Corporates aga corruption

*Bribery and corruption used to be seen as part of the reality of doing business in certain parts of the world. But, writes **Leo Martin**, business is leading the international charge for change*

According to Transparency International's Corruption Perceptions Index, two thirds of the 176 countries and territories it ranked have scores that suggest a serious corruption problem in their public sector. This presents a real problem for global businesses, with many often forced to work with governments whose contracting, public tendering and financing are far from transparent or accountable.

Against this background, it is not surprising that stories of corruption still dominate the business pages or feature in the history of many corporations. It has long been argued that in certain parts of the world, this is how business is done. And from the cases we read about, it appears that many companies went along with this, or turned a blind eye, at least until they got caught.

Corrupt activity is usually carried out indirectly through third parties, intermediaries or agents. But though this may secure a contract, it also makes doing business more costly. The UN estimates that corruption costs the global economy \$1tn a year and adds up to 25% to the cost of procurement.

What concerned Transparency International, in particular, was that given the recent focus on tackling bribery, very few countries have done much to reduce corruption – in direct contrast to the business community. But this is changing.

In the UK, for example, since the Bribery Bill first appeared in the Queen's Speech in 2009, corruption has risen up the corporate agenda. Where the UK was once criticised for lagging behind the world on anti-corruption legislation, its Bribery Act is now seen as among the most rigorous. There are parallel processes going on elsewhere. As a consequence, many companies listed in the UK and on the major North American and European exchanges are at the forefront of tackling corrupt behaviour.

So what are the best businesses doing? Crucially and, perhaps, most importantly, businesses are beginning to take this seriously. Anti-corruption compliance is fast becoming the latest 'must-have' function, and not just in those sectors subject to industry-specific legislation, such as pharmaceuticals or financial services. These newly-formed compliance teams are putting systems in place to ensure their organisations comply with anti-bribery legislation and are spending money to check they actually work.

In the best cases, compliance and ethics teams are working to set the right spirit and tone, developing systems and processes that govern behaviour and go beyond box-ticking exercises that simply aim to meet regulatory requirements. Tick-box compliance was prevalent in the financial services sector, resulting in damaging behaviour and heavy fines. Such an approach should be avoided at all costs in a rigorous anti-corruption programme.

In many companies, developing robust anti-corruption measures begins with a high-level review, comprising a risk assessment for senior management. This includes a careful appraisal of the geographical areas where the company operates and the likely exposure to corruption; a review of all suppliers, agents, joint-venture partners and other third parties; an assessment of staff, customers and business areas most at risk from bribery or internal fraud; and an examination of relationships with public officials and due diligence of major capital projects or new ventures.

Such an exercise should provide companies with an anti-corruption roadmap showing gaps in protection and identifying any procedures that would be deemed inadequate. It also informs policy-making and the development of effective and targeted training programmes.

> *Anti-corruption has never been higher on the corporate agenda, and there are signs that business can effect change. But corporates should not be left to fight this battle alone*

Successful anti-bribery and corruption (ABC) programmes are based on the six key principles outlined in the Guidelines on Adequate Procedures, published by the Ministry of Justice, enabling companies to demonstrate:

- top-level commitment to ABC policies and a zero tolerance of bribery and corruption;
- effective communication of and training in the company's ABC programme;
- regular risk assessments of the business, markets, countries and sectors where the company operates;
- due diligence on all high risk areas, individuals and organisations. A focus on the highest risk transactions and intermediaries is key, including sales agents and anyone helping the company enter a market or obtain permits and licences of any sort;
- rigorous ABC controls in operation in all key business functions and ongoing monitoring, internal and external, to check ABC compliance.

Some companies have made significant steps towards these goals but, for many, the business landscape, particularly in certain parts of the world, is still challenging.

Assessing risk and monitoring conduct in the supply chain is the most difficult area, yet is possibly the area most vulnerable to corruption. In 2011, every US Foreign Corrupt Practices Act/Department of Justice prosecution involved corrupt activities in the supply chain. This clearly shows the need, not just for due diligence checks, but for monitoring and establishment of a zero tolerance policy on corrupt practices across the organisation.

Some companies are attempting to perform due diligence on tens of thousands of suppliers; others are unsure where to begin and have no system in place. Having some type of 'decision tree' to judge where due diligence is needed is essential.

Decision trees enable businesses to conduct the appropriate checks on the right suppliers. In the majority of cases, service suppliers have more opportunity to bribe on an organisation's behalf than suppliers of goods. Companies are, therefore, having to categorise suppliers according to risk by examining the service they provide and the opportunity for corruption.

Once categorised, appropriate due diligence is conducted in the

inst

form of questionnaires, audits, training, signed agreements and investigative research, as appropriate.

This should be carried out on new and existing suppliers, and always before a contract is awarded. This can be most challenging when it comes to existing suppliers and, although risk assessments should still be carried out, penalties for terminating contracts must be considered alongside possible risk and reputational damage.

Third parties, intermediaries, agents and joint venture partners are increasingly being checked in the same way. Often, when managing these relationships, differences in business conduct and culture are most acutely felt, but companies can and should put systems in place to reduce risk and ensure adequate procedures have been set up.

Where suppliers are identified by the decision tree as 'high risk', the company should:

- ask to see its anti-corruption policy or statement
- introduce anti-corruption terms and conditions into the contract
- ask the organisation to sign an anti-corruption commitment
- check its past record on corruption
- check its relationships with government officials
- carry out anti-corruption training if necessary
- establish ownership of the intermediary and look out for conflicts of interest
- check its policy on gifts and hospitality and, where none exists, ask for them to commit to yours
- check for statements on facilitation payments and communicate the company's own policy on such payments.

In addition to due diligence, conflicts of interest, gifts, hospitality and facilitation payments are also emerging as challenging issues.

Facilitation payments are a major challenge for many organisations working in emerging markets and in sectors that require permits and licences to operate. Best practice and, nowadays, laws demand a zero tolerance approach. Some do successfully enforce this, despite working in challenging countries. But to succeed, companies must unequivocally back all staff who resist requests for payment.

It is important that facilitation payments are addressed explicitly in the company's code of conduct, ideally supported by an anti-corruption statement of principle from high-risk third parties, suppliers, agents, intermediaries and joint venture partners. Many companies are tightening controls in this area but feel they are working in isolation, potentially penalised for failure without government or embassy-level support in urging countries to act themselves.

Gifts, entertainment and conflicts of interest require a more sensitive approach. With respect to gifts and entertainment, many companies are treading a path between what complies with company policy and the culturally-defined expectations in certain parts of the world.

Many companies are wary of corporate imperialism but, to comply with adequate procedures, they should communicate a clear gifts and hospitality policy, and undertake regular monitoring to ensure they are not being put at risk. The UK case between Sainsburys' and Greenvale shows that gifts are unlikely to be the target of a corruption investigation in and of themselves, but can be very compelling evidence in showing that a relationship has been corrupted.

Rigorous monitoring of potential conflicts of interest is also essential and, again, the best companies have systems in place. However, conflicts must be fully explained to staff. All too often, employees are scared to declare a conflict because they are unsure about how it might be treated. Staff should be encouraged to be transparent and it should be made clear that the conflict itself is not the problem, but rather the actions taken to manage it (or not).

Many companies are also getting themselves into ridiculous knots over political connections. The key thing is to focus on connections that are material, that might actually influence a public decision affecting the company, and to ignore the rest. Again, even this type of conflict is usually easy to manage, as long as it is declared.

From the work GoodCorporation does in this area – conducting reviews, audits and training for leading international companies – we know that ABC compliance is becoming increasingly widespread and far reaching. Supply chain and procurement risks are also being monitored more meticulously. Some companies are taking extreme action to protect their businesses, severing relationships with third parties, agents and suppliers suspected of corruption – and even pulling out of countries where they fear they cannot operate without engaging in corrupt practices.

Anti-corruption has never been higher on the corporate agenda and there are signs that business can effect change. Corporates should not be left to fight this battle alone – more inter-governmental action would be in everyone's interest. In the meantime, the business world is leading the charge.

Leo Martin is director and co-founder of GoodCorporation

people

- **Simon Henderson** has been appointed Black Sun's corporate communications division managing director. He joins the company from Centrica, where he was director of CR and digital media.

- **Bacardi** has appointed Eric Kraus to the newly-created role of senior vice president, chief communications and corporate affairs. Eric will lead all facets of Bacardi's corporate responsibility programs in sustainability, social responsibility and philanthropy.

- **Christophe Hans** has been appointed Ethos Foundation communication manager, where he will head the development of its communication policy. Christophe joins from the Swiss Federal Department of Economic Affairs, where he was head of public affairs.

- **Wilco van Heteren** has been appointed director of Sustainalytics research products team. He will work alongside Esther Hougee, Heather Lang and Hendrik Garz to manage more than 70 analysts globally.

- **Kabira Hatland** has been named director of client service for OgilvyEarth. Hatland is a senior communications professional with a background in corporate social responsibility, media relations, crisis communications and social media strategy.

- **The Sustainability** Consortium's membership has elected four new corporate members to its board of directors: Charlene Wall-Warren, of BASF; Karen Hamilton, of Unilever; Kim Marotta, of Miller Coors; and Kevin Rabinovitch, of Mars. Andrea Thomas, senior vice president of Sustainability at Wal-Mart, was re-elected for another term.

- **The California** Public Employees' Retirement System board of administration has re-elected Rob Feckner as board president and George Diehr as vice president. Feckner will be serving his ninth term as president, and Diehr will be in his sixth vice presidential term.