



Corruption – Damage, Risks and Prevention

Seminar 125 held at The Royal College of Pathologists, London
26 April 2006

Summary

Introduction

Corruption occurs in many forms, but could be defined as the demanding or receiving, offering or giving, of undue reward by or to any persons in order to influence their behaviour and to persuade them to act contrary to the normal rules of honesty and integrity.

Transparency International's (TI) Bribe Payers' Index rates the construction/public works industry as the most corrupt business sector. Corruption can result in inappropriate, dangerous or defective projects, and increases cost.

The seminar discussed different forms that corruption can take, and the potential pitfalls and legal liabilities faced by companies and individuals. It also looked at how companies, and business and professional associations, are beginning to work together both nationally and internationally to develop and implement anti-corruption strategies, and to call for more effective action from governments.

Examples of corruption

Funding agencies such as the World Bank, the Asian Development Bank or the European Commission often sponsor major projects in countries abroad. Engineering or construction consultants may either be paid directly by such agencies or receive money from the government of the country which has been lent or given the money.

A consultancy will often use a sub-consultant from the country receiving money, who will specify how much of the fee they want for their input; a proportion of this money may be used to bribe the client. Often the main consultant will not query this money, which may be used to pay either people in the funding agency or in the government of the country for which the work is undertaken.

Where there is a transfer of technology, people from the country in which a project is carried out visit the UK to learn the skills. They are often accompanied by uninvited friends and relatives who may expect to be suitably entertained and given gifts.

When it is the consultant's responsibility to call for tenders and to make a recommendation for the appointment of a contractor or supplier, the client's manager may insist on the appointment of a particular company which has agreed to reward him or her.

The consequences of corruption

- Corruption distorts markets and is therefore the enemy of fair competition. It means that time and money is wasted by deserving companies who lose business to corrupt competitors.
- The misuse of corporate capital by a company, its subsidiaries or its joint-venture partners tarnishes the corporate culture and has a debilitating effect on employees, who fear for their jobs if they do not comply with the offence.
- Uneconomic or unnecessary projects may be undertaken, which create demands on scarce foreign exchange, resulting in the appointment of unsuitable or unqualified officials.
- Corruption results in a general deterioration in government standards and a loss of tax revenue, which may bring about a collapse of the economy or the downfall of a political regime.
- The ease with which the proceeds of corruption can be laundered fuels extortion and can damage the reputations of banks and financial markets.
- The proceeds of corruption are often paid offshore and never enter the host country, so that its people do not benefit.
- Surveys have shown that the biggest single deterrent to inward direct investment in a country is the perceived level of corruption.

Law and liability

As far as the law is concerned, corruption takes several forms. The issues are analysed in detail in [Transparency International's Anti-Corruption Code](#).

1. Bribery

Persons may be convicted of bribery for the demanding or supplying of a bribe, which may be in cash or kind. A bribe need not be given personally and could be made through a third party. An offence is committed even if a transaction is not completed.

Bribery in the construction industry may relate to winning contracts, variations of contract, extensions of time, bribing witnesses or arbitrators and payment for services.

Facilitation payments, where officials are bribed to carry out duties they are obliged to perform anyway, such as customs clearance, are often the norm in overseas countries, but are deemed criminal offences under UK law. The chance of being prosecuted in the UK for a facilitation payment is small, but nevertheless it is a reality.

2. Extortion

The act of acquiring money by threats or pressure is extortion. Giving in to extortion is an act of bribery unless there is imminent danger of death or personal injury. Extortion is possibly the biggest problem facing UK consultants and contractors.

...continued

3. Fraud

Fraud is a significant problem in the construction industry. TI's Anti-Corruption Code lists a large number of criminal offences relating to fraud, an offence which may be committed in a number of ways, such as collusion, fraudulent claims, obtaining property by deception or false accounting.

It is, for example, an offence to form a cartel, and directors or managers who do so face imprisonment. The Office of Fair Trading (OFT) now has numerous powers to offer immunity to people who blow the whistle on others.

False claims have become 'part of the game' in the construction industry, but putting in a claim which is deliberately or recklessly false is a criminal offence.

Companies can be liable for criminal offences committed in the course of its business by its directors, senior officers or other employees, and may also be liable for criminal acts committed by joint-venture partners, agents or subcontractors in the course of a shared project.

Consequences of committing an offence

Bribes paid in connection with a contract render it void or voidable. Where a contract is terminated, damages can be claimed against the party guilty of an offence or who is contractually responsible for the offence. Such damages can be considerable in a major project because a large number of affected parties are usually involved.

The World Bank and all multilateral banks now debar companies found guilty of corruption. Under recent EU legislation, any company convicted of corruption, or whose senior manager or director has been convicted of corruption, is automatically permanently debarred from all public sector work in the 25 member countries.

The Anti-Corruption Forum considers this EU legislation to be draconian, and is working with the EU Commission and the Office of Government Commerce (OGC) to amend the procedures and penalties to make them fair and proportionate.

The Serious Fraud Office (SFO) is currently investigating numerous allegations of corruption by British companies and individuals overseas

International Developments

Emphasis on corporate responsibility has given rise to anti-corruption mechanisms and anti-corruption codes of conduct in many companies. More and more banks are asking for such codes as proof of anti-corruption procedures and the World Bank is taking steps to encourage the practice. With an Institutional Integrity Department of more than 50 lawyers, so far 300 companies and individuals have been blacklisted by the World Bank and there are 1,800 complaints of corruption on its books. Under the US Lugar Bill, American donations to multilateral banks will only be given to those with anti-corruption policies.

The UN Convention Against Corruption has been agreed by 146 nations and ratified by around 40, including the UK. Companies around the world are withdrawing from markets in which they cannot do business without paying bribes.

Transparency International publishes the [Corruption Perceptions Index](#) which rates countries according to their perceived propensity for corruption, and has major international initiatives running in three sectors: defence, the oil and gas industry and construction. It also produces a [Bribe Payers' Index](#) in which out of 21 countries the UK is rated as the 8th least likely to pay a bribe.

Anti-Corruption Forum

In October 2004 the Institution of Civil Engineers (ICE), the Institution of Structural Engineers (IStructE), the British Consultants and Construction Bureau (BCCB), the Association for Consultancy and Engineering (ACE), together with Transparency International and senior people from a number of other companies created the Anti-Corruption Forum. The Forum has drawn up an '[Anti-Corruption Action Statement](#)' which sets out the actions which need to be taken by all participants in the industry to prevent corruption.

Tackling corruption requires real cooperation among a variety of participants, but before this can happen they must have an understanding of the issues and be convinced of the importance of the task:

- Governments: there must be an effective legal and social framework to deter bribery and corruption amongst government officials, individuals and companies.
- Aid agencies: multilateral and bilateral agencies can help build these frameworks.
- International organisations: the United Nations (UN), the European Union (EU), the Organisation for Economic Co-operation and Development (OECD) and other organisations have an important role in bringing about the necessary cultural changes.
- Business and civil society organisations: need to be inspired and supported to play their part.
- Companies: must refuse to participate in corruption and have effective systems and policies in place for their employees and subcontractors.

...continued

Various means of making the anti-corruption strategy work were discussed, including:

- Establishing a benchmark for British companies using the best practice experiences of Anti-Corruption Forum companies
- Initiating dialogue with the government through the Foreign Office, the OGC and other departments
- Seeking partner organisations in other countries
- Involving regional and international bodies through the concept of a global forum
- Working with the European Construction Industry Federation (EIC), of which BCCB is the UK member organisation

Participating organisations

Arup
BAA plc
Bechtel Ltd
British Consultants and Construction Bureau
Cross London Rail Links Ltd
Denton Wilde Sapte
Department for Transport
EDS Ltd
Emcor Rail Ltd
Freshfields Bruckhaus Deringer
Halcrow
Imperial College, London
KBR
Kendall Freeman Solicitors
Laing Rail
Major Projects Association
Mott MacDonald Group Ltd
Mouchel Parkman
Network Rail Infrastructure Ltd
PA Consulting Group
Pell Frischmann
PricewaterhouseCoopers
Scott Wilson
Shadbolt & Co LLP
Taylor-DeJongh
Taylor Woodrow Construction
The Nichols Group
Transparency International (UK)
Transport for London
Union Railways Ltd