

When sweeteners turn sour – the challenge of doing business in regions rife with corruption

By Megan Lampinen

The world's leading automotive manufacturers are expanding their global operations into new regions every year, seeking out fresh growth opportunities as traditional markets slow down. In many of these new markets, companies find themselves face to face with the reality of widespread bribery and corruption for the first time. *Automotive World* spoke with Richard Goetz, head of Dykema's international law practice, on the legal and ethical challenges of doing business in regions rife with corruption.

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The sideways approach

Scania's recent acquittal regarding charges of violating UN sanctions by paying kickbacks to the Iraqi regime put a spotlight on the situation. Its particular situation is typical, in which a single holdout company may find it hard to operate in an industry as the only one not willing to pay bribes. "They had originally gone to the Swedish government and said 'We've been asked to pay kick-backs out of this oil for food programme. We're not going to do it.' Then they looked around and saw everyone else was doing it," said Goetz.

Notably, the charges claimed that Scania had paid a third party to actually make the bribes. Scania itself was cleared of the accusation, but this is one means companies sometimes take to skirt around the rules. "More and more companies know they can't go out and pay bribes. They look for a third party to do it for them," explained Goetz. "Sometimes it's legal even under the most rigid enforcement in the US. In a typical context, if a company is selling to



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a distributor and the distributor chooses to bribe a customer in a foreign country, that may or may not be a violation of the FCPA [Foreign Corrupt Practices Act] depending on what the manufacturer knew. If they didn't know their distributor was doing this, didn't have reason to know, they are pretty much off the hook."

In other cases, however, knowledge of corruption is pretty clear. Goetz provided an example: "If they are asked to provide vehicles to Russia and they want Arabic instruction manuals, you get a hint. If you're asked to give a special price from a normal dealer who does business with you, ask what the discount is for."

Market variation

The level of corruption companies can expect to confront varies widely by region. Transparency International publishes a yearly Corruption Perceptions Index, in which countries are scored on how corrupt their public sectors are seen to be. The hope is that

governments will be forced to take action and address the situation. As Transparency International notes, "The index cannot capture the individual frustration of this reality, but it does capture the informed views of analysts, business people and experts in countries around the world."

As the index indicates, corruption is not limited to emerging markets. Goetz noted: "It's more predominant in emerging markets but it's certainly not exclusive to emerging markets." Corrupt practices are generally found in regions where the government is more chaotic and the economy is heavily regulated. Notably, sometimes the bigger corruption scores come from the more advanced economies. The FCPA itself, added Goetz, stems from an incident of bribery paid to ministers of the Japanese government in the 1970s. "Now typically more advanced countries have more enforcement and more laws against bribery and corruption and better police work. There is better communication among

agencies charged with enforcing them,” he stated.

Self-disclosure

The FCPA is enforced by the US Justice Department and the Securities and Exchange Commission (SEC), and they can bring civil as well as criminal actions. “I think for larger companies, especially publically traded companies that fall under SEC, there is a great deal of caution,” said Goetz. “The penalties are enormous. The impact it has on your employees and reputation is pretty bad. Companies tend to try religiously to follow the law. That doesn’t mean some don’t. And where the ‘some don’t’ come from is like the Scania situation – if you don’t pay the bribe you don’t get the business. You have the choice of saying ‘I won’t do this’, then seeing someone else, usually from a different country, get the business.”

Some companies that discover an internal corruption issue report themselves to the authority and began an in-house investigation. “Typically now companies self disclose. Once in a while they get caught.”

The agencies themselves tend to investigate certain industries more than others “because they operate where corruption is rife,” added Goetz.

A double-edged sword

In the end, before committing to any business project in a new region, each company needs to ask themselves whether or not business can be conducted without resorting to corrupt practices. “Sometimes the answer is you can’t,” said Goetz. “Most companies, when they realise that their reputation and good name are at stake, and an enormous fine is possible, decide, ‘I just won’t go there.’”

Goetz views corruption as a double-edged sword: “The country where the bribe is received is cheated because they are giving something they shouldn’t away and at the same time losing investment because the more honourable, decent companies won’t go there. It clearly has an economic cost for the company where the bribe recipient is.”

Goetz’s recommendations boil down to a few key steps. “The advice I give is look at how things are done in that country. Can you do business there without paying bribes? Second, make friends. Get to know people in government at different levels so that if somebody holds their hand out for a building permit, you can go to somebody at a different level of government and say ‘I can’t do that.’”

It is also important to examine the level of government control over the area in which a company does business. “You need to ask, ‘How much authority or

control does the local government have over you, depending on your business?’ Understand where you’re going to interact with government. Who in the company you’re going to establish there will need to interact with government and make sure they are fully trained in what the legal requirements and compliance requirements are. Make sure this all comes top down from the Chairman and understand your market. Make sure you have contacts and places to go to appeal from bribery.”

And finally, expect everything to take longer than in a company’s home country. “In markets where bribery is more rampant, the locals say companies come in at the last minute with unrealistic expectations on how quickly things can be done. Have realistic expectations. Understand what the local market is like. Then have a really good programme to make sure you enforce it to prevent bribery.”

In the end, a bribery conviction can carry a hefty fine and taint a company’s reputation. “That said, I haven’t seen a lot of companies actually go out of business because they were convicted of paying bribes,” concludes Goetz. “But a lot of them shelled out huge amounts of money because they usually discover themselves they were not adequately policing their system.”