

Why software firm SAP paid
\$235M
after being charged with bribery

VinciWorks

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SAP, the global software giant, was charged with bribing government officials around the world. The German-based company agreed to pay over \$235m in a settlement that is one of the largest of its kind.

What happened?

Over the course of eight years, starting in 2014 through January 2022, SAP conducted bribery schemes in South Africa, Malawi, Kenya, Tanzania, Ghana, Indonesia and Azerbaijan. The company employed third-party intermediaries and consultants who paid bribes to government officials to obtain business with public sector customers in these countries.

The bribes were recorded as legitimate business expenses despite the fact that the third-party intermediaries could not show that they provided the services for which they had been contracted. SAP and its co-conspirators paid bribes to foreign officials, delivering money in the form of cash, wire transfers, political contributions and sometimes luxury goods.

The bribes were an effort to curry favour with different public entities - examples include the city of Johannesburg, a South African water company and Indonesia's telecommunications agency.



How it was done

Regulators detailed some of the practices that illustrated how the deals were done. Government officials from South Africa and Indonesia were sent on trips to New York, shopping excursions and dining and golf outings. In one instance, according to the US Securities and Exchange Commission (SEC), an executive at SAP's Indonesian subsidiary paid bribes to officials in the country's Maritime Affairs and Fisheries ministry. To hand over the bribes, the executive was instructed to have "seventy million, in fifty thousand bills... Bring empty envelope."

In another instance, SAP's South African subsidiary signed a deal with Eskom Holdings, South Africa's state-owned power company, worth \$29 million. The SEC identified over \$6.7 million in payments to "consultants" who never performed any services.

The settlement

Between payments to the SEC, the US Justice Department and South African prosecutors, SAP will pay over \$235 million to settle all the investigations.

The company also agreed to enter into a three-year deferred prosecution agreement with the US Justice Department. Under the agreement, two conspiracy charges under the Foreign Corrupt Practices Act (FCPA) will be dismissed if SAP satisfies certain conditions. The company also settled cases brought by the SEC and South African authorities.

"SAP fully cooperated with the authorities, and these settlements close all compliance matters under investigation in the United States and South Africa," a SAP spokesperson said in a statement. "The past conduct of certain former colleagues and former partners does not reflect SAP's values or our commitment to ethical behaviour."

"Our order holds SAP accountable for misconduct that spanned seven jurisdictions and persisted for several years and serves as a stark reminder of the need for global companies to be attuned to both the risks of their business and the need to maintain adequate entity-level controls over all their subsidiaries"



**Charles E. Cain,
Chief of the SEC Division of Enforcement's FCPA Unit**

What did SAP do wrong?

The company did not have effective oversight over its intermediaries and consultants. It did not implement adequate internal accounting controls over third party freelancers and lacked sufficient entity-level controls over its wholly owned subsidiaries.

This is also not the first time SAP settled bribery allegations. In 2016, the company forfeited roughly \$3.7 million in profit to the SEC over a bribery scheme in Panama.

What did SAP do right?

SAP cooperated with the authorities and punished and fired employees involved in the payments. It also made employees available, collected complex financial information and even provided text messages that could serve as evidence. The company received credit for its cooperation. Penalties were reduced from the maximum possible.

Significantly, the company took steps to improve its compliance program. It increased its budget and restructured its compliance office to ensure its autonomy. SAP is also participating in a Justice Department pilot program.



The red flags

There are often warning signs that a deal or transaction involves corruption. These are the red flags your company should look more closely at when conducting business:

- ↳ request for bids or proposals is not adequately advertised
- ↳ prequalification procedures that are not reasonable
- ↳ very narrow contract specifications that favour the winning bidder
- ↳ leaking of bid information to favour a certain bidder, and withholding critical information from others
- ↳ manipulating the scoring of bids or changing bids after receipt
- ↳ arbitrary or trivial reasons for disqualifying other bidders
- ↳ unnecessary change orders are approved to increase contract values after award
- ↳ splitting purchases to avoid procurement thresholds
- ↳ Approval of sole source awards that are hard to justify
- ↳ pressure by project officials on contractors to select a specific subcontractor or agent
- ↳ engagement of a questionable subcontractor or local agent
- ↳ delays in contract negotiations or award

Risk assessments are the key

Risk assessment is the basis of an effective anti-bribery programme. It is an ongoing process that gives a company a systematic and prioritised view of where the significant inherent bribery risks are. The process is critical - the information gained through risk assessment will shape a company's anti-bribery programme and repeated risk assessments will ensure that it maintains its validity.

All companies face some degree of bribery risks. Companies cannot be sure if they have taken the appropriate risk approach and designed the right controls if they do not know the scale of the risks, where the risks lie, how bribery can take place, which are the largest risks for the company and what makes bribery risks more likely.

Key risk indicators

A risk assessment looks at key risk indicators (KRIs) for bribery and corruption. KRIs refer to known vulnerabilities or aspects of a business that might attract corruption.

There are five primary KRIs that all firms should consider as part of their anti-corruption process:

1. Types of client
2. Nature, complexity, and size of the business
3. Products and services offered
4. Geographical risks
5. Process for onboarding clients and engaging with existing clients

Risk factors for bribery and corruption identified

Once a company understands its risk factors, it can assess how these affect risk relating to specific activities. Commonly identified risk factors include:

Country risk

The starting point in identifying country risk is the Transparency International's Corruption Perceptions Index (CPI) and the World Bank Governance Indicators. The CPI measures perceptions of corruption of public officials. It does not measure country corruption or corruption of the private sector. Keep in mind that corruption happens in all countries so even a country that scores well on the CPI may present risks.

Sector risk

Certain business sectors are typically associated with higher levels of bribery risk than others. Many of the foreign bribery cases occur in construction, transportation and storage and information and communication. Of course, a company in a high risk sector may face low risk because of its specific business and a company in a low risk sector should still do analysis to ensure that it is safe from corruption.

Value

Projects with high value or critical significance such as a major infrastructure project, telecommunications licence, mining concession, regulatory or planning approval can create incentive for bribery.

Complexity

The more complex a project, the more potential it has for breakdowns in accountability and control over expenditures.

Legal risks

Anti-bribery approaches are quite similar across jurisdictions but there can be significant local variations which may bring risks and will require tailoring of policies and procedures.

Third parties

Many of the major bribery scandals have involved the use of third parties, especially sales agents and consultants.

Interaction with public officials

In many countries, any dealing with government officials can carry a higher level of risk. Laws that comply with the OECD Anti Bribery Convention, such as the UK Bribery Act and the FCPA, have explicit prohibitions on the bribery of foreign public officials. One of the challenges is to identify who is a government official. This is not clear in some countries where there is some uncertainty about whether certain organisations are in the public or private sectors.

VinciWorks' anti-bribery and corruption training

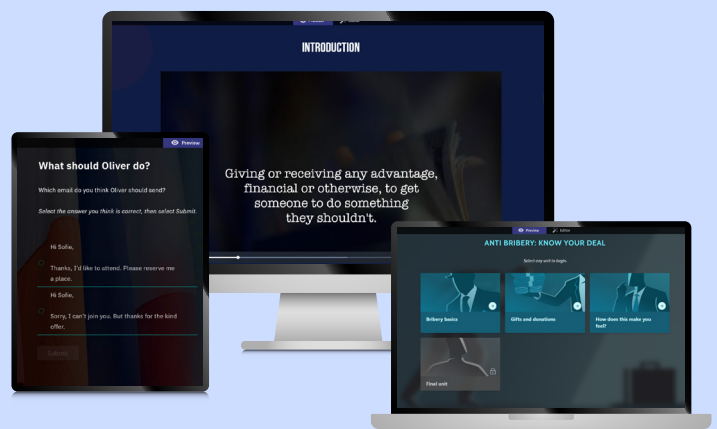
Get your entire staff on board

Compliance should be far more than simply a tick-box exercise. **VinciWorks'** suite of anti-bribery courses brings together gamified learning, personalised content, short bursts of information and refresher training. Our course builders make delivering the most relevant content to each employee easy, while real-life scenarios make the training engaging for the user.

VinciWorks' courses are designed to raise awareness of the most common issues relating to bribery and corruption that national and international firms may face. Multiple course versions ensure that there is something appropriate for everyone on staff, from in-depth courses for high-risk individuals to more basic overviews and refresher courses, and the courses are customisable with the possibility to add modules for internal policies and procedures. Real-life scenarios and tests ensure that users internalise and retain the material and know how to apply it in real life.

VinciWorks anti-bribery & corruption compliance courses

- ✓ Anti-Bribery Fundamentals
- ✓ Anti-Bribery: Know Your Deal
- ✓ FCPA: Know Your Deal
- ✓ Anti-Bribery Knowledge Check
- ✓ Anti-Bribery Global
- ✓ Anti-Bribery: The Basics



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