



# Bribery and corruption

## Identifying and mitigating risks

**The increasingly intense scrutiny of authorities in both home and host states is requiring corporations to put ethical business practice to the forefront of their CSR and legal compliance frameworks.**

### Overview

The broad reach of the US Foreign Corrupt Practices Act (FCPA) is by now well known among non-US entities engaged in transnational business. The tide of FCPA enforcement in recent years by the US Department of Justice and the Securities and Exchange Commission has been impossible to overlook. Many other countries have adopted similarly broad prohibitions on foreign bribery, including the 37 states party to the Organisation for Economic Co-operation and Development anti-bribery convention. The UK has also recently introduced a new Bribery Act 2010, which has a wide territorial scope though falls short of the FCPA in jurisdictional reach.

### Risks to your business

#### Fines, lost business and serious risks for individuals

Corporations face serious consequences for failing to pay proper regard to bribery and corruption laws. Companies face unlimited fines in the UK and fines of up to €750,000 in France. More significant, in revenue terms, is the possibility of being barred from future government contracts – a possibility in the UK, US and France. Moreover, individuals face potential imprisonment for involvement in corrupt practices. In the UK, there is the additional danger of disqualification from company directorship for up to 15 years.

#### Reputational damage

The increasing sensitivity of press and shareholders to allegations of corruption creates an impetus for effective compliance training. Allegations, even if ill-founded, can taint a company for years and destroy individual reputations. Effective monitoring, reporting and compliance procedures are critical if unfounded allegations are to be dispelled immediately.

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## Actions to mitigate risk

Companies operating in the weaker governance environments common in Africa, and in the African extractives industry in particular, have a number of means of reducing risk and securing compliance while maintaining competitiveness.

### Assess the regulatory environment

Companies must remain vigilant to secure compliance with home state regulatory standards, in particular the 'home states' that may seek to exercise jurisdiction over them. Applicable rules in host states are becoming ever more important as African countries increasingly seriously address the issue of corruption.

### Compliance training

Companies' internal policies on bribery and corruption must be matched with capability-building through compliance training for staff engaging with public officials. Cultural differences in conducting commercial negotiations can sometimes cause employees to be overcautious about ethical business practices, and could have a negative effect on profits, driven neither by law nor best practice.

### Monitoring

Once the policies and training programmes are in place, audits and investigations may be required to manage risks. These internal measures are important in the African context. Some governments in the region exercise insufficiently rigorous oversight of ethical business practices and businesses bear a consequently greater burden to monitor their own compliance.

### Scrutinise contracts

Often the risks to a company stem from corrupt practices of which it had no knowledge, undertaken by its suppliers and customers. Due diligence and careful negotiation are required to insulate your company from the wrongdoing of others. In Africa, foreign investors should consider deploying enhanced scrutiny when entering into contracts with local operators.

## Where we have seen this before

The increasingly intense scrutiny of authorities in both home and host states is requiring corporations to put ethical business practice to the forefront of their corporate social responsibility and legal compliance frameworks. One of our clients recently became concerned about the activities of an employee on the procurement of a contract from an eastern African government. We were able to advise the client on its liabilities and how to take immediate steps to minimise the risk to its business. As the matter developed, we helped the client co-ordinate its response to government and local law enforcement authorities.

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Opportunities and risks in the extractives industry