THE COMPLETE GUIDE

Risk mitigation for bribery

VinciWorks

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The complete guide

Bribery and corruption are not new issues. But they remain impressively persistent in their ability to wreak havoc and cause trouble. According to the World Bank, £800 billion is paid each year in bribes, and more than double that goes to corruption and enforcement. That figure represents 5% of the global GDP. (And the real number is likely even higher.) The United Nations listed corruption as "one of the biggest impediments" to achieving its 2030 Sustainable Development Goals.

In the workplace, bribery is deeply destructive and often insidious. Organisations are losing hundreds of thousands of pounds to these schemes, not to mention reputational damage and legal action. The UK Bribery Act 2010 was introduced to clamp down on illicit payments, while the National Crime Agency was established in 2013 to oversee law enforcement response. A key component of the Act - and significant for companies - is that it's not just individuals who can be held accountable for taking or offering bribes. Their employer can also be fined up to 10% of their organisation's turnover, and they could be prohibited from tendering certain contracts.

All this means that it's vital that companies know how to manage and mitigate their bribery and corruption risks in their organisations. We created this guide to help companies develop an effective anti-bribery programme and learn how to mitigate the risks of corruption.

Creating an anti-bribery programme

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.

Getting started: Best practices

Best practices in a risk assessment procedure of corruption risks gives your company a systematic and objective view of bribery risks. This enables the company to:

- ✓ get a realistic overview of the key areas of bribery risks in its operations
- ✓ focus on the business activities and relationships which are most risky
- ✓ provide a basis for the development of
    - anti-bribery mitigation processes
    - restructuring activities to mitigate risks
- ✓ identify where there may be low risk activities and reduce effort in those areas
- ✓ design risk-based due diligence that will be appropriate for third parties
- ✓ enable improvement by identifying areas of efficiency
- ✓ support the promotion of risk awareness

The anti-bribery risk assessment process: A checklist

- ✓ Get top level commitment. Senior management must demonstrate commitment and provide leadership to ensure ongoing risk assessment and that the process maintains its quality.
- ✓ Create a planning team. They should appoint a project lead, identify stakeholders, delegate team responsibilities, gather information sources, draft a risk assessment plan, and communicate the plan and its requirements to those involved.
- ✓ Develop a list of bribery risks. Identify the risks the company could realistically be exposed to by virtue of the size, nature and location of its activities.
- ✓ Evaluate the company's activities. Pinpoint the ones with risk factors that could increase the company's risk exposure to bribery.
- ✓ Analyse the risk and the forms of bribery identified. Take into account the risk factors the company is exposed to.
- ✓ Prioritise risks. This should be based on both how likely bribery is to occur and the potential negative impact on your company.
- ✓ Risk assessment results should be applied to a review of the company's anti-bribery programme. Modifications to the programme should be incorporated, as needed.

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

Each of these KRIs includes several risk drivers that influence how relevant they are to your firm. If the drivers increase the risk, then the rating will be higher – and vice versa. As such, the risk assessment will need to include a risk range so that you can take appropriate action.

Active vs passive bribery

Active bribery is when the company or persons connected with it give a bribe.

Passive bribery is when an individual receives or acts on the expectation of receipt of a bribe.

Both are of concern to your company. More attention is generally given by companies to active bribery but the risk involved in passive bribery is just as significant. Passive bribery occurs most often in contracting and procurement fraud, when employees accept kickbacks for awarding contracts. Passive bribery can also occur in recruitment, sponsorship or allocating services or supplies where goods or raw materials are in high demand and short supply.

Risk assessment: The process

Designate responsibility, determine risk approach

An effective risk assessment process for anti-bribery programme starts with full leadership commitment, including a board committee responsible for oversight of the risk assessment process. Training should be provided so there is an understanding of bribery risks.

Responsibilities for anti-bribery assessments could be delegated with overall responsibility given to a senior executive. It's important to allocate sufficient resources to conduct effective continuing risk assessment. This includes people and time to carry out the process. A regular review of reports on the implementation of the risk assessment process should be conducted including information about key risks and their mitigation and any residual risks.

It's important to recognise how business objectives could be affected by bribery risk. These need to be laid out in the assessment. From reputation to compliance with regulations to impact on profitability, the significance of bribery as a risk needs to be clear. The risk tolerance is then determined. Companies are typically faced with many types of risks and decisions on risk approach will need to be balanced within the overall context of risks facing the company.

The planning team

The board committee should create a planning team that determines the types of bribery risk in the company and where they are. This knowledge will set the expectations for the risk assessment and what information is needed.

Risk assessments can be done at global and regional levels, by business division, and by activity. There needs to be sufficient resources and good sources of information on bribery risks in the company should be identified.

Risk assessment is a continuing process and the team needs to consider how to do that

across the company's activities and its third parties. It also has to determine how the risk assessment will be documented both to provide a reference for future risk assessments and for any reviews and discussions on the current risk assessment approach. Documentation will also provide evidence to authorities in the event of an investigation on the adequacy of the company's risk assessment process.

Note: A risk register may be used, which records information gathered and the sources, description of the bribery risk, the assessment and rating of the risk and the measures and controls to mitigate risks.

Information on how bribery could occur

Information is required to understand the forms of bribery that could be a risk for the company, such as what might occur in the company's activities and where. This should address both active and passive bribery.

External and internal resources can be used including information in the public domain, past experiences of bribery issues, previous assessments (if there are) and experiences of board members of employees.

An important source of information is country and market insights from management and employees in different countries. These include knowledge about local culture, business practices and customer behaviour. The company's legal team or local management can provide insight into local laws and regulations.

Additional information can come from:

- Whistleblowing reports
- Due diligence reports on third parties
- Internal audits
- Allegations and investigations reports
- Compliance reviews
- Employee opinion surveys

A bribery risk assessment needs to look at the business and activities of the company and be based on many perspectives, from management to employees. Those conducting the risk assessment need to make sure they identify all relevant risks. They can conduct interviews with staff, stakeholders, experts and send business units and third parties a risk assessment template to complete.

Be careful about assuming trust will not be breached, accepting current practices and resistance from managers and employees. Make sure the quality of the information received is continually assessed and can be trusted.

Identify the bribery risks

A risk register of inherent bribery risks, risk factors and bribery schemes should be created. This will provide the basis for evaluation of risks.

This involves identifying activities subject to bribery risks and the related risk factors, such as if it takes place in a country known to have high levels of corruption or is in a sector vulnerable to bribery. This is all based on information gathered.

A risk register should be used to capture and organise the information and will provide the basis for assessing and prioritising the identified risks. This involves a list of activities where bribery commonly can take place.

Some examples:

- Bribes made to win orders or to gain insider information
- Contracts awarded to a supplier who then pays a kickback
- Acceptance of bribes from suppliers and intermediaries
- Payment of bribes in logistics to obtain regulatory approvals, port and canal clearances.
- Bribes paid to human resources employees or outsourcing contractors to influence recruitment, appointments, promotions and disciplinary actions.
- Bribery of public officials to circumvent regulations
- Donations to politicians and political parties
- Bribes received by employees for awarding contracts or providing access to facilities
- Bribes received for providing personnel and other information
- Bribes received to steer recommendations for products and suppliers, insider trading.
- Bribery to obtain insider information, provide favourable terms.
- Acceptance of bribes to falsify records or overlook non-compliance.
- Bribery of researchers to falsify results or of officials to obtain regulatory approvals.
- Bribery of officials to obtain approvals or other services.

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.

Bribery schemes

How is bribery given or received? When conducting a risk assessment, a company should identify the vulnerable processes and address them with anti-bribery controls.

The assessment explores how someone could fraudulently get something of value, in order to pay a bribe, whether active or passive. Can an employee agree to an inflated fee for a sales agent to create room for bribery payments? Can a buyer approve rush orders to generate funds for kickbacks to be given for awarding the contract? And pay attention to new forms of bribery.

There are some activities which are particularly vulnerable to bribery schemes. Companies need to look closely at gifts and hospitality, political engagement, donations, community investment, managing third parties and contractors and suppliers.

Evaluate the risks, and then prioritise

Your company now needs to generate a list of bribery risks that will need to be mitigated. This involves assessing and prioritising the bribery risks you have identified.

As noted above, to prioritise risks you need to consider the likelihood of occurrence and the potential adverse impact on your company.

The likelihood of bribery occurring increases depending on the significance and number of risk factors associated with a particular activity where bribery could happen. There are risk factors that could apply to many, or sometimes all, areas of risk. This is most relevant where there is a culture of corruption in a particular location. All business activities at that location are at risk for bribery.

The accumulation of risk factors is difficult to measure. It needs to take into account the company's circumstances and their existing approaches. Any one or more specific risk factors can be seen as increased risk or each risk factor can be assigned its own level of danger or a company can tally up the number of risk factors to demonstrate greater or lower levels of risk.

The potential adverse impact of bribery on your company involves considering the following:

- impact of active versus passive bribery risk
- financial value or loss of opportunity of transactions
- financial value of sanctions including fines and debarment risk
- impact on other contracts if bribery is discovered

It's hard to anticipate the fallouts from a bribery incident. The implications can be company wide, with impacts felt on the financial, legal, regulatory, commercial and reputational front. A company could consider all these impacts and grade them with low, moderate and severe ratings.

Ultimately, your company should generate a list of prioritised bribery risks that spans the company's activities. This involves:

- a description of the activity
- the kind of bribery that can occur (both active and passive)
- the business units, including third parties, where it can occur
- the defined risk factors and their likelihood, assessed
- the bribery schemes and its connection to the vulnerable company activity

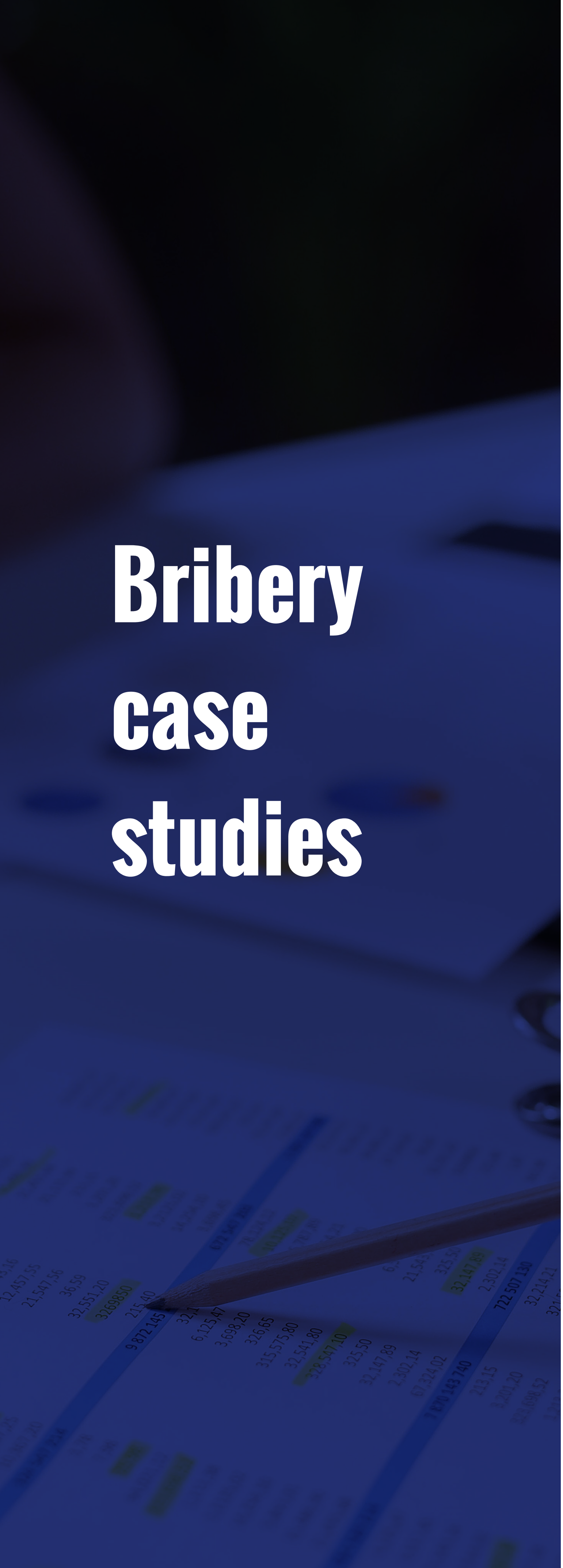
Design anti-bribery processes

You will now want to develop anti-bribery controls in your company to mitigate the main risks you've identified and deal with lower level risks.

Review your anti-bribery programme, apply the results of your risk assessments and determine what aspects to be modified and what needs to be added, keeping in mind the resources you have available. All companies face risks on many issues. Bribery risk management efforts should be focused on the risks which are most likely to have the biggest adverse impact.

The steps:

1. Map out the bribery risks
2. Assess the risks against existing controls
3. Check what is currently being mitigated
4. Identify gaps in the existing controls
5. Design and implement a programme to mitigate the risks.
6. The anti-bribery programme should be part of a wider anti-corruption programme



Bribery case studies

Why Trafigura pled guilty to a decade of bribery

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 bribery 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.

SAP

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

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.

Bribery: 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

Creating an anti-corruption compliance culture

- **Buy-in is top down.** If the senior management of your company is truly committed to compliance and preventing corruption, employees throughout the company will pay closer attention to potential corruption risks and will try to avoid them.
- **Implementing effective policies and procedures.** Your company's implementation of solid controls and standards that are effectively designed to address the real-world risks that the company is facing in the real world, and its efforts at making sure they are followed and enforced (thanks to senior management's commitment), will ensure that all your employees - and, crucially, agents - are aware of the corporation's requirements and they will more likely participate in being compliant.
- **Communication of corporate values.** Senior management needs to consistently remind your company's employees of the importance of the company's anti-corruption culture, not to mention its zero-tolerance policy for offenders, and that honesty, and legal compliance are critical corporate values. In this way, employees recognize that it is part of the corporation's identity and brand and will be less inclined to violate the anti-corruption policies.
- **Anti-corruption compliance training.** Compliance training needs to be conducted on an annual basis for all employees involved in international business or who might have contact with foreign government officials or who have any exposure to possible corruption. This training should include ethics training, due diligence interviews and real-world scenarios that employees might encounter.
- **Ongoing monitoring and auditing of anti-corruption compliance.** Your company needs to make sure that its policies, procedures and controls are effectively implemented, followed and enforced. This requires ongoing monitoring and auditing of the anti-corruption programme. This should be conducted by a number of corporate functions and departments working cooperatively. This also sends a powerful message to employees and third parties that the corporation is serious about compliance and will not tolerate corruption.

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

Read more

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