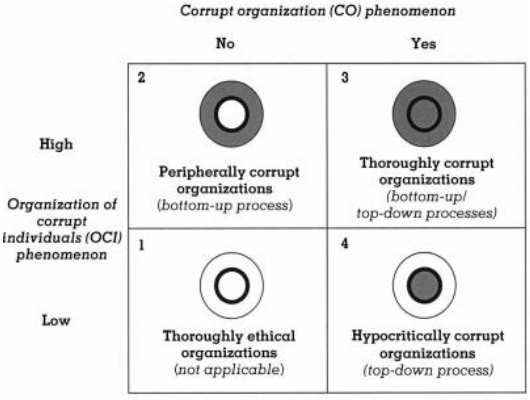
This could be explained because, despite of showing signs of progressive development, Peru is still in a developing process and political uncertainty is fairly high (The World Bank, 2018a). In that context, in order to reduce uncertainty, Peruvian executives might be creating their own institutions in which corruption is tolerated (Lambsdorff & Taube, 2004). Once some

executives start to act according to these institutions, other executives might follow and also start engaging in corruption. This can be seen as some kind of prisoner's dilemma, in which if a company doesn't engage in corruption, the competition will (Kochan & Goodyear, 2011).

This phenomenon might be creating a corruption trap, because the willingness of Peruvian executives to commit corrupt activities might depend on their perceptions of how corrupt their peers are (Krambia-Kapardis, 2016). A study tested the correlation between justifiability of corruption and perceived corruption, and concluded that the higher the perceived corruption is, the higher the citizens will deem corruption as justifiable (Dong, Dulleck, & Torgler, 2012). It must be also noted that there is still a glimpse of hope. During the interviews, the Consultant pointed out that the newer managers seem to be more proactive against corruption and show more willingness to expose the wrongdoings that are concealed by older managers.

Third, the fact that corruption is still happening at a national level and keeps being institutionalized is facilitated by the design of Corporate Compliance and Anti-Corruption programmes. Organizational corruption literature suggests that there two types of corruption at the organizational level: i) corrupt organizations, in which corruption is top-down phenomenon undertaken by top-management (either by themselves or through their subordinates); and ii) organizations of corrupt individuals; in which corruption is a bottom-up phenomenon (Pinto, Leana, & Pil, 2008). Since a company might be both kinds of organization at the same time, Pinto et al (2008) propose the following typology:

Figure 11: A Typology of Organizations Based on Occurrence of OCI and CO Phenomena



Source: Pinto et al. (2008, p. 700)

Applying this typology to the Peruvian case is relevant, because it opens up the possibility of considering different scenarios. By analysing the identified core elements found in Corporate Compliance & Anticorruption programmes (DOJ & SEC, 2014; INACAL & ISO, 2017; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Ministry of Justice - UK, 2010; United Nations Global Compact, 2010), it can be argued that Anti-Corruption programmes are based on a rational-actor approach to corruption, specifically principal-agent relations (see Jancsics, 2014).

If top-management needs to set the tone at the top and create a culture in which its employees do not participate in corrupt activities, it assumes that top-management are ethical individuals that show the way to the rest of the company. In that sense, it seeks to transform a peripherally corrupt organization into a thoroughly ethical organization. This ignores the scenarios in which companies are thoroughly corrupt organizations or, at least, hypocritically corrupt organizations (see Pinto et al., 2008).

Ignoring these scenarios might be the reason why Peruvian companies still "*make facilitation payments*" (The Consultant, phone interview, April 27, 2018) and why bribery scandals are still occurring (Faiola, 2018) despite of having Corporate Compliance & Anti-Corruption programmes in place. Interestingly, this problem directly reflects the criticisms of employing principal-agent theory to analyse corruption: it fails to address what happens if the principal is the corrupt party (Hansen, 2017).

This particular fact might also apply globally and explain why corruption is still an issue, even in companies from less corrupt countries. For instance, Swedish Telecom Telia was charged USD 1 billion in fines in September 2017 for its corrupt activities in Uzbekistan back in 2007, despite of having a compliance programme and coming from a country with low perceived corruption (Compliance Week, 2017; Telia Company, 2016, 2017; Telia Sonera, 2007; Transparency International, 2018b). This reinforces the point that the culture of a corrupt organization (see Pinto et al., 2008) trumps the wider national culture of the individual (Schweitzer, 2004).

While some could make the argument that Corporate Compliance & Anti-Corruption programmes also address corruption as a structural problem by attempting to create an

ethical organizational culture, according to the interviews, in practice these preventive controls seem to be more abstract and easily overridden by top management. For instance, unrealistic financial goal setting doesn't need to be written in paper in order to be expected by a manager from his employees. The same principle applies when seeing corruption under a relational approach (see Jancsics, 2014). One can make the argument that Corporate Compliance & Anti-Corruption programmes address both horizontal relationships and vertical relationships, the former by avoiding unrealistic goal setting and the latter by training & communication activities. However, this doesn't assure that corruption will not happen in the organization.

The idea that Corporate Compliance & Anti-Corruption programmes are mainly based on principal-agent dynamics and ignores the scenarios of corrupt organizations (Jancsics, 2014; Pinto et al., 2008) might be because these programmes are mostly based on Donald Cressey's Fraud Triangle (ACFE, 2016; Cressey, 1953; Deloitte, 2016; EY, 2014b; KPMG, 2013; PwC, 2011; United Nations Global Compact, 2013). Corporate Compliance & Anti-Corruption programmes seem to try to prevent employees in engaging in corruption by:

- Avoiding pressure by conducting employee due diligence to identify if someone has financial distress or a criminal record; and by avoiding setting unrealistic goals.
- Avoiding opportunity by increasing internal controls.
- Avoiding rationalization by conducting training and communication activities.

While training and communication activities, as well as avoiding setting unrealistic goals might cover corruption as a structural (organizational level) and relational problem, it doesn't really assure that top management is committed to it. Additionally, it doesn't address structural corruption at a national level. Odebrecht had a perfectly well established Corporate Compliance & Anti-Corruption programme and still managed to create one of the biggest corruption scandals (E. Contreras, phone interview, April 26, 2018).

By applying critical discourse analysis, Lokanan (2015) argues the Fraud Triangle centres itself on individual behaviour and ignores other societal and institutional factors. Additionally, it not only centres the causes for occupational fraud (and thus also corruption) in individual

behaviour, but also in a principal-agent relationship in which the fraudster puts his needs before the ones of the company.

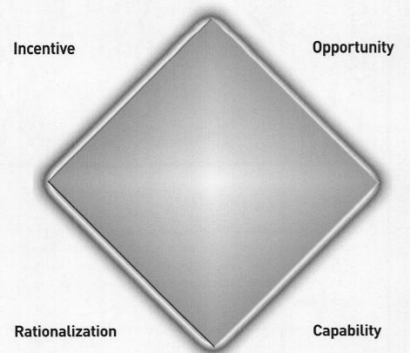
The “pressure” element restricts itself to financial shortcomings and is exemplified with drug addiction, gambling problem and other lifestyle issues with negative connotations. However, occupational fraud and corruption cases involving high earning executives are inconsistent with this description of the pressure element of the fraud triangle, as they do not show signs of having any kind of financial pressure. In that sense, it can be argued that the pressure element does not need to be neither non-sharable nor financial (Lokanan, 2015).

The “opportunity” element of the fraud triangle implies that either the company’s internal controls are not efficient, or that an employee is actively trying to circumvent them in order to get away with his scheme. Nevertheless, some cases show that sometimes internal controls are not necessarily circumvented by dishonest employees, but sometimes they are just overridden by the owners of the company themselves. For instance, in 2007 a partner in the management consulting and accounting firm EY turned a blind eye to the certain bookkeeping practices of Lehman Brothers in order to window dress their balance sheet just prior the 2008 financial crisis (Lokanan, 2015).

Finally, the “rationalization” element of the fraud triangle can’t really be seen and thus neither quantified nor measured. Additionally, it implies that the fraudster doesn’t perceive the wrongdoing in his action. For example, in an insider trading scandal involving KPMG partner Scott London, he claimed that he knew that what he was doing was wrong, but he still wanted to help the implied company out (Lokanan, 2015).

In attempt to improve the fraud triangle, some scholars have tried to create different adaptations of it. One is the fraud diamond, which trades the pressure element of the fraud triangle with “incentives”, thus eliminating the non-sharable financial pressure constraints; and adds a new element: “capability”. Capabilities in this context refers to human traits that make a person more or less prone to commit a crime (Wolfe & Hermanson, 2004).

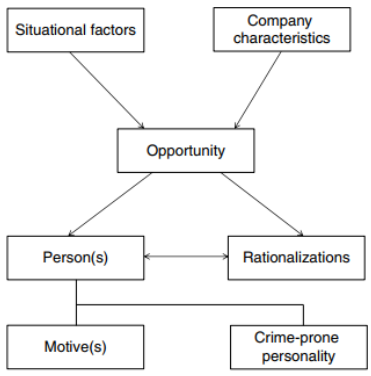
Figure 12: The Fraud Diamond



Source: Wolfe & Hermanson (2004, p. 38)

Another iteration of fraud triangle is the ROP Risk Assessment Fraud Model. In this model, ROP stands for Rationalization, Opportunity and Person. Having three elements, it is similar to the fraud triangle but eliminates the "pressure" element and includes the "person(s)" element. While "rationalization" stays equal as in the fraud triangle, "opportunity" is here influenced by situational factors and the company's characteristics. The "Person(s)" element is decomposed in "motive(s)" and "crime-prone personality" (Krambia-Kapardis, 2016).

Figure 13: ROP Risk Assessment Fraud Model



Source: Krambia-Kapardis (2016, p. 16)

The ROP Risk Assessment Fraud Model includes interesting characteristics that address the shortcomings of the fraud triangle. For once, by including "situational factors" to the "opportunity element", it acknowledges that besides defective internal controls, lack of a properly communicated code of conduct and other company characteristics, other situational factors like collusion opportunities come into play (Krambia-Kapardis, 2016). This addition has

even a bigger influence if one considers the institutional context as a situational factor that influences and even legitimizes certain criminal activity (Gabbioneta, Greenwood, Mazzola, & Minoja, 2013).

Similarly, the "person(s)" element adds the distinct characteristics of the individual (similar to the "capabilities" element in the fraud diamond), and addresses the fact that one or more persons might be involved (Krambia-Kapardis, 2016; Wolfe & Hermanson, 2004).

Despite of these contributions and extensions to the fraud triangle, for some reason the original version of it remains the most commonly used in the Corporate Compliance & Anti-Corruption industry today (ACFE, 2016; Deloitte, 2016; EY, 2014b; KPMG, 2013; PwC, 2011; United Nations Global Compact, 2013).

If academic contributions to the Fraud Triangle have not found their way into practical application up until now, I find that one way to "fix" the shortcomings of the original Fraud Triangle, and thus preserve its applicability without altering the original elements of "pressure", "opportunity" and "rationalization", is to eliminate the current boundaries to the perpetuators individual behaviour acting within a principal-agent relationship (Cressey, 1953; Krambia-Kapardis, 2016; Lokanan, 2015).

Pressures, besides the financial ones, might also be isomorphic pressures which influences the individual to engage in corruption because he is expected to (Cressey, 1953; DiMaggio & Powell, 1983). Opportunities might arise from both company characteristics and situational factors (Krambia-Kapardis, 2016). Finally, even though Lokanan (2015) argues that rationalization does not need to be present, his argument is based on the paradigm that rationalization is the lack of guilt felt by the individual (Cressey, 1953). This is not necessarily the case, since the perpetrator might find his actions legitimate given his local social norms and values (North, 1990; Scott, 1995). In that sense, companies could keep designing their Corporate Compliance & Anti-Corruption programmes by using the Fraud Triangle as a starting point, if they would expand its scope from the individual behaviour to a larger institutional context.

Finally, while it was established that Corporate Compliance & Anti-Corruption programmes do not address structural corruption on a national level, it must be noted that one of the analysed standards does include efforts that go beyond the company level: The Principle 10 of the UN Global Compact, which asks to have joint actions with other institutions to address corruption beyond the organization (United Nations Global Compact, 2010).

Table 8: UN Global Compact - Joint Actions

Question	JOINT ACTIONS
AC.6	**Does the company take joint actions with others to engage in and promote anti-corruption initiatives?**
Indicators	
a	The company shares experience, procedures and challenges of corruption with other organizations i.e. the local business community, sector initiatives, networks etc.
b	The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a fair business environment.
c	The company stimulates multi-stakeholder dialogue on challenges of corruption.
d	The company encourages the local business community and business partners to initiate cooperation to fight corruption.

Source: United Nations Global Compact (2010)

The proposed Joint Actions go beyond addressing the problem of corruption within own organizational boundaries and calls for multi-stakeholder engagement. During the interviews, the Consultant welcomed such initiatives but showed certain degree of scepticism regarding the actual effectiveness of these efforts. It must be noted that Principle 10 of the UN Global Compact, as well as NTP-ISO 37001:2017 are the results of joint actions themselves (Hansen, 2017).

Joint Actions might have only come up as a core element of a Corporate Compliance & Anti-Corruption programme in the model proposed by the UN Global Compact (United Nations Global Compact, 2010), but these kind of initiatives have already existed for some time. Besides traditional forms of regulations, corruption is also governed by industry self-regulation and multi-stakeholder initiatives (Hansen, 2017).

For instance, the Maritime Anti-Corruption Network (MACN) is a voluntary Anti-Corruption industry-self-regulation proposed by Maersk in 2010 in the midst of growing FCPA and UKBA enforcement. In 2011, a still informal network of shipping companies was established to map the most challenging locations in terms of corruption. Finally, after gaining attention in the

media and international organizations, MACN was officially established in 2012. Up until today, MACN has managed to join various members of the maritime industry, establish official digital platforms for communication and interaction, and has participated in different projects with organizations like the UNDP and UNODC to address corruption (Hansen, 2017).

Likewise, the Extractive Industries Transparency Initiative (EITI) is an example of a multi-stakeholder initiative in which extractive companies, investors, civil society and governments act together to address corruption in the extractive industry by setting transparency standards (Hansen, 2017).

However, despite of addressing structural corruption at national level, studies show that countries that have agreed to be part of EITI do not show signs of be performing any better. The study analysed the performance of 16 countries, including Peru, that have participated in EITI during 1996-2014 in terms of voice & accountability, political stability, government effectiveness, regulatory quality, rule of law, control of corruption, foreign direct investment (% of GDP) and GDP per capita. The results concluded that these countries did not do better prior participating in EITI, nor did they outperform other countries during the same period. The researches behind the study attribute the following possible explanations: a limited mandate, its voluntary nature, stakeholder resistance, and dependence on strong civil society (Sovacool, Walter, Van de Graaf, & Andrews, 2016).

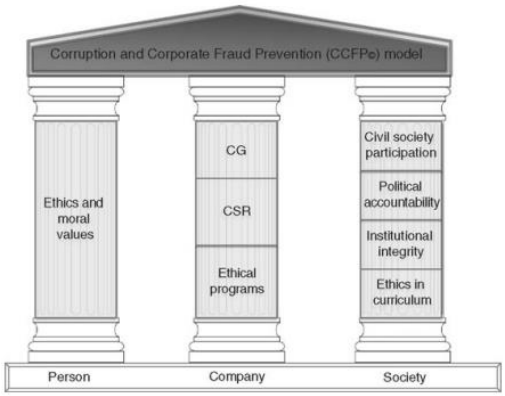
Sovacool's et al. (2016) findings do not necessarily discourage the use of joint actions, since some of the possible explanations mentioned in the study like "stakeholder resistance" and "dependence on strong civil society" might be addressed by promoting more joint actions to achieve change (Sovacool et al., 2016; United Nations Global Compact, 2010).

Other researchers also acknowledge that corporate corruption can't be only be mitigated with Corporate Compliance & Anti-Corruption programmes at the company level, and propose a holistic corruption and corporate fraud prevention model (Krambia-Kapardis, 2016), in which:

- The person applies ethics and moral values

- The company applies good corporate governance, corporate social responsibility and ethical programmes
- The society applies civil society participation, political accountability, institutional integrity and ethics in curriculum

Figure 14: A Holistic Corruption and Corporate Fraud Prevention Model



Source: Krambia-Kapardis (2016, p. 164)

Although it can't be expected from a company to apply one of these holistic models (in the Peruvian context, this should be done by the CAN), companies participating in joint actions might help involving the "person" and the "society" elements of the model in also addressing corruption in order to reduce it as a whole at a national level (Krambia-Kapardis, 2016).

6. Conclusion

This research has addressed the research question "How are Corporate Compliance and Anti-Corruption programmes perceived by Peruvian companies"?" by interviewing Peruvian professionals in the Corporate Compliance & Anti-Corruption field. The collected views and perceptions have been discussed with empirical data about the Peruvian and Anti-Corruption context within theoretical frameworks about neo-institutionalism and corruption. The following conclusions have been drawn:

First, the motivation behind implementing Corporate Compliance & Anti-Corruption programmes comes from perceived coercive isomorphisms (DiMaggio & Powell, 1983) that make companies believe that, if they do not implement them, they are risking legal liability despite of the voluntary nature of these regulations (DOJ & SEC, 2014; INACAL & ISO, 2017; Ministerio de Justicia y Derechos Humanos - Perú, 2017; Ministry of Justice - UK, 2010; United Nations Global Compact, 2010). This leads to the compliance programmes to be perceived as costly and strict, as opposed to having a self-regulating nature. Institutional dualities regarding forms of corruption that are prohibited by law but socially expected by local informal institutions further contributes to the perception that Corporate Compliance & Anti-Corruption programmes need to be complied with in paper, but not in practice (DiMaggio & Powell, 1983; Hillman & Wan, 2005; Jancsics, 2014; Kostova & Roth, 2002; Ministerio de Justicia y Derechos Humanos - Perú, 2016, 2017; North, 1990).

Second, due to the perceived coercive pressures and institutional dualities, Corporate Compliance & Anti-Corruption programmes are often perceived as just mechanisms to mitigate legal risks, which affects the programme's controls effectiveness as they become "*controls that can be audited rather than controls that are really effective*" (Cunningham, 2004, p. 269). This perception also leads to compliance programmes not having enough allocated resources, which further hinders their overall effectiveness. Resistance to implementing robust compliance programmes might be a manifestation of Peruvian executives creating their own institutions that are more "flexible" towards corruption to deal with policy uncertainty (Dong et al., 2012; Kochan & Goodyear, 2011; Krambia-Kapardis, 2016; Lambsdorff & Taube, 2004), and might explain why corruption is still an issue in Peru

despite of its better economic performance and lower inequality levels (The World Bank, 2018b; Transparency International, 2017, 2018b; World Economic Forum, 2017)

Third, the perceived ongoing corruption in Peru might be being facilitated by the design of Corporate Compliance and Anti-Corruption programmes. These are based on principal-agent relationships, perhaps because they are commonly based on the Fraud Triangle (Cressey, 1953; Deloitte, 2016; EY, 2014b; KPMG, 2013; PwC, 2011; United Nations Global Compact, 2013), and thus fail to address corruption in scenarios in which the principal is corrupt as well (Hansen, 2017; Jancsics, 2014; Pinto et al., 2008). This might explain why, according to the interviewees, top-management can still engage in corruption despite of having these programmes in place and hence explains recent corruption scandals in Peru and the Latin American region (Faiola, 2018; Long, 2018).

Finally, even if Corporate Compliance & Anti-Corruption programmes would be designed in a way that corruption is addressed as a structural and relational issue (Jancsics, 2014), they might still not be necessarily effective as other joint initiatives like EITI do not prove to be a way to achieve performance in terms of corruption control (Sovacool et al., 2016). However, further joint actions might address some of the factors that hinders the success of EITI, and might even help in achieving a holistic model to prevent corruption that includes society and the citizen as individuals (Krambia-Kapardis, 2016).

It must be noted that, despite of the general criticisms, the interviewees pointed out that they also perceive benefits, as these programmes can mitigate other kind of risks and help to generate a more ethical culture. A special emphasis on whistle-blower mechanisms was put on. Also, perceptions of Peruvian Corporate Compliance & Anti-Corruption experts suggest that newer generations of managers seem to be more aligned to the anti-corruption cause.

This work has contributed to the academic literature by bridging neo-institutionalism and corruption literature together and setting it up in the Peruvian context. While there is plenty of literature on Corruption and Corporate Compliance & Anti-Corruption programmes, these are mostly either descriptive works of latest anti-corruption practices (e.g. Kochan & Goodyear, 2011), or research critically analysing possible shortcomings of these efforts (e.g. Pinto et al., 2008). I have not encountered research that critically assesses Corporate

Compliance & Anti-Corruption programmes and brings the views and perceptions of active practitioners into the work, specifically in the Peruvian context. In that sense, this master's thesis might fill a gap in the literature and serve as starting point for potential further research on other Latin American countries, and eventually globally. This could yield in interesting results regarding the scope of the applicability of this work in other regions. Similarly, while literature criticising the applicability of the Fraud Triangle exists today (Krambia-Kapardis, 2016; Lokanan, 2015; Wolfe & Hermanson, 2004), these do not involve active practitioners into the studies and might be the reason why the findings have not found their way into practice yet.

I find that this work could be complemented by researching institutional dualities within one country in greater detail and apply that research in corruption studies. So far, there is interesting work on how MNE's deal with institutional dualities in host countries and which strategies subsidiaries might adopt to deal with them (Hillman & Wan, 2005; Kostova & Roth, 2002), but this needs to be further applied in the international Anti-Corruption legislation context. Additionally, replicating this work involving more Corporate Compliance professionals, as well as other actors that have some kind of interaction with these programmes (e.g. CEOs, Board members, mid-level management, supply chain professional dealing with third party due diligence, HR professionals dealing with training and communication activities, etc...), might enhance the gathered perceptions in this work. However, it must be noted that the interviewees (as consultant and compliance officer) deal with all kind of actors ranging from blue collar employees to members of the board and thus incorporated their own understanding of these views into their answers.

On practical terms, it is my hope that these findings might help policy makers in addressing corruption in new innovative ways that consider the institutional context of the applicable jurisdiction and see corruption as more than a principal-agent problem. Also, I hope that Compliance Officers can use these findings, so they include them in their own Corporate Compliance & Anti-Corruption programmes by, ironically, reducing the "compliance" view to "Corporate Compliance & Anti-Corruption".

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List of Appendixes

Appendix 01: Composition of the High-level Commission against Corruption (CAN)

Members with vote (10)	Members with voice but without vote (11)
President of the Congress (Congreso de la República)	Comptroller General (Contraloría General de la República, CGR)
President of the Judiciary (Poder Judicial)	Ombudsman (Defensoría del Pueblo)
Presidency of the Council of Ministers (Presidencia del Consejo de Ministros, PCM)	Executive Director of the Supervisory Body of Public Contracting (Organismo Supervisor de las Contrataciones del Estado, or OSCE)
Minister of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos)	President of the National Assembly of Deans (Asamblea Nacional de Rectores)
President of the Constitutional Court (Tribunal Constitucional)	President of the National Council for Public Ethics (Consejo Nacional para la Ética Pública, Proética)
President of the National Council of the Judiciary (Consejo Nacional de la Magistratura)	President of the National Confederation of Private Business Entities (Confederación Nacional de Instituciones Empresariales Privadas)
Attorney General (Fiscalia de la Nación)	Representative of the labour unions of Peru
President of the National Assembly of Regional Governments (Asamblea Nacional de Gobiernos Regionales)	Representative from the Catholic church
President of the Association of Municipalities (Asociación de Municipalidades)	Representative from the Evangelical church
Executive Secretary of the National Agreement (Acuerdo Nacional)	Executive Director of the Peruvian Press Council (Consejo Prensa Peruana)
	General Co-ordinator of the CAN (Coordinador General de la CAN)

Source: OECD (2017, p. 29)

Appendix 02: Corruption Perception Index 2017

Country	ISO3	Region	CPI Score 2017	Rank	standard error	Lower CI	Upper CI	number of sources
New Zealand	NZL	AP	**89**	1	2.4	85	93	8
Denmark	DNK	WE/EU	**88**	2	2.75	83	93	8
Finland	FIN	WE/EU	**85**	3	2.84	80	90	8
Norway	NOR	WE/EU	**85**	3	1.83	82	88	8
Switzerland	CHE	WE/EU	**85**	3	1.71	82	88	7
Singapore	SGP	AP	**84**	6	2.26	80	88	9
Sweden	SWE	WE/EU	**84**	6	2.27	80	88	8
Canada	CAN	AME	**82**	8	1.49	80	84	8
Luxembourg	LUX	WE/EU	**82**	8	2.08	79	85	6
Netherlands	NLD	WE/EU	**82**	8	2.23	78	86	8
United Kingdom	GBR	WE/EU	**82**	8	1.7	79	85	8
Germany	DEU	WE/EU	**81**	12	1.87	78	84	8
Australia	AUS	AP	**77**	13	1.4	75	79	9
Hong Kong	HKG	AP	**77**	13	2.37	73	81	7
Iceland	ISL	WE/EU	**77**	13	4.38	70	84	7
Austria	AUT	WE/EU	**75**	16	1.17	73	77	8
Belgium	BEL	WE/EU	**75**	16	1.63	72	78	8
United States of America	USA	AME	**75**	16	3.24	70	80	9
Ireland	IRL	WE/EU	**74**	19	3.68	68	80	7
Japan	JPN	AP	**73**	20	2.66	69	77	9
Estonia	EST	WE/EU	**71**	21	2.21	67	75	10
United Arab Emirates	ARE	MENA	**71**	21	6.26	61	81	7
France	FRA	WE/EU	**70**	23	1.36	68	72	8
Uruguay	URY	AME	**70**	23	2.67	66	74	7
Barbados	BRB	AME	**68**	25	3.24	63	73	3
Bhutan	BTN	AP	**67**	26	1.83	64	70	5
Chile	CHL	AME	**67**	26	2.03	64	70	9
Bahamas	BHS	AME	**65**	28	5.39	56	74	3
Portugal	PRT	WE/EU	**63**	29	2.56	59	67	8
Qatar	QAT	MENA	**63**	29	7.5	51	75	7
Taiwan	TWN	AP	**63**	29	3.28	58	68	8
Brunei Darussalam	BRN	AP	**62**	32	8.72	48	76	3
Israel	ISR	MENA	**62**	32	2.19	58	66	7
Botswana	BWA	SSA	**61**	34	2.74	57	65	7
Slovenia	SVN	WE/EU	**61**	34	2.78	56	66	10
Poland	POL	WE/EU	**60**	36	1.36	58	62	10
Seychelles	SYC	SSA	**60**	36	8.32	46	74	4
Costa Rica	CRI	AME	**59**	38	2.98	54	64	7
Lithuania	LTU	WE/EU	**59**	38	2.21	55	63	9
Latvia	LVA	WE/EU	**58**	40	3.21	53	63	9
Saint Vincent and the Grenadines	VCT	AME	**58**	40	3.39	52	64	3
Cyprus	CYP	WE/EU	**57**	42	3.78	51	63	7
Czech Republic	CZE	WE/EU	**57**	42	1.98	54	60	10

Country	ISO3	Region	CPI Score 2017	Rank	standard error	Lower CI	Upper CI	number of sources
Dominica	DMA	AME	**57**	42	2.55	53	61	3
Spain	ESP	WE/EU	**57**	42	3.78	51	63	8
Georgia	GEO	ECA	**56**	46	3.1	51	61	6
Malta	MLT	WE/EU	**56**	46	1.18	54	58	5
Cabo Verde	CPV	SSA	**55**	48	4.19	48	62	4
Rwanda	RWA	SSA	**55**	48	6	45	65	6
Saint Lucia	LCA	AME	**55**	48	4.27	48	62	3
Korea, South	KOR	AP	**54**	51	2.24	50	58	10
Grenada	GRD	AME	**52**	52	3	47	57	3
Namibia	NAM	SSA	**51**	53	3.22	46	56	6
Italy	ITA	WE/EU	**50**	54	3.72	44	56	8
Mauritius	MUS	SSA	**50**	54	4.41	43	57	5
Slovakia	SVK	WE/EU	**50**	54	3.32	45	55	9
Croatia	HRV	WE/EU	**49**	57	2.64	45	53	10
Saudi Arabia	SAU	MENA	**49**	57	6.14	39	59	7
Greece	GRC	WE/EU	**48**	59	2.98	43	53	8
Jordan	JOR	MENA	**48**	59	2.99	43	53	8
Romania	ROU	WE/EU	**48**	59	3.12	43	53	10
Cuba	CUB	AME	**47**	62	2.36	43	51	5
Malaysia	MYS	AP	**47**	62	2.67	43	51	9
Montenegro	MNE	ECA	**46**	64	2.45	42	50	5
Sao Tome and Principe	STP	SSA	**46**	64	5.21	37	55	4
Hungary	HUN	WE/EU	**45**	66	2.89	40	50	10
Senegal	SEN	SSA	**45**	66	2.52	41	49	9
Belarus	BLR	ECA	**44**	68	4.12	37	51	7
Jamaica	JAM	AME	**44**	68	3.96	37	51	7
Oman	OMN	MENA	**44**	68	7	33	55	5
Bulgaria	BGR	WE/EU	**43**	71	2.66	39	47	10
South Africa	ZAF	SSA	**43**	71	3.98	36	50	8
Vanuatu	VUT	AP	**43**	71	3.93	37	49	3
Burkina Faso	BFA	SSA	**42**	74	2.18	38	46	7
Lesotho	LSO	SSA	**42**	74	4.08	35	49	6
Tunisia	TUN	MENA	**42**	74	3.73	36	48	7
China	CHN	AP	**41**	77	1.96	38	44	9
Serbia	SRB	ECA	**41**	77	2.8	36	46	8
Suriname	SUR	AME	**41**	77	4.08	34	48	4
Trinidad and Tobago	TTO	AME	**41**	77	5.47	32	50	6
Ghana	GHA	SSA	**40**	81	2.56	36	44	9
India	IND	AP	**40**	81	2.16	36	44	9
Morocco	MAR	MENA	**40**	81	2.6	36	44	7
Turkey	TUR	ECA	**40**	81	1.8	37	43	8
Argentina	ARG	AME	**39**	85	2.92	34	44	8
Benin	BEN	SSA	**39**	85	4.17	32	46	6
Kosovo	KSV	ECA	**39**	85	2.13	36	42	5
Kuwait	KWT	MENA	**39**	85	2.47	35	43	6

Country	ISO3	Region	CPI Score 2017	Rank	standard error	Lower CI	Upper CI	number of sources
Solomon Islands	SLB	AP	**39**	85	3.71	33	45	3
Swaziland	SWZ	SSA	**39**	85	5.81	29	49	3
Albania	ALB	ECA	**38**	91	1.81	35	41	8
Bosnia and Herzegovina	BIH	ECA	**38**	91	2.56	34	42	7
Guyana	GUY	AME	**38**	91	1.84	35	41	5
Sri Lanka	LKA	AP	**38**	91	1.82	35	41	7
Timor-Leste	TLS	AP	**38**	91	7.5	26	50	3
Brazil	BRA	AME	**37**	96	4.24	30	44	8
Colombia	COL	AME	**37**	96	2.77	32	42	8
Indonesia	IDN	AP	**37**	96	3.12	32	42	9
Panama	PAN	AME	**37**	96	1.79	34	40	7
Peru	PER	AME	**37**	96	3.35	32	42	8
Thailand	THA	AP	**37**	96	2.03	34	40	9
Zambia	ZMB	SSA	**37**	96	2.46	33	41	9
Bahrain	BHR	MENA	**36**	103	1.81	33	39	4
Côte D'Ivoire	CIV	SSA	**36**	103	2.03	33	39	8
Mongolia	MNG	AP	**36**	103	1.4	34	38	9
Tanzania	TZA	SSA	**36**	103	1.55	33	39	9
Armenia	ARM	ECA	**35**	107	3.79	29	41	6
Ethiopia	ETH	SSA	**35**	107	1.36	33	37	9
Macedonia	MKD	ECA	**35**	107	4.49	28	42	6
Vietnam	VNM	AP	**35**	107	2.78	30	40	8
Philippines	PHL	AP	**34**	111	1.9	31	37	9
Algeria	DZA	MENA	**33**	112	2.32	29	37	6
Bolivia	BOL	AME	**33**	112	2.98	28	38	6
El Salvador	SLV	AME	**33**	112	3.25	28	38	7
Maldives	MDV	AP	**33**	112	1.71	30	36	3
Niger	NER	SSA	**33**	112	3.27	28	38	6
Ecuador	ECU	AME	**32**	117	2.66	28	36	7
Egypt	EGY	MENA	**32**	117	4.04	25	39	7
Gabon	GAB	SSA	**32**	117	3.22	27	37	4
Pakistan	PAK	AP	**32**	117	2.11	29	35	8
Togo	TGO	SSA	**32**	117	3.29	27	37	6
Azerbaijan	AZE	ECA	**31**	122	5.64	22	40	7
Djibouti	DJI	SSA	**31**	122	5.32	22	40	4
Kazakhstan	KAZ	ECA	**31**	122	3.59	25	37	9
Liberia	LBR	SSA	**31**	122	3.24	26	36	8
Malawi	MWI	SSA	**31**	122	1.85	28	34	9
Mali	MLI	SSA	**31**	122	2.08	28	34	7
Nepal	NPL	AP	**31**	122	2	28	34	6
Moldova	MDA	ECA	**31**	122	1.54	28	34	9
Gambia	GMB	SSA	**30**	130	6.22	20	40	6
Iran	IRN	MENA	**30**	130	3.51	24	36	7
Myanmar	MMR	AP	**30**	130	3.91	24	36	7
Sierra Leone	SLE	SSA	**30**	130	1.95	27	33	9

Country	ISO3	Region	CPI Score 2017	Rank	standard error	Lower CI	Upper CI	number of sources
Ukraine	UKR	ECA	**30**	130	2.27	26	34	9
Dominican Republic	DOM	AME	**29**	135	2.56	25	33	7
Honduras	HND	AME	**29**	135	2.32	25	33	8
Kyrgyzstan	KGZ	ECA	**29**	135	2.59	25	33	7
Laos	LAO	AP	**29**	135	5.89	19	39	5
Mexico	MEX	AME	**29**	135	1.69	26	32	9
Papua New Guinea	PNG	AP	**29**	135	2.55	25	33	6
Paraguay	PRY	AME	**29**	135	3.1	24	34	6
Russia	RUS	ECA	**29**	135	2.5	25	33	9
Bangladesh	BGD	AP	**28**	143	3.19	23	33	8
Guatemala	GTM	AME	**28**	143	2.19	24	32	7
Kenya	KEN	SSA	**28**	143	1.94	25	31	9
Lebanon	LBN	MENA	**28**	143	2.11	25	31	7
Mauritania	MRT	SSA	**28**	143	2.41	24	32	6
Comoros	COM	SSA	**27**	148	8.87	12	42	4
Guinea	GIN	SSA	**27**	148	2.37	23	31	7
Nigeria	NGA	SSA	**27**	148	1.97	24	30	9
Nicaragua	NIC	AME	**26**	151	1.29	24	28	8
Uganda	UGA	SSA	**26**	151	2.11	23	29	9
Cameroon	CMR	SSA	**25**	153	2.58	21	29	9
Mozambique	MOZ	SSA	**25**	153	2.87	20	30	8
Madagascar	MDG	SSA	**24**	155	2.72	20	28	8
Central African Republic	CAF	SSA	**23**	156	3.28	18	28	5
Burundi	BDI	SSA	**22**	157	3.29	17	27	6
Haiti	HTI	AME	**22**	157	2.05	19	25	6
Uzbekistan	UZB	ECA	**22**	157	2.11	19	25	7
Zimbabwe	ZWE	SSA	**22**	157	2.22	18	26	9
Cambodia	KHM	AP	**21**	161	2.43	17	25	8
Congo	COG	SSA	**21**	161	1.08	19	23	6
Democratic Republic of the Congo	COD	SSA	**21**	161	1.96	18	24	8
Tajikistan	TJK	ECA	**21**	161	2.36	17	25	5
Chad	TCD	SSA	**20**	165	2.73	16	24	6
Eritrea	ERI	SSA	**20**	165	5.74	11	29	5
Angola	AGO	SSA	**19**	167	1.28	17	21	5
Turkmenistan	TKM	ECA	**19**	167	1.78	16	22	5
Iraq	IRQ	MENA	**18**	169	2.47	14	22	5
Venezuela	VEN	AME	**18**	169	1.6	15	21	8
Korea, North	PRK	AP	**17**	171	4.18	10	24	4
Equatorial Guinea	GNQ	SSA	**17**	171	3.56	11	23	3
Guinea Bissau	GNB	SSA	**17**	171	1.7	14	20	5
Libya	LBY	MENA	**17**	171	3.05	12	22	5
Sudan	SDN	SSA	**16**	175	2.31	12	20	7
Yemen	YEM	MENA	**16**	175	1.85	13	19	7
Afghanistan	AFG	AP	**15**	177	1.39	13	17	5
Syria	SYR	MENA	**14**	178	1.93	11	17	5

Country	ISO3	Region	CPI Score 2017	Rank	standard error	Lower CI	Upper CI	number of sources
South Sudan	SSD	SSA	**12**	179	1.56	9	15	5
Somalia	SOM	SSA	**9**	180	2.26	5	13	5

GLOBAL AVARAGE	43.07

Corruption Perceptions Index 2017: Short Methodology Note

The Corruption Perceptions Index (CPI) aggregates data from a number of different sources that provide perceptions by business people and country experts of the level of corruption in the public sector.

The following steps are followed to calculate the CPI:

1. Select data sources: Each data source that is used to construct the CPI must fulfil the following criteria to qualify as a valid source:

- Quantifies perceptions of corruption in the public sector
- Be based on a reliable and valid methodology, which scores and ranks multiple countries on the same scale
- Performed by a credible institution
- Allow for sufficient variation of scores to distinguish between countries
- Gives ratings to a substantial number of countries
- The rating is given by a country expert or business person
- The institution repeats their assessment at least every two years

The CPI 2017 is calculated using 13 different data sources from 12 different institutions that capture perceptions of corruption within the past two years. These sources are described in detail in the accompanying source description document.

2. Standardise data sources to a scale of 0-100 where a 0 equals the highest level of perceived corruption and 100 equals the lowest level of perceived corruption. This standardisation is done by subtracting the mean of each source in the baseline year from each country score and then dividing by the standard deviation of that source in the baseline year. This

subtraction and division using the baseline year parameters ensures that the CPI scores are comparable year on year since 2012. After this procedure, the standardised scores are transformed to the CPI scale by multiplying with the value of the CPI standard deviation in 2012 (20) and adding the mean of CPI in 2012 (45), so that the data set fits the CPI's 0-100 scale.

3. Calculate the average: For a country or territory to be included in the CPI, a minimum of three sources must assess that country. A country's CPI score is then calculated as the average of all standardised scores available for that country. Scores are rounded to whole numbers.

4. Report a measure of uncertainty: The CPI is accompanied by a standard error and confidence interval associated with the score, which captures the variation in scores of the data sources available for that country/territory.

Source: Transparency International, 2018b

Appendix 03: Offenses deemed as "emblematic forms of corruption" according to the Peruvian Criminal Code

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section II: Concussion	**Article 382.**	**Concussion (Economic Extorsion)**	The official or public servant who, abusing his position, compels or induces a person to give or unduly promise, for himself or for another, a property or a patrimonial benefit, shall be punished with a deprivation of liberty of not less than two nor more of eight years and with one hundred eighty to three hundred sixty-five days-fine.	✔	✔	✔	✔	✘
Section II: Concussion	**Article 383.**	**Improper collection (Economic Extorsion)**	The official or public servant who, abusing his position, demands or makes someone pay or deliver contributions or emoluments not owed or in an amount that exceeds the legal rate, shall be punished with deprivation of liberty of not less than one nor more than four years.	✔	✔	✔	✔	✘
Section II: Concussion	**Article 384.**	**Collusion (simple and aggravated)**	The civil servant or public servant who, intervening directly or indirectly, by reason of his position, in any stage of the modalities of acquisition or public contracting of goods, works or services, concessions or any operation at the expense of the State arranges with the interested parties to defraud to the State or entity or body of the State, according to law, shall be punished with deprivation of liberty of not less than three nor more than six years and one hundred and eighty three hundred and sixty-five days-fine. The civil servant or public servant who, acting directly or indirectly, by reason of his position, in the contracting and acquisition of goods, works or services, concessions or any operation by the State through agreement with the interested parties, will defraud the State or entity or State agency, according to law, shall be punished with deprivation of liberty of not less than six nor more than fifteen years and three hundred sixty-five to seven hundred thirty days-fine.	✔	✔	✔	✔	✘
Section II: Concussion	**Article 385.**	**Illegal patronage**	Whoever, using his capacity as official or public servant, sponsors interests of individuals before the public administration, shall be punished with deprivation of liberty of no more than two years or with community service provision of twenty to forty days.	✔	✔	✔	✔	✘

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section III: Peculation	**Article 387.**	**Peculation: intentional and culpable (Asset Misappropriation)**	The civil servant or public servant who appropriates or uses, in any form, for himself or for another, funds or effects whose perception, administration or custody is confided to him by reason of his position, will be repressed with deprivation of liberty of not less than four nor more than eight years and one hundred eighty to three hundred and sixty-five days-fine. When the value of what is appropriated or used exceeds ten tax units, it shall be punished with deprivation of liberty of not less than eight nor more than twelve years and with three hundred sixty-five to seven hundred thirty days-fine. It constitutes an aggravating circumstance if the flows or effects were destined for assistance or social support programs. In these cases, the penalty of privatization of freedom shall be not less than eight nor more than twelve years and three hundred and sixty-five to seven hundred thirty days-fine. If the agent, through fault, gives occasion for another person to make the removal of funds or effects, it shall be punished with a deprivation of liberty of not more than two years and with the provision of community services of twenty to forty days. It constitutes an aggravating circumstance if the flows or effects were destined for assistance or social support programs. In these cases, the penalty of privatization of freedom shall be no less than three nor more than five years and one hundred and fifty to two hundred and thirty days-fine.	✗	✓	✗	✓	✗

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section III: Peculation.	**Article 388.**	**Misuse of public goods**	The civil servant or public servant who, for purposes unrelated to the service, uses or allows another to use vehicles, machines or any other work instrument belonging to the public administration or under his or her custody, shall be punished with a deprived penalty of freedom of two nor more than four years and with one hundred eighty to three hundred and sixty-five days-fine. This provision is applicable to the contrast of a public work or to its employees when the effects indicated belong to the State or to any public dependency. This article does not include motorized vehicles destined for personal service because of the charge.	✗	✔	✗	✔	✗
Section III: Peculation.	**Article 389.**	**Embezzlement**	The official or public servant who gives the money or property that he manages an application different from the one to which they are destined, affecting the service or function entrusted to him, shall be punished with deprivation of liberty of not less than one nor more than four years and with one hundred eighty to three hundred sixty-five days-fine. If the money or assets that he manages are destined to social support, development or assistance programs and are destined to a different application, affecting the service or function entrusted, the privatization penalty of freedom shall be not less than three nor more than eight years and with three hundred sixty-five days-fine.	✗	✔	✗	✔	✗
Section III: Peculation.	**Article 390.**	**Unjustified payment delay**	The civil servant or public servant who, having expedited funds, unjustifiably delays an ordinary payment or decreed by the competent authority, will be repressed with deprived freedom penalty of not greater than two years.	✗	✔	✗	✔	✗
Section III: Peculation.	**Article 391.**	**Refusal of giving goods under custody**	The civil servant or public servant who, required with the formalities of law by the competent authority, refuses to deliver money, things or effects deposited or placed under his custody or administration, shall be punished with a deprivation of liberty of not more than two years.	✗	✔	✗	✔	✗

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section IV: Corruption of Public Officials	**Article 393.**	**Passive Bribery (proper)**	The official or public servant who accepts or receives donation, promise or any other advantage or benefit, to perform or omit an act in violation of their obligations or who accepts them as a result of having failed to do so, shall be punished with deprivation of liberty. not less than five nor more than eight years, and his disqualification according to subsections 1 and 2 of Article 36 of the Penal Code and one hundred and eighty three hundred and sixty-five days-fine.The civil servant or public servant who solicits, directly or indirectly, a donation, promise or any other advantage or benefit, to perform or omit an act in violation of his obligations or as a result of having failed to do so, shall be punished with a deprived penalty of freedom not less of six or more than eight years, and his disqualification according to paragraphs 1 and 2 of Article 36 of the Penal Code and three hundred and sixty-five to seven hundred and thirty days-fine.The official or public servant that conditions his functional behaviour derived from the position or employment to the delivery or promise of donation or advantage, will be repressed with deprivation of liberty of not less than eight nor more than ten years and his disqualification according to paragraphs 1 and 2 of the 36th article of the Penal Code and with three hundred sixty-five to seven hundred thirty days-fine.	✔	✔	✔	✔	✘
Section IV: Corruption of Public Officials	**Article 393-A.**	**Passive Transnational Bribery (both proper and improper, a.k.a. facilitation payment)**	The official or public servant of another State or official of public international body that accepts, receives or requests, directly or indirectly, donation, promise or any other advantage or benefit, to perform or omit an act in the exercise of his official functions, in violation of their obligations, or accept them as a consequence of having failed to obtain them, to obtain or retain a business or other undue advantage, in the performance of international economic activities, shall be punished with deprivation of liberty of not less than five nor more than eight years and with three hundred sixty-five to seven hundred thirty days-fine.	✔	✔	✔	✔	✘

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section IV: Corruption of Public Officials	**Article 394.**	**Passive Bribery (improper) (a.k.a. facilitation payment)**	The civil servant or public servant who accepts or receives donation, promise or any other advantage or undue advantage to perform an act proper to his position or employment, without breaching his obligation, or as a consequence of having already performed them, shall be punished with a deprivation of liberty of not less than four nor more than six years, and his disqualification according to subsections 1 and 2 of Article 36 of the Penal Code and one hundred and eighty three hundred and sixty-five days-fine. The official or public servant who solicits, directly or indirectly, a donation, promise or any other undue advantage to perform an act proper to his position or employment, without breaching his obligation, or as a consequence of having already performed it, will be punished with privatization of freedom for not less than five nor more than eight years, and his disqualification according to subsections 1 and 2 of Article 36 of the Penal Code and three hundred sixty-five to seven hundred thirty days-fine.	✔	✔	✔	✔	✘

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section IV: Corruption of Public Officials	**Article 395.**	**Passive Specific Bribery**	The Magistrate, Arbitrator, Prosecutor, Auditor, Administrative Court Member or any other analogous to the foregoing, who under any modality accepts or receives donation, promise or any other advantage or benefit, knowing that it is done in order to in fluence the decision of a subject that is subject to his knowledge, shall be punished with deprivation of liberty of not less than six nor more than fifteen years and disqualification pursuant to paragraphs 1 and 2 of Article 36 of the Penal Code and one hundred and eighty three hundred and sixty-five days -penalty fee. The Magistrate, Arbitrator, Prosecutor, Auditor, Administrative Court Member or any other analogous to the foregoing, who under any modality may request, directly or indirectly, donation, promise or any other advantage or benefit, in order to influence the decision of a subject that is subject to his knowledge, shall be punished with deprivation of liberty of not less than eight nor more than fifteen years and disqualification pursuant to paragraphs 1 and 2 of Article 36 of the Criminal Code and three hundred sixty-five to seven hundred days- penalty fee	✔	✔	✔	✔	✘
Section IV: Corruption of Public Officials	**Article 396.**	**Passive corruption of jurisdictional auxiliaries**	If, in the case of article 395 °, the agent is judicial secretary, rapporteur, specialist, auxiliary judge or any other analogous to the previous ones, it will be repressed with a deprivation of liberty of not less than five nor more than eight years and disqualification according to the paragraphs 1 and 2 of Article 36 of the Criminal Code and one hundred and eighty three hundred and sixty-five days-fine	✔	✔	✔	✔	✘

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section IV: Corruption of Public Officials	**Article 397.**	**Generic active bribery (both proper and improper, a.k.a. facilitation payment)**	Whoever, under any modality, offers, gives or promises to a civil servant or public servant a donation, promise, advantage or benefit to perform or omit acts in violation of their obligations, shall be punished with imprisonment of not less than four nor more of six years. Whoever, under any modality, offers, gives or promises a donation, advantage or benefit for the official or public servant to perform or omit acts specific to the position or employment, without violating his obligation, will be punished with imprisonment not less than three nor more than five years.	✔	✔	✔	✔	✔
Section IV: Corruption of Public Officials	**Article 397-A.**	**Transnational active bribery (both proper and improper, a.k.a. facilitation payment)**	Whoever, under any modality, offers, grants or promises directly or indirectly to an official or public servant of another State or official of an international public organization a donation, promise, advantage or improper benefit that results in their own benefit or that of another person , for said server or public official to perform or omit acts specific to his position or employment, in violation of his obligations or without breaching his obligation to obtain or retain a business or other undue advantage in carrying out international economic or commercial activities, will be repressed with deprivation of liberty not less than five years nor more than eight years.	✔	✔	✔	✔	✔

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section IV: Corruption of Public Officials	**Article 398.**	**Specific active bribery**	Who, under any modality, offers, gives or promises a donation, advantage or benefit to a Magistrate, Prosecutor, Expert, Arbitrator, Member of the Administrative Tribunal or similar for the purpose of influencing the decision of a matter submitted to his knowledge or competence , shall be punished with imprisonment of not less than five nor more than eight years and disqualification in accordance with paragraphs 2, 3, and 4 of article 36 of the Penal Code. When the donation, promise, advantage or benefit is offered or delivered to a secretary, rapporteur, specialist, auxiliary judge, witness, translator or interpreter or similar, the penalty of imprisonment shall be not less than four nor more than eight years and disqualification in accordance with paragraphs 2, 3 and 4 of article 36 of the Criminal Code. If the person offering, giving or corrupting is a lawyer or is part of a law firm, the penalty of deprivation of liberty shall be not less than five nor more than eight years and disqualification in accordance with paragraphs 1, 2, 3 and 8 of the Code Criminal and one hundred and eighty three hundred and sixty-five days-fine.	✔	✔	✔	✔	✔
Section IV: Corruption of Public Officials	**Article 399.**	**Incompatible negotiation or improper use of public office**	The official or public servant who unduly directly or indirectly or by simulated act is interested, for his own benefit or that of a third party, for any contract or operation in which he intervenes due to his position, will be repressed with a deprived penalty of freedom not less than four nor more than six years old and disqualification pursuant to paragraphs 1 and 2 of Article 36 of the Penal Code and one hundred and eighty three hundred and sixty-five days-fine	✔	✔	✔	✔	✘

Section	Article	Criminal Offense	Text	Informal exchange	Affiliation	Two or more parties	Deviation from rules	Targeted at non-public officials?
Section IV: Corruption of Public Officials	**Article 400.**	**Influence peddling**	Who, invoking or having actual or simulated influences receives, gives or promises for himself or for a third party, donation or promise or any other advantage or benefit with the offer to intercede before an official or public servant who has to know, is knowing or has known a judicial or administrative case, will be repressed with custodial sentence of not less than four nor more than six years. If the agent is an official or public servant, he will be punished with imprisonment of not less than four nor more than eight years and disqualification according to paragraphs 1 and 2 of article 36 of the Penal Code.	✔	✔	✔	✔	✔
Section IV: Corruption of Public Officials	**Article 401.**	**Illicit enrichment**	The civil servant or public servant who, abusing his position, unlawfully increases his patrimony with respect to his legitimate income will be repressed with deprivation of liberty of not less than five nor more than ten years and with three hundred sixty-five to seven hundred thirty days-fine. If the agent is a public official who has held senior management positions in the entities, agencies or companies of the State, or is subject to the prerogative of pretrial and constitutional accusation, the deprivation of liberty shall be not less than ten nor more than fifteen years and three hundred sixty-five to seven hundred thirty days-fine. It is considered that there is evidence of illicit enrichment when the increase of the patrimony or of the personal economic cost of the civil servant or public servant, in consideration to his affidavit of goods and income, is notoriously superior to the one that normally he could have by virtue of his salaries or received emoluments or increases in capital or income for any other lawful cause.	✘	✔	✘	✔	✘

Source: Own work based on Jancsics (2014) & Ministerio de Justicia y Derechos Humanos - Perú (2016)

Appendix 04: UN Global Compact Self-Assessment Tool – Anti-Corruption

ANTI-CORRUPTION: COMPANY CULTURE AND PROCEDURES

Question	Signalling a non-corrupt environment	YES	NO	F/A	N/A	COMMENTS	FOLLOW-UP ACTION
AC.1	**Does the company take a clear stand against corruption?**						
Indicators		**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
a	The company's CEO, director or president has declared that the company will not engage in corruption at any time or in any form.						
b	The company has a policy rejecting corruption and requiring all directors, managers and workers worldwide to behave ethically and in conformity with the law.						
c	The company anti-corrution policy includes how to handle requests for facilitation payments, giving and receiving gifts, engaging in sponsorships, giving political contributions, and how to conduct responsible lobbying.						
d	The company has defined benchmarks and indicators regarding its anti-corruption initiatives and reports these to the public (e.g. in its annual CSR report)						
Question	**Anti-Corruption risk assessment**	**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
AC.2	**Does the company assess the risk of corruption when doing business?**						
Indicators		**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
a	The company evaluates the potential areas of corruption including factors such as type of transaction, countries of operation, industries, and customers or business partners involved.						
b	The company evaluates the risk of corruption when workers, agents, intermediaries or consultants deal with public officials (including workers of state owned companies).						
c	The company evaluates the risk of internal and external conflicts of interest in relation to business partners.						
d	The company has developed an action plan to address the risk of corruption, and has defined responsibilities for each task, as a minimum for high-risk areas.						
e	The company has identified internal functions with the highest risk of corruption within the company and seeks to address these weaknesses.						
Question	**Awareness raising**	**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
AC.3	**Does the company ensure that relevant workers are properly trained?**						
Indicators		**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
a	The company informs all workers about its anti-corruption commitment.						
b	The company provides regular anti-corruption training for all relevant workers within the organisation e.g. procurement and sales staff.						

c	Information on disciplinary procedures for violations of company anti-corruption policies is available to workers.						
d	The company actively seeks worker feedback and dialogue on its anti-corruption initiatives.						
e	The company has and promotes a function by which workers can safely report suspicion of corruption related cases (e.g. hotline or mailbox) and allocates resources to systematically address the issues that are identified.						
Question	**Anti-corruption procedures**	**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
AC.4	**Do the company's internal procedures support its anti-corruption commitment?**						
Indicators		**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
a	The company has assigned different individuals or departments to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments.						
b	The company mentions "anti-corruption" and/or "ethical behaviour" in its contracts with business partners.						
c	The company prohibits informal employment and any 'off the books' record-keeping						
d	The company performs internal audits and has checks in place in connection with all anti-corruption commitments.						
e	The company's procurement, financial and internal audit personnel have clear instructions to look for and to identify alarms, report them to management, and follow-up counter measures.						
f	The company requests external auditors to maintain a critical eye and follow all alarms and irregularities.						
g	Any alarm or irregularity reported by external auditors is systematically addressed by management.						
h	The company monitors compliance and continuously identifies strengths and weaknesses in the anti-corruption initiatives to remain effective and up-to-date in addressing changing risks.						
Question	**Agents and other associates**	**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
AC.5	**Does the company's anti-corruption initiative cover agents, intermediaries and consultants?**						
Indicators		**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
a	The company conducts an inquiry and/or attentiveness (e.g. financial, legal, labour, tax, IT, environment, market/commercial) on all agents, intermediaries and consultants.						
b	All agreements with agents, intermediaries and consultants are fully documented in written, signed contracts.						
c	The selection and terms of reference of agents, intermediaries or consultants are approved at the senior management level or at a level above that of the management involved in the operations for which the intermediary is hired.						
d	Contracts with agents, intermediaries and consultants include a section on anti-corruption and that the contract-holder must comply with all applicable laws and regulations.						

e	Agents, intermediaries and consultants are provided with information on the company's anti-corruption commitment, anti-corruption policies, training material on anti-corrupt behaviour and information on disciplinary procedures for violations of company anti-corruption policies.						
f	The company ensures that payment to agents, intermediaries and consultants are in line with standard payments for other service providers of similar ranking.						
g	The company only makes payments by bank transfer or check - never in cash - in the country of the agent, intermediary and consultant and never to a third party without prior examination.						
ANTI-CORRUPTION: JOINT ACTIONS							
Question	**JOINT ACTIONS**	**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
AC.6	**Does the company take joint actions with others to engage in and promote anti-corruption initiatives?**						
Indicators		**YES**	**NO**	**F/A**	**N/A**	**COMMENTS**	**FOLLOW-UP ACTION**
a	The company shares experience, procedures and challenges of corruption with other organizations i.e. the local business community, sector initiatives, networks etc.						
b	The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a fair business environment.						
c	The company stimulates multi-stakeholder dialogue on challenges of corruption.						
d	The company encourages the local business community and business partners to initiate cooperation to fight corruption.						

Source: United Nations Global Compact (2010)