

SPECIAL REPORT: Fighting Corruption and Bribery

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This special report has been produced
with input from Salamanca Risk Management
and World-Check:

Heyrick Bond Gunning
hbg@salamancarm.com

Michael Short
mshort@integrascreeen.com.hk

In association with

Salamanca Risk Management
Global Security and Risk Management Solutions



The Cost of

Nathan Skinner reviews anti bribery and corruption measures – and discusses just how effective they are

Bribery and corruption are very short-sighted corporate strategies. Yet they are not uncommon in the world of international business. The Organisation for Economic Cooperation and Development (OECD), one of the world's foremost anti-bribery groups, believes the moral responsibility is on the rich world, the 'supply side' or bribe payers, to stamp out corruption. Corruption in business transactions decreases competition, deters investment, and increases the cost of goods and services, says the OECD.

Despite the rather longwinded title of the *'OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions'*, the publication is the cornerstone of the Paris-based organisation's efforts to fight corruption. It is an important international agreement, which establishes the bribery of foreign public officials as a crime. Currently, 38 countries around the world have subscribed to the convention, which requires that they establish and implement a comprehensive set of legal and regulatory measures to prevent, detect, investigate and prosecute the bribery of foreign officials. It also mandates stiff fines and imprisonment for companies and individuals who commit bribery. Before the convention came into force, few countries had any offences that covered corruption.

However, the convention remains largely unenforced in many parts of the world. A big problem is that three major countries, India, China and Russia, are not parties to it. The OECD is concerned that the number of convictions for corruption remains very low. Mark Pieth, chair of the OECD Working Group on bribery, says he would like to see more prosecutions.

Poor performance

There are many reasons for the low level of conviction. Offences are difficult to detect, for bribery is, by its very nature, secretive. Uncovering them requires a free flow of information across national borders and improved cooperation between businesses, the financial sector, governments and the media. Complicated jurisdictional issues also slow the pace of enquiries. And prosecutors sometimes lack the resources and specialised training to investigate and

prosecute bribery properly.

This means there is a great deal of room for improving enforcement. One necessary step is that companies themselves make use of the convention and bring it into their corporate cultures.

Another significant issue is that some jurisdictions are not taking their anti-corruption responsibilities seriously. The UK, along with Turkey, Ireland and Slovakia, are all on the OECD's problem list. The OECD is deeply troubled by the UK's discontinuance of the BAE Al Yamamah investigation and the lack of progress in rectifying deficiencies in legislation. The organisation also expressed serious concern over possible systemic problems in bringing cases to prosecution. In Ireland, the OECD says the Government has not made sufficient effort to raise awareness about the convention or improve its anti corruption laws, particularly on corporate liability. The OECD also condemned Turkey's dismissal and slow treatment of foreign bribery cases and expressed concern about remarks made by the Slovak Minister of the Economy, which appeared to condone the bribery of foreign officials.

The UK has a bad reputation for not tackling corruption. The country achieves far fewer prosecutions for bribery than the US and Europe. Between 10 and 12 bribery cases are brought to court each year in Britain, according to Ministry of Justice figures. With its soft-touch approach to anti bribery laws, the UK is not doing much to shed its image as a push over jurisdiction. This is bad news for the its reputation as well as for companies based there.

In 2003, 2005, 2007 and 2008 the OECD publicly scorned the UK for failing to bring its laws into line with international standards. The group said it was 'disappointed and seriously concerned' about the UK's continued failure to address deficiencies in its laws. As well as putting directors at risk of prosecution by foreign countries, the inadequacy of British rules is having other effects.

Uncertainty in the country's legal framework may trigger increased due diligence over UK companies by their commercial partners. And in the absence of an effective domestic corporate liability regime there is no incentive for companies based in the UK to take

issues of corruption and bribery seriously. A survey by Ernst & Young found that bribery and corruption still play a big role in the conduct of business in Britain. Thirteen percent of all UK respondents said that their organisation had experienced at least one incident of bribery or corruption in the last two years, compared to 6% in Germany and 6% in France.

This laissez faire attitude has become entrenched by years of government inaction. In 2006 the Serious Fraud Office (SFO), the UK's fraud and corruption enforcement authority, abandoned a probe into the £43bn Al-Yamamah arms deal with Saudi Arabia. BAE, a defence contractor and one of Britain's biggest companies, was accused of handing out kickbacks to secure a deal to supply fighter aircraft and services to the Saudi government. The investigation was abandoned after the then Prime Minister, Tony Blair, said it was a threat to national security.

A BAE report after the affair was over revealed that senior management failed to pay sufficient attention to ethical issues. This is a serious concern, because corporate ethics are not just about staying on the right side of the law; they also makes good business sense. In the global economy, corporate reputation has become an essential part of an enterprise's value. 'The effective management of ethical and reputational risks has become a critical element of corporate governance,' said the BAE report.

Toughening up

But it is not all doom and gloom. There are promising moves towards improved enforcement worldwide, and some tough penalties are being handed out for non-compliance. With the prosecution of insurance broking group Aon at the beginning of this year for failing to prevent €5.5m (\$7m) of suspicious payments to overseas firms, the UK could be seen as toughening up its stance.

The Financial Services Authority (FSA) fined Aon €6m (£5.25m) for failing to prevent bribery overseas. Margaret Cole, director of enforcement at the FSA, said: 'This is the largest financial crime-related fine imposed by the FSA to date. It sends a clear message to the UK financial services industry that it is

Transparency and the rule of law will be the touchstones of this presidency
US President Barack Obama

Corruption

For much of its operations across the globe, bribery was nothing less than standard operating procedure for Siemens
US assistant attorney general Matthew Friedrich

completely unacceptable for firms to conduct business overseas without having in place appropriate anti bribery and corruption systems and controls.' Put in perspective the fine is a small one, but it is a step forward in the fight against corruption.

Another big step forward would be tougher laws. The UK is said to be preparing a draft bribery bill making it a criminal offence to offer or accept a bribe anywhere in the world. Under the proposals, the maximum penalty for such a crime would rise from seven to 10 years, with an unlimited fine. The bill is also reported to include a new corporate offence of negligence in preventing bribes. Transparency International, a global coalition against corruption, has urged the Government to pass the bill before the next election.

Despite its high profile as a lax jurisdiction, the UK ranks fifth in Transparency International's 2008 Bribe Payers Index of the countries least likely to have companies that engage in bribery overseas. Belgium and Canada topped the table with the cleanest record. Amongst the 26 countries listed, France, Australia, the US, Spain, and Italy were all more likely than Britain to have companies engage in bribery overseas.

Another promising move is that the OECD is pushing to grow its influence in Asia and Africa. The OECD is in discussion with China over its transnational anti bribery efforts. The organisation has also signed a partnership with the African Development Bank to help African countries fight bribery and corruption. And China, India and Indonesia are already members of the Asian Development Bank/OECD Anti-Corruption Initiative for Asia and the Pacific, which brings together 28 Asian and Pacific economies that are committed to implement international anti corruption standards.

Transparency International also welcomed President Barack Obama's tough stance on anti corruption enforcement, which was taken on his first day in



Reinhard Siekaczek, former Siemens manager, awaits his judgement in a Munich courtroom in July 2008. Source: Reuters

office. The coalition lauded Obama's declaration that 'transparency and the rule of law will be the touchstones of this presidency'.

'The United States was a trailblazer in 1977 when it passed the Foreign Corrupt Practices Act (FCPA), barring US based firms from bribing public officials abroad. Its enforcement track record is a model for all major exporting countries that has yet to be replicated,' said Transparency International in a recent statement.

Siemens case

The Siemens bribery case, which revealed widespread corruption in one of the biggest corporations in the world, demonstrates the long arm of US anti corruption laws and the effectiveness of the FCPA.

In December 2008, the German engineering giant and three of its subsidiaries pleaded guilty to violations of the FCPA and agreed to pay a record total of €1bn (\$1.3bn) to American and European authorities. The firm was fined €395m (\$520m) by the Munich Public Prosecutor's Office. On the American side, Siemens also paid €340m (\$450m) to the Justice Department and €265m (\$350m) to the Securities and Exchange Commission. The combined US penalties made it the largest monetary sanction ever imposed in an FCPA case since the act was passed.

Beginning in the mid-1990s, Siemens engaged in systematic efforts to falsify its corporate records and knowingly failed to implement existing internal

controls, according to the prosecutors. Siemens was accused of making bribes totalling around \$1.3bn to government officials in Asia, Africa, Europe, the Middle East and the Americas. The bribes included kickbacks to the Iraqi government, and illegal payments to Argentine, Venezuelan and Bangladeshi officials to secure favourable treatment on national infrastructure projects. 'For much of its operations across the globe, bribery was nothing less than standard operating procedure for Siemens,' said US assistant attorney general Matthew Friedrich.

The incident, which has done untold damage to Siemens' corporate reputation, is also indicative of a trend whereby foreign jurisdictions are increasingly cooperating on big cross-border investigations. This was laid out as one of the goals of the Group of 20 when they met in London in April this year.

A large part of the fight against corruption depends on political willingness to use the tools already in place. For the sake of freedom, fairness and prosperity let us hope they are used effectively.

Nathan Skinner is associate editor, StrategicRISK

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- ▶ Nigeria set to prosecute two over bribery
- ▶ Bribe payers shamed

Know your business

What are the implications of the Foreign Corrupt Practices Act (FCPA) for European companies and their directors?

The FCPA is a piece of US legislation, but it has transnational reach. The entities that can be legislated by it are American companies, companies that have an American branch office, or companies regulated by a US regulator. There is also a, somewhat untested, provision under the FCPA which means if any part of the corrupt action touches a US jurisdiction, the regulators will pounce. A good example of this is the BAE case. The Americans are looking into whether some of the funds that were allegedly a corrupt payment to the Saudi Arabian government were routed through the US. So far that rule has not been tested in court. But not many breaches of the FCPA are settled in court. Most companies who are investigated under the FCPA reach some kind of accommodation with the Department of Justice (DOJ) before the case reaches the courtroom. The DOJ is very aggressive at following this type of thing.

The US is unique in the way it has exported its anti corruption legislation world-wide. It has done this through the vehicle of the FCPA. In terms of how aggressive the enforcement authorities are in prosecuting offences, it really depends on the jurisdiction. Another trend is cooperation between foreign regulators and the DOJ; we saw this with the Siemens case.

Everyone knows corruption is a bad thing; everyone knows the FCPA has levelled the playing field; it is now down to the tactical issues of ensuring compliance.

How can companies ensure they are compliant?

You have to have a consistent, comprehensive and thorough compliance programme. A compliance programme has many facets. It can have a training element to educate your own people and your clients about why corruption is bad and outlining the company's policy against corruption. Coded ethics are another big part, so that a company publicly says what it expects from its employees, management and

Knowing who you are doing business with is absolutely key

clients. There is an auditing requirement as well. A big part of the FCPA is the books and records provision, which means companies have to account properly for absolutely everything.

But, for me, the biggest part of how to be compliant with the FCPA is about knowing who you are doing business with. The FCPA is all about not paying bribes to secure business abroad. If you do not know who you are doing business with, you have no idea if you are paying them bribes or not. A bribe in business these days is not a brown paper envelope under the table. It is a nice fat consultancy contract, a government PR contract, or giving work to people that can funnel the money to people in positions of influence. A company does not know if it is doing business with a foreign political figure unless it checks the background of that person. Knowing who you are doing business with is absolutely key. A company can have all the bells and whistles on its compliance programme, but if it does not know who it is doing business with it is not going to be compliant. And there is no way it can claim to the DOJ that it is compliant. If a company can demonstrate it has a consistent and comprehensive anti corruption compliance programme in place it can negotiate fines down by up to 95%.

How can companies manage the risk of corruption when doing business in emerging markets?

Companies can manage the risk of corruption by understanding the background of the companies they are dealing with. The main priority is to identify the

company correctly. Once the company has been identified it is possible to ascertain who owns the company and who exercises management control over it. I am surprised by the number of multinationals in Asia who cannot get an accurate vendor list together, either because it is stored in many different places and formats or the vendor names are out of date.

Another crucial issue is to adopt a risk-based approach. Different jurisdictions and different types of company warrant different levels of due diligence. A FTSE company requires a different level of due diligence than a privately owned company in Indonesia, for example. Companies need mechanisms to risk rate their vendors and they need to apportion their due diligence commensurate with the level of risk they represent.

When a company looks at its vendors, it should risk rate them using a mixture of country-specific, industry-specific and situation risk. It should identify what types of company they are and the people behind the vendors, because ultimately that is where the risk really resides. It should look at companies to see if they have a track record of corruption, or indeed if they have a track record at all. If it is a newly incorporated company with no track record, then that raises as many questions as if it is a company with a long and sullied history of corruption.

I think emerging markets are more challenging for a number of reasons. They are very different from home environments so people tend to expect less, and they tend to think they can get away with more, which is not the case. The common wisdom is that these markets are opaque and difficult to get information in. I do not agree with that. Information is just as accessible in emerging markets as it is in developed markets.

What other legal obligations are European corporations exposed to in relation to anti money laundering, anti corruption and counter terrorism?

The obligation which underpins all of these laws is the same, whether it is in relation to anti money

Identifying your suppliers and customers is crucial if you want to avoid international corruption scandals and legal penalties. **Michael Short** has the answers.

laundering (AML), anti corruption or counter terrorism. The requirements under the US Patriot Act are the same as the European directives on AML, and that is to really know who you are doing business with.

Do you think the current economic climate is having an impact on the level of corruption risk around the world?

Yes, I think it is. People are now struggling even harder to make the same sales as they made before. If a company does not have a consistent compliance culture and tracking mechanism within it, that is when things can start to go wrong. Sales guys can start to cut deals that they should not be cutting. And that is all a factor of there being less business going around at the moment.

What tools are available to help companies identify and rank political, economic and criminal risk in the countries they operate in?

In terms of risk ranking for jurisdictions we have a Country Check tool that lets a user assess the risks in a particular jurisdiction.

The other tool that companies need is access to government and company records. You can only retrieve what is publicly available, but there is a wealth of information in emerging markets on companies and the people behind them, which is often overlooked. China, for example, has fantastic public information if you know where to look. India is pretty good as well and Indonesia is not bad. There are thousands of company registries in China based on municipalities, counties, states and provinces. The information is not online, but it is far in excess of what is available from Companies House in the UK.

You have years of experience tackling organised crime with the Royal Hong Kong Police Force. What are the threats posed by organised crime in Asia?

Organised crime in Asia operates on a number of levels. There are serious organised crime gangs; they are heroin traffickers or cocaine importers, which are

what I call the hardcore criminals. There is also a middle level of criminals who counterfeit cigarettes and DVDs. At the bottom end of the scale is the street level threat.

At every level you see organised crime involvement, whether it is street level extortion, buying fake DVDs or counterfeit cigarettes, or the really serious drug and human trafficking. Over the last 20 years increasingly complex relationships between the organised crime groups have developed. Now there is a real globalisation of organised crime. What we have now is a whole new globalised level of black commerce. Whether it is the Triads in Hong Kong or Yakuza in Japan, they all know each other, they all outsource jobs to each other. That type of organised crime is totally different to the stuff you see on the streets.

One of the most popular pastimes of organised criminals now is counterfeiting tobacco, because it makes them almost as much money as drug smuggling does, but the penalties are much less steep. A counterfeiter may get six months in prison or perhaps a \$100,000 fine, but they are not going to get hung for it. Counterfeit tobacco and DVDs are where organised criminals are making the most money at the moment.

Large scale extortion against big multinational companies is not really a common tactic. Organised criminals would rather prey on their own or the weak than cause a big fuss. It is virtually unknown for an organised crime circle to try and blackmail a big multinational company, because it would create too much publicity and the authorities would jump on it. Organised crime makes its money by flying below the radar, and it does that either by producing and distributing counterfeit goods or by dealing with a completely illicit market like drugs or human trafficking.

Michael Short is managing director of IntegraScreen, which does due diligence on companies and governments worldwide. In February 2009 World-Check bought IntegraScreen.

Information is just as accessible in emerging markets as it is in developed markets



Michael Short

SPECIAL REPORT

Corruption Risks on the Rise

Corruption used to be taken for granted as a way of doing business. Until recently, many countries allowed bribes paid overseas to be tax deductible. It is now the subject of greater legislation and law enforcement. Leading companies report on it in their corporate responsibility reports, and have instituted zero tolerance policies.

There are three primary reasons why corruption risks have increased. First, there is the massive increase in global trade and, in particular, transactions and relationships involving countries that are high risk with regard to corruption, for example, sourcing from China or selling to India and Russia. Second, a more consistent and wide reaching international anti corruption legal framework has been put into place after the 1997 OECD Anti Bribery Convention and the 2003 United Nations Convention Against Corruption (UNCAC).

Finally, and perhaps most importantly, there has been a substantial increase in corruption related investigations and regulatory enforcement. However, efforts in this direction by the UK and other European countries pale into insignificance beside those of the Department of Justice in the US in enforcing the much feared Foreign and Corrupt Practices Act (FCPA). The FCPA incorporates several important principles, notably extra-territoriality. The sums levied in fines or agreed settlements have been eye-catching: \$1.6bn in the Siemens case and \$579m on Halliburton and associated companies over bribes relating to the Bonny Island project in Nigeria.

The challenge is what companies should do. This is particularly important in the light of new trends in legislation, in which having an effective anti corruption system in place can be a defence for an accused company. It will not prevent investigation and penalty, but it will help to exonerate senior executives and board members, enabling a case to be made that problems have arisen from rogue employees rather than company policy or systemic failures. In the recent Financial Services Authority ruling against Aon in the UK, the company was criticised for having a 'weak control environment'. This included: poor risk assessment, especially in high risk markets; an inadequate system and controls with poor risk monitoring; a slow reaction to warning signals, and poor training.

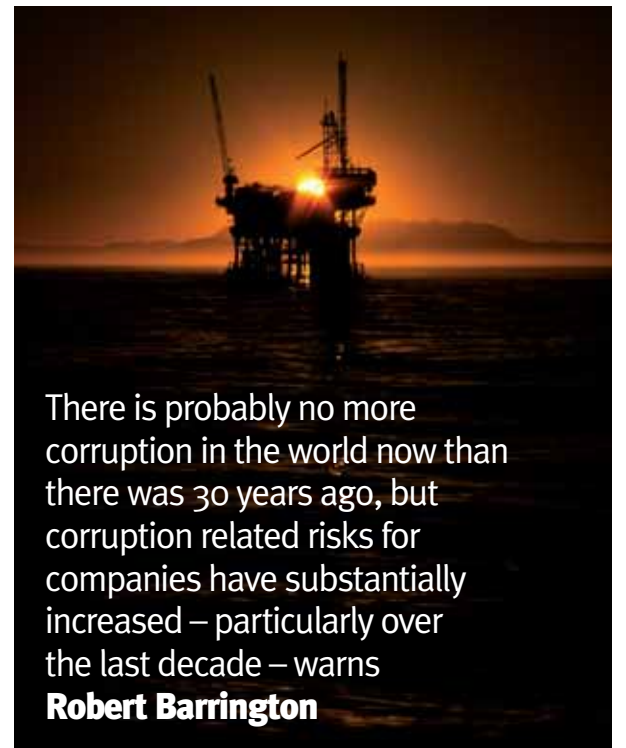
The Aon case is instructive because, like the Woolf report that was commissioned after a series of allegations against BAE Systems, it demonstrates that we learn most about what regulators think is a good anti corruption system from what's gone wrong.

Interestingly, Aon received a 30% discount in its fine because it had cooperated fully with the authorities. Likewise, Siemens cooperated fully with the Munich and US authorities, and it has been estimated that without such cooperation, the case would have taken two to three times as long to resolve, potentially trebling the 1.5 million lawyer and forensic accounting hours involved. Regulators are strongly emphasising that self reporting and full cooperation are the quickest ways to a favourable and less costly resolution of cases.

Avoidance of problems in the first place is clearly critical for companies, and there are three simple steps that can be taken to mitigate the risks. A good starting point is board level sign off of business principles that have a zero tolerance approach to bribery. Transparency International's *Business Principles for Countering Bribery* is one of three codes accepted by the UN as demonstrating compliance with the anti corruption principles of the Global Compact, along with the International Chamber of Commerce code and the World Economic Forum's PACI principles. These codes cover areas including political contributions, charitable donations, gifts, hospitality and facilitation payments – all potential pitfalls.

Next, there needs to be a thorough risk assessment of where the business is exposed to corruption risks. Among the tools used in the risk assessment are likely to be two developed by Transparency International and available at www.transparency.org. The Corruption Perceptions Index highlights which countries are high risk. The Bribe Payers Index shows which countries' companies are most likely to pay bribes, and which sectors are most vulnerable. Certain types of transaction are particularly high risk. Using local agents, entering into contracts or joint ventures with state-owned companies, and dealings with government officials or politicians (known as politically exposed persons or PEPs) are all high risk.

Finally, there is a need for good training. The transactions that involve straightforward passing over of cash to receive a contract or permit have become less common as corruption has become more sophisticated. It is more likely to be found in the provision of



There is probably no more corruption in the world now than there was 30 years ago, but corruption related risks for companies have substantially increased – particularly over the last decade – warns **Robert Barrington**

payments or services to a corrupt official's family members or nominated charity, or a requirement to do business with a specific counter party. This complexity makes corruption difficult to trace, and also makes it necessary for employees to be properly trained in the pitfalls and the legal sanctions they and their company face if they make a wrong decision.

No system is foolproof, but in the corruption arena, most companies do not have a system at all. However, as corruption risks are rising, companies need to respond to them. It is likely that in both the US and Europe there will be an increasing number of high profile cases with high fines and prison sentences. Most of the companies involved in investigations to date did not know they had a problem until investigators came knocking on the door. That should be worrying for any business.

Robert Barrington is director of external affairs, Transparency International (UK)

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- ▶ Emerging markets most likely to bribe
- ▶ Aon's bribery fine is a major milestone

Having an effective anti corruption system in place can be a defence



Integrity Interactive Corporation, a US-based organisation which helps companies manage and reduce the risk of compliance failures, has found in its latest survey that concerns over new supply chain regulations and negative media exposure from potential supply chain scandals are top of the list of companies' compliance issues. However, a report by the global responsible investment specialist EIRIS released in the second half of last year has found that only 10% of high risk companies manage their bribery risks to a good standard.

UK firms have already had a sound warning about what courts and regulators expect of them by way of ensuring that third parties act ethically in business dealings carried out on their behalf. A review into business practices at UK defence firm BAE Systems last year by former chief justice Lord Woolf called for tougher anti bribery measures at the company. Of the 23 recommendations made, number 11 is one of the most pertinent. This states that there should be 'a requirement to undertake face-to-face interviews, involving a company lawyer, as part of the due diligence process with all advisers whose activities require the interaction with potential customers.' Woolf also said that advisers should submit quarterly activity reports to the company for internal audit to review, and that facilitation payments should be stamped out.

Some are sceptical about how the recommendation that company lawyers should interview current and prospective contractors will work in practice. Kate Jones, founder of consultancy *Inspired Lives* and a former general counsel at Kellogg's, says that 'Lord Woolf's recommendation is a nice thought, but very difficult to put into practice. There is a limit as to what

Risk managers also say that it is immensely difficult to try to police their suppliers

There may also be a growing impetus for UK companies to ensure that they carry out appropriate due diligence when they source locally based third party contractors for their overseas operations. Calum Burnett, head of the finance litigation practice at law firm Allen & Overy, and Aron Chakrabarti, a partner in the firm's banking and finance litigation group, say that the Law Commission's latest report on reforming bribery, which came out at the end of 2008, proposes a new criminal offence aimed at corporate entities.

The proposal states that if a corporate entity negligently fails to prevent bribery being committed by an employee or an agent on its behalf then the company will have committed a criminal offence. However, while it would be a defence for the corporate entity to show that there were adequate procedures in place designed to prevent such bribery.

Kirsty Searles, partner in the enterprise risk services group at professional services firm Deloitte, says that 'as regulators step up their enforcement of anti bribery and corruption legislation it is increasingly important that companies know who they are dealing with and can demonstrate that they are taking appropriate steps to manage the risk of their advisers, agents and subcontractors behaving improperly.'

Under the US Foreign Corrupt Practices Act, and similar legislation in the UK, if an agent or subcontractor pays a bribe to secure a contract which the company benefits from, the company may be liable for its supplier's action. The penalties of non-compliance can be extensive, with multi million dollar fines, penalties, and disgorgement of profit, as well as the disruption of an investigation, imposition of a monitor and a ban on bidding for government contracts.

Peter Smithson, director of risk assurance services at accountants PricewaterhouseCoopers, says that company executives need to ensure that there are physical visits to contractors' sites. That way, he says, 'you will get a much better idea about how they run their companies, whether staff are being well-treated, and how their corporate ethics are reflected in their working practices. In an interview, people can say whatever they want to try to impress. But a visit to their premises can be much more revealing.'

Smithson also suggests that companies should ask suppliers for a copy of their ethical business guidelines, and ask how they are embedded and enforced throughout the organisation. 'By digging deeper into their ethical culture, you are more likely to find gaps between the expectation of how the business should be run, and the reality on the ground. The more holes you find, the more wary you should be. If they cannot enforce their own codes of conduct, how can they follow and enforce yours?'

Neil Hodge is a freelance writer

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- ▶ CSR and suppliers
- ▶ Advice to combat bribery risk

Policing your Suppliers

With the threat of jail time, massive fines, exclusion from government contract work, and potentially ruinous damage to their reputations, companies should be putting bribery risks committed via third parties high on their risk agenda, says **Neil Hodge**

an in-house legal team can do in these circumstances,' she says. 'What can a lawyer actually achieve in an interview? What is he supposed to ask and how long should the interview last?'

Risk managers also say that it is immensely difficult to try to police their suppliers, as well as their own staff. 'We don't have the resources or necessary access to check what our suppliers and contractors are doing overseas. You can only inform them of the way that we want to do business and threaten them with penalties and sanctions if they fail to honour the contract,' says one risk manager who asked not to be named. Gemma Lacey, a CSR project manager at the John Lewis Partnership, says that 'it is never possible to provide 100% confirmation that all suppliers are fully observing our code of practice at all times.'

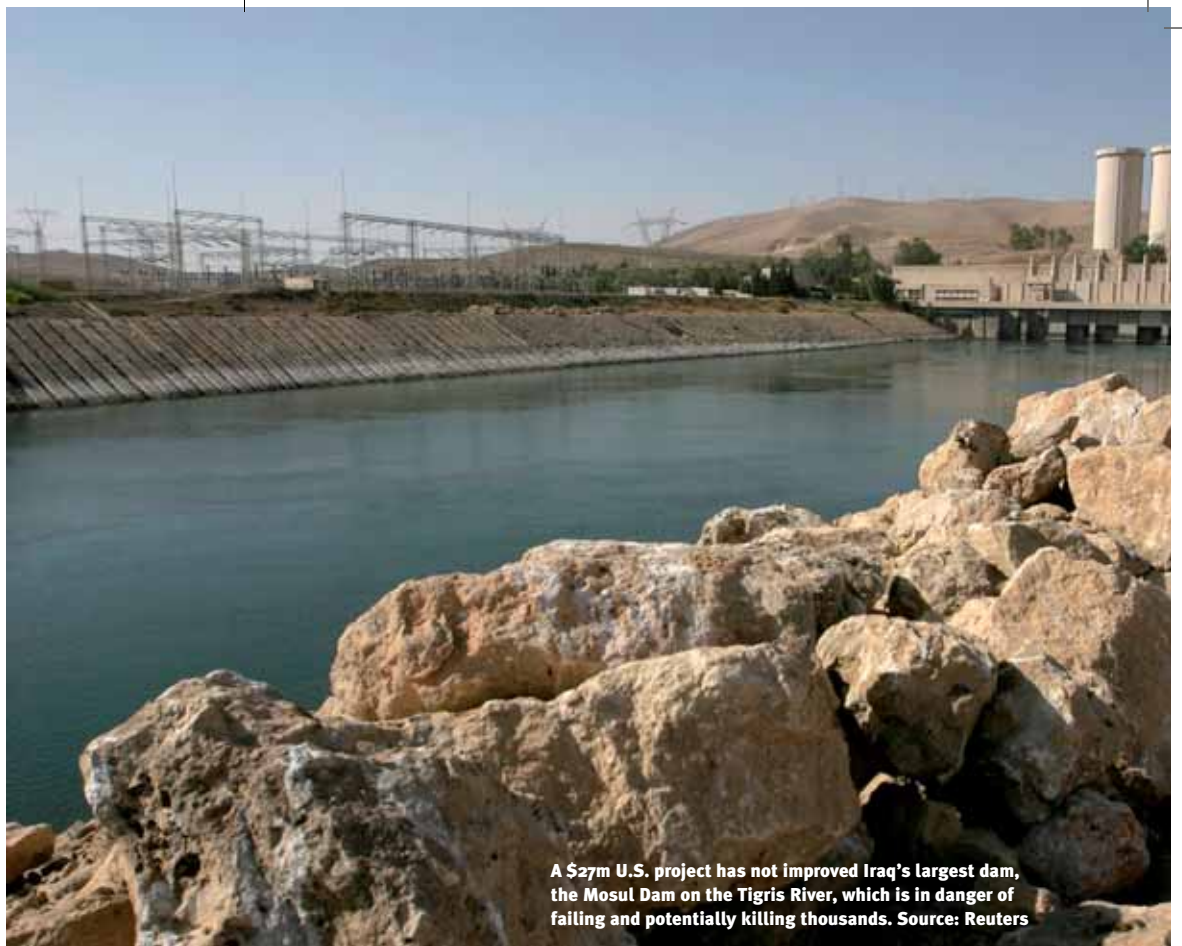
SPECIAL REPORT

The current economic environment is pushing many countries into unfamiliar territories where they are more likely to encounter bribery and corruption. There are a host of issues that are likely to arise when operating in an environment where corruption and bribery are a prerequisite in order to oil the wheels of commerce. Even as the US Foreign Corrupt Practices Act (FCPA) becomes the de facto anti bribery standard worldwide, over 50% of US executives – and a shocking 84% worldwide – know little to nothing of its provisions, according to Ernst & Young's 10th global fraud survey.

It is almost inevitable that those countries offering the greatest rewards are also highlighted in dark red on Transparency International's world map of bribery and corruption. Two examples that have affected our clients only go to exemplify the difficulties faced.

Democratic Republic of Congo

The US Department of State described corruption in the DRC in 2007 as 'pervasive'. Transparency International's 2007 Corruption Perceptions Index identifies the DRC as one of the 10 most corrupt



A \$27m U.S. project has not improved Iraq's largest dam, the Mosul Dam on the Tigris River, which is in danger of failing and potentially killing thousands. Source: Reuters

It could happen to you

As companies find themselves looking outside their normal areas of operation, **Heyrick Bond Gunning** expands on his clients' experience in countries where corruption and bribery loom large.

countries in the world. Furthermore, the World Bank has reported that the DRC's judicial system is one of the world's six weakest in terms of enforcing commercial contracts. It is this institutional weakness that has allowed corruption to flourish.

At the lower levels, corruption is evident from the moment one enters the country, whether it is \$50 required for an incorrectly dated yellow fever immunisation document or payments at police checkpoints. At the other end of the scale, the abundance of natural resources in the DRC enables corruption on an enormous scale as government officials use bribery to share in the profits. For example, it is estimated that in the mining sector, exports of large quantities of DRC copper and cobalt have been undeclared, and that 60-80% of the DRC's 2005-2006 customs revenue was embezzled. A payment in kind or in cash is often required at every step of the process.

It is possible to operate without using bribery but this requires patience, time, an extremely robust anti bribery policy and above all, local knowledge.

Iraq: reconstruction

Iraq was ranked 118th in Transparency International's 2003 Corruption Perception Index, with a CPI of 2.2, but descended to 178th in 2007 with a CPI of 1.4, making it the third most corrupt country in the world.

The demise of Saddam Hussein's regime saw the removal of any form of state control and the country descend into anarchy. The population sought to compensate itself after years of repression, and

institutionalised corruption replaced initial indiscriminate looting. Vast amounts of money poured into the reconstruction effort; billions of dollars remain unaccounted for and lost to corrupt practices.

In Iraq, allegations range from petty bribery to large scale embezzlement, expropriation, profiteering and nepotism. A Transparency International report has stated that the corruption in Iraq will probably become 'the biggest corruption scandal in history.' A Coalition Provisional Authority report by Stuart Bowen found that \$8.8bn dollars from Iraqi oil revenues had been distributed by US administrators to Iraqi ministries without proper accounting procedures. Consequently the money has virtually disappeared.

While setting up a business in Iraq, I saw a variety of levels of corruption from bribes issued to customs officials through to the almost constant stream of 'officials' that waited at my hotel to demand payment for everything from office space and land to services that had not been delivered.

Even so, there still are numerous opportunities within Iraq, but it is necessary to undertake rigorous analysis prior to committing – performing due diligence on clients and opportunities involved, and ensuring the necessary mitigating procedures are put in place to counter the risks uncovered.

Tackling/mitigating corruption

There are a variety of initiatives in play to combat corruption and bribery from the United Nations Convention against Corruption to the Partnering

Against Corruption Initiative (PACI), to individual corporate initiatives.

Organisations should:

- have a zero tolerance policy
- prohibit giving or accepting bribes – directly or through an agent or other intermediary
- identify high risk areas – political/charitable giving, gifts/expenses, 'facilitation' payments, business relationships
- have an effective programme to include a code of ethics, policies and procedures and administrative processes
- educate and train employees and ensure and accountability through guidance and oversight
- ensure policies are adhered to by suppliers
- build a consensus with stakeholders on approaches and specific activities to combat corruption
- implement consensus-based plans, capacity building in complementary skill areas including: community based monitoring and reporting; community analysis of options; revenue generation to support sustainable local monitoring, and participation in decentralised governance
- make agents and business partners explicitly aware of the company's policies and expectations. It is the responsibility of managers to ensure that they comply with these policies
- have a whistle blowing/reporting facility.

Heyrick Bond Gunning is managing director of Salamanca Risk Management, www.salamancarm.com