BRIBERY STORIES

Why Trafigura pled GUILTY to a decade of bribery

VinciWorks

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Trafigura, an international commodities trading company, resolved a long-standing bribery case with the US Department of Justice. The case involved employees and agents who wanted to secure business with Brazil's state-owned and controlled oil company Petroleo Brasileiro (Petrobras). The company agreed to pay over $126 million to settle the investigation.

What happened?

Between 2003 and 2014, Trafigura, which is headquartered in Switzerland, paid bribes to Petrobras officials in order to secure and maintain contracts with Petrobras. Under the scheme, Trafigura, along with its co-conspirators, made illicit payments of up to 20 cents per barrel of oil products bought from or sold to Petrobras. The bribes were concealed in shell companies or funnelled through intermediaries who used offshore bank accounts to deliver cash to officials in Brazil.

How it was done

It sounds complicated but the deals ran smoothly for years. Trafigura employees used Brazilian market money exchangers ("doleiros") or made wire transfers. The cash for the bribes were labelled as commissions. Co-conspirators would send an invoice from a Hong Kong company for "consulting services" related to buying goods (often floor and wall tiles) from Brazil. Trafigura would pay the amount to the co-conspirator, who then put the money into a Hong Kong account. Petrobras officials had access to that account.

How it ended

Trafigura pled guilty to charges of bribery in Brazil or one count of conspiracy to violate the US Foreign Corrupt Practices Act. As part of the deal, the company agreed to pay $80.5m in fines and forfeited profits of $46.5m.

The company had paid approximately $19.7m in corrupt commissions to Brazilian officials to secure oil contracts. Trafigura entities earned $61m in profits during its decade-long period of illegally obtained business with Petrobas.

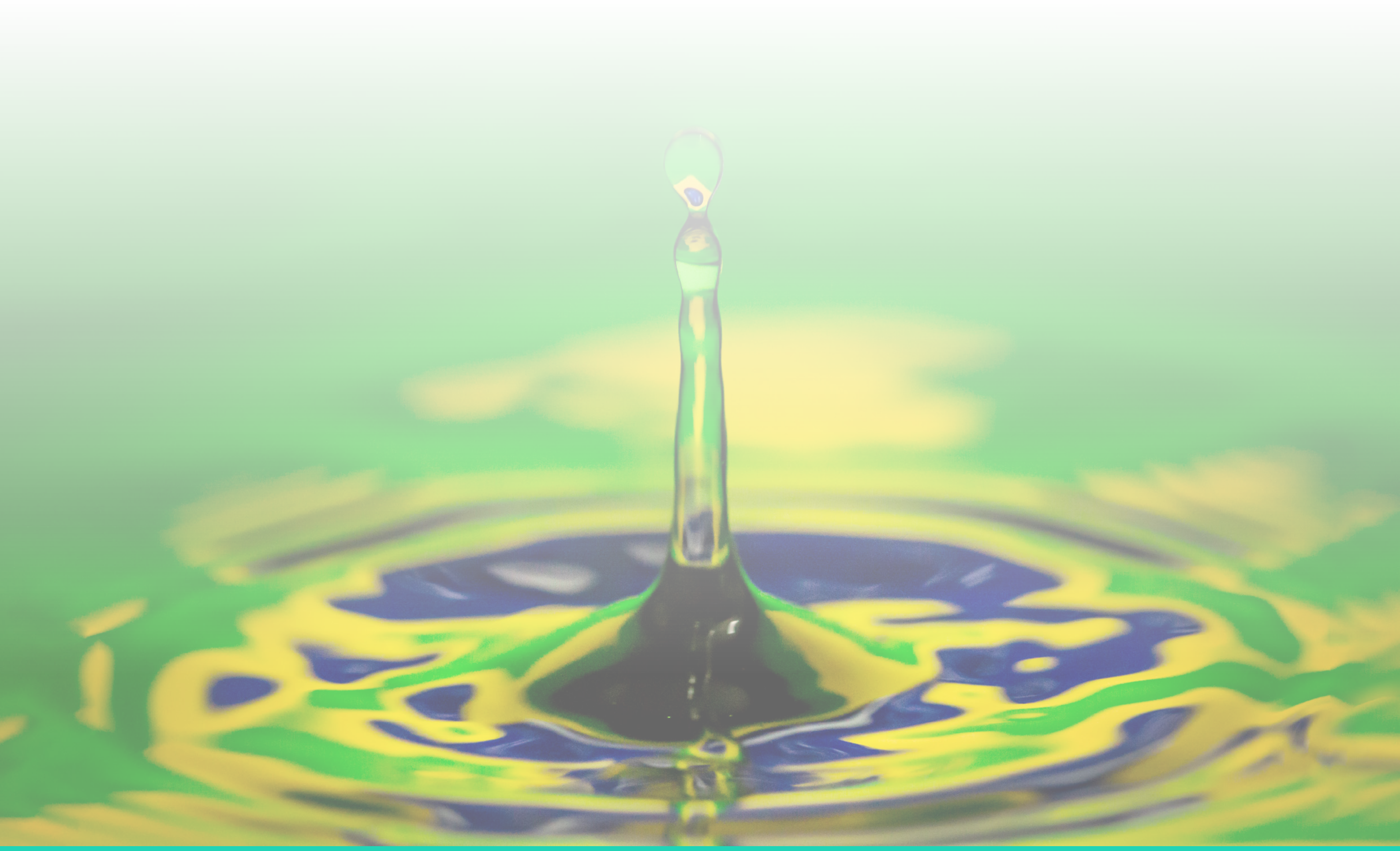
The bigger picture: The car wash

The payments were connected to Brazil's biggest political corruption case, Lava Jato which means car wash. This was a huge contracts-for-kickbacks scheme that was centred on Petrobras. Company executives were revealed to have taken bribes for handing out contracts in a conspiracy that even involved a construction cartel.

Dozens of politicians and businessmen went to prison as the Lava Jato case unravelled. In the course of the investigation, it was revealed that Trafigura's office in Rio de Janeiro was the site where some of the cash payments were made.

This plea is the first time that Trafigura actually admitted to being involved in the Car Wash scandal. (Company rivals Glencore and Vitol already admitted to bribery in the scandal to settle broader corruption probes.) Six years ago, Brazilian prosecutors charged two former Trafigura executives for allegedly paying bribes of about $1.5m.

With this plea, the civil case into Trafigura in Brazil for the Car Wash scandal has been suspended but some of the $127m can be used for settlements with Brazilian authorities.



The settlement: What did Trafigura do wrong - and what did it do right?

Trafigura did cooperate with the DoJ's investigation and ultimately accepted responsibility, for which it got some credit. This involved:

- ✓ providing timely updates on what it learned during its internal investigation
- ✓ making factual presentations to the department
- ✓ allowing employees and agents to be interviewed and arranging for counsel for employees where appropriate
- ✓ producing relevant non-privileged documents and data to the department
- ✓ providing information about individuals involved in the bribery incidents

But the DoJ noted that the company did not voluntarily disclose evidence, was not always fully cooperative and it did not preserve and produce certain documents and evidence quickly, especially during the early phase of the investigation. The DoJ also noted that Trafigura was slow to exercise disciplinary measures for certain employees whose conduct violated company policy.

The DoJ did give Trafigura credit for its remediation efforts. It improved its risk mitigation procedures by:

- ✓ developing and implementing enhanced, risk-based policies and procedures relating to

  > anti-corruption
  >
  > use of intermediaries and consultants
  >
  > third party payments
  >
  > joint venture and equity investment risk assessment

- ✓ enhancing processes and controls around high-risk transactions
- ✓ investing in employee training and compliance testing
- ✓ enhancing ongoing compliance monitoring and controls testing processes
- ✓ proactively discontinuing the use of third-party agents for business origination

Corruption and commodity traders

Commodities are an important material basis for the economies of both the producing and trading countries as the need for raw materials and natural resources never ends.

But the commodity trading sector is particularly high-risk for corruption and bribery. Trading companies deal with large financial transactions and often operate in high-risk countries that have weak governance, institutions and limited accountability. The sector is also notorious for a lack of transparency and not being well regulated. These are ideal conditions in which corruption - from bribery to money and commodity laundering - can thrive.

Industry fines

Risk mitigation is becoming increasingly significant as in recent years, commodity trading houses have been fined with severe penalties for bribery and corruption.

In 2020, Vitol Group's US subsidiary agreed to pay $164m to resolve an investigation by the DoJ that the energy trader paid bribes in Brazil and other countries to boost its oil trading business. Under a three-year deferred prosecution agreement, the Swiss trading firm admitted guilt and agreed to improve internal reporting and compliance functions.

In 2022, Glencore pleaded guilty to bribery in Africa and Latin America to access oil contracts. The company was fined over $1b.

In March 2024, Gunvor, one of the world's largest oil traders, agreed to pay $662 million to resolve US and Swiss investigations into a scheme to pay bribes to Ecuadorian officials to win business.

And then there’s Trafigura, which, along with its former COO, still face charges in Switzerland about suspected bribery payments in Angola.

Risk mitigation in commodity trading

There are ways for companies to mitigate corruption risks in commodity trading. These would involve:

- ✓ increased transparency in commodity sales
- ✓ open tenders
- ✓ transparency of payments
- ✓ due diligence processes both on the production conditions and on trading partners
- ✓ establishment of supervisory authorities
- ✓ transparency of beneficial ownership

It's important for companies to involve banks and financial intermediaries in this risk mitigation process.

The red flags

In general, 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

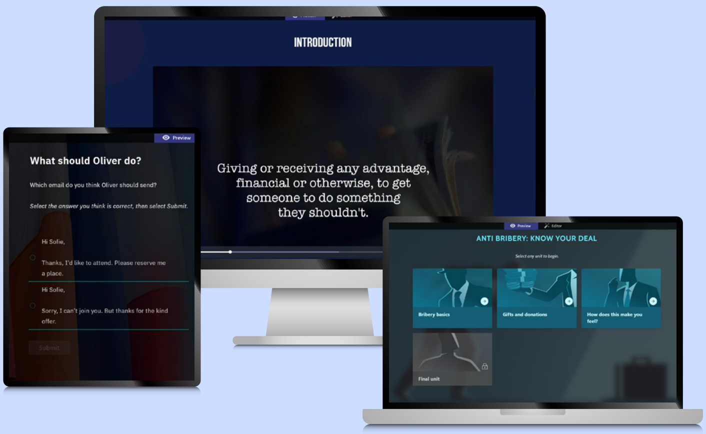
Get your entire staff on board

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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