



COMBATING CORRUPTION IN INTERNATIONAL BUSINESS

The media has turned up its glare on international companies caught in bribery and corruption allegations. As global trade becomes more complex and sometimes cutthroat, three experts highlight the dire consequences of stumbling into corruption and how Canadian firms can fend it off.

“Picture this. I was forced to sit in a jury box in the Federal Court of Miami. Surrounding me were about a dozen men all wearing orange jumpsuits...”

So begins the story by Stephen Reynolds, of Alcatel-Lucent, about his company’s experience with improper conduct. The impact, he illustrates, went far beyond the 93 million Euros in fines their global company had to pay.

Reynolds had the unsavory role of being the official representative authorized to plead guilty on behalf of the company’s subsidiaries abroad, whose conduct by third party sales agents violated the U.S. *Foreign Corrupt Practices Act* (similar to Canada’s *Corruption of Foreign Public Officials Act*).

And while those actions took place years before the management team was at the helm, the company’s reputation suffered—distracting from the many accomplishments of Alcatel-Lucent, a global ICT leader and pioneer in radar and cell phones.

In addition to the large fine, the company had to have an outside lawyer monitor its compliance with its anti-corruption policies around the world for a three-year period, adds Reynolds.

“You cannot always prevent corruption (by an individual),” he adds, “especially when you have 80,000 employees in 148 countries. The best you can do is ensure you have the right policies and practices in place, as well as an audit function [to monitor compliance], so you can establish you have done all that you possibly can to avoid corruption.”



HERE COMES THE LAW

“The law is really pretty simple,” says the RCMP Inspector. “Section 3.1 of Canada’s *Corruption of Foreign Public Officials Act* basically says that you will not bribe or agree to bribe a foreign official—somebody who’s working for a foreign government—in the course of business to gain advantage. A bribe, for example, could be paying to send that official’s child to school in another country.

“The other thing that people have to be aware of is the proceeds of crime. If a company bribes a foreign official, say for \$100,000, but from the contract (gained from the bribe), the company makes \$100 million. Well, the RCMP or police consider the assets or proceeds of the bribe \$100 million.” In other words, the fine is determined on the basis of the value of the contract, not the bribe.

APPLY TOP DOWN, VERIFY BOTTOM UP

“Really, it is a function of getting the word out from the very top. And it has to trickle all the way down,” adds Reynolds.

EDC’s senior vice-president, who oversees the application of EDC’s corporate social responsibility principles, elaborates: “Aside from having our own anti-corruption program that sets out our policies and procedures, we require confirmation from customers regarding the absence of corruption through, for example, (anti-corruption) declarations from exporters who apply for accounts receivable insurance.”

If there is reason for suspicion, EDC looks at such issues as: How clear are the standards in a firm’s code of conduct? How effective is its code training and are there annual code sign-offs and training exercises? What is its enforcement like, for example, if someone has breached the code, how quickly will the company act and what are the consequences? These kinds of guidelines should also apply to agents who act on a company’s behalf.

While Alcatel-Lucent ended up banning the use of third-party sales agents to remediate its problem, this is not a realistic choice for many small and medium-sized companies who are venturing into a new country for the first time.

For example, if you are going to hire agents, you still have to do your own reference checks, even if the referral initially came from the Canadian Embassy or a business colleague. You should understand the agent’s compensation and incentive structure and what they are permitted to use the money for. “Can you track the money the entire way?” You will also need to have contracts analyzed carefully before you sign.

All our experts suggest it is important to keep in regular touch with employees or agents abroad. Of course, it is not easy for small business owners to travel to their foreign markets too often or for a large one to know what thousands of foreign representatives are doing at all times.

Still, as an RCMP Inspector puts it: “Do even the janitors know they are not supposed to be paying a bribe to foreign officials?” If he is investigating whether the corruption is a systemic problem or if it’s caused by a rogue employee, he can get a good sense of the strength of a company’s anti-corruption program by interviewing employees about their knowledge of the program and compliance measures.

What if you’re working in a country where special administrative or so-called “facilitation” fees are almost a way of life? And can a company realistically compete in these regimes without playing by the same rules?

Alcatel-Lucent’s view is: “There are certain countries where we as a company just decide we’re not going to do business. We now have a zero-tolerance approach for any payments that would violate our policy and facilitation payments are among those we do not permit.”

WATCH FOR THE WOLF IN DISGUISE

Bribery doesn’t usually happen overnight, where you meet someone wearing a dark overcoat who asks for a wad of cash to give you a contract. Often it starts with what security professionals call the “set-up.”

For instance, a foreign contact starts by becoming overly friendly, offers to do you small favours, and then perhaps invites you to fancy dinners—with good liquor flowing freely. Eventually these people could start asking for favours in return, first maybe seemingly small ones, until before you know it (and while you are feeling a little obliged to them) they are asking for a bigger favour or facilitation payment—in other words a bribe (or even extortion).

To avoid this kind of trap, experts advise:

- don’t become unduly familiar with business contacts;
- learn about their background;
- indicate you don’t have the authority on certain decisions;
- avoid private meetings outside business locations;
- and generally maintain a polite, but professional, distance.