



WHITEPAPER

COUNTERING BRIBERY & CORRUPTION IN THE PUBLIC & PRIVATE SECTORS

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INTRODUCTION

Across a global community with varying definitions of corruption and bribery, the responsibility of modern multinational corporations to monitor and mitigate corporate risks is increasingly defined by legal precedence and international standard-setting.

Within this context, the ISO defines bribery as:

'offering, promising, giving, accepting, or soliciting of an undue advantage of any value, directly or indirectly, and irrespective of location(s), in violation of applicable law, as an inducement or reward for a person acting or refraining from acting in relation to the performance of that person's duties'.¹

Although marginally defined by the central provisions of the UK Bribery Act of 2010², corruption is legally indicated by a varying spectrum of legislation undertaken to address a range of specific activities including organised crime³, terrorism,⁴ money laundering⁵, and fraud.⁶ Accordingly, the breadth of risk surrounding corruption and bribery introduces important constructs of accountability including rigorous record keeping under the Companies Act 2006⁷ and an expectation of regular and adequate procedures designed to 'establish guidance and protocol for avoiding liability... on the basis of procedural competency'.⁸

Due to the globalised nature of modern enterprise, the concept of 'adequate procedures' is vulnerable to interpretation depending upon national or industrial jurisdiction, complicating the application of a generic Anti-Corruption procedure. In spite of recognising this systemic limitation,

many enforcement agencies and government authorities have failed to provide guidance regarding the definition of 'adequate procedures' as it shapes both Anti-Corruption guidelines and legal defence.

This study was undertaken to critically assess the applicability of several recent legislative guidelines to the proactive mitigation of corruption and bribery in corporate administration. Drawing upon two recent cases of multinational, multi-party bribery, this investigation reveals the consequences of systemic inadequacy, confirming a paradigm shift in corporate oversight and network risk management.

This study explores the basis for rigorous and persistent risk assessment and monitoring by comparing the causes and legal justification for the prosecution of Airbus and Rolls-Royce, two global leaders in aircraft engineering. On the basis of these findings, it is recommended that modern corporations adopt and implement formal Corruption Mitigation And Management Systems (CMMS) which adhere to international law, structure internal policies and practices, and restrict the likelihood of corporate exposure and risk.⁹

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AIM & OBJECTIVES

The primary aim of this study was to conduct investigative research into two recent case studies in order to demonstrate effective and adequate applications of Anti-Corruption procedures based upon specific case-level outcomes.

Over the course of this exploratory research, the following core objectives have been accomplished:

- To compare and analyse the spectrum of regulatory instruments and corporate compliance standards in order to establish the comparative basis for Anti- Corruption policies and practices.
- To assess the specific cases of Airbus and Rolls-Royce to outline rules-based violations and identify compliance instruments for mitigating future replication.
- To propose a combinative institutional solution for managing and monitoring corporate compliance to prevent bribery and corruption in modern enterprise. ⁹

2.

CORRUPTION COMPLIANCE:

STANDARDS, GUIDANCE, & LEGISLATION

2.1. ISO 37001:2016 ANTI-BRIBERY MANAGEMENT SYSTEM

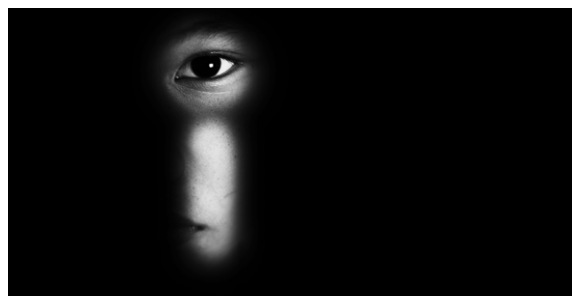
Prioritising Anti-Bribery Management Systems (ABMS), the guidelines in ISO37001 are predicated upon international best practices; and therefore, provides the systems necessary to ‘prevent, detect, and respond to bribery and comply with anti-bribery laws and voluntary commitments applicable to its activities’.¹⁰

At the core of ISO 37001 is an expectation that organisations will adopt a ‘compliance policy supported by appropriate management systems to assist in complying with legal obligations and commitment integrity’.¹¹

Critical distinctions underscoring the ISO 37001 guidelines include the following verbal indicators:¹²

- **Shall: A requirement**
- **Should: A recommendation**
- **May: A permission**
- **Can: Possibility or capability**

Providing general guidance, ISO 37001 is contingent the of managers to not only predict the risks surrounding bribery (e.g. exposure, vulnerability, threat), but to determine both the likelihood and severity of those risks relative to the central corporate structures and systems.¹³ This targeted risk assessment involves identifying bribery risks, analysing and prioritising those risks, and evaluating the suitability or effectiveness of existing controls to mitigate the assessed risks.¹⁴



DEBUGGING FEARS THAT PARALYSE FRAUD PREVENTION

Even though companies understand the fraud risk factor – nearly 77 per cent of HR professionals accept that there is a risk that employees can initiate fraudulent activity because of the work-from-home arrangement during the pandemic – more often than not, companies do not take action to implement robust fraud prevention processes in place until the organisation is exposed to fraud or appear in the news due to an investigation, incident, or external and (or) internal violation. **This article aims to answer the question of why companies wouldn’t adopt fraud prevention and detection measures proactively.**

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Accordingly, ISO 37001 can be synthesised into the following seven critical components:¹⁵

1

CONTEXT OF THE ORGANISATION

Understand the needs and expectations of stakeholders, determine scope of the ABMS, the implementation procedures, and the review process, evaluate capacity for regular bribery risk assessments.

2

LEADERSHIP

Demonstrate leadership commitment to ABMS including adopting policy, assigning responsibilities, monitoring compliance, and establishing specific decision-making process/controls.

3

PLANNING

Adopt anti-bribery objectives at relevant functions and levels, apply planning actions to address risks and identify improvement opportunities.

4

SUPPORT

Provide necessary resources (personnel, equipment, finance) for implementation and continuous improvement of ABMS. Ensure personnel are qualified and competent, adopt structured employment procedures to facilitate compliance with ABMS. Review performance bonuses and targets to assess risk of bribery. Provide regular anti-bribery training to all personnel and stakeholders.

5

OPERATION

Implement and control processes necessary to meet requirements of the ABMS. Conduct due diligence regarding those activities and associates that increase bribery risk. Implement financial and non-financial controls to manage risks. Require similar implementation across supply chain.

6

PERFORMANCE EVALUATION

Monitor and evaluate effectiveness of the ABMS. Conduct internal audits on effectiveness and conformity of the ABMS with requirements of ISO 37001.

7

IMPROVEMENT

Take action to control and correct non-conformity and improve effectiveness of AMBS. In spite of the rigorous characteristics of the ISO guidance, the organisation acknowledges that anti-bribery measures ‘cannot be so extensive, burdensome, and bureaucratic that they are unaffordable or ring the business to a halt; nor can they be so simple and ineffective that bribery can easily occur.’¹⁶

For this reason, the ISO 37001 standard is an evolutionary framework designed to systematically improve AMBS at the structural level, whilst limiting corporate exposure to legal prosecution in the event of a systemic failure.

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2.2 TRANSPARENCY INTERNATIONAL (TI): GLOBAL ANTI-BRIBERY GUIDANCE

Acknowledging the varied spectrum of global bribery risks, TI recommends that a formal company-wide bribery policy is established based upon universal guidelines and principles to define expectations and mitigate network confusion.¹⁷

Commitment to non-bribery requires overlapping stages of intervention including the formalisation of the corporate policy, network support for groups and individuals to resist bribery, a strong central anti-bribery culture, and rigorous oversight and Anti-Corruption initiatives.¹⁸ By adopting an overarching policy of corporate social responsibility (CSR), TI proposes that the range of protected conditions needed to mitigate the threat of corruption such as community engagement and awareness, business intelligence systems, and stakeholder engagement will provide an insular superstructure which allows for the identification and mitigation of risk throughout the supply chain.¹⁹ This guidance-based solution is based upon the following critical stages in the corruption mitigation process:²⁰



Set a Clear Policy

Define corruption and bribery, establish policy guidance, identify stakeholders and affected parties.



Establish Controls

Ensure that corporate activities are monitored and that expenses are reviewed and assessed for compliance. Utilise internal audits and management reviews to assess compliance and initiate changes or re-training as needed.



Create Procedures

Design transparent procedures based upon risk assessment and explicit guidelines for international policies and practices.



Acknowledge Local Customs

Evaluate and acknowledge the subtleties of local customs relating to gifts and hospitality to outline standard policies and best practices.



Communicate and Train

Communicate policy throughout organisation, its subsidiaries, and its strategic partners to avoid misunderstanding or misinterpretation. Outline specific approved gifts and expenses and clarify those which are prohibited.

2.3 IACA ANTI-CORRUPTION GUIDELINES

To precipitate the formal implementation of an Anti-Corruption compliance programme (ACCP), the IACA recognises that companies must consider a full-spectrum approach to compliance and risk mitigation such as the ISO 37001 and the TI Business Principles previously outlined. In addition, there are several guides that provide valuable resources for programme architecture including:

- UNDOC: Anti-Corruption ethics and compliance programme for business²¹
- OECD: Good practice guidance on internal controls²²
- OECD/UNDOC/World Bank: Anti-Corruption ethics and compliance handbook²³
- World Bank: Integrity compliance Guidelines²⁴
- APEC: Anti-Corruption code of conduct for business²⁵
- WEF: Partnering against corruption initiative (PACI)²⁶

Similar to ISO 37001 and the TI framework, the IACA acknowledges that risk assessment 'is the foundation for designing and implementing' an ACCP.²⁷ The central antecedents to effective risk assessment include the risks of corruption, the individuals liable for risk exposure, the business units or sectors most likely to be exposed to those risks, and the mitigation measures appropriate to various risks.²⁸ Key guidelines supporting risk assessment are included in the OECD/UNDOC/World Bank²⁹ and UN Global Compact (Principle 10)³⁰ guidelines.

Country and industry-specific risks are explicated under the TI corruption perceptions index (CPI)³¹, the FATF lists of high-risk jurisdictions³², and the BASEL AML index.³³ At industry level, summary reports such as the PWC global economic crime survey can be used to provide analysts and corporate administrators with the severity and likelihood predictions needed to increase the accuracy of the corruption risk register.³⁴

As an additive process, the IACA extends TI recommendations, which prioritise a zerotolerance corruption paradigm, encouraging programme administrators to clearly define corporate principles and values which extend across international borders regardless of cultural or political variations.^{35 36} By formally defining these principles and developing a procedural basis for responding to or reporting threats or acts related to corruption, the basis for effective cross-organisation risk monitoring can be embedded within the internal networks and resources available to all key stakeholders.^{37 38}

→ **One of the most challenging tasks facing any organisation that has fallen victim to fraud, white-collar crime or corruption that leads to a financial loss is how to recover the stolen funds. This is a task best suited to experts who can trace assets and help you locate and recover funds and limit your financial damage.**

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2.4 UK ANTI-BRIBERY ACT 2010

For UK corporations, Provision 7 of the ABA clarifies the liability of commercial organisations for bribery-related offences. The liability acknowledges that the organisation itself is guilty of an offence under this section if the ‘person (A) associated with the commercial organisation (C) bribes another person’ with intentions ranging from attaining corporate benefits or improving the commercial advantages afforded to the organisation (C).³⁹

To mitigate liability, the corporation must prove that it ‘had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.’⁴⁰ To address the undefined condition of ‘adequacy, Provision 9 of the ABA outlines an expectation that the Secretary of State (SoS) must ‘publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing’.⁴¹ Such guidance draws distinction between actions relative to bribing, being bribed, and bribing a foreign public official, acknowledging that both implicit and explicit bribery activities are indicated within these behavioural specifications.^{42 43}

The measure of adequacy under the Anti-Bribery Act is conditioned by the ‘expectation test’ which references a ‘test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned’.⁴⁴ This distinction is critical to understanding the efficacy and functionality of any functional anti-bribery procedures, as it is conditioned by both domestic legislation (e.g. written law, normative procedures and policies, industry boards) and socio-cultural normalisation (e.g. Western culture, best practices, reasonable execution of duties).

The differentiatonal effects of national culture are a powerful predictor of corruption perceptions as individuals weigh both tangible externalities and normative social practices against nationalised legal and procedural guidelines.^{45 46 47} At the same time, the violation and legal liability associated with the ABA is not limited to the UK itself if a company is domestically incorporated, if there is a close connection to the UK (e.g. British citizen), or if they are a foreign company operating a business inside of the UK.⁴⁸



THE VIOLATION & LEGAL LIABILITY ASSOCIATED WITH THE ABA IS NOT LIMITED TO THE UK ITSELF IF A COMPANY IS DOMESTICALLY INCORPORATED

3.

CASE STUDY COMPARISON

To assess variations on corruption prosecution from recent cases in the global aviation industry, the following comparison draws upon two public, high-profile incidents with overlapping timelines. Whilst both Airbus and Rolls-Royce were subject to multinational prosecutorial inquiries on the basis of their similar corporate activities, the legal conditions and subsequent resolutions were distinct and indicative of varying compliance approaches.

3.1 AIRBUS

In January of 2020, Airbus committed to financial penalties of \$4 billion in response to the collaborative investigation by French, British, and US authorities regarding complaints of third-party intermediary bribery that took place from 2004 to 2016.⁴⁹ Indicative of a system of intermediary leverage which deployed 'hundreds of third-party Airbus agents' across 16 countries to encourage national and airline purchase of the company's civilian aircraft and satellites, the investigation stems from an internal audit which revealed these widespread practices of indirect influence.⁵⁰

The civil penalties for corruption levied against Airbus are the result of a recent initiative undertaken by French authorities to align domestic prosecution of corruption under a programme of 'convention judiciaire d'intérêt public' (CJIPs) with the Corporate Settlement Agreements (CSAs) in the US and DPAs in the UK.⁵¹

Feffer, the chair of TI acknowledged that prior to 2016, no corporation had been convicted of corruption, 'leading to an unacceptable state of near-impunity'.⁵² Whilst the internal acknowledgement of corporate wrongdoing by Airbus executives was indicative of an

effective application of this programme, Feffer reports that 'no company has ever come forward to denounce their illicit wrongdoing to French authorities'.⁵³

Under the revised 2016 Sapin 2 law, French prosecutors may elect not to prosecute companies accused of corruption 'provided that the company acknowledges the facts, cooperates with the justice system, implements remediation measures, pays a fine, and compensates the victims'.⁵⁴

Although Airbus denied corporate wrongdoing and emphasised intermediary culpability, the sequence of events suggests that internal audits should have identified the bribery expenses prior to the UK audit.⁵⁵ In April of 2015, the UK Export Finance (UKEF) bureau provided export credit financing to Airbus's business partner in Sri Lanka, an organisation tasked with expanding the company's international footprint and assisting in winning sales contracts overseas.⁵⁶

The UKEF proposal for supplemental export insurance (EXIP) acknowledges that corporations are responsible for adhering to the Bribery Act 2010 and the Proceeds

of Crime Act 2002 regardless of international operations and the rule of law adopted in other jurisdictions.⁵⁷

In spite of the SFO notification on the 15th July, 2016 that Airbus would be under criminal investigation for its role in bribery and corruption, French law no. 68-678 (the French blocking statute, FBS) 'prevents any French... legal entity... from communicating documents or information of an economic, commercial, industrial, financial, or technical nature which constitute evidence in foreign judicial administrative proceedings'.⁵⁸

Under French statute 694-4 of the French Code of Criminal Procedure, judicial authorities determined that they are 'entitled to exclude from their response any documents or information that would be detrimental to the interests of France'.

Due to this jurisdictional barrier, the SFO partnered with the PNF in January of 2017, allowing French authorities to retain control over document management to ensure compliance with 68-678.⁵⁹ Through a comprehensive review of more than 30 million documents utilising a team of more than 200 agents, the joint task force revealed the following summary judgment:

In order to increase sales, persons who performed services for and on behalf of Airbus SE offered, promised, or gave financial advantages to others intending to obtain or retain business, or an advantage in the conduct of business, for Airbus SE.

Of direct consequence to Airbus' defence:

Airbus SE did not prevent, or have in place at the material time adequate procedures designed to prevent those persons associated with Airbus SE from carrying out such conduct.

In spite of the jurisdictional conflict (e.g. SFO in UK vs PNF in France), Airbus accepted that the Bribery Act 2010 afforded the SFO

'extraterritorial powers and potential interest in the facts post 2011'.⁶⁰ This decision, however, is complex, as Airbus SE is registered in the Netherlands, maintains operational headquarters in France, and was conducting business outside of the UK or its territories.⁶¹

Two potential explanations have been identified regarding this extrajudicial determination:

1. Airbus operates two UK subsidiaries including Airbus Operations Ltd and Airbus Military UK Ltd through Airbus SAS and Airbus Defense and Space SA which are under direct, strategic operational management of Airbus SE;
2. in the act of obtaining financing through the UKEF, there was potential involvement for UK nationals to unknowingly participate in international corruption.⁶² In the decision rendered by the presiding judge Dame Sharp, however, it is Airbus' willingness to agree to UK jurisdiction that is identified as the leading dimension supporting extrajudicial powers when '*Airbus accepted that the Bribery Act 2010 provided the SFO with extended extraterritorial powers*'.⁶³

Moreover, Sharp confirmed that the unprecedented international cooperation between forces, coupled with the international nature of the acts in question and the cooperation by the French PNF in relation to the joint investigation task force (JIT) affirmed the legitimacy of the SFO prosecution and inclusion in the judicial proceedings.⁶⁴ From a remedial perspective, the court ruling drew upon legal precedence, citing Rolls-Royce⁶⁵ and the DPA-facilitated final judgement which 'provides an opportunity to require an organisation to become a flagship of good practice'.⁶⁶

As an organisation, the judgement revealed that change was manifest at Airbus prior to the judgment including appointment of new executive representatives, fundamental changes to internal corruption and bribery review, introduction of new compliance

roles, adoption of new onboarding requirements, improved due diligence for third party agents, and appointment of independent auditors throughout the organisation.⁶⁷

In a post-judgment review, airline industry compliance analyst, Jonathan Epstein proposes that corporations should acknowledge the shortcomings in compliance which precipitated the Airbus controversy, adopting several new practices capable of reducing the risks for corruption and bribery:⁶⁸



ESTABLISH A COMPLIANCE CULTURE

Siloed organisations create gaps in compliance culture; and whilst Airbus maintained Anti-Corruption compliance procedures, downstream compliance officials were willing to approve questionable or unverified consulting arrangements to clear regional red flags.



AUDIT SPONSORSHIPS OR ENDORSEMENTS FOR THE POTENTIAL FOR BRIBERY

Although common practice, sponsorships may entail bribery, particularly when affiliated with critical stakeholders of a company or association (e.g. the race car teams of two executives of a Malaysian Airline).



PRIORITISE DUE DILIGENCE

Third-party intermediaries represented the weakest element in the Airbus judgment as a lack of due diligence led to contractual arrangements with parties willing to engage in corrupt practices.

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3.2 ROLLS ROYCE

In January, 2017, the UK serious fraud office (SFO) entered into a deferred prosecution agreement (DPA) with Rolls-Royce, following a four-year investigation regarding 12 counts of conspiracy to corrupt, false accounting, and failure to prevent bribery.⁶⁹ The settlement in excess of £497.2 million (plus SFO costs of £13m) accounted for approximately 3.4% of Rolls-Royce's revenues for 2016; however, the terms of the settlement represent a much more significant impact to the bottom line if the organisation fails to follow through in the administration of a formal CMMS.⁷⁰

The investigation surrounding Rolls-Royce and its subsidiary organisations was substantial, spanning four years and the review of more than 30 million documents, records, and e-mails by the SFO.⁷¹

The inciting incidents for the DPA were diverse, ranging from awards of Rolls-Royce vehicles to government officials in Indonesia in exchange for favouring the T700 engine to financial payments in excess of \$7.2 million made to Thai government employees in exchange for the same favourable selection of the T700 engine.⁷²

Culminating in 12 counts of conspiracy to corrupt, false accounting, and breaches of Section 7 of the Bribery Act 2010, Sir Brian Levenson, president of the Queen's Bench Division of the Royal Courts of Justice reported that the corrupt activities represented: The most serious breaches of criminal law in the areas of bribery and corruption, some of which implicated senior management, and on the face of it, controlling minds of the company⁷³

In spite of this declaration, the central strategic focus of the Rolls-Royce investigation emphasised the role of third-party intermediaries in bribe selection and distribution schemes that the organisation had leveraged to reduce legal liability and corporate risk.⁷⁴ These rulings indicated



**£497.2 MILLION
(PLUS SFO
COSTS OF £13M)
ACCOUNTED FOR
APPROXIMATELY
3.4% OF ROLLS-
ROYCE'S
REVENUES FOR
2016**



ETHICS, COMPLIANCE & ROLLS-ROYCE: LESSONS LEARNED

This report analyses the performance of Rolls-Royce in terms of anti-bribery and anti-corruption policies within the scope of the ISO 37001 provisions. This organisation has been involved in several large-scale investigations in recent years, which makes it especially interesting to explore how it has changed its policies in this sphere to address the identified deficiencies. Explore what the findings mean.

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a complex evolution of global corruption mitigation, with some intermediaries such as a private company in Indonesia executing legitimate business contracts under generous terms of remuneration without apparent fraudulent or corrupt intentions.⁷⁵

Under the APEC code of conduct, bribery involves those transactions which allow individuals to gain advantage (directly or indirectly) through the conduct of business⁷⁶, a critical revelation in the Indonesian case, where the major shareholder was a civil servant responsible for aircraft parts decision-making.⁷⁷ Similarly, OECD-UNDOC-World Bank guidelines indicate that indirect ownership by politicians constitutes a clear case of bribery under which corporate liability is based upon the risk of facilitation or influence.⁷⁸

Whilst the DPA allowed Rolls-Royce to avoid further prosecution at the organisational level, the consequences of the judgment are significant and likely to impact upon future business activities. Critiquing the internal corruption compliance manual developed

in 2017, Peltier-Rivest suggests that this instrument still fails to meet the goals outlined by ISO 37001 including negating any 'reference to setting, reviewing, and achievement of measurement anti-bribery objectives.'⁷⁹

Further, the instrument suggests that training is afforded to staff members as required, failing to identify a target audience or a regular timeline for continuing professional development.⁸⁰ In its defence, Warren East, CEO of Rolls-Royce has reported that 'the past practices that have been uncovered do not reflect the manner in which Rolls-Royce does business today...we have zero tolerance of business misconduct of any sort'.⁸¹ Expectations underscoring the internal Anti-Bribery and Corruption (ABC) policy are conditioned by corporate recognition of guiding legislative instruments and include a range of hierarchical responsibilities which subdivide stakeholder groups according to anti-bribery responses and best practices.⁸²

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4. RECOMMENDATIONS

The events reflected by the Airbus and Rolls-Royce bribery cases are substantially similar, highlighting a form of quid pro quo agreement that was used by third-party agents to secure high-value contracts in international markets. Both institutions participated in intermediary bribery practices that not only exploited regional contracts for the purpose of corporate gain and expansion, but utilised complex political and industrial inroads to embed corporate practices that were based upon corruption and bribery at the operational level.

Whilst TI has acknowledged that varying cultural values and behaviours are likely to shape the distinction between what is acceptable and what is corrupt, more rigorous legislation such as the UK Bribery Act provide limited basis for flexibility or interpretation.⁸³

Airbus, following the award of an unprecedented multinational fiscal penalty, has elected to engage in a much more rigorous rehabilitation of its compliance practices, transitioning internal policies towards a standard format which mirrors that of the ISO 37001 recommendations. In contrast, Rolls-Royce has elected a more rigid, but iterative approach to compliance in spite of the potential for violating the central terms of the DPA if the adequacy of its corruption mitigation practices cannot be verified.

Addressing the challenges of establishing, maintaining, and continuously improving the effectiveness of a functional CMMS or ABMS, both the ISO and the HM Gov have acknowledged the need for 'reasonable' or 'adequate' controls. Yet, for multinational corporations, the vulnerability to



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variations in cultural and industrial practices can elevate risks for companies unless continuous improvement is made in CMMS guidelines via unified, topdown initiatives.

TI acknowledges that cross-border legislative monitoring is a complex, but critical practice, one which involves tracking legislative changes and amending internal policies and accountability measures.⁸⁴ Simultaneously, the OECD recognises that corruption compliance must be extended across corporate subsidiaries, creating a structured and universal CMMS capable of unifying the central principles and values adopted by all corporate stakeholders.⁸⁵

Whilst internal monitoring is likely to provide the basis for restricting direct corporate activities from the threat of corruption, third party relationships (such as those reflected in the Rolls-Royce case) are vulnerable to corruption and bribery; therefore, steps must be taken to apply continuity in the CMMS across indirect channels as well.^{86 87}

Contractual protection, for example, can be used to mandate partner adherence to a central CMMS, whilst also meeting the conditions of adequacy relative to the broader legislative conditions of corporate responsibility.⁸⁸ Whilst preparatory interventions and broad-sweeping corporate compliance may provide the basis for Anti-Corruption excellence, there is an expectation of downstream due diligence and network accountability that elevates the importance of contract research and third party inspections and assessments before contracting is approved.^{89 90 91}

In light of recent high-profile corruption cases, the US Department of Justice (USDoJ, 2020) has recommended that companies review their compliance programmes to assess their existing design, the comprehensiveness of the programme, its accessibility, the responsible stakeholders, and the role of the central gatekeepers.⁹² These recommendations are an important transition towards the continuous improvement recommended under ISO 37001 and the adaptive content

of these increasingly comprehensive, risk-adverse policy documents.⁹³

From risk-based training programmes to clear central policies regarding corruption or bribery to inside support and guidance when confronted with compliance questions, the basis for adequacy and CMMS effectiveness is increasingly predicated upon proactive measures and risk acknowledgement.⁹⁴

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In spite of more rigid anti-bribery regulations and international oversight, Feffer of TI compares measures like Sapin 2 in France to 'quasi-immunity' for corporations due to the slow prosecution procedures (e.g. Airbus took 4 years) and lack of non-fiduciary accountability.⁹⁵ However, as agencies like the SFO adopt a more aggressive stance, industry analysts like White & Case have reported significant improvements in corporate accounting and effective selfreporting guidelines that precipitate a paradigm shift towards internal commitment to systematically limiting the exposure to corruption and bribery throughout multinational operations.⁹⁶

The rate of prosecution under conditions where jurisdiction is more transparent, such as in the UK is likely to accelerate as DPAs prove increasingly successful and corporate auditors increase their awareness of the inflexibility of emergent terms and conditions of Anti-Bribery and Anti-Corruption legislation.⁹⁷

Based upon these findings, there are three summary recommendations that are offered to streamline this procedure and create the minimal standards of adequacy necessary to effectively secure against legal prosecution:



CONDUCT A THOROUGH RISK ASSESSMENT AND DEVELOP A GUIDELINE

It is essential that the risks of corruption or bribery are identified and modelled according to severity and likelihood. Develop a procedural guideline for addressing potential threats based upon corporate standards of best practice which avoid the risk of corrupt practices.



ENGAGE STAFF IN ANTI-CORRUPTION CULTURE

Adopt a top-down commitment to Anti-Corruption which prioritises rigour and responsibility over advantage and opportunism. Engage leadership in motivational support and enthusiastic fulfilment of procedural directives and downstream participation will increase.



AUDIT, REVISE, AND ADAPT TO ENSURE COMPLIANCE

The failure to audit could reduce the transparency of the CMMS, limiting the effectiveness of the programme and exposing the company to additional risks. It is essential for these programmes to continue to revise and adapt specifications to meet new guidelines as they reflect the letter and precedence of the law itself.

5. SUMMARY

Both cases have highlighted the potential reputational, economic, and legal consequences that evolve out of the failure to monitor corporate activities adequately and responsibly for corrupt practices like bribery and favouritism.

The culture of corruption demonstrated by recent DPAs such as Rolls-Royce suggests that a lack of ethical rigour or deficiency in the robustness of corporate monitoring measures will no longer be tolerated by Western governments like the UK.

For multinational corporations, the vulnerability to transborder corruption can be significant, with even more significant internal consequences; accordingly, this case study reveals the critical role which systemic transparency, unified communications, and cross-cultural risk mitigation is introduced via standardised policies and procedures.

At the core of any bribery or corruption management system is the expectation of transparent policies, central performance objectives, and standardised processes which afford the capacity for reaching those objectives.⁹⁸ Whilst adequacy itself may serve as a general point of initiation for developing a CCMS, it is argued that structural embeddedness, active monitoring, and network accountability are critical deliverables that should be attained and reviewed with regularity.

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Zafar, Group CEO of Corporate Research and Investigations Limited (CRI Group), has been building a 30 years’ career in the areas of anti-corruption, fraud prevention, protective integrity, security, and compliance. Possessing both industry expertise and an extensive educational background (MS, MSc, CFE, CII, CIS, MICA, Int. Dip. (Fin. Crime), CII, MIPI, MABI), Zafar Anjum is often the first certified global investigator on the scene when multi-national EMEA corporations seek to close compliance or security gaps.

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