# C:\Users\Michelle\Documents\Work\Curbing Corruption\Branding\CC_Stacked_Logo_for_white.pngSector | Legal Services

Young lawyers want to see law firms tackle corruption better.  How can law firms play a more active role?

**“*Swear by God Our Lord and these Holy Gospels, respect and enforce the National Constitution and the Laws dictated by the Constitutional Bodies; dedicate your efforts with patriotic commitment to the aggrandizement of the Nation; integrally and loyally to the service of society and your fellowmen the knowledge of the profession, of the art of science*”. After I said – “Yes, I do”- I received the title of lawyer, and my pathway in the legal profession began. Even though many of my colleagues might have pronounced these words without much effort, for me, it was different. For me, this was a very important oath and it is still today that I think what it really means to me. Choosing this profession can be a big challenge, with great rewards but at the same time I truly believe that you need a bigger purpose in life if you are going to choose this profession. Earning money is a valid option, but it should be accompanied by a greater dream if you really want to comply with the oath we make.**

**In my case, coming from a highly corrupt country, I found my purpose in fighting corruption to reduce the gap of inequality and injustice in society. I recognise that this can be a genuinely difficult issue for those colleagues practicing law, especially when having to balance the commitment to integrity with the other important principles like confidentiality. But, having looked into this question as a part of my continuing professional education, I am dismayed to find that the legal profession worldwide is much less active on this topic than I expected. The principle of protecting confidentiality seems to be coming well ahead of honesty and integrity in almost all countries. Law firms seem to be paying less attention to compliance within their firms,** **doing much less due diligence than the clients whom they advise. Law firms should be acting as role models and increasing the awareness of these issues in different regions along the world. Here in this paper is my perspective, proposing nine measures through which law firms can be stronger, and I welcome other views.**

## Introduction

Competence and skill in structuring, managing and safeguarding deals involving corruption are not merely learnt through the experience of individuals. These abilities are also developed and evolved by collaborators, partners and intermediaries, spreading a common expertise that minimizes the overall risk of exposure. Besides spreading the risk through collaboration and intermediation, corruption is also facilitated through psychological processes such as self-legitimization and the building of hidden channels of communication and exchange[[1]](#footnote-1).

Lawyers, accountants and auditors are among the necessary professionals in the corruption chain. But it is the lawyers who are potentially closest to the epicentre of these processes – being not only key intermediaries[[2]](#footnote-2) but also essential parts of the neutralisation and legitimisation of what would otherwise be ‘corrupt’, protected as they are by the bounds of confidentiality.

On the other hand, lawyers take an oath of integrity in order to obtain their licenses and titles and to be able to call themselves lawyers[[3]](#footnote-3). They have gained the necessary knowledge to defend and promote the rule of law. Does this oath of doing the right and respect the institutions have a real meaning today? If it does, then lawyers have the responsibility of acting in accordance and do something to protect the value of their word.

What exactly is being done, and how, for the legal profession around the world to be upholding both integrity and the law whilst at the same time maintaining their role as close advisers? The objective of this paper is to examine how different sectors can contribute to tackle this question constructively, and what changes are being implemented that might stimulate others.

## Involvement of lawyers

The perception that lawyers and law firms are involved in corruption has become relatively widespread. According to a joint survey by the International Bar Association (IBA), the Organisation for Economic Cooperation and Development (OECD) and the UN Office on Drugs and Crime (UNODC), of 642 legal professionals from 95 jurisdictions, roughly half consider corruption to be an issue in the legal profession both in their home and in neighbouring jurisdictions.[[4]](#footnote-4)

Lawyers can also be involved in corruption without knowing about it. Clients can request their lawyers to set up a legal structure presented as lawful but which may be in fact used for laundering money. Lawyers may be requested to act as intermediaries for their clients and help hiring agents or distributors in new markets, finding local partners in emergency markets and organizing their new businesses abroad. The role of lawyers is fundamental in M&A when companies need to assess their future partners and to comply with that, doing a proper due diligence is critical.

Lawyers must be aware of the risk they face when helping their clients with these issues, and for that reason professionals must distinguish between their role as advisors and the more active roles of acting as intermediaries and in setting up legal structures.

The way a lawyer is involved in their client´s business can lead him to be prosecuted for being part of a corrupt chain. For example, there are some examples of prosecution and sanction of professionals involved in corruption such as the Germany case where an attorney was charged of having committed money laundering, assistance after the fact and attempted assistance in avoiding punishment and prosecution. When the “drug baron” asked for help to hide his money the defence counsel’s wife and the defence counsel’s colleague (also an attorney) agreed to help. The defence counsel was sanctioned with imprisonment of 21 months and a fine of €7,000 and the defence counsel’s colleague was sentenced to ten months imprisonment. However, both sentences were suspended on probation.[[5]](#footnote-5)

In some situations, the lawyers have been less intermediaries than central players in the corruption networks, such as in the Panama Papers and the Paradise Papers. In both cases, famous and rich people from around the world used law firms like Mossack Fonseca to hide their wealth in tax heavens through third parties. The same law firm has been also prosecuted[[6]](#footnote-6) for their connection with the bribes paid by Odebrecht in many countries where the company earned contracts. The Panama Papers case has many examples of law firms and accountants acting as facilitators for the development of “off-shores” and “tax haven” businesses, which is not illegal itself but it can be used to hide the money obtained from corrupt activities. The former lawyers from Mossack Fonseca are also being prosecuted by the DOJ of the U.S for helping their clients to laundry money, avoid taxes and build illegal schemes to accomplish corrupt businesses[[7]](#footnote-7).

Moreover, in the U.S. an attorney was indicted for bribing an Israeli Air Force officer to purchase GE aircraft engines worth $ 300 million. The bribes totalled $ 7.8 million. While a co-defendant was charged under the FCPA, the attorney was charged with mail and wire fraud.[[8]](#footnote-8)

## Measure 1: Clients should demand evidence of anti-corruption compliance from law firms

Clients and companies that are really engaged in levelling the playing field and driving businesses in an ethical and responsible way should start asking to their legal advisors to prove their anti-corruption policies and practices by carrying out due diligence and reviewing whether the law firm in question share the same values they are trying to promote (if that is the case).

The increasing conscious about ethical issues can also be reflected in the huge demand of compliance officers and ethic officers in companies and public sector. Between 2008 and 2018, it is estimated that the demand for these professionals has tripled globally[[9]](#footnote-9). If these officers are well prepared to stop corruption in their organizations is a different issue, much more complicated to prove, but at least we can confirm that the increasing demand is directly connected with the increasing awareness of the topic.

It can also be argued that an important percentage of compliance officers have a legal background. We just need to read a couple of job´s offers from recruiters looking for compliance or ethics officers to see that the vast majority of the requirements include knowledge of laws or the title of lawyer itself. So, when companies hire internal compliance officers, they ask for specific requirements and characteristics. The bigger the company, the more conscious is about the importance of anticorruption training and experience.

It seems an eminently reasonable expectation that compliance programmes within law firms should be the norm: Law firms should surely be expected to have internal controls and systems adapted to the size of the company, type of operation, country of operation and the other countries they are associated with[[10]](#footnote-10). But when I started to write this paper one of my doubts was whether commercial companies also take the same measures when hiring external lawyers and advisors.

For that reason, in March of 2019 I interviewed the former Business Ethics Coordinator of a major international law firm. She confirmed me that during the years she worked in the law firm, no client demanded to see or read the Compliance Program the law firm has. Indeed, clients usually ask for conflicts of interests with other clients or plans of payment but never for anticorruption policies, codes of ethics or AML officers. Companies are demanding their suppliers to sign their Ethic Codes and to prove they have adequate measures implemented to prevent corruption in their businesses but it seems they do not require the same from one of the most risky suppliers they have, their legal advisors.

To support this argument, we can analyse the results of the surveys made by the IBA, OECD and the UNODC[[11]](#footnote-11) which show that more than two-thirds of respondents said their law firms had not been subject to anti-corruption or anti-money laundering due diligence conducted by foreign clients[[12]](#footnote-12). Instead, results also showed that much of the legal profession still largely relies on networks when seeking to hire external legal counsel, with nearly 80% of respondents relying on recommendations made by colleagues and 63.5% on recommendations made by other external counsel[[13]](#footnote-13). Without proper vetting and due diligence mechanisms, clients are unable to assess the existence of conflicts of interest, undue influence and anti-corruption awareness, which leaves them at risk[[14]](#footnote-14).

In the UK, the Solicitors Regulation Authority required all regulated legal service firms to appoint Compliance Officers for Legal Practice (COLPs). COLPs are charged with taking reasonable steps to ensure that firms comply with their obligations, which entails interpreting what outcomes-focused regulation (OFR) requires of the firm. Yet despite their importance, little is known about how compliance roles operate within legal service firms[[15]](#footnote-15).

If this is the case in the UK, where the legislation is much more advanced and robust in terms of anti-corruption and compliance, what can be expected from law firms and lawyers in countries where this subject is not so developed or where there is no regulation at all. The results of the survey mentioned before by IBA, OECD and the UNODC[[16]](#footnote-16) provide revealing snapshots of the situation in many law firms. Less than 40% of respondents said anti-corruption was a priority at their law firm and almost a third of respondents said that their firms do not have a clear and specific anticorruption policy. Similarly, 65% of respondents admitted that they do not have a policy for monitoring the anti-corruption compliance of existing legal counsel[[17]](#footnote-17).

Almost a decade after this survey has been done, I compared some of the biggest law firms in different countries and tried to find any publication of their anticorruption policies, programmes or compliance officers. My conclusion has been that multinational law firms, members of the so call “magic circle” in the UK or USA do have at least some information available in their web-pages. It is the case for example of Baker & Mckenzie[[18]](#footnote-18), Simmons-Simmons[[19]](#footnote-19) or Clifford Chance[[20]](#footnote-20). However, other big firms such as Allen & Overy or Freshfields do not have the same information, at least, available. That means they have some policies and Codes available for suppliers for example[[21]](#footnote-21) but no Code for their own employees at least published for the public. If the compliance field is becoming more and more complex and at the same time popular, it calls my attention that some of the best well-known law firms are giving advice about these issues but not implementing it within their organizations. In Argentina, 2 of the biggest law firms – Marval O´Farrell Mairal[[22]](#footnote-22) and Beccar Varela[[23]](#footnote-23) do not have any kind of codes at all. In January 2019, I spoke with a former Senior Compliance Attorney from one of these firms who confirmed me that the firm had the idea of creating an Ethic Code but until last month it was still an idea unaccomplished.

It seems law firms and legal practitioners from countries like USA and UK are more aware of the importance of having internal controls, because the law require them to do so or because they understand the risk they are exposed to. However, in countries like Argentina where the situation is different, having internal controls within legal organization seems to be a long term goal. However, multinational companies should start asking to their legal local partners and suppliers for this information in order to promote and rise a compliance culture in those high-risk markets.

## Measure 2: Principles of Integrity in the legal profession

The first protection measure is the establishment of a set of principles that all lawyers agree should be respected by practitioners. While regulatory and organisational frameworks vary significantly from jurisdiction to jurisdiction, most experts agree on certain standard principles of integrity that underline the legal profession. The IBA, for example, has created a list of 10 International Principles on Conduct for the Legal Profession[[24]](#footnote-24):

1. Independence
2. Honesty, integrity and fairness
3. Conflicts of interest
4. Confidentiality/professional secrecy
5. Clients’ interest
6. Lawyers’ undertaking
7. Clients’ freedom
8. Property of clients and third parties
9. Competence
10. Reasonable Fees

The IBA´s intention is to see these principles replicated in every Bar Association around the world, so lawyers, no matter where they are from, will be governed by the same principles and the legal profession in general will be under the same values. By revising different Bar Associations, it is possible to find many examples of these principles in their respective Codes of Ethics or Conducts[[25]](#footnote-25).

Two of these principles are deeply connected with the topic of the present essay, and the ambiguity between them is at the heart of why this is a difficult issue for lawyers. Principle 2 ‘Honesty, integrity and fairness’ requires that a lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer’s clients, the court, colleagues and all those with whom the lawyer comes into professional contact. At the same time, in accordance with principle number 4, a lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

Concepts such as integrity and fairness do of course have their own problems of definition. But, where a violation does happen, the lawyer has also the possibility to invoke the confidentiality principle in order to hide some of this unfair or unethical situations. What is supposed to act as a standard for honest lawyers can equally be used as a tool to protect the contrary behaviour.

Here again lawyers face the dichotomy of the rule of law and the reality they have to live in. What principle is more important and how to determine that, will make the difference between ethic lawyers and greedy ones.

## Measure 3: Legal provisions that make it mandatory for the legal profession to report corruption in general or corrupt practices of their clients in particular

The second measure – more controversially – makes it a legal obligation for the legal profession to report corruption in general and corrupt practices of their clients. This is the opposite of the legal situation in some countries today, where reporting by a lawyer can itself be a criminal offence or be a breach of professional duties where it relates to a client.

Research by Arnold & Porter LLP for Fundación Universidad de San Andres in 2013[[26]](#footnote-26) sheds some light on the wide range of current practice on this topic.

On the one hand:

1. In Argentina, counsel indicated that there is both criminal and professional liability for reporting confidential information in relation to a client[[27]](#footnote-27)
2. In Brazil, counsel has indicated that the Brazilian Bar Association is strongly against creating an obligation to report corruption. While there have been some recent legislative proposals for such a duty, counsel have advised that legal professionals cannot be forced to disclose information or evidence obtained through their clients or which might otherwise be subject to attorney-client privilege. Indeed, local legislation enshrines the protection of confidence between an attorney and their client and local laws create criminal liabilities for any party breaching professional secrecy[[28]](#footnote-28). Violation of these provisions can lead to fines and administrative sanctions, including reprimands, suspension, fines and loss of practising license.
3. In Bulgaria, it was noted that there is a general obligation on citizens to report criminal activity.[[29]](#footnote-29) However, Bulgarian counsel indicated that where there is such an obligation it was also confirmed that no criminal offence is committed for failure to report. While Bulgarian counsel noted that concerns have been reported[[30]](#footnote-30) about corruption in the local legal profession, they also stated that members of the Bulgarian Bar have an absolute duty of confidentiality[[31]](#footnote-31) to their clients and cannot be compelled or otherwise provide evidence that arises from their work with clients. If a legal professional reveals information subject to this duty, they may also be committing a criminal offence[[32]](#footnote-32).

Examples of the opposite case include the EU and the UK:

1. In the European Union, since 2005 there are strict obligations placed on lawyers to report illegal behaviour of their clients while at the same time it is banned to let their clients know that their lawyers have suspicions of their activities[[33]](#footnote-33).
2. The United Kingdom goes yet further, making it an offence to not report suspicious activities once you are aware of them in connection with money laundering activities[[34]](#footnote-34).

Not having a homogeneous regulation for the profession increases the chances of discretionality among professionals when making ethical (or non-ethical) decisions. If something is allowed in one place and is not in another, bad customs and traditions can be repeated in new jurisdictions. This could cause certain behaviours to be considered legal and therefore ethically correct according to who and where they do it. Doing a comparison with the anti-bribery laws, which are very strong in some countries and almost non-existent in others, some companies have decided to establish global parameters and internal standards within their organization that are usually stricter than the law of certain countries where they operate, in order to have clear rules and demonstrate commitment to ethics and values. However, the legal profession is struggling with complying with the different hard laws where they practise law.

## Measure 4: Soft laws set up by Bar or similar professional organizations

If it is not possible or realistic to develop a global mandatory position, Bar Associations or similar professional organisation can work instead through “soft-law” approaches that they recommend to their members to prohibit lawyers engaging in or facilitating bribery.

In the majority of cases, membership of the local bars associations is mandatory if lawyers want to practise law in that jurisdiction, therefore they need to adhere to the rules set out in their code. The bar association can therefore also play a key role in regulating – and thereby reducing – corrupt behaviour. The standards set by local bar associations are also an important tool for assessing whether corruption risks are being effectively addressed and mitigated by lawyers in that country.

### International Bar Association

**i. Anti- Corruption Strategy**

The International Bar Association has launched in 2010 an Anti- Corruption Strategy in cooperation with OECD and the UNODC, which focuses on methods to manage the risks of corruption in order to meet the demands and requirements of clients; the role lawyers play in combatting international corruption; and how international instruments and extraterritorial legislation apply to the legal practice.[[35]](#footnote-35)

They raise awareness and promote education campaigns for legal professionals and law students. This includes (i) in-country anti-corruption workshops geared towards private practitioners, (ii) the development of educational tools and materials for law schools, and (iii) specialised sessions at IBA conferences to follow-up and analyse the developments and achievements of this Strategy.

The IBA has been conducting in-country workshops for senior-level private practitioners of those law firms highly involved in business transactions. The pilot workshops took place during the second half of 2010 in five Latin American jurisdictions – Argentina, Chile, Colombia, Mexico and Peru. In 2011 and 2012 further workshops were held in Asian, South African countries, Latin American and European jurisdictions, and continued in 2013 in Spain, Africa and Southeast Asia. In 2014, workshops took place in Dubai, Uganda, Rwanda, Bolivia and Paraguay.

However, since 2015 no activity or training has been organised according to the information in their web-page[[36]](#footnote-36). What seemed to be a promising initiative to spread ethical values in the legal profession has been stuck halfway. In 2010 IBA OECD-UNODC made a survey and it showed only 43% of respondents realised that their bar associations provide some kind of anti-corruption guidance for legal practitioners. Of these, only a third said that such guidance specifically addresses the issue of international corruption[[37]](#footnote-37). In response, the IBA created an anti-corruption guide for bar associations in 2013 with a variety of guidelines on how bar associations can improve their anti-corruption practices with the purpose of encouraging bar associations around the world to take affirmative steps to support the legal profession in combating corruption. Nevertheless, I could not find any survey after these years to compare the effectiveness of the actions taken during this project. Has the awareness increased thanks to this programmes? Have they been effective to reduce the level of engagement of lawyers in corruption cases? I suggest this questions should be answered by the organizations involved in the project, in order to keep working on this path or modified the aspects that have not been really effective.

**ii. Report of the Task Force on the Role of Lawyers and International Commercial Structures**

Thanks to the great attention, that certain corruption scandals have driven over the role of lawyers involved in those cases, the OECD and the IBA together decided to established the Task Force on the Role of Lawyers and International Commercial Structures. It was established to review and consider the role of lawyers in detecting, identifying and preventing illegal conduct in commercial transactions, particularly transactions with an international character[[38]](#footnote-38).

In May 2019, the IBA and the OECD launched the Report of the Task Force on the Role of Lawyers and International Commercial Structures. This report, which is not a continuation of the Anti-Corruption Strategy mentioned before, starts with a list of Principles. Most of them follow the same logic of previous principles published by IBA. I would like to mention specifically 2 of them connected with the present paper.

The “Principle 2: Misuse of the duty of confidence and privilege” is a topic addressed in this paper too, because of its major relevance. The IBA OECD Report mentions in the description of this principle that lawyers should not use the confidential nature of the lawyer-client relationship to shield wrongdoers. A lawyer should give due and proper consideration to refraining from acting for a client if the lawyer is aware of, or has reasonable grounds to believe, that the main purpose of the retainer is to allow the client to be able to rely on the confidential nature of the lawyer- client relationship so as to permit or encourage the client to engage in illegal conduct[[39]](#footnote-39).

The “Principle 3: Client due diligence” states that a lawyer should undertake and document all reasonable and proportionate inquiries in order to identify and verify a client. At the same time, identify any ultimate beneficiary of the conduct or transaction, the origin of the funds for the transaction (consistent with applicable anti-money laundering or counterterrorism financing legislation), the substantive nature of the conduct or transaction (including expected revenue and taxation consequences of the transaction) and be satisfied that the conduct and/or transaction is legal in the lawyer’s jurisdictions[[40]](#footnote-40).

The inquiries that a lawyer undertakes should be heightened if the risk profile of the client, the type of transaction, the origin of the funds, the parties involved and/or the jurisdiction fall within well-established international benchmarks for jurisdictions with increased risk of bribery, corruption and commercial crime (eg, pursuant to the Transparency International Corruption Perception Index), or otherwise raise objectively grounded and reasonably based suspicion[[41]](#footnote-41).

Both Principles mentioned previously, are directly connected with some of the main concerns society has been raising regarding the role of lawyers in curbing corruption. These doubts are usually if clients are attempting to hide behind lawyer-client privilege confidentiality to get away with dodgy acts and if lawyers are taking responsibility for their role in the funding of corruption[[42]](#footnote-42).

This report according to Nicola Bonucci aims to be a response in terms of prevention for the legal profession[[43]](#footnote-43). The report is not a mandatory piece of paper that oblige local bar associations to do something in particular, but it is more focus on soft law and good behaviour expectations.

The Task Force, considers that joint awareness-raising activities and campaigns involving the legal profession should be encouraged in this context. For this same reason, it is curious to see that IBA has actually stopped the worked it had been doing until 2015 connected with the initiative mentioned in the previous section (the Anti-Corruption Strategy). Re-launching or re-starting campaigns from cero instead of ensuring continuity to the projects already started might be affecting the support and trust of stakeholders. Regarding the real purpose of the organization in terms of fighting corruption in the legal sector.

### Local Bar Associations and other Organizations

Local Bar Associations are doing their part in spreading ethical values among their members. In Mexico for example, the code of ethics of the local bar association (the Barra Mexicana de Abogados) explains that engaging in bribery would be a breach of ‘honour and professional ethics’. Moreover, lawyers must not provide advice to clients engaged in corrupt practices. Similarly, in the United States, in relation to acts of bribery, the Model Rules of Professional Conduct explain that it is professional misconduct for a lawyer to “state or imply an ability to influence improperly a government agency or official...”[[44]](#footnote-44)

In France, the soft laws that apply to French lawyers require them to establish procedures that allow them to assess the precise nature and scope of the transaction for which advice is being sought. By using such procedures, if a lawyer suspects that a transaction would have as its object or affect the “commitment of an infringement” he must dissuade his client, and if necessary, cease to act for him[[45]](#footnote-45). Interestingly, there is no obligation to proactively report the suspected illegal activities, there is simply a requirement to “dissuade” the client from pursuing the transaction.[[46]](#footnote-46)

In addition to the soft laws discussed above, in certain jurisdictions, some law firms have also adopted rules and guidelines developed by bodies other than the local bar association. As an example it can be mentioned the signature of the United Nations Global Compact[[47]](#footnote-47), which has been signed by some law firms[[48]](#footnote-48) around the world. This is a clear sign that even though local regulation does not imposed a conduct, individual actors decide to comply with certain standards imposed by international organizations. Another international organization that has been used as a guide in this sense is the Financial Action Task Force[[49]](#footnote-49). In Japan, the Japanese Federation of Bar Associations (JFBA) published its comments on the recommendations adopted by the FATF. These measures are aimed at reducing money laundering. The comments of the JFBA generally serve as additional guidance on the measures that lawyers can take to prevent money laundering. Measures include requesting specific information on client assets and the source of client funding, and also obtaining details regarding ownership/control of a client.[[50]](#footnote-50)

## Measure 5: Holding the legal profession to account. What measures might be taken to hold the legal profession to account from a public and private perspective?

As already explained, the regulatory framework surrounding the legal profession is incredibly varied. In certain jurisdictions, the bars have regulatory autonomy, while in others legal practice is administered by the judicial branch of government and/or governmental bodies or regulatory agencies[[51]](#footnote-51). From a report made by the OECD[[52]](#footnote-52) it can be understood that there is also disagreement regarding the extent to which the government should interfere with the administration and conduct of the legal profession.

According to the OECD[[53]](#footnote-53), regulations, whether issued by the government or the legal profession, generally cover:

• Qualitative entry restrictions

• Compulsory membership to a professional body

• Reserved tasks: legal advice and exclusive rights to appear in court coupled with compulsory legal representation

 • Identification of appropriate standards of professional conduct and the encouragement of adherence to those standards

 • Investigation of complaints and the administration of discipline with respect to legal practitioners, including expulsion from legal practice

These national regulations are important for assessing whether the legal profession can be held to account and what standards are in place to safeguard integrity within the profession. Regarding the regulation of corrupt activities, as it was described before, it can be observed that in many jurisdictions even where the lawyer is not directly responsible for the act of corruption but facilitates or otherwise provides assistance for a corrupt act, the lawyer can be liable as an accessory or accomplice[[54]](#footnote-54). In the majority of countries surveyed by Arnold and Porter in 2013, Bar Associations set codes of conduct that prohibit lawyers from infringing the law or facilitating an infringement of the law. In Mexico and the USA, bar associations expressly forbid lawyers from engaging in bribery and corruption[[55]](#footnote-55).

## Measure 6: Professional education and Training

In relation to wider awareness of professional ethics, including policies on bribery and corruption, it is more common now that persons seeking to qualify as lawyers must attend or study a course on ethics. For example, in England and Wales, one of the compulsory modules at all Law Schools is a module on professional standards, which explains how the relevant soft laws are applied[[56]](#footnote-56).

The public sector has a key role to play in the construction and promotion of better ethical standards among lawyers. One way that governments can contribute to this would be to work with the legal profession to raise awareness of the foreign and local bribery offence, and encourage the profession to develop training on bribery in the framework of their professional education and training systems. Many countries like UK already have this measures being implemented while other countries do not.

The secrecy in the profession and the privilege client-attorney must be clear and limited by law. No soft-law regulation should address this very important issue. Those countries with a very high perception of corruption should think about the role the lawyers occupy and should pass bills that regulate their duties like in the case of money laundry or terrorism finance. In countries like Argentina, lawyers do not have the obligation to report suspect operations from their clients while other professional such as art dealers or notaries do have that obligation.

## Measure 7: Requirements for law firms to operate their own Codes of Conduct

While the IBA’s principles[[57]](#footnote-57) are not meant to replace or limit a lawyer’s obligation under applicable laws or rules of professional conduct, they are meant to provide a basis for lawyers within different jurisdictions to behave in accordance with basic standards. The IBA also maintains that bar associations should adhere to a rigorous code of conduct. The IBA recommends that bar associations consider reviewing their codes of conduct to reflect their condemnation of lawyers who engage in corrupt practices[[58]](#footnote-58). The existence of a code of conduct within a law firm similar to the IBA code is therefore a good indication of adequate internal standards for tackling corruption and promoting integrity[[59]](#footnote-59).

It is important to highlight that launching a Code of Conduct is not enough to prevent corruption and promote fair principles. Those Codes, for bar association and for law firms must be revised and modified periodically to ensure that they are updated and are actually a useful source of information and guide for the practitioners. Examining the codes regularly is a good way of measuring the respective legal industry’s anti-corruption safeguards and also address challenges in an effective way.

## Measure 8: Due diligence within legal firms

Law firms are usually hired by clients to analyse the risk of their businesses and suppliers and to perform accurate due diligences. The legal practitioner should also do exactly the same due diligence when deciding to work for a new client or a new project, to analyse and be sure that they comply with all the requirements and rules of the different places where they will practice law. Even though the lawyer might not have the licence to practise law in most jurisdictions around the world, he can work for their clients as advisors, agents or hold the power to act and do things or their behalf, and for that reason they are also exposed to the rules of the new countries.

Due diligences are another tool that lawyers should implement within the industry to detect and prevent engagement in corrupt activities. The recommendation of this paper is that a proper due diligence cannot be made one way. Indeed, any due diligence should be thought in a double way, this means it involves due diligence on the part of clients when choosing law firms and from the law firms when they agree to work with clients. Both parts of the deal must behave in a responsible way when engaging with partners and third parties. It can be argued that due diligence carried out by law firms is especially relevant when it comes to the role lawyers can play as intermediaries. Due diligence is particularly important when lawyers are required to participate more actively, rather than simply provide legal advice[[60]](#footnote-60). It is fundamental for lawyer to understand and analyse the scope of their duties, since it does not carry the same responsibility and liability to give legal advice or to actually be involved in a deeper way by setting up legal structures or acting as intermediaries or facilitators in payments abroad.

In the context of multinational business transactions and globalised firms operating in a variety of jurisdictions, every lawyer is called upon to observe applicable rules of professional conduct in both home and host jurisdictions when engaging in the practice of law outside the jurisdiction in which the lawyer is admitted to practice[[61]](#footnote-61). Therefore, international law firms, or local ones with multinational clients, surely should be doing their own due diligence on whether their organisations comply with anti-corruption rules in every jurisdiction in which it carries their works and duties.

From a positive perspective, there seems to be a rising anti-corruption expectations among clients. For that reason, experts note that legal professionals must not only develop the ability to exercise due diligence on prospective clients, but also learn to embed the client’s standards and policies in theirs[[62]](#footnote-62). Being able to do this, will mark the difference between regular due diligence and effective ones. It is exactly this ability what makes the difference between the average legal professional and the best prepared to effectively address the problems of corruption.

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2. The OECD definition of intermediaries in international business transactions is: “an intermediary is defined or described as a person who is put in contact with or in between two or more trading parties”(2009). [↑](#footnote-ref-2)
3. Universidad de San Andres and Arnold & Porter LLP, “The role of lawyers in the fight against corruption A Summary Report”, 2013. [↑](#footnote-ref-3)
4. https://www.u4.no/publications/integrity-issues-related-to-lawyers-and-law-firms.pdf [↑](#footnote-ref-4)
5. Universidad de San Andres and Arnold & Porter LLP, “The role of lawyers in the fight against corruption A Summary Report”, 2013, page 29. [↑](#footnote-ref-5)
6. <https://www.bbc.com/mundo/noticias-43422646>, last visited 11th May 2019. [↑](#footnote-ref-6)
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