

Global quest for a level playing field

WORLD OVERVIEW The ethical dimension of corporate life has grown dramatically in the past decade and, while legislative pressure has led businesses to examine their performance, a global shift in attitudes has taken place, writes **Michael Dempsey**

Practices that were once tolerated in the corporate world now attract mass condemnation. The media spotlight on businesses that appear to have fallen short of public expectation is merciless. The energetic debate that is taking place around these issues is tangible evidence of a new ethical climate.

The extractive industries have found themselves at the forefront of this argument. Oil, gas and mining companies have to operate in remote geographies where local standards of government and legality often bear little relation to thinking in the West. But laws and effective lobbying by pressure groups have forced the mining and drilling industries to rethink the way they do business.

Many of the top resources businesses are headquartered in London. They work in emerging markets where corporate transparency is frequently a very new notion. And the UK is about to introduce tough legislation in the form of the Bribery Act. So what the extractive industries say on this subject is worth hearing.

A group of board-level executives gathered at the House of Lords earlier this year to discuss the vexed

question of ethical standards in their sector. Organised by the GoodCorporation, advisers on best practice in the ethical dimension, this meeting witnessed a frank exchange of opinions and experiences. What became clear is that while everybody needs a clear ethical policy, there are two very different schools of thought among extractive industry players about how to make it work.

Speaking on condition of anonymity, very senior executives gave vent to their annoyance at the lack of one single effective international code of practice for their sector. By being registered in the UK or United States, a business finds itself beholden to the strict clauses of either the Foreign Corrupt Practices Act (FCPA) or the UK's Bribery Act. But companies based elsewhere can avoid such tough scrutiny and hence exploit a laxer ethical regime.

RIVALS

This lack of a level playing field concerns a number of organisations which have fought hard for ethical standards only to see rivals with less vigorous standards seize contracts from under their noses.

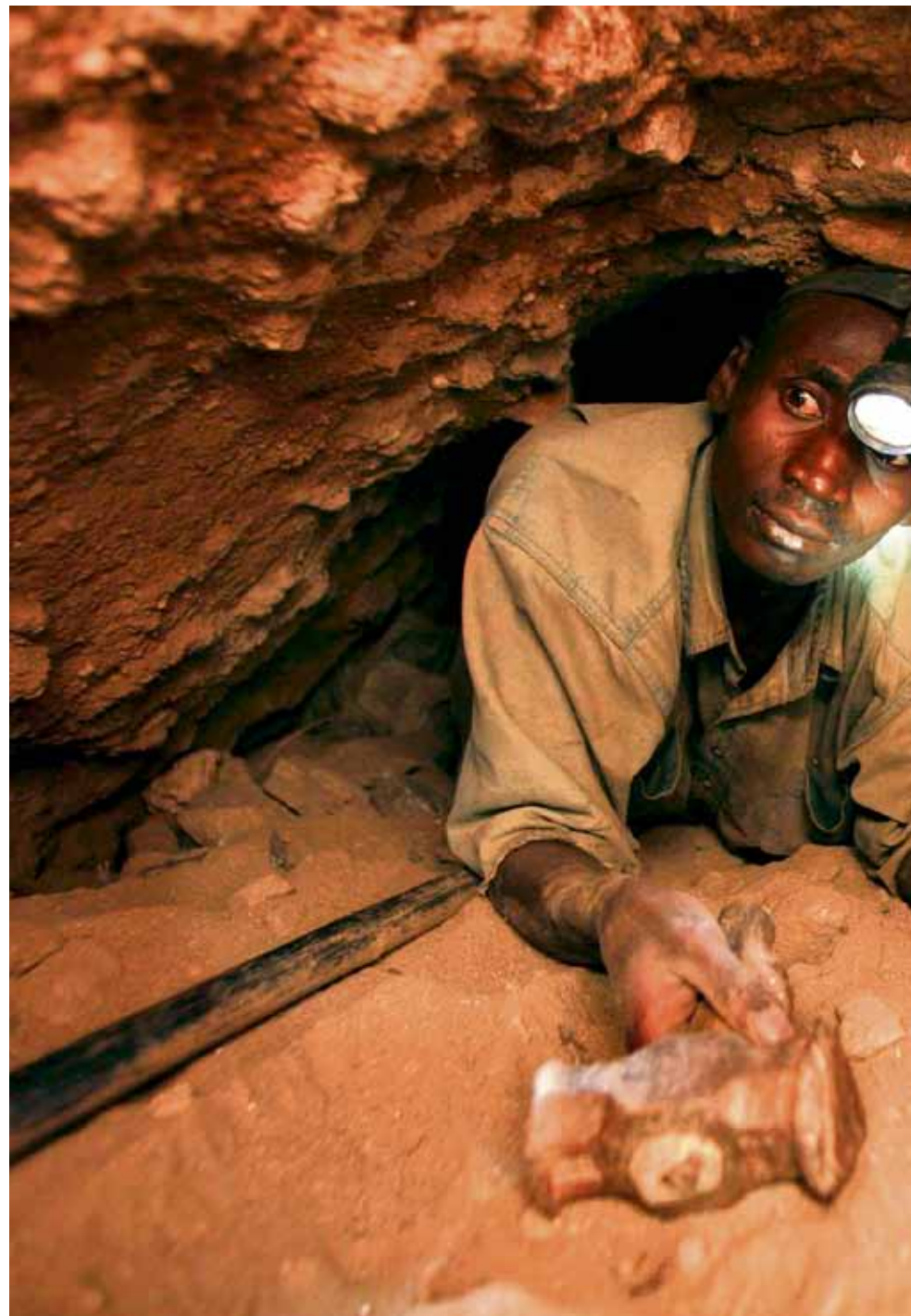
A key division at this meeting was between those organisations that

believed in a formal code of ethics that required mass staff training and form-filling, and those that regarded the process-directed approach with suspicion and insisted that ethics are driven from the top. A strong and unambiguous policy from senior management is what really promotes good conduct right throughout a large business, they argued.

Pressure groups have tended to focus on the activities of large corporations. But the behaviour of small local competitors, artisan miners who operate below the radar of the international observers and conventions, worries extractive industry staff on the ground in some parts of the world. There were calls for corporate conduct lobbyists to monitor and regulate right across the board, including the minor players in their scope. Without comprehensive global standards the feeling remains that Western companies are operating at a real disadvantage.

Michael Littlechild, director of the GoodCorporation, welcomes the fresh emphasis on ethics that the Bribery Act entails. "The UK has been late in coming to the table with a targeted law," he says. But he also reflects on the greater pressure that public opinion can exert on a business. "People are realising that they don't want to be in the headlines for the wrong reasons."

He thinks that the UK's new law is eminently sensible, in that companies have no excuse not to work with bodies like GoodCorporation to create embedded procedures that should exclude corruption. If an individual employee breaks the rules, then the employer should be able to point to its adequate proce-



Mining for rare tanzanite gemstones in Tanzania, East Africa

dures and avoid both legal penalties and public calumny.

PRINCIPLES

The Extractive Industries Transparency Initiative (EITI) is responsible for promoting a set of principles agreed in 2003. These 12 principles seek to reconcile the commercial and practical needs for extracting resources with transparency in all dealings between governments and the oil, gas and mining industries.

Eddie Rich, deputy head of EITI's international secretariat, defines EITI as a platform for business to discuss the whole subject of transparency and ethics. "I do believe it is very difficult for companies to behave in an ethical way unless there's a sympathetic environment," he says.

EITI examines what is called the "paradox of plenty", whereby nations blessed with oil and minerals often have poor governance and lag behind in development indexes. But, while he welcomes the UK's Bribery Act, Mr Rich believes that, in the developing world, "what matters is the management of the country".

Complaints about the intensity of the Bribery Act get short

shrift from Clive Newall, president of First Quantum Minerals. This Canadian-registered company has always had to contend with Ottawa's own legislation which is "way stricter than the UK Bribery Act," he says. "We are used to operating in a strict environment."

Mr Newall believes that being ethical is much more than a question of appeasing external pressure groups and indulging in good public relations. "In reality, this is the only way to operate in the long term. If you pay a bribe it comes back and bites you every time." First Quantum, which mines copper in Zambia, regards it as a matter of self-interest to pay proper wages and treat employees ethically.

An entire methodology has grown up around ethical practices. At business advisers Deloitte, head of business intelligence services Emma Codd is implementing the idea of Integrity Due Diligence (IDD). This involves looking hard at just who a company's business partners are.

DILIGENCE

Due diligence is normally associated with preparatory work ahead

Total fuels ethics debate

Can a global group really possess consistent ethical standards when it operates in nations as diverse as Chile and China? French energy giant Total should know. In March 2001 it created an ethics committee reporting directly to the chairman and chief executive. The five committee members are chosen to represent Total's business lines and are said to be sufficiently senior "to guarantee the necessary independence and freedom of judgement".

The committee is tasked with establishing the conditions that will allow employees to follow and promote Total's code of conduct. It can draw the attention of Total's bosses to any business activity that offers the potential of breaching the code. It provides a confidential ear when employees need help interpreting the code as it may apply to their jobs or operations. And all business units are encouraged to approach it with any potential ethical dilemma.

What does all of this amount to? Well, Total's guiding principles, enunciated in the code, certainly sound worth defending: upholding human rights; fighting corruption and fraud; respect for free competition; and financial transparency.

Critics charge that this kind of operation does wonders for a company's image, but really reduces ethics to a matter of process, excluding the true sentiments and actions of a hugely dispersed international workforce. Total retorts that "these principles produce tangible achievements, through specific application processes and internal control procedures". Their real-world application is one of Total's most critical challenges.

Whatever the truth of this argument, Total has clearly invested the time and energy of senior staff in building an ethical framework for its business. That in itself suggests the code may be worth a lot more than the paper it is written on.



A lengthy supply chain may expose a business to contact with agents and representatives further down the line who do not work within acceptable ethical limits

stoppable finds further favour at Interchange Solutions, a business founded by John Burbidge-King to help clients mitigate corruption risks. Mr Burbidge-King isolates the cost of corruption to wider society as the spark that has ignited mass anger. "The public realise that their money is being wasted when corruption thrives and they feel short-changed," he says. "This is a global change in attitude. It's not about morality, it's about money – and people are fed up."

AUDIT

Just as Deloitte is performing due diligence at arm's length from its clients, Interchange Solutions focuses on the supply chain as a critical component in any ethical audit. "Getting clients to focus on their supply chain is key to knowing who they are dealing with via their suppliers," says Mr Burbidge-King. A lengthy supply chain may expose a business to contact with agents and representatives further down the line who do not work within acceptable ethical limits.

The Bribery Act's controversial clause placing responsibility on a business for any party who can be deemed an "associated person" puts the entire corporate supply chain under potential jeopardy. While critics of the Act point to this broad definition of business partners as an example of how the legislation is deeply unhelpful, Mr Burbidge-King takes a different view. "If you get to know all your representatives well, you may be able to reduce payments and other costs. There is a real business advantage in managing the supply chain properly."

Interchange Solutions does much of its work in the aerospace and defence sector, and Mr Burbidge-King reckons it is ahead of the curve in applying supply chain due dili-

Kroll intelligence

In its latest annual Global Fraud Survey, corporate investigations giant Kroll worked with the Economist Intelligence Unit to poll more than 800 senior executives worldwide. With 51 per cent of participants coming from companies with revenues of more than US\$500 million and significant responses from China and India, this is truly a snapshot of global attitudes.

The survey highlights a shocking lack of understanding of the shifting legal environment. The US Foreign Corrupt Practices Act (FCPA) saw more cases between 2005 and 2009 than in the preceding 28 years the Act had been in place. In 2010, some 130 FCPA cases were open and under investigation.

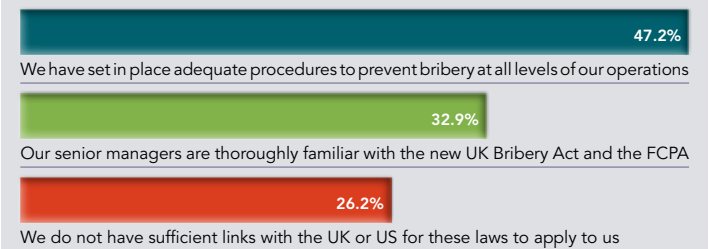
Kroll notes that this abrupt change of tempo is likely to be reflected in the UK when the Bribery Act comes into force. However, "too few companies fully understand the current regulatory situation," the survey's report says.

Only one third of respondents with operations in the US or UK believe their senior management are fully familiar with this legislation. And 42 per cent of these say they have put the right monitoring procedures in place to deal with these laws. "Just because a company knows that it is subject to the FCPA or the Bribery Act, it does not automatically follow that it is fully-equipped to comply with them."

Kroll's Eurasia chairman Tommy Helsby picks up the theme that regulators in the major democracies are on the war path. "Stung by criticism that their laxity contributed to the financial crisis, regulators are acting with renewed vigour, authority and political backing," he says.

Many businesses polled failed to grasp extra-territoriality, the way anti-corruption legislation like the FCPA and Bribery Act applies to any business with a presence in the legislator's country. More than 25 per cent of respondents believed they were not exposed to these laws despite having operations in the relevant jurisdiction.

Executives told pollsters...



Source: Kroll Global Fraud Report 2010/11

of major transactions, such as mergers and acquisitions. But the corporate world has learnt that any suggestion of malpractice can be very damaging and the best way to avoid exposure to this risk is to assess future alliances in terms of ethical conduct. Ms Codd notes that identifying risks associated with corruption has now overtaken transaction-related work for her unit in Deloitte. "Ten years ago IDD was seen as a nice-to-have. Now, it's an absolute must-do," she says.

Technology has made the ethical investigation far less onerous than when researchers had to plough through licences and files on paper, says Ms Codd. "There is a huge amount of information you can gather through the internet. And, if you have 200 agents working for your business, it is best practice to know more about each of those agents and who else they are doing business with."

A conviction that the march to transparency is relentless and un-

gence. But other industries are fast catching up. "Business ethics have come to the top of the agenda for companies and the governments they work with," he says.

One of the growing fears around the Bribery Act is that small and medium-sized enterprises (SMEs) will not have the resources to carry out extensive preparation and exercises, like supply chain due diligence.

Interchange Solutions has responded to this appetite for ethical auditing among SMEs with a product due for launch in January 2011.

It is a subscription-based online business tool that will help SMEs to manage intermediaries in a cost-effective way. This will feed into the Bribery Act's requirement for proof of robust procedures in place while addressing the frequent criticism that preparing for the Act is a game for big businesses.

The extent of the debate over ethics proves that a watershed has been passed. Now businesses around the world need to consider their position in relation to the global mood as well as the legislative stampede.

Institute of Business Ethics

The IBE was established in 1986 by business for business to encourage high standards of business behaviour based on ethical values.

- We offer practical advice in developing and strengthening an ethical culture, deliver training in business ethics and undertake research into good practice in business behaviour.
- We also provide a neutral forum for sharing current business ethics challenges.

Please contact us for more information or visit our website: www.ibe.org.uk

“...doing business ethically ... makes for better business”



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