

The Challenge for Multinationals: Being Serious about Corruption

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Cases of organized systems for paying bribes abroad by multinational companies which have been uncovered in recent months (see the Siemens and BAE examples), have led those companies into trouble with law enforcement agencies, including criminal justice in their home countries and abroad. Additional reputational damages have ensued, unrest by shareholders and the resignation of CEO's and other top managers. This disregard of the law and also of good corporate practice has come as a surprise to many observers and experts who tended to believe that after Sabane-Oxley and domestic statutes enforcing the 1997 OECD Convention against bribery in international business transactions, top multinational would have immunized themselves against that practice, notably through internal compliance programs.

Contrary to this view, which multinationals themselves and their organisations have spread, it seems that in some areas, countries and sectors "business as usual" goes on. This includes paying bribes or bowing to requests of payment in order to secure lucrative business in foreign countries where this practice is widespread.

The novelty of the OECD Convention and the efficiency of its implementation by national prosecutors should not be overlooked however by international business, as the pending cases show. The OECD mechanism has turned upside down the focus of the fight against corruption in international transactions, with a fall out also domestically. While the public official who solicits a bribe may commit a more serious offence under the law than the private businessman who pays it, the difficulty of prosecuting seriously high placed public officials in many countries has brought a radical change of perspective. Businessmen that corrupt foreign officials commit now a crime under their home country legislation and are liable to prosecution there. The burden to comply and the risk of non compliance has thus been shifted on the offer side, rather than the demand side in bribery transactions.

Moreover the cooperation network between prosecutors of different countries, tested in anti-terrorist, money laundering and drugs trafficking cases, ensures a higher level of efficiency in prosecution than in the past, including when off-shore centres are resorted to in order to carry out and hide the illegal transactions. Finally the criminal liability of corporations has been added to the personal liability of managers and accomplices also in countries where this type of liability was hitherto unknown. Companies cannot shield themselves behind the alleged unauthorized wrong doing of individual managers as was common in the past.