Market Intelligence

ANTI-CORRUPTION 2019

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Anti-Corruption 2019

Global Trends

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In 2017, Mr Davis was appointed to serve as an independent compliance monitor pursuant to an FCPA disposition following extensive vetting by the DOJ and SEC. This multi-year project recently concluded.

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International anti-corruption efforts continue to attract attention from companies, investors and governments of both exporting and host countries, and, in many places, populations in general. The problems of endemic corruption have been prominent factors in political upheavals experienced by countries such as Brazil, Peru, Malaysia, Guatemala and Argentina, and in the shift of popular opinion away from entrenched governments or parties (for example, recently in South Africa and Venezuela). The United States, generally seen as an anti-corruption leader, has experienced political discord over perceived corruption not seen since the era of the 1970s Watergate scandals. Even governments with less accountability to voters, such as those in China and Russia, evidence anxiety that corruption undermines their authority.

Concerns regarding the corrosive political and economic effects of public corruption have provided an impetus for several multinational conventions designed to combat corrupt payments and related issues. This started with the 1996 Inter-American Convention against Corruption and accelerated with the 1999 Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention and two Council of Europe conventions (criminal and civil) that came into force in 2002 and 2003. The scope of these international obligations expanded significantly with the entry into force of the UN Convention Against Corruption (UNCAC) in December 2005. The most important impact of these treaties and other efforts was to require signatories to prohibit domestic and transnational corruption, and many countries have enacted laws that in significant ways mirror the provisions of the law that first focused specific attention on these issues – the US Foreign Corrupt Practices Act (FCPA), enacted in 1977.

While the grand political dynamics may not concern compliance professionals on a day-to-day basis, the growth of anti-corruption regulation globally has resulted in the need to focus not just on the long and assertive reach of the FCPA, but also on an expanding array of other national laws, some of which create different compliance standards or (in the case of laws or judicial decisions related to issues such as data privacy, national security or the application of legal privileges) may undermine key aspects of a company's compliance programme if not handled appropriately. Companies also increasingly need to assess potential liability risks in many jurisdictions, as multi-country, coordinated international enforcement (in some cases, led by non-US countries) continues to become the norm in the anti-corruption sphere.

International enforcement trends

Enforcement of anti-corruption laws around the globe continues on an upward, if uneven, trend. Reporting on enforcement by the signatories of the OECD Anti-Bribery Convention is considered by many to be the best yardstick to measure this


John E Davis

progression, as the OECD Convention parties include most of the major capital-exporting countries (which can be seen as funding the 'supply' side of cross-border corruption) as well as other key economies, such as Russia and Brazil. The OECD also evaluates each signatory's implementation of Convention obligations and issues detailed public reports that include critiques and recommendations for improvement.

The latest data on enforcement collected by the OECD Working Group on the Anti-Bribery Convention (released in December 2018) show that 560 individuals and 184 entities have been sanctioned under criminal proceedings for foreign bribery by 23 different convention signatories from the convention's 1999 entry into force to the end of 2017. In addition, the OECD reported that at least 172 of the sanctioned individuals were sentenced to prison for foreign bribery, including at least 11 cases that resulted in prison terms exceeding five years. The OECD report also states that over 500 corruption-related investigations were ongoing in 30 countries as of the end of 2017. In 2017, 11 convention signatories were conducting 155 prosecutions (against 146 individuals and nine entities) related to offences defined by the convention or relevant applicable country laws.

"TI asserts that 11 'major exporting' countries, 'accounting for about a third of world exports', 'actively' or 'moderately' enforce their anti-corruption laws."

Transparency International (TI) has released its own assessments of the effectiveness of the OECD Anti-Bribery Convention. The latest TI report on Exporting Corruption (released in September 2018) provides a less sanguine outlook. TI asserts that 11 'major exporting' countries, 'accounting for about a third of world exports', 'actively' or 'moderately' enforce their anti-corruption laws. The TI report states that eight countries (Germany, Israel, Italy, Norway, Switzerland, the United States and the United Kingdom) 'actively' enforce their anti-corruption laws, while four other countries (Australia, Brazil, Portugal and Sweden) manage 'moderate' enforcement. There is an argument that France and the Netherlands should at least qualify for a 'moderate' rating based on recent cases and that Brazil should be moved to the 'active' category. TI cites 11 other countries with 'limited' enforcement, though the report states that the 'moderate' and 'limited' levels of enforcement 'are considered insufficient deterrence'. Most tellingly, TI noted that, as of the end of 2017, there was little or no enforcement by 22 countries, representing almost 40 per cent of the world's exports. That group includes China, Hong Kong, India, Russia and Singapore. TI noted 'disappointingly' that 'there has been little change in the overall enforcement level [based on share of world exports]' since 2015 and that '[t]he number of

countries in the top two levels has increased by only one, and these nations account for roughly the same share of world exports as in 2015.' Of interest to compliance professionals, the TI report also noted that 'for most countries' the organisation's experts 'reported inadequate public statistical information and insufficient access to case law' – making the tracking and understanding of enforcement trends and risk areas difficult.

In December 2018, the OECD launched a review of the 2009 OECD Anti-Bribery Recommendation, which is scheduled for completion in 2020. Per the OECD, the Recommendation contains, among other things, 'provisions for combating small facilitation payments, protecting whistle-blowers, [and] improving communication between public officials and law enforcement authorities'. The recommendation also includes provisions on the interpretation of certain key convention obligations, such as having in place appropriate systems that create liability for companies.

Several other multinational bodies have focused on anti-corruption enforcement and related national strategies for reducing public corruption. The International Monetary Fund (IMF), as part of its 1997 Governance Policy, has long assessed and attempted to address governance issues that can threaten to divert or undermine the financial assistance provided by the institution to specific countries. In April 2018, the IMF's Executive Board adopted a 'new framework' for 'enhanced Fund engagement' on governance and corruption issues. Of the four 'elements' of this new framework, two are noteworthy in regards to enforcement trends. The first element 'is designed to enable the Fund to assess the nature and severity of governance vulnerabilities – including . . . the severity of corruption'. The focus of such analysis will be larger-scale corruption issues – ones that arise related to the IMF's 'surveillance' of economies 'when they are sufficiently severe to significantly influence present or prospective balance of payments and domestic stability', or that 'affect the use of Fund resources'. The framework paper notes, in particular, different types of corruption indicators and some initial concepts related to how the IMF should weigh them. However, the Fund is still in the early stages of 'constructing its assessment methodologies' – a statement that is still present in summaries of the framework posted as recently as March 2019.

The framework notes specifically that 'an effective strategy requires action to curb the facilitation of corrupt practices by private actors, particularly in the transnational context'. Thus, the fourth element will focus 'on measures [in countries under review] designed to prevent the private actors from offering bribes or providing services that facilitate concealment of corruption proceeds'. To that end:

> *irrespective of whether a member is experiencing severe corruption itself, the Fund urges all members to volunteer to have their own legal and*

> *institutional frameworks assessed in the context of bilateral surveillance for purposes of determining whether: (a) they criminalize and prosecute the bribery of foreign public officials; and (b) they have effective . . . system*[s] . . . . *designed to prevent foreign officials from concealing the proceeds of corruption.*

The framework notes that, if such an assessment occurs, the country would be benchmarked against applicable international standards to which the country has agreed, such as those in the OECD Anti-Bribery Convention or the UNCAC. Significantly, the framework states that '[t]he Fund should continue to avoid interference in individual enforcement cases.' As noted, the IMF is only starting to implement this framework and it is unclear how many countries will participate. The IMF has stated that the fund is scheduled to conduct a comprehensive 'surveillance review' in 2019, but no further information is available as of the time of publication. These efforts, when at last underway, may provide further guidance to companies regarding both compliance risks and local enforcement trends in host countries.

The IMF's attention to countries' anti-corruption enforcement frameworks dovetails with efforts surrounding the 2019 G20 meetings that are concerned with further implementing the G20's High Level Principles on Organizing Against Corruption. These principles date from July 2017 and focus in part on 'administrative measures' that deter corruption and encourage transparency across government agencies and on international cooperation relating to technical assistance and enforcement. The July 2019 Final Declaration by the G20 leaders noted support for an action plan to carry out these principles through 2021 and laid out several key steps.

First, the G20 countries approved the High-Level Principles for the Effective Protection of Whistleblowers. These principles state that 'G20 countries should establish and implement clear laws and policies for the protection of whistleblowers' and that organisations, including corporate entities, should be encouraged 'to establish and implement protections and provide guidance on the elements of these protections'. The principles state that such protections should be broad and widely available and 'should ensure confidentiality of the whistle-blower's identifying information and the content of the protected disclosure, as well as the identity of persons concerned by the report, subject to national rules, for example, on investigations by competent authorities or judicial proceedings'. Given that several G20 countries do not always allow for anonymous reporting, it will be interesting to see whether these principles affect relevant laws or practices. Finally, the principles states that countries 'should ensure that whistle-blowers who make a protected

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disclosure are protected from any form of retaliatory or discriminatory action' – but, as several civil society organisations such as TI have pointed out, countries are obliged only to 'consider providing for effective, proportionate and dissuasive sanctions for those who retaliate against whistle-blowers or breach confidentiality requirement'.

The G20 also adopted a Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development, which focuses largely on corruption issues and responses. Many aspects of the 'good practices' discussed are more relevant to governments that are managing infrastructure projects than to companies, but the compendium does include information on corruption risk levels at different project stages, as well as suggestions on tenders, bids, awards and project monitoring and auditing, that can provide insights for company compliance counsel working in the public procurement space.

Finally, the OECD and UN issued a progress report on implementing the G20's 2030 Agenda for Sustainable Development, which includes an anti-corruption component. The report called progress on the anti-corruption goals 'uneven over the past five years'. The report cited the above-referenced OECD Working Group

enforcement numbers favourably but noted that three G20 members 'have yet to conclude a single foreign bribery enforcement action'.

The Group of States against Corruption (GRECO), the entity that monitors implementation of the Council of Europe conventions, is in its fifth round of evaluations of member states' compliance with their treaty obligations. A focus for this round, which began in March 2017, is 'preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies'. Meanwhile, GRECO continues to issue reports related to member countries' compliance with recommendations from earlier rounds of reviews, each of which has a different focus (for example, measures related to the integrity of legislators and judges).

Turning to notable developments in individual countries, the massive investigations of many political and business leaders in Brazil known as the 'Lava Jato', or Operation Car Wash, have continued. Recent consequences of what is likely the largest corruption probe in history include:

- US$1.78 billion in penalties and disgorgement paid by Petrobras in September 2018;
- the November 2018 Securities and Exchange Commission (SEC) settlement with Vantage Drilling (which also spawned charges in Brazil against the involved agent and a former company CEO);
- the December 2018 SEC settlement by Electrobras involving US$2.5 million in fines; and
- the June 2019 disposition of a case against TechnipFMC (which involved US$296 million in global penalties related to the same conduct for which Keppel Offshore paid US$422 million in global penalties in December 2017).

The investigation, now in its sixth year, was a major contributing factor to the election of Jair Bolsonero as President of Brazil, leading to fundamental policy shifts in that country. Fallout from the Lavo Jato triggered a major constitutional crisis in Peru in the autumn of 2019.

The saga of Lee Jae-yong, the vice-chairman of Korean company Samsung Electronics originally sentenced in August 2017 to five years in prison on various charges that included bribery and embezzlement, continues. The prosecution of Mr Lee was one of several related to a larger corruption scandal that resulted in the earlier impeachment of South Korea's President, Park Geun-hye, who was convicted and sentenced to 24 years in prison in April 2018. However, in February 2018, an appeals court dismissed many of the corruption charges against Mr Lee and reduced the terms of his sentence. The prosecution appealed to South Korea's Supreme Court, which in late August 2019 reversed the appellate court ruling

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and ordered new trials for Messrs Lee and Park, with the possibility of longer sentences for both. The ultimate outcome of this case will likely deeply affect public perceptions of corruption in South Korea, where the large *chaebol* have long been considered untouchable due to their central economic role.

Early 2019 also saw key developments in the Royal Canadian Mounted Police's ongoing corruption case against SNC-Lavalin, Canada's largest engineering and construction firm. In 2015, Canadian prosecutors charged the company with paying bribes to government officials in Libya in order to win government contracts, as well related improper activities. However, the prosecution has faced significant difficulties. First, SNC-Lavalin reportedly lobbied for the adoption by the Canadian government of a new remediation agreement regime (similar to a US deferred prosecution agreement (DPA)), which presumably would have allowed the company to negotiate an agreement to avoid a conviction and a presumed crippling debarment from government contracting. Thereafter, SNC-Lavalin reportedly lobbied the Prime Minister's office to help secure an actual remediation agreement for the company, in part based on the company's remediation efforts and the number of jobs at stake. According to allegations reported in the press, Prime Minister Trudeau urged his

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then-Minister of Justice and Attorney General to pursue such a settlement agreement with SNC-Lavalin, leading to allegations that the Prime Minister and his aides had inappropriately interfered in the investigation. The resulting political scandal led to the resignation of three high-ranking members of the government. In late May 2019, a judge in Quebec ruled that a trial against the company can move forward starting in late September 2019.

Finally, an enforcement trend worth noting across many countries is the increasing, and increasingly formalised, use by various authorities of negotiated agreements with companies to reach dispositions in anti-corruption investigations. These tools, which go by different names, are similar to US-style DPAs and non-prosecution agreements (NPAs), which are favoured in FCPA enforcement. Among the countries that have authorised or used these types of agreements are the UK (DPAs), France (judicial agreements in the public interest (CJIPs)), Canada (the aforementioned remediation agreements), Israel (conditional agreements), the Netherlands (out of court settlements), Argentina (effective collaboration agreements) and Brazil (leniency accords). These agreements allow for flexibility in terms and the imposition of ongoing obligations, such as compliance programme implementation or reporting on activities, and thus are increasingly favoured by the authorities. They also mirror many aspects of US DPAs and NPAs in terms of eligibility requirements. For example, the French government's formal guidelines for CJIPs, issued in June 2019, encourage companies to self-report, conduct internal investigations and cooperate with prosecuting authorities – concepts that are novel in the French criminal law system. The increase in the use of such tools is also likely influenced by ongoing developments in international cooperation among various agencies in anti-corruption investigations.

Trends in international cooperation and legal assistance

International cooperation through mutual legal assistance provisions of bilateral and multilateral treaties (including, most prominently, the OECD Anti-Bribery Convention, the OAS Convention and the UNCAC) continues to accelerate. As an initial benchmark, the OECD's comprehensive 2014 Foreign Bribery Report found that '13 per cent of foreign bribery cases are brought to the attention of law enforcement authorities through the use of formal and informal mutual legal assistance between countries for related criminal investigations accounts.' A more recent OECD report from December 2017, entitled The Detection of Foreign Bribery, stated that 7 per cent 'of bribery schemes resulting in sanctions have been detected through mutual legal assistance (MLA) requests'. The drop in percentage may be the result of the overall increase in the number of bribery sanctions in the intervening years (which could show a numerical increase in MLA-based cases as a percentage drop in the resulting larger universe), as well as possible differences in counting methodologies. It is

also noteworthy that these statistics only cover cases 'detected' through MLA; the figures do not appear to document assistance in cases that have arisen through other methods, such as company self-reporting. The rise in publicly-announced enforcement dispositions involving multiple country authorities over the past four years provides strong evidence that cooperation efforts (at least among a select group of countries – all OECD members) have increased and the 2017 OECD report notes a proliferation of formal and informal cooperation mechanisms and arrangements.

In April 2016, the OECD held a workshop on mutual legal assistance in international corruption investigations that highlighted both the challenges and the growth of best practices regarding cooperation with the participation of enforcement authorities from 20 countries, including China, and issued a summary report of the proceedings. The OECD also hosts twice-yearly confidential meetings of law enforcement personnel from signatory countries – meetings that, according to recent OECD reports, 'have proven to be instrumental in fostering contacts between law enforcement officials and facilitating international cooperation in foreign bribery cases'.

In July 2017, the new International Anti-Corruption Coordination Centre (IACCC) was launched under the auspices of the UK National Crime Agency, with the goal of 'bring[ing] together specialist law enforcement agencies around the world to tackle allegations of grand corruption'. IACCC participants include the UK, US, Australia, New Zealand, Canada and Singapore, with Switzerland and Germany as observers and Interpol support scheduled to begin in 2019. While most of these countries already engage in significant international cooperation generally, the IACCC participants share intelligence and conduct other mutual assistance activities designed to 'bring corrupt elites to justice'. According to a public summary of its activities in 2018, the IACCC 'provided vital intelligence support' for nine grand corruption investigations, 'identified and disseminated intelligence of 227 suspicious bank accounts found within 15 different jurisdictions' and offered intelligence and technical support to countries 'who have never received international law enforcement support before'. The IACCC coexists with an older, smaller group, the International Foreign Bribery Taskforce (IFBT), which has operated since 2013. The IFBT has taken the lead, for example, in the multi-jurisdictional investigation of the company Unaoil and its interactions with various companies in the oil and gas and other industries.

Most of the recent significant corporate corruption investigations that have resulted in penalties have featured international cooperation among authorities. For example, the Car Wash scandal in Brazil has resulted in extraordinary international cooperation – the latest examples being significant settlements involving Petrobras in late 2018 and TechnipFMC in mid-2019. According to Brazil's Federal Public Prosecutor's Office, as of October 2018, the Car Wash investigations have led to 548 international cooperation requests and the convictions of 140 individuals. In another

"Nine of the top 10 largest global resolutions related to the US FCPA have involved the extraction of penalties by authorities from at least two countries."

example, the *MTS* telecoms case, which resulted in US$850 million in total penalties, featured thanks for cooperation from the DOJ and SEC to authorities in at least 15 countries.

As another measure of the growth of international cooperation, it is noteworthy that nine of the top 10 largest global resolutions related to the US FCPA (historically the most active anti-corruption enforcement regime) have involved the extraction of penalties by authorities from at least two countries. Five of those cases were completed within the past three years:

- *Odebrecht/Braskem* (US$3.77 billion – Brazil, US, Switzerland, Panama);
- *Petrobras* (US$1.78 billion – US, Brazil);
- *Telia* ($965 million – US, Netherlands, Sweden);
- *Rolls-Royce* (US$816 million – UK, US, Brazil); and
- *Vimpelcom* (US$795 million – US, Netherlands).

Despite these trends, there is data that suggests that international cooperation still has a long way to go before becoming the norm across the world. The July 2019 OECD and UN report on the G20 2030 Sustainability Goals noted above found that, '[w]

hile all G20 countries can use the UNCAC as a legal basis for mutual legal assistance, extradition or law enforcement cooperation, few countries regularly do so in practice'. International cooperation can often be difficult and time-consuming. A survey by the OECD conducted in December 2015 indicated that '70 per cent of anti-corruption law enforcement officials report that mutual legal assistance challenges have had a negative impact on their ability to carry out anti-corruption work'. The September 2017 TI Exporting Corruption report noted that, in addition to sometimes restrictive legal requirements, mutual legal assistance 'processes often suffer from limited resources, lack of coordination, and long delays'. For companies under investigation, dealing with even the possibility of multiple investigations by different government authorities can create significant challenges related to coordination of sometimes competing government priorities, additional costs and the quantification of liability risks (the last especially in countries where investigators are inexperienced or not subject to effective due process requirements).

International guidance on anti-corruption compliance programmes

The US authorities in charge of enforcing the FCPA have set out the basic elements of what they consider to be an 'effective' anti-corruption compliance programme. Due to the active anti-corruption enforcement undertaken by the United States over at least the past 20 years, these elements have influenced the development of compliance standards by multinational bodies and other countries. The US authorities initially provided this guidance through a series of annexes to specific investigation dispositions, which the agencies over time revised to add details based on issues identified by them and compliance professionals. The culmination of that effort is contained in the US agencies' 2012 publication A Resource Guide to the US Foreign Corrupt Practices Act. The DOJ issued guidance documents in February 2017 and April 2019 to help companies evaluate the robustness of their compliance programmes by reciting a series of questions focusing on various programme elements, though the documents do not provide benchmarks. Similarly, the UK Ministry of Justice in 2011 issued guidance regarding what it considers to be 'adequate procedures' for companies to put into place to prevent bribery; these are to be used to determine whether a company has a defence against a UK Bribery Act charge that it failed to prevent bribery by an associated person.

Recently, several other countries have enunciated standards for corporate compliance programmes under their national anti-corruption laws. France issued its anti-corruption guidelines under its Sapin II legislation in December 2017. Among other details, the guidelines describe eight characteristics of a 'coherent and indivisible [compliance] policy framework' that largely track international practice. The importance of these guidelines was reinforced by the June 2019 guidance on the

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eligibility of companies for French CJIPs. Argentina's new anti-corruption law, which took effect in March 2018, defines the elements of a corporate 'integrity programme' (which again generally track other standards). Having such a programme in place can, along with other factors, exempt companies from legal liability for illegal payments under the law.

International bodies have long focused on issuing their own guidance regarding the structure and key provisions of corporate compliance programmes. The OECD has led the field in this area, with its first Guidelines for Multinational Enterprises issued in 1976. The seventh of these guidelines stated that companies should 'not render – and they should not be solicited or expected to render – any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office'. The OECD has updated these guidelines several times, with the current 2011 version containing more expansive language.

The OECD's 2009 Anti-Corruption Recommendation, which is currently under review as noted above, contains two annexes. The second, which the OECD Council adopted on 18 February 2010, is Good Practice Guidance on Internal Controls, Ethics, and Compliance. This document lists key elements of an anti-corruption compliance

"The UNCAC obligation thus globalises the establishment of compliance programmes and related systems for companies operating internationally."

programme and related accounting controls. Given the number of guidance compliance programme documents that have been issued by national enforcement authorities and international bodies since 2010, it is likely that the OECD Good Practice Guidance will be significantly updated in 2020.

The UN Convention against Corruption (UNCAC), which entered into force on 14 December 2005, established in its article 12.2(b) that all of its signatories 'shall take measures' to 'prevent corruption in the private sector', including 'promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business'. The UNCAC itself does not define those standards, but this obligation covers all of the convention's parties. The UNCAC obligation thus globalises the establishment of compliance programmes and related systems for companies operating internationally. The UN Office on Drugs and Crime (UNODC) issued a detailed Anti-Corruption Ethics and Compliance Handbook for Business in November 2013; the handbook discusses, in part, risk assessment issues and programme elements, and was developed with input from the OECD and the World Bank.

The International Chamber of Commerce (ICC) issued its first set of Rules on Combating Corruption in 1977. The ICC updated its rules in 2011 and the current version contains specific advice on what the ICC considers to be the essential elements of a compliance programme. The rules are also part of a comprehensive 2017 ICC Business Integrity Compendium that contains other guidance from the organization on such relevant compliance topics as gifts and hospitality, use and monitoring of agents and intermediaries, and whistle-blowing.

On 15 October 2016, the International Organization for Standardization (ISO) issued a new standard for 'anti-bribery management systems', called ISO 37001. The goal of this exercise was to create an internationally recognised standard for such compliance systems that would allow for certification by third-party auditors. The standard acknowledges that it is built on previous guidance from the OECD, ICC, TI and 'various governments', though the standard differs in certain respects on requirements and coverage (for example, risks from mergers and acquisitions are not specifically covered). The standard also contains information regarding how companies can achieve the relevant ISO certification.

Companies and countries have generally been slow to adopt this standard. Several companies, including ENI, Alstom SA, and CPA Global, have announced that they have been certified under the standard after assurance audits by independent organisations. Several other prominent multinationals, including Microsoft and Walmart, have said that they will adopt the standard for their operations and have been seeking a method for certification, but updates on these efforts have been scarce. There has been criticism within the compliance community regarding both the content of the standards and the accreditation process for certifying bodies. Some enforcement officials have warned companies, moreover, that ISO certification of their compliance programmes should not be considered as a safeguard against prosecution. For example, in November 2016, a DOJ official stated that while 'certification is a factor, the DOJ would have a lot of questions about what was done' and would evaluate 'how the programme was adopted at the time'. More recently, another DOJ official stated that the certification 'may be helpful, but the DOJ will look at your programme, not a proxy for your programme' and that the DOJ will want 'evidence that what you're doing is working'. It is perhaps notable that the DOJ's April 2019 guidance on measuring the effectiveness of compliance programmes does not on its face give any weight to such certifications.

Efforts to measure and deter 'demand' for bribes

While corporate enforcement actions and compliance programmes are designed to constrain the 'supply' of bribe payments to public officials by businesses and their

associated personnel, there is also an increasing focus on attempting to gauge and deter the 'demand' side.

Because today's standards require that compliance programmes be designed to mitigate the actual risk faced by companies across the globe, there is a need for compliance professionals to follow efforts to measure the actual likelihood that corrupt payments will be solicited in specific countries of operation. TI remains the most cited resource for this information. Since 1995, TI's Corruption Perceptions Index (CPI) has ranked countries (180 in 2018, the latest survey) by perceived levels of corruption. Those countries ranked lower on the survey are perceived as more corrupt and thus are considered to harbour higher demand for official corruption. Though some private consultancies are now offering different or more complex data sets to provide alternative measures, TI's CPI rankings are still frequently used by companies (and sometimes by enforcement agencies) as measures of potential overall corruption risks in the countries ranked.

The World Bank's Enterprise Surveys provide another source of perceived levels of corruption in various countries. This source covers 139 countries, though some of the data sets on individual countries are ageing – some are over five years old and a few are now a decade old. According to the World Bank, the data is based on survey responses by over 135,000 firms worldwide. Compliance professionals may find here information that is more directly related to day-to-day operational issues, as the surveys cover responses to 12 'indicators' of potential corruption, including the likelihood of having to make a payment or gift to obtain an operating licence, the value of a gift to an official expected to secure a government contract or percentage of firms expected to give gifts to officials to 'get things done'.

There are also regional efforts to measure corruption demand. One example is the Europe-Caucasus-Asia Corruption Survey published in September 2018. This survey, conducted by 11 law firms practising across the region, focused on the perceived effectiveness of local anti-corruption laws. The survey found that 71 per cent of respondents region-wide stated that their relevant anti-corruption laws were ineffective, 62 per cent responded that corruption was a significant obstacle to doing business and 35 per cent stated that they believed that they had lost business to competitors that paid bribes – though respondents in certain countries with high perceived levels of corruption reported significantly higher numbers. In addition to trends on the demand side, the survey also provides useful information for benchmarking compliance efforts; for example, the responses discuss specific types of compliance programme activities that companies operating in the region have undertaken.

Deterrence on the demand side generally is handled by local laws that govern the conduct of officials and all of the major anti-corruption conventions require their

state parties to enact and enforce those laws in good faith. Some entities, such as the OECD and GRECO, have taken steps to assess countries' legal frameworks related to the demand side and to offer technical assistance for improving such frameworks.

For example, a December 2018 report by the OECD Working Group analysed a sample of case studies to assess the consequences for officials who solicited bribes in investigations brought in various signatory states during the period 2008–2013. The report noted that 'although a considerable number of investigations and prosecutions targeting public officials took place, only 20 per cent of the 55 cases [examined by the OECD's analysis] ended with sanctions on one or more public officials'. The OECD report noted several other issues:

- that 11 investigations of officials were still pending years after the study's technical cut-off date;
- that mutual legal assistance appeared to have little effect on demand-side investigations; and
- that media played a major role 'as an intermediary in information flow between the supply-side and demand-side enforcement authorities'.

While it contains valuable data, the report does not cover more recent years in which there have been significant investigations and convictions of officials who solicited bribes, especially in Latin America and other individual high-profile cases, some of which are discussed in this edition.

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