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Has corruption
given all of
us willful
blindness?

Mónica Ramírez Chimal



by Mónica Ramírez Chimal

Has corruption given all of us willful blindness?

- » Corruption prevails by using “front” companies, cash, and parallel accountings, and it may even be authorized by CEOs and presidents of companies.
- » It is thought that culture is the trigger of the corruption. Certainly not. Companies and persons have shown us how to promote it in less likely countries or industries.
- » To protect companies from corruption risk, first assess how much exposure the company faces in each area or process and by which job positions. It’s different depending on where it is located and where it does business.
- » Do business visits by surprise, make your policy accessible for employees and third parties, use reminders, and use quizzes or games to ensure everybody knows what to do, but above all, make sure they are aware of what could happen.
- » Timing is a key issue for any report of corruption. Do something! Otherwise people won’t speak up and impunity will prevail.

I am sure you have heard so much about corruption that it does not scare you anymore. In fact, would you be surprised if I tell you that many of the most important companies worldwide have given bribes in order to be successful? Let’s say they have

“shortened the path to expanding their business” by the most common practice known: corruption.

Until now, the most relevant case of corruption in Latin America has been Grupo Odebrecht (a Brazilian construction conglomerate caught up in the Lava Jato scandal).¹ Odebrecht

paid more than \$700 million as bribes in twelve countries in Latin America and Africa. Its strategy: Pay politicians, political parties, or state employees to secure the contract of public works. Those people were paid either to directly assign public works to Odebrecht or for someone to intercede in favor of it. In all

countries involved, its modus operandi was to use different front companies to pay the bribes in cash. It even bought a local bank in Antigua (the Caribbean island) to facilitate the operations.

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Within the company, they used a parallel accounting scheme (named Structured Operations sector) to guaranteed the funds used and to authorize the transfers with the supervision of the president of the company. The news called it “the professional corruption system.”



Ramírez Chimal

Siemens, Walmart, Johnson & Johnson, Alcatel, Snamprogetti, AstraZeneca, and other international companies have been involved in corruption scandals. Add to this: FIFA, politicians, and...the scope becomes wider. Regardless in which country they are located and doing business, those cases have shown us that corruption goes beyond countries, age, or religion. Sometimes people blame the culture of a country as the trigger for corruption. That is incorrect. It is true that, at a certain point, a corrupt environment facilitates it, but certain cases also show us that companies and persons can promote it where it is less likely to happen. Therefore, it is important that you are aware how *not* to facilitate it, promote it, or be the trigger of it.

The International Monetary Fund² has estimated that more than \$2 trillion dollars are paid in bribes worldwide—money that could be destined to other causes, such as helping people in extreme poverty. Just as a reference, more than 700 million people live on less than \$1.90 dollar a day, according to the World Bank.³

Corruption generates inequality, poverty, crime, instability, distrust, and unjustness. It also generates overpricing of goods and services, undermines governments, hinders the development of countries, and creates unfair competition. But above all, it raises deep moral and social wounds in people. Shouldn't we all have the same opportunities?

For companies, it also impacts reputation and image. Share prices fall, revenues decrease,

finances must be paid and, in the worst scenario, people may even go to jail.

Internal controls

So, how should any type of company protect itself from this risk? There are several key internal controls that a company must have in place.

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Assess

corruption risk

How vulnerable are you to it? In which area or process? By which job positions? The answers depends on several factors, such as the country where you are located and do business, if you work with third parties (e.g., agents, strategic alliances, suppliers, distributors, subcontractors), and how much

they intervene in your business. Review the risk at least once a year. A useful tool is the Corruption Perception Index issued each year by Transparency International.⁴ Also, check up on that person or company you are working with and monitor the news on the Internet. This could lead to something bigger.

Perform due diligence

This depends on the level of risk you are facing. If it's low, then with those checks done on the Internet or news, you will cover it; but if the risk is higher, then additional actions should be performed. Keep in mind to use the U.S. Office of Foreign Assets Control (OFAC)⁵ and United Nations (UN) sanctioned lists,⁶ and any other sanctioned list or database that

exists in the country where you are located or do business. Above all, in high-risk cases, do an onsite business visit. You don't want a front company!

Elaborate an anti-bribery policy

This also depends upon the level of risk your company faces. The policy should include how to avoid conflicts of interests (and how to stop them), how to conduct business in other countries (such as considering its culture, laws, and how to negotiate), rules about gifts and donations, and what should be done in case anyone is offered a bribe. Be sure to define clearly what key concepts mean and that this anti-bribery policy is consistent with the code of ethics. Both documents are related to each other.

Communicate the policy to all employees and third parties

Tip: Make everyone sign it so you have evidence that it was distributed. Also, make it accessible to all. Publish it on the intranet or any other site or give out physical copies. But make sure that people can have access to it, even if they don't work directly for the company or they work remotely. Don't let them have an excuse.

Train everyone on the content of the policy

If the policy has changes, then update it when the changes are officially approved. At least once a year, train all employees and third parties. Remind them about it using posters, a banner on the intranet, key messages, etc.⁷ Use anything that helps to keep it in the mind of all.

Establish a hotline

Employees and third parties need a hotline or any other kind of mechanism that they can use to report. Make it available 24 hours/365 days. But above all, appoint someone responsible to be in charge of it. Elaborate an escalation process and include what to do if an emergency occurs, as well as timelines. When a report of bribery occurs, timing is important.

Employees and third parties need a hotline or any other kind of mechanism that they can use to report. Make it available 24 hours/365 days.

Appoint a person in charge of anti-bribery compliance

This person or area should have direct access to the reports made by employees and third parties and should have a direct line to the board of directors in order to be independent. Also,

this person should have the full support of the board and CEO so the position can have the force needed. Otherwise, it could lose its importance and any observations issued may be forgotten.

Monitor employees and third parties

Within your company, perform tests, quizzes, contests of honesty/loyalty, games, etc. This will help you to ensure that everybody understands and is aware of the impact corruption could have in the company and that they know what to do. Keep in mind that if you don't enforce a policy, nobody will read it and it will become just a paper. For third parties, ensure they have established appropriate anti-bribery measures by auditing them, by conducting surprise visits, or by using a kind of "mystery shopper" who tempts them to get a bribe. On a recurrent basis, perform checks on the Internet, in the news, in sanctioned lists, etc.

Verify internal reports

Inspect internal audit reports, external audits, compliance reports, or any other report—revision that includes an observation that may lead to corruption or to bribery. Don't minimize the risk! And take the necessary actions to improve those controls. You don't want to read the same observation in the next couple of years.

Generate your own red flag list

Start with the common warnings, such as unusual payments or commissions, payments only in cash, lack of documentation, etc. Add to it any other red flag that is proper to your business. Include this information in the systems your company uses, in the anti-bribery corruption policy, and in key performance indicators. Bottom line: Use this information in order to prevent and detect any behavior or situation that could lead the company to be vulnerable to corruption.

Establish a whistleblower procedure

Make sure employees know how they can report, how the company will protect them, and the investigation procedures, timelines, etc. It's essential that every report be confidential so that employees are encouraged to speak.

Do something!

And by this, I mean that when a report occurs, something is done in the company—an investigation, a sanction, etc. Show that the company is able to respond on time. It is important that employees see action; otherwise, if they don't believe in the company, then nobody will report and impunity will prevail. You don't want that!

Make sure employees know how they can report, how the company will protect them, and the investigation procedures, timelines, etc.

Repeat, repeat, and repeat what is right and what is wrong

This is an important fact—the majority of people learned values and ethics from home. Few subjects in colleges reinforce these concepts. Until they work for a company and the issue is revisited with the code of ethics, few people think about it. Key issue: Companies need to remind people about ethics to compensate for years of lack of it. If you add to this how much information we manage each day, it is key to reinforce values.

Final thought

Certain cultures and/or types of businesses are more vulnerable to corruption than others. But, even in low exposure countries or businesses, corruption can be promoted by a company or person. For this, it is important to have an ethical business environment. In the majority of the corruption scandals, the upper levels have been involved, allowing it to happen and even authorizing the bribes. In others, internal investigations have been cut off the minute there is a report of bribery case. Corruption can come in different ways, unexpected...and for that you will need someone who speaks up; someone who stops it. Make sure you have more than one person who will be willing to do it. *

1. Daniel Gallus: "Brazil's Odebrecht Corruption Scandal" *BBC South America*, March 7, 2017. Available at <http://bit.ly/brazil-scandal>
2. David Lawder: "IMF: Global corruption costs trillions in bribes, lost growth" *Reuters*, May 11, 2016. Available at <http://bit.ly/global-corrupt>
3. "World Bank: 'extreme poverty' to fall below 10% of world population for first time" *The Guardian*, October 5, 2015. Available at <http://bit.ly/wb-poverty>
4. Transparency International website at <https://www.transparency.org>
5. U.S. Department of the Treasury: Resource Center: OFAC Recent Actions. Available at <http://bit.ly/sanctions-programs>
6. Consolidated United Nations Security Council Sanctions List. Available at: <http://bit.ly/suborg>
7. Mónica Ramírez Chimal: "Oldies but Goodies" *Compliance and Ethics Professional* magazine, April 2016, pp 67-72.

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