

CLEANING UP

Corruption, scandal and bribery are commonplace in the world, but what action is being taken to eradicate these crimes? And what can treasurers do to avoid them? Ian Fraser reports

In September 1977, Sir Richard Dobson made some off-the-cuff remarks he would come to regret. In an after-dinner speech, the British Leyland chairman dismissed allegations that the state-owned car manufacturer was running a slush fund to bribe overseas officials as a case of accusing the company of a perfectly reasonable and even ‘respectable’ practice. It later transpired the allegations were true. British Leyland was handing £4.2m a year – the equivalent of £20m in today’s money – in kickbacks to officials to secure sales of buses and Land Rovers in the Gulf States, Iran, Libya, Nigeria, Sudan and Turkey. But in 1970s Britain, the scandal benefited from a full-establishment cover-up and was never investigated. Dobson, however, fell on his sword the following month.

The story illustrates the extent to which attitudes to bribery and corruption have changed. “In the 1970s, bribery wasn’t really seen as problematic – it just wasn’t the sort of thing that decent chaps talked about,” says John Grout, policy and technical director at the ACT, who started his career at the car giant seven years earlier. “The world has moved on enormously.”

The US was quicker to turn the tables. In the year of Dobson’s unspeakable remarks, President Jimmy Carter signed the Foreign Corrupt Practices Act into

law. This was America’s response to major bribery scandals involving the US firms Lockheed – which was paying \$20m a year in bribes to governments around the world to secure defence contracts – and the banana importer United Brands – which, in a scandal that led to the suicide of its chairman in New York and a coup in Tegucigalpa, had handed Honduras’s military ruler, Oswaldo López Arellano, \$2.5m in bribes to get taxes lowered.

Crackdown on corruption

In Europe, change took longer. A blind eye was for many years turned to graft by ‘strategic’ players such as defence manufacturers, including BAE Systems. In parts of Europe, bribes were even tax deductible. It wasn’t until the late 2000s that Britain got its anti-bribery act together. Following international pressure from the Organisation for Economic Co-operation and Development (OECD) and others, the country’s previous anti-corruption legislation, a mishmash of dusty statutes and common law, was replaced with the Bribery Act in July 2011.

The Act – wider ranging and more draconian than the Foreign Corrupt Practices Act (FCPA) – served as a massive wake-up call for businesses operating internationally and spawned an industry of consultancy and compliance, which, arguably, has a vested interest in hyping its dangers. But Jake Storey, vice chairman of the Maritime Anti-Corruption Network (MACN), says “the act has focused people’s minds like they were never focused before”.

Rather than focus solely on bribes paid to foreign officials and state-owned enterprises, the Act encompasses all types of business transaction. It makes UK-based firms liable to prosecution no matter where offences occur. And, unlike the FCPA, the Act treats ‘facilitation payments’ as an offence. Smaller than bribes, these are often made to ease and accelerate public-sector procedures that would have happened anyway.

However, the Bribery Act’s most disconcerting aspect for UK firms is that it leaves them open to prosecution for acts of bribery they do not commit, but which are committed on their behalf by >

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intermediaries. The firms' sole defence in such a scenario is to prove that they have adequate anti-bribery procedures in place. Nick Burkill, a partner in law firm Dorsey & Whitney, says: "That aspect of the Act is designed to change corporate behaviour – and it's working."

Initially, a lack of convictions raised doubts over the Act and whether the Serious Fraud Office (SFO) was fit to police it. The perception gained ground in 2013 when the SFO saw its case against Jordanian-born metals magnate Victor Dahdaleh, who was charged with bribing Bahraini officials on behalf of US-based aluminium giant Alcoa, collapse. Then, in December 2014, the Act and the SFO were partially vindicated when they secured the first convictions under the Act.

Gary West, a director of bio-energy firm Sustainable Growth Group (SGG), was jailed 13 years after being found guilty of accepting bribes from a third party in exchange for issuing fake invoices that entitled the agent to commissions. The agent, Stuart Stone, was convicted of giving, and West of accepting, the bribes under the Bribery Act, with Stone receiving a six-year prison sentence. SGG's former boss, James Whale, convicted of fraud, was jailed for nine years. It has been reported that the SFO is also poised to enter into deferred prosecution agreements (which were introduced to the UK last year) with a further two small UK-based exporters over bribery allegations before the year is out.

According to an OECD review of bribery cases between 1999 and 2014, more than half were in the construction sector, the extractive industries, transportation and IT/communication. Most involved large companies, with only 4% of cases involving SMEs. Facilitation payments to customs officials accounted for 12% of cases. And bribery was shown to be almost as widespread in

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What is corruption?

According to the UN, corruption is "the misuse of a public or private position for direct or indirect personal gain". It can include acts of bribery, extortion, bid-rigging, embezzlement, price-fixing and multiple varieties of fraud. The corrosive effects of bribery in eroding trust in governments, distorting competition and inhibiting innovation have been well-documented.

developed economies as in developing ones, a finding that may require some companies to rethink how they assess risk. Transparency International's annual Corruption Perceptions Index provides a widely used guide to the prevalence of corruption in different parts of the world (see www.transparency.org/cpi2014).

How can treasurers protect their organisations?

What should corporate treasurers do to ensure their firms don't fall foul of anti-corruption legislation? MACN's Storey says they need to be careful not to miss the wood for the trees. "A lot of corporate treasurers are so focused on the obvious, first-tier risks, they're blind to the long tail of corruption risks that exist in the supply chain." He advocates regular interaction with intermediaries as essential, including "regular risk assessment". He says compliance checks can be pooled via new services such as Trace International, which Storey calls "the TripAdvisor of the seas" and shines a light on the ownership of each vessel.

Nick Kochan, co-author of *Corruption: The New Corporate Challenge*, says

treasurers need to be particularly careful when dealing with intermediaries to ensure that payments are not made to fake companies whose beneficial owners are, in fact, 'politically exposed persons'. "If that politician is overthrown, his successor may well let it be known," says Kochan.

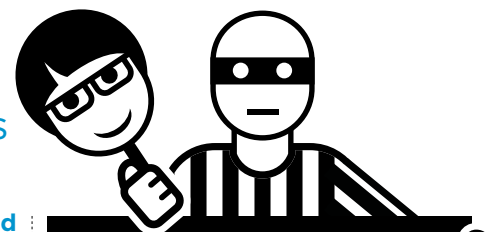
Burkill says: "Red flags include the use of cash, the use of special-purpose vehicles and offshore companies, the use of consultants and agents, and payments to charities; and areas to check include travel agents, promotional events and also, funnily enough, exchange rates." He said an internal auditor told him of a case where a payment request and invoice seemed legitimate, but it turned out exchange rates were being manipulated to build up a cash fund.

A business strategy can, in and of itself, be a red flag of future corruption risk, warns Richard Bistrong, an anti-bribery consultant, who formerly cooperated with the FBI and City of London Police. "You need to think broadly about the strategy, not just individual risks. If the firm is entering a low-integrity frontier market, with ambitious growth targets, the corporate treasurer ought to be asking their operational colleagues how that growth is going to be achieved."

If corruption is found internally, or at an intermediary, the worst a firm can do is seek to bury it. Prosecutors are generally tougher on companies that fail to self-report or cooperate, but reward those that do. "Regular monitoring, reporting to the board and example-setting are an absolute must if any defence of 'adequate procedures' is to succeed," says Angela Pearson, a partner at law firm Ashurst.

Staff training is essential. Seth Berman, MD of consultants Stroz Friedberg, says managers in high-risk areas ought to be given "entertaining and informative live training sessions" at least once every three years. He also recommends annual online training. And intermediaries should not be neglected. In its annual benchmarking

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report, risk mitigation and response company Kroll recently found that only 27% of firms were training third parties at least once a year, with half giving third parties no anti-bribery training at all. The figures were “alarmingly high”, said Kroll.

SMEs are more likely to struggle with anti-bribery requirements than their larger peers, and some are preferring to give certain high-risk territories a wide berth rather than risk a probe. Recent research from the Ministry of Justice and the Department for Business found a third of UK SMEs were unaware of the Act. Storey says: “SMEs often don’t know where to start.” He recommends smaller firms tap into collective action networks, such as the MACN, the World Economic Forum’s Partnering against Corruption Initiative or the Extractive Industries Transparency Initiative.

Targeting foreigners

Of the 10 biggest settlements reached by the US Department of Justice (DOJ) under the Foreign Corrupt Practices Act, only two were with US firms – Halliburton and Alcoa. The rest were with British, French, German, Italian and Japanese multinationals. The financial settlements, always involving deferred- or non-prosecution agreements, ranged from \$93m to \$800m. Suggestions the DOJ is targeting non-US firms are dismissed by anti-bribery experts. Burkill says: “What non-US firms often don’t grasp is the importance of cooperation with the US authorities.”

Corruption cases around the world

The enforcement of bribery legislation remains patchy. Only half of the 41 signatories of the OECD’s anti-bribery convention are bothering to investigate or pursue foreign bribery cases. Only four – Britain, Germany, Switzerland and the US – are actively prosecuting alleged breaches, according to Transparency International. However, a few emerging markets are taking a surprisingly tough line.

The former South Korean prime minister Han Myung-sook was jailed for two years in August after being found to have accepted \$758,850 in bribes from the boss of a local construction firm. In China, president Xi Jinping’s anti-corruption drive has seen the country’s ‘gift’ culture go underground, dented sales of Scotch whisky, and seen GlaxoSmithKline fined \$490m for bribing doctors and hospitals to get its products promoted. Thailand last year joined China, Iran and Vietnam in introducing the death penalty for corruption cases, and, in Indonesia, Muslim clerics are pushing for its introduction.

But corruption will always be a mercurial thing. When one door is closed – for example, through a legislative crackdown – people with malign intent open others. Technology, including cryptocurrencies and the dark web, are opening new off-piste routes. In a recent interview with Bistrong, Tom Burgis, a *Financial Times* journalist and author of *The Looting Machine*, said: “History suggests that corruption evolves in response to threats. Just look at how cash bribes have given way to the use of offshore front companies and concealed equity stakes in projects granted to officials.”

Rahul Magan, manager in corporate treasury at New York-headquartered

Western hypocrisy

Oxford University academic Paul Collier says there is a degree of hypocrisy about corruption in the developed world. He has said: “In corruption it takes three to tango – the bribed official, the bribing company and the lawyers who provide the getaway car for that corrupt bribe, so it can be parked in an anonymous bank account somewhere in a secrecy haven.” London’s property market was recently identified as a low-tax ‘laundromat’, where corrupt foreigners can safely park their ill-gotten gains without scrutiny. Storey says: “If the UK is serious about addressing corruption and illicit financial flows, it cannot allow the open sore to exist.”

outsourcing firm EXL, warns that lawmakers are constantly fighting the last war. He says: “Laws like FCPA and the UK Bribery Act are a bit of a joke when you consider the current scandals. They are like anti-virus software that only addresses the last-known virus in the system. They’re incapable of eradicating the many new viruses that have plagued the system since they were drafted.”



Ian Fraser is a freelance financial journalist and author