SAI GLOBAL

# *Exploring the Behavior and Psychology Behind Bribery and Corruption*

*An eBook from SAI Global*

# IT CAN HAPPEN TO ANYONE: AN INTERVIEW WITH RICHARD BISTRONG

By Sean Freidlin

**Richard Bistrong is the CEO of Front-Line Anti-Bribery LLC, a former FCPA violator, and an FBI/UK cooperator.**

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Richard was formerly the VP of International Sales for a large, publicly traded manufacturer of police and military equipment, which included residing and working in the UK. In 2007, as part of a cooperation agreement with the United States Department of Justice and subsequent Immunity from Prosecution in the UK, Richard assisted the United States, UK, and other governments in their understanding of how FCPA, bribery and other export violations occurred and operated in international sales. In 2012, Richard was sentenced as part of his own Plea Agreement, and served fourteen-and-a-half months at a Federal Prison Camp, returning home in December 2013. Richard now consults, writes, and speaks about current front-line anti-bribery and compliance issues. He was named one of Ethisphere's 100 Most Influential in Business Ethics for 2015, is a Contributing Editor of the FCPA Blog, and can be contacted at richardtbistrong@gmail.com.

**On November 14, 2016, I spent two hours with Richard Bistrong in New York City to discuss how bribery, corruption, and doing the wrong thing changed his life, and how compliance officers can ensure their employees avoid the mistakes he made. Below is a transcription of our interview, edited for clarity.**

## Richard, for anyone reading this who may not know you already, can you please tell us a little about your background and how you got to where you are today?

I grew up in Long Island, New York, and I never planned or aspired to be a VP of International Sales. I graduated from the University of Rochester with a political science degree and I wanted to be a foreign policy professor. So I entered the Woodrow Wilson School of Government at the University of Virginia, in their Ph.D. program to pursue that path.

Right after getting my Master's degree, I was at a crossroad between two interesting offers. One was for a foreign policy internship with The White House during the Reagan administration. The other was from my father and cousin to enter into our family business, started in 1888 by my great grandfather, which was going strong for three generations and manufactured bullet proof vests.

As compelling as the internship was, especially considering my goal when I started grad school, the idea of taking the baton in the family business was even more inspiring. So with my Masters Degree in tow, I moved back to New York to work with my father and cousin, and the focus of my work was strictly on U.S. law enforcement and U.S. military sales. Those sales cycles were stable, the procurements were high frequency, with a well-organized civil-service, and there was always a steady demand for supply. That was where I "cut my teeth" in sales, and eventually the business became so successful that we sold it in the early 90s.

With that sales experience under my belt and the company sold, I decided to take the next step in my career and go work for a successful, publicly traded company that manufactured bullet proof vests, armored vehicles, armored systems, munitions, and riot control equipment, among other products and services. Their portfolio of products was deep and wide, which created an exciting opportunity for me as a sales executive, and to apply what I learned selling similar products in my family's enterprise. When I started this new job as a VP of Sales, I remained strictly focused on U.S. military and U.S. law enforcement markets, like my prior position with my family.

*In 1997, the company decided to invest in international sales. It was clear that the demand for such products was growing in the international markets, and U.S. products and technology were regarded as some of the most reliable and sophisticated among end-users.*




The company was ready to tap into that dynamic. They wanted to hire someone to lead this initiative, and as soon as I heard about that opportunity, I thought "I want that job!"

Here was an incredible opportunity to fuse together my foreign policy background and sales experience. I got the job of VP of International Sales and Marketing, where I start traveling the world.

I tallied it up and did the math: I was on the road for 250 days a year on average, or 70%, of the year, which was time I wasn't spending with my family, friends, and domestic colleagues.

Because I was traveling so much, I started to work out of the company's UK office and living in England, just to make it easier to conduct business with regions such as Europe, Asia and the Middle East. While it might be exhausting going to Dubai for a two or three day visit from New York, it's a breeze from Manchester, which is where I was living.

## What did you know about the FCPA before you took that first flight in your new role?

Before I took my first international business trip, my employer at the time presented me with a copy of the Foreign Corrupt Practices Act (FCPA). In short, they shared, "This is the law. If you have any questions, we'll get you resources to help you." It was clear enough: I knew that bribing or conspiring to bribe a foreign official was illegal.

## Ok, so back to the story.

So now I start traveling around the globe, and one of my first goals was to visit with existing customers, and that was a network of intermediaries and agents, upon which I would build a global operation. One of them was in South America, and they had done a few successful deals with our company in the past. In all of our prior experiences and dealings, there was no indication or warning signs of corruption or corrupt intent. So on this visit, which was either my second or third, we spent the weekend at Tierra del Fuego. It's the southernmost city in Argentina, and actually the southernmost habitable city on Earth, around 600 miles from Antarctica.

**In retrospect, I probably should have asked myself "why am I going on a trip with my agent?"**

No matter who's paying, why am I going? But the default mindset for a salesperson is that the more time you spend with a customer, the more likely you are to build up that relationship and close future deals. Being new to the world of international business, I wanted to spend time with these folks to create as much goodwill as possible. I was also anxious to put some wins on the scoreboard as to demonstrate to my company that they made a good decision in giving me this new role. Nonetheless, I should have been home with my wife and our two young children - and more about those decisions later. But I was excited! It was very cool visiting some of the places that I only read about as a young grad student.

Moving along, we were working together on a bid (procurement) for a large contract, and during my visit he shares with me that as part of his success and his success fees, he's paying "tolls" to win tenders. And I knew what he meant by "tolls."

**There are two elements of the conversation I had that I think remain relevant for commercial teams, C-level executives, and compliance leaders.**

1. He's speaking in wink and nod terms to describe a bribe – referring to them as "tolls." In 15 years in the field, I've heard many colorful words and phrases to describe a bribe, from "taking care of" to "making people happy", but the one word I never heard to describe a foreign bribe was "bribe."

2. He wasn't what we think of as a "bagman." He was intertwining corrupt and legitimate business services into the same conversations and opportunities. His bank account was in his name and in his country. He was providing translations, identifying market opportunities, and doing all the things you'd want and expect a legitimate agent to do, but he was paying "tolls" when he had to pay "tolls."

In other words, his work with me was a mixed bag of legitimate and corrupt services. But the interesting thing is that he didn't explicitly ask me for anything – he didn't say "the tolls are going up, I need a bigger success fee" or "there are a lot of toll takers, I need a bigger commission" – and his commission rates weren't even suspiciously high or out of the ordinary – he just pointed to "this is how we do it here."

So here I am, in Tierra del Fuego, looking out at the Antarctic tundra so to speak, thousands of miles away from company headquarters and compliance personnel, and certainly out of the earshot of international law enforcement. I then pondered, "This is only a red flag if I make it one." And do you know what I did? I nodded my head to the "tolls."

**When people ask me "Hey Richard, between grad school and prison, when did it all start to go wrong?" – This moment was the beginning of my slippery slope.**

While I didn't go to prison for nodding my head, Tiera del Fuego is how it started. I nodded my head as a co-conspirator to violating the FCPA. That initial conversation in Tierra del Fuego would play itself out in region after region over the coming years, using different colorful words and terms in different situations, and that's how I started to think of foreign corruption as the norm in international business.

## At what point did you know you were breaking the law and doing something wrong?

In Tierra del Fuego, the moment I heard the word "toll."

## Richard, it was ten years until you got caught. In a general sense, how might your conduct have been detected earlier?

I was the poster boy for a robust detection regime. It's one thing to think corruptly, it's another thing entirely to be able to engage in these transactions and make them a reality. A tighter control regime, with stronger internal accountability mechanisms would have certainly helped. I think this is still a dilemma – I was successful, and as my success continued, the company gave me more autonomy and discretion. Operating internationally and being so successful, I was given latitude to set my own discounts, commissions, and marketing allowances.

My peers focused on the U.S. business, by comparison, had a very tight discretionary matrix of what they could and couldn't do – those controls were looser for me because I was so successful, and because I operated so remotely, I was able to use that latitude and freedom corruptly when I needed to. Over the course of ten years, I outperformed my forecasts, even in times where the market was turning downwards. A tighter set of controls would have prompted a "red-flag," even if not transactionally, where someone might have queried, "how?"

## Beyond detection, what might have stopped you before it started? What could your company have done? Any thought to that?

A couple of things, but let's be clear, when I was targeted by the Justice Department in 2007, I had come a long way from nodding my head. I was thinking and acting corruptly, which is why I continue to share that getting caught was a great moment in my life, as marking the start of rebuilding anew, even with dire consequences ahead.

**The "what could have been done?" question is a speculative one, but one which I had fourteen and a half months in prison to think about.**

With a big *if*, here's what I have concluded:

*As I shared, I had already spent 10 plus years in the U.S. sales marketplace before I accepted the international role. That environment was safe, reliable, well organized, and people operated with a high level of integrity. So, before I got on that flight, if someone with P&L responsibilities – a CEO or divisional President sat me down and said:*

"Richard, we're taking you from one of the lowest risk market places to one of the highest risk market places, and possibly in harm's way. You're going to hear about illegal conduct, and you are going to be asked to participate in illegal conduct, especially with respect to foreign bribery – it's inevitable in some of these regions. So, we need to tell you what our philosophy is – no, and never. We know you want to make money, and are not afraid of incentive opportunity, we get that, but we're going to compensate you in a way that promotes long term ethical business and value creation.

We're confident that we can succeed if we conduct business ethically, but it's going to take time, so part of your compensation is going to be based on the performance of the company as a whole, not just on you as an individual. We want you to be successful, but we also want you to be safe and we want to get you back home.

So, if the voice on those quarterly calls is only about getting business done, and it drowns out the importance of we care about HOW you get the business done, then you need to come and talk to us. What we want to do here is prepare you for risk before you are in the middle of it. We want you to understand the resources that are here to support you, and we also want to train you on how to engage if there's a problem."

If that type of conversation took place before I started my extensive travels, by the time I landed in Argentina, I would have been ready for the conversation which took place, and I would have known how to respond. In some parts of the world, sitting in someone's remote office, saying "no" might not be the best decision from a personal safety perspective. A company has to understand the realities of different regions and prepare their sales executives who might be exposed to a corrupt offer with a response plan, along with how to get home safely. That's not always intuitive, and certainly not simple.

If you have those hard conversations with people before they embark on their commercial roles, first of all, they may realize they aren't cut out for the job, but more importantly, it prepares them for that risk and eliminates the element of the surprise, which can result in compliance "on the fly" decision making. I'm not the first sales executive to change market sectors and start operating in unfamiliar territory. It happens all the time.

In sum, people need to be prepared for risk before they are in the middle of it, know the resources that are available to support them, and have a roadmap for how to engage.

**Richard, considering what compliance and ethics programs look like today, and will look like in the future with technology, is there anything else that you think would help those on the front-lines of international business and those in compliance who are tasked with supporting their work? In other words, how can we best operationalize compliance? We know that not all risk is created equal.**

Well, what I tend to focus on is the behavioral aspect of compliance and ethics, and how programs engage and inspire people on the front-lines. So, as I often reflect, is compliance in the field being embraced or distorted to the demands of business growth? In other words, do people in the field consider themselves the recipients of compliance or compliance ambassadors?

**One thing that's clear is the behavior precedes the bribe, so I always try to pivot the discussion to "how can a compliance program impact how people think?"**

In my opinion, a rules-based compliance program, one that is articulated through policies and procedures, while a necessity, doesn't in itself inspire a workforce. As Ann Tenbrunsel and Max Bazerman address in Blind Spots, compliance programs can "contort the decision making process."

How? By having a program devoid of a greater ethical discussion and awareness.

I never thought about the ethical consequences of my decisions. I wasn't spending my evenings on the Transparency International website, thinking about how bribery degrades human rights, economic development, and social progress. I was thinking about it as a win-win, because who was really getting hurt?

I wasn't messing with the integrity or quality of the products I sold. The client got a great product, the intermediary moved on to the next opportunity and I made my bonus, quota, and forecast. And the public official who is the bribe recipient, who may be making next to nothing from a salary perspective, gets a little something extra to make ends meet. Professor Francesca Gino co-authored piece "Self-Serving Altruism" where she addresses the dynamic of how, when one's unethical decisions benefit others, they come to be thought of as altruistic and morally permissible. It is scary stuff and not to be discounted.

**From inner city hotels and fine restaurants, there's an unhealthy ethical distance between where business gets conducted in these frontier markets, and the general population at large, which suffers significant harm due to corruption, even petty bribery.**

A read of Chayes' Thieves of State or, The Looting Machine by Burgis might be a good start for front-line personnel to think about how their conduct impacts society at large. There are unintended consequences of bribery that you can't find in a compliance manual, from safety to human rights. When field personnel think of their conduct as "I don't bribe or feed corrupt governance" above "I don't violate the FCPA," that's a good start.

**Who better understands risk than the people who work in the middle of it?**

When I talk to compliance leaders, I encourage them to show their vulnerability and humanity in order to demonstrate to the field that they embrace the reality that compliance looks a lot more complicated in the field than it does at HQ. That means a lot to those who work far away from home in challenging commercial environments.

Compliance officers need to communicate that they want their commercial teams to be successful and that they want to be a trusted partner, but that they also care about keeping people out of harm's way.

> *All those messages point to one critical moment:*
> *If you aren't sure, call your compliance officer.*
> *That's the moment where compliance and commerce collide.*

Let your teams know that "while we might be upset by what you share with us, becoming upset means that the conversation is going well, because now we have a problem that we can fix together." In other words, "if you tell us about it, we will work on a solution as a team, but if something comes to our attention via internal investigators or an enforcement agency, well, then it's too late". But it's a door that swings both ways, because people in the field need to embrace their responsibility to speak up. When they see compliance missing real-world risk, they need to share that information and not keep it to themselves. People in the field need to understand that good news can wait, but bad news needs to be shared quickly, and with the same fidelity.

Finally, compliance personnel should not discount the impact of local cultures. A German social psychologist, Jamie Lee-Campbell, calls it the "Cocoon of Corruption." You start to trust the people who are in your circle and a micro-culture develops to get things done. You start distrusting the support systems and mechanisms that are there to help you, because you don't think they understand the risks you face and how to engage in these environments.

The thinking becomes "compliance doesn't know what it's like out here, and what I'm up against" which is to everyone's peril. In my case, that got reinforced as I met up with peers and competitors at trade shows and hotel bars, where war stories on corruption were exchanged. That has a profound effect, which I still hear today on, "if I don't do this, someone else will." I hate to talk in clichés, but it really is a slippery slope. I don't think compliance officers always appreciate the impact of behaviors that such environments can have, especially in frontier markets, where corruption risk and lucrative business opportunities are intertwined.

I think the challenge remains in getting teams to keep their ethical north no matter where they are.

## Do you consider yourself a good person?

I do now, but I didn't in 2007. There was a time, particularly when I was in my family business, when I had a good family life, but years later, due to no one's fault but my own, I chose a path which ultimately ended up causing tremendous ruin, for myself, and my loved one's. The dynamic of 'win above all else' took priority above all else, including family and spirituality. Today, I am grateful to have those bonds back in my life, and to enjoy the fellowship, friendship, and camaraderie of compliance professionals from around the globe.

But wherever my career and journey might take me, I will never again disconnect from the networks of those who care about me and my well-being. And I, theirs. That's something I talk about often. Today, more than ever, technology makes it easier for people to stay close to their personal networks.

**For commercial teams who might read this, if you're jet-lagged, sleep deprived, and struggling with an ethical or business decision far away from home – call your family!**

Listen to them, stay close to them, and remember, if you go tip the wrong way in ethical decision making, those are the voices that you will lose, and those are the lives which will be devastated as the result of your conduct. Skype, Facetime, or text, whatever it takes, but listen to those voices! Then get on the phone and call your manager and compliance leaders!

*You were caught. Countless other people who give and accept bribes and act corrupt or caught. Why do you think people don't think they can be caught or will get in trouble? How do you justify doing something wrong when you know it's wrong?*



There's something called optimism bias. You think that the probability of you getting caught is less than someone else getting caught. You think "it can't happen to me."

The most dangerous part of optimism bias is that the longer you're not caught, the more you think you'll never get caught. So I was really thinking of myself as invincible. Always on the move. Nobody is ever going to catch up with me. I thought I was successful and safe, but what I wasn't counting on or thinking about was one of my intermediaries getting caught.

## What other advice do you have for professionals who face challenges similar to yours?

Incentives, and "carrots/sticks" are a huge issue now, especially with the recent Wells Fargo scandal. While incentives can be a controversial subject, after all, why should you have to incentive people to behave ethically, it's now an unavoidable topic. I came to think of personal/financial success and anti-bribery compliance as a zero sum gain.

**To me, the people in compliance back when I was in the field were the "bonus prevention department." I pondered "what does management really want," compliance or sales? That's a debate I regretfully didn't share with anyone, and as I would come to lament, the paycheck always won.**

We should remember, incentives are a huge unspoken message, and like prescription medication, they can have unintended side-effects.  Even worse, bad incentive systems remain hidden, that is, until it's too late, as bad behavior can hide behind good performance.

**What I encourage people in the field to do is to use the planning process, where forecasts, quotas and incentives are discussed and debated, as as an opportunity to make certain that strategy accounts for risk.**

If you feel like there's a part of your business planning that doesn't point in the same direction as your compliance program, speak up and speak up early. As Roy Snell, CEO of SCCE, recently shared, "a license to perform isn't a license to cheat," but people have a responsibility to share their concerns, and to share early, if they feel like strategy and compliance exist in separate silos. The time to do that is not the last day of a fiscal quarter. Saying "I didn't get the sale because I didn't pay a bribe" so late in the process sounds like more of an excuse than a well-articulated concern.

Having spent the better part of my career at a public company, we know that strategy, forecasts, and quotas don't roll-up overnight. There is a very calculated, well-articulated process behind those numbers. Use that planning process to share your reservations with commercial and compliance managers, and make sure that risk is baked into your business plans.

It might be that your company is left with the dilemma of rolling back their forecast to make sure that ethics and compliance rolls forward, but that's only a decision which can be analyzed if it's raised.

Finally, to complement that recommendation, compliance officers need a "seat at the table" of strategy, to be visible, and accessible. They need to be a part of these C-level planning meetings and part of the sales planning process, because if they're not, then compliance might not get operationalized, and leaders will be left with the unenviable task of catching falling knives.

## International Anti-Corruption Day is coming up in a few weeks, on December 9th. What is the #1 thing people can do to help fight corruption?

Don't think of corruption or bribery as a "norm" even if it seems to be the norm where you work. Don't think of it as "if I don't do it, someone else will."

Think of your ethical north, your center of mass, and that your ethics travel with you, no matter where you work. That can have consequences which might impact business development depending on where you are engaging, but never forget what your values are.

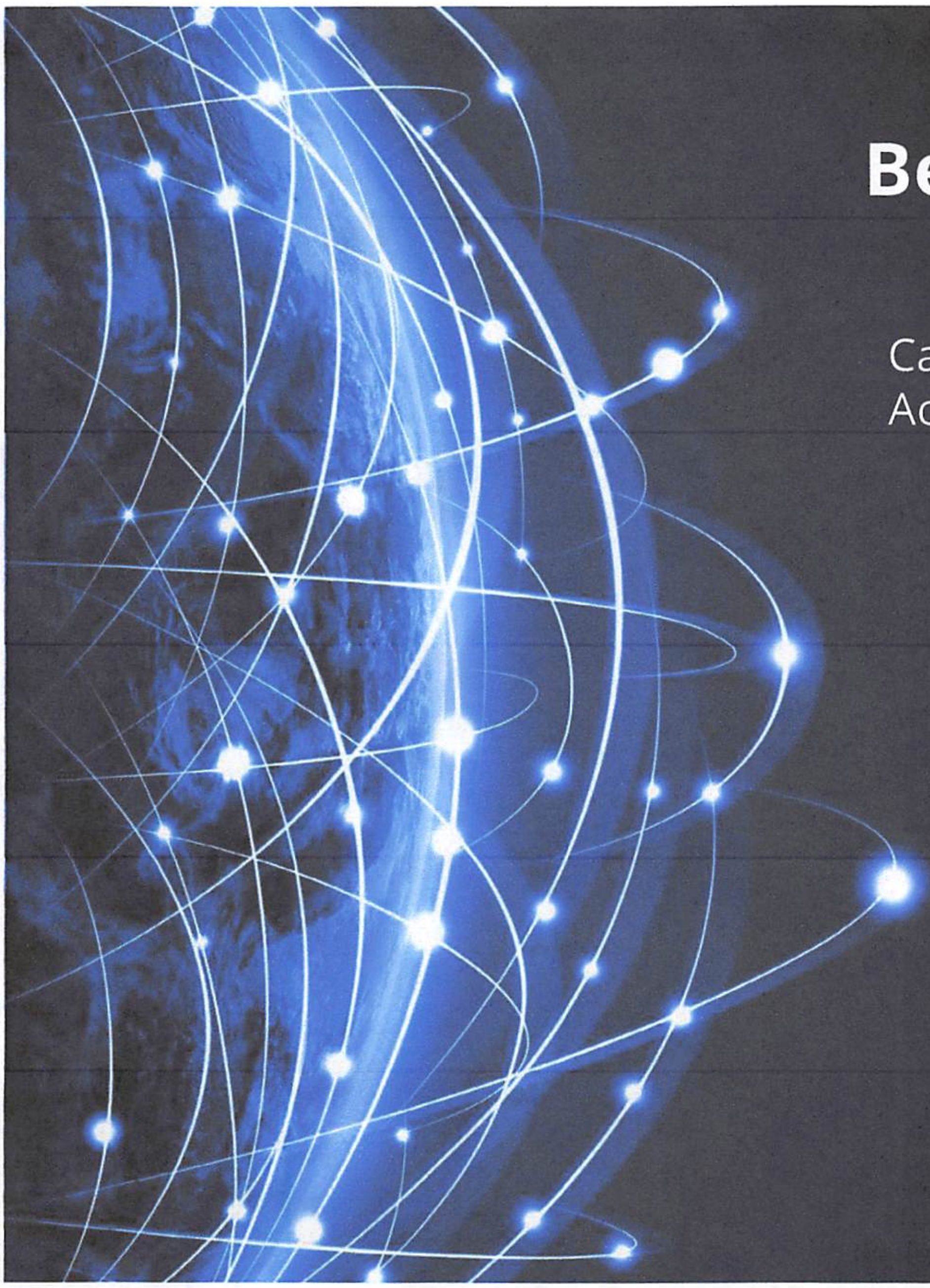
Never compromise on ethics, because at the end of the day, long term value creation and ethical businesses WILL WIN, it just might take longer in some places than others.

Finally, remember that you're not a compliance recipient, you ARE compliance, and as you work at the sharp end of compliance risk, that makes you the front-line of defense AND solutions. Guard your company, and hence, your liberty, with all the resources at your disposal!
If you are ever in doubt, hit the pause button and call someone you love.

## RICHARD'S BRIBERY AND CORRUPTION READING LIST

THE Network

Integrated GRC Solutions



# Behind the Bribe

## What Compliance Officers Can Learn From A First Hand Account Of The Dark Side Of International Business

A GRC WHITEPAPER
FROM THE NETWORK

# Behind the Bribe: What Compliance Officers Can Learn From A First Hand Account Of The Dark Side of International Business

In 2013 I attended a Corporate Outreach event, speaking about anti-bribery compliance issues from a "front-line" perspective, and before the event, milling around, I had a chat with a VP of Corporate Compliance from a large multinational bank. While I was drinking my diet Coke, she queried me about my background and when I shared it with her, with an aghast look she said, "*You* went to jail?"

Yes I did, and I found her reaction quite symbolic of much of my experience since I started writing and speaking about anti-bribery compliance. Simply put, the FCPA and other anti-bribery acts are laws that are designed to curb illegal behaviors that occur at the front lines of international business. Bribery is not some obscure financial derivative governing complex transactions. As Matteson Ellis well states[1]: "Corruption is a crime of opportunity."

As Ellis continues, "People pay bribes by exploiting weaknesses." It involves real people who demand, request or suggest payment for favor in gaining a competitive edge (or retaining one) in international business, involving a public or state owned entity. Furthermore, the people who decide to pay and receive bribes have, at some level, calculated that the gain in engaging in corruption outweighs the potential chances and consequences of getting caught. In other words, behind the laws, there exists the dark side of international business, where this all occurs with bad decisions as the outcome.

When I first started talking to The Network about this paper, they asked if I would take their readers to the front lines of international business, and to address the temptations, rationalizations and emotions that occur in the field, which are not often addressed or even acknowledged by many compliance and C-suite personnel. A year ago I would not have believed that to be the case, but based on my experience as exemplified by the "*you* went to prison," I have to agree.

What I don't hear in the current compliance discourse is how to deal with the behavioral "dark side" of international business. I hope that this paper, by 'pulling the curtain back' at what happens 'behind the bribe,' might provide some practical and real-world tools that can be developed to address bribery before it happens. I will provide suggestions in my concluding remarks. However, my recommendations are simply based on my field experience. There are well-experienced practitioners in the fields of law, audit, regulation and investigation. With that in mind, I hope that my own suggestions might be viewed as a complement to those existing programs.

Prison was an awful experience, especially for my family; thus, I hope that by sharing my own crucible, I can help others to avoid a similar experience. Thank you to The Network for giving me such an opportunity.

1 Ellis, M. *Regional Flavor: Cross-Cutting Corruption Issues in Latin America,* a chapter in Wrage, A. How to Pay a Bribe: Thinking Like a Criminal to Thwart Bribery Schemes. 2012.

As Alison Taylor, Managing Director, Control Risks, states in the Forbes article *Compliance and Risk: Clearing the Org Chart Hurdle*, "The traditional preventative approach to risk management is proving inadequate in the face of regulatory complexity, volatility and an environment of constant change, but what should replace it is not yet clear." Indeed, and as Dr. Roger Miles, Behavioral Risk Lead, Thomson Reuters, states in a 2013 Thomson Reuters whitepaper, *Risk Culture and Conduct Control: Time for a More Enlightened Approach*:

"Shouldn't the designers of financial controls spend some time looking at the dark side? Instead of regulating by defining and enforcing some formulated version of normal behavior, a better approach for supervisors seeking to regulate conduct might be to identify the pathologies of "bad behavior." What are its warning signs, its leading indicators? Can these be found in financial reports? (Hint: No, they cannot.) Where do we need to look?"

So, before we take that look, and as I share my own experiences and perspectives, I make no attempt to justify my conduct, even as I explain how I rationalized my behaviors and decisions. What I did was wrong, personally, professionally and societally. It was wrong when I did it, and I knew it was illegal when I did it; as a consequence, I suffered the loss of liberty for fourteen and a half months.

## INTERNATIONAL BUSINESS: WHAT'S IT LIKE?

In a general sense, having international business responsibility is both interesting and stressful. Days are usually filled with business activity, in my case, meeting with both end users and intermediaries. Evenings are most often occupied with social time with intermediaries and catching up on e-mails and calls with the home office. Time differences create a certain level of tension and stress with corporate personnel, as deadlines, forecasts and reports are still in need of completion. I remember one supervisor sharing with me that, "We know when Richard lands from an overseas flight," as e-mails addressed in transit would cascade down during my arrival home.

Over time, this dynamic starts to develop in a way which cross cuts corruption issues, and which I describe in my own "perfect storm" of rationalizing bribery.

## INTERNATIONAL BUSINESS: WIN BIG, LOSE BIG

In many international markets, especially those with weak state institutions, procurements are far and few between, subject to cancellation, delay and renegotiation. Unlike the United States where public procurements are spread across federal, state and local purchasing entities, in many countries, procurement remains at the level of national ministries, in my career, Ministry of Defense (Armed Forces) and Interior (Police). Those entities are purchasing on the behalf of all the end users in that particular country and Ministry.

When you add in possible annual renewals, the win of an international contract can extend for years, while a loss will not be replaced in the near future. This creates enormous work pressure to succeed with a "win big, lose big mentality" at the front line. A sales forecast which gets forwarded to corporate personnel becomes an "all or nothing" scenario, as there is no middle ground between winning and losing on large international tenders.

Furthermore, even after a 'big win' there are numerous touch points where small bribes may be demanded in order to finalize a contract, pass inspection or receive payment; potentially turning a legitimate "win" into a corrupt transaction. In high-risk (low integrity) regions where public procurement personnel are poorly trained, inadequately compensated and the rules of procurement deliberately confusing, bribery can actually be "baked into the economic order." (Ellis) Thus, the pressure of win big, lose big at the front lines of business can actually get amplified *after* a win, as front-line personnel become dependent on intermediaries to sort out unclear procurement regulations needed to conclude the transaction. Here is where requests for small bribes are often encountered in order to "move things along" and get the deal finalized. In my case, this is where I first started to see how corruption operated in the field of international business.

## "NO ONE IS HERE BUT US..."

In my experience, when the talk turns to corruption, often in the context of petty bribery, usually the only witnesses present are the business person and the agent, end user or intermediary. Over time, as that working relationship becomes more familiar, you get complacent, you get comfortable and the discussion starts to open up. Once, when I was actually on holiday with an agent, having no prior indication of corruption, he informed me that he was "paying tolls" to win orders. He was not asking me for anything, his commission was already set and it was not at a level that raised any red flags. All I had to do was "nod" upon hearing about his "tolls," and I was now breaking the law. I was a co-conspirator. I know to a compliance professional that sounds like an easy scenario: just a) "call home," b) unwind the upcoming transaction and c) do a complete disclosure. But, at the front line, isolated, yet comfortable, it does not seem as black or white.

After all, there was an upcoming transaction that was in the forecast, and there was no one else present. I thought to myself, "This is only a red flag if I make it one." In addition, a disclosure would mean the complete discontinuation of all work with the agent, and how would that business be replaced? Would my manager welcome this news, or be upset with me for disclosing this discussion and walking away from a forecasted piece of business?

Again, for those involved in compliance, that choice might seem "black and white." But in reality those choices become more difficult when sales, marketing and business development groups are operating overseas and are being compensated with lucrative sales compensation plans, as is often the case. This is how, without the HR, compliance or executive teams realizing it, the anti-bribery message can get distorted, diluted, or worst case, discarded, as a sales person might think of compensation and compliance as a zero sum game. A dangerous situation for all involved. This leads us to the next element.

## WHAT DOES MANAGEMENT REALLY WANT?

> "If I violate the Code of Conduct, I may or may not get caught... If I miss my numbers for two quarters, I will be fired."

Simply put, if you take someone with international business responsibility, and put him or her in a country or region with a "low integrity" reputation (see Transparency International CPI for more context), while having a majority of that individual's compensation as "personal performance driven," then you have an inherent tension between compliance and compensation. In such circumstances, compliance can become derisively referred to by the sales team as "business prevention." And where you have the perception among overseas business teams that compliance and individual financial success can't coexist, it invites problems.

When business teams ponder, "What does management really want, compliance or sales?" at the field level, as they compare compliance programs to their bonus packages, compliance decisions can be taken into their own hands as they make decisions pertaining to whether to engage in or refrain from corruption. Very often that confrontation comes down to choosing between the 'spoken rules of behavior' as exemplified by Codes of Conduct and formal compliance programs with the unspoken rules of behavior of 'how we get things done around here' as elevated by aggressive business forecasts and lucrative incentive packages. When that conflict gets resolved in the field by front-line personnel, it is peril for all involved.

I think part of that thinking is encapsulated in a relevant post ("Mickey Rooney and The 90 Cent Solution") by another contributor to The Network's blog, Thomas Fox, where he references the thinking of a foreign Regional Manager, who, pondering compliance and sales, is alleged to have said, "If I violate the Code of Conduct, I may or may not get caught...If I miss my numbers for two quarters, I will be fired." Furthermore, when front-line personnel start to make those calculations, they might embrace the *illusion* that bribery has no victims, or even that it is a win-win at the field level. The ethical and societal consequences of corruption are not weighed in that analysis; hence, my next element of rationalizing bribery at the front lines of business.

## WHO IS GETTING HURT HERE?

To those at the front lines of international business, bribery has the false appearance of being a victimless crime. While the costs of corruption may be generally understood in intellectual terms, to individuals on the front lines, where the competition is intense and the stakes are high, this level of societal awareness is not always so informed, or even recognized. In fact, all too often, bribery can be rationalized as a win-win, where sometimes the end-user (often a public agency) pays less money for the product due to the bribe. There is a real-world example of this in my own Plea-Bargain. Imagine the impact of such thinking where one ponders the value being provided to the customer *due to bribes.*

## IT'S HOW THINGS GET DONE AROUND HERE

The influence of "everybody else does it," should not be underestimated as front-line personnel exchange "war stories" with peers or even competitors as to how corruption is rampant in certain markets. Such exchanges provide an odd positive affirmation among personnel and create what one behavior psychologist calls a "social cocoon" of corruption where, "Employees see corruption as a customary behavior, and employees behave criminally."[2] Those cocoons don't have to be spread across an entire organization, but can in fact exist isolated from other parts of an organization, within low integrity and highly corrupt regions. As Dr. Roger Miles states in *Risk Culture and Conduct: Time for a More Enlightened Approach*, "If bad behavior is regarded as normal by sufficient numbers of people in the industry, it *becomes* the norm."

All of these elements speak to the "what happens" when someone is exposed to an environment where bribery is an accepted norm, and when such exposure is extended over a period of time. Having spent 250 days a year traveling overseas for over ten years, I can share that the dynamic of "this is how it is done here" has an enormous impact on attitudes. Such communication can alter and shift one's value system to a new norm where criminality gets rationalized to the danger of all involved. Also, as I hope to have demonstrated, sometimes all you have to do is "nod" to break the law.

## WHAT CAN COMPLIANCE OFFICERS LEARN FROM MY EXPERIENCE?

First, let's remember, as Dr. Miles writes in *Tales of the Unintended: Well Meant Regulations Vs. "What Actually Happens"*, "Rule systems tend not to foresee how ordinary people respond when someone in authority tells them to change the way they behave," and that "Most of the regulated people, meanwhile, are not experts; they include sales teams, customers, even some boards of management, who are not on the policy making side of the fence." Thus, when it comes to how anti-bribery compliance intersects the front line of business, let's try to keep in mind, as Dr. Miles states, how "ordinary people relate to an issue, and in particular how people make sense of information about a risk."

As I have shared with others who ask the same question after hearing of my own journey, a good start to addressing bribery *before* it occurs is to bring in your international business teams. Set up an environment and tone where your field personnel feel comfortable sharing the risks they face in their work. The more upset you are by what you hear, the better those conversations are going. You can fix what you know, and anti-bribery compliance is not a one-size fits all model. Corruption risk in the Middle East is not the same as in China, and practical solutions need to be developed. So, how about, even anonymously, posing the following dilemma to your team:

**First, describe the scenario:** You just won a large contract, where forecast and bonus are at stake, where there was no prior indication of bribery, and where the agent shares *after* the contract was awarded that it was obtained corruptly at the "last minute" via a small bribe to save the deal. You have secured business before with this agent, and in this country, with no corrupt element. In addition, this conversation about the bribe is in total privacy, using language that was vague and in 'wink and nod' terms (like "paying tolls.")

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2 Campbell, JL & Goritz, A. (2014, March). Culture Corrupts! A Qualitative Study of Organizational Culture in Corrupt Organizations. *The Journal of Business Ethics*. Accessed at: http://link.springer.com/article/10.1007/s10551-013-1665-7.

**Now some questions[3]:** Considering those elements, ask your team if they would continue the transaction based on any of the below statements. Have them check off which ones apply:

- "We've done all this work to win the deal, let's not change it now."
- "It's not our policy to question that with an agent."
- "That's never been a factor/issue before."
- "If it isn't addressed in the business plan, it isn't a problem."
- "He didn't raise it when we first discussed this."
- "How could I have known that?"
- "It's too vague to really know for sure."
- "It's none of my business."
- "It is not illegal here."
- "It's only a red flag if I call attention to it."

A yes to any of the above shows an acceptance of corruption risk that might be rationalized as inconsequential at the field level, but which represents unacceptable and illegal conduct. Once you have digested that dynamic, the real work begins.

## BRING IN HR

Recently, when addressing a group of compliance professionals, I was asked about how "rain makers" can be best motivated to be financially successful while at the same time embracing anti-bribery ethic, even in low integrity regions. While I don't want to think that all human behavior is governed by financial incentives, when it comes to business development and sales teams, incentives play an important role. However, when trying to incorporate a compliance component into those compensation structures, I have seen and heard of how HR, especially at the corporate level, is often shut out of that process.

Given that HR is involved in the development and implementation of compliance programs and documentation, isn't it appropriate that they have a "clear-eyed" view of compensation plans in high-risk territories? Wouldn't HR be in a unique position to see if the corporate goals of anti-bribery compliance are out of alignment with group, divisional or even regional bonus plans? Perhaps that speaks to a recent article in the Harvard Business Review (December 2014, *Why Corporate Functions Stumble*), where the authors state that "fewer than 10% of the companies (in their survey) reported that they were highly satisfied with the effectiveness of headquarters." Perhaps HR, as part of that system, is being deliberately shut-out where, "Division managers see it more as a hindrance than help."

3 This list was developed with the support of a research piece by Dr. Roger Miles, University of London: "From Compliance to Coping: Bank CROs 2007-9" Hazards and Risk Research Group, King's College London, 2012.

"In an area that is highly corrupt, the last thing we want to do is pay someone 'to eat what they kill.'"

Yet, HR has an important role to play as providing an objective viewpoint in order to ascertain if divisional or group incentive plans are not in sync with programs which are designed to promote ethical conduct. Staying with the Harvard Business Review, (December 2014) *Why Chief Human Resource Officers Make Great CEOs*, as the article concludes, "If you don't have the right people in the right places - the right talent strategy, the right team dynamics, the right culture - and if you don't proactively manage how an organization works from a culture and a people perspective, you're on a serious path to disaster." Agreed, and who better than an HR professional to provide that reality check?

One HR professional shared with me that in his organization where teams work in highly corrupt territories, bonus calculations are indexed at one third each: corporate, group and individual performance. As he said, "In an area that is highly corrupt, the last thing we want to do is pay someone 'to eat what they kill.'"

Such a plan elevates a number of valid concepts. First, when it comes to international business, incentives are not a one size fits all model. For example, someone who has responsibility for Scandinavia, where markets are mature, the institutions of state are strong and there is a low reputation for corruption should be indexed differently from someone working in the Andean region of South America. Such a review will help to insure that reward systems communicate the message that anti-bribery ethics and commercial success are in fact *complementary* goals.

## A FINAL WORD ON STRATEGY

I often ask when aggressive forecasts are reached in low integrity regions is it all "high fives" in the board rooms and C-suite, or is someone asking, "How did we do that in such a corrupt region?" When those targets are articulated down the organizational chart, it should be with a clear-eyed view of what you are asking of your business teams. Are you building delays into your financial model so that field personnel are not susceptible to pressures for small bribes to "move things along?" The Network had a great article written by Pia Adolphsen called *Anti-Bribery Training from Coca-Cola: What I Learned About Bribery, Corruption and Responsibly Entering Underdeveloped Markets*. In this article, Ms. Adolphsen addresses how Coca-Cola "does not bribe." Furthermore, when an on-time factory opening in Asia was threatened by a public official via a request for a small bribe, "its employees did not entertain the small requests that the inspector asked, nor pay the bribe that was asked for."

You can be sure that when Cola-Cola develops market strategies and forecasts, it is with a clear-eyed view of what risks front-line personnel face, and that those targets reflect those dynamics in a way which makes it clear to the field that bribery is not acceptable, and you will not be punished for saying "no." As I once heard a compliance professional share at a symposium, real anti-bribery compliance is achieved when front line personnel, "Say no to bribery, but not because compliance says I can't do it, but because *I don't do it."* When that happens, you can be sure that compliance programs, Codes of Conduct, sales targets and bonus plans all speak to the same element of "just say no." ω

## Richard Bistrong: Anti-Bribery Blogger & Former FBI/UK Cooperator

**Richard Bistrong** spent much of his career as an international sales executive and currently blogs and speaks on foreign bribery and compliance issues from that front-line perspective. Richard was the Vice President of International Sales for a large, publicly traded manufacturer of police and military equipment, which included residing and working in the UK. In 2007, as part of a cooperation agreement with the United States Department of Justice and subsequent Immunity from Prosecution in the UK, Richard assisted the United States, UK, and other governments in their understanding of how FCPA, bribery and other export violations occurred and operated in international sales. In 2012, Richard was sentenced as part of his own Plea Agreement, and served fourteen-and-a-half months at a Federal Prison Camp.

Richard now blogs at www.richardbistrong.com about current front-line anti-bribery and compliance issues. Richard can be reached via his blog and he frequently tweets on #FCPA & #compliance @richardbistrong. Richard is available to speak about his experience and current compliance challenges on the front lines of international business to corporations, industry groups and academia.

ABOUT THE NETWORK

The Network is a leading provider of integrated governance, risk and compliance (GRC) solutions that allow organizations to create better workplaces and ethical cultures. The Network's Integrated GRC Suite, recognized as the "Apple of GRC" by GRC 20/20, is the first natively integrated enterprise GRC software platform in the compliance industry. The Suite was built to leverage the way employees retain and apply ethics and compliance information and helps companies prevent, detect and remediate non-compliance and unethical conduct. A SaaS-based technology solution, the Suite integrates policy management, training and communications, Code of Conduct, surveys and assessments and case management, all on a reporting and analytics platform. Originally established as the first whistleblower hotline provider in 1982, The Network serves thousands of organizations in every industry, including nearly half of the Fortune 500.

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# MANAGING REAL-WORLD THIRD PARTY RISKS:

## THE RED-FLAGS YOU DON'T SEE

By Richard Bistrong

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# ABOUT THE **AUTHOR**

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Richard now blogs at **www.richardbistrong.com** about current front-line anti-bribery and compliance issues. Abstracts on Richard's compliance practice can be found on his website.

# INTRODUCTION

It is widely accepted that third party risks can and should be mitigated. This is usually achieved through an attempt to put in place a system of contracts and procedures whereby intermediaries are required to read through company policies, and represent that they will abide by anti-bribery laws as well as corporate ethical and legal commitments. Add to this a standard background check, and it might appear that you are 'good to go.'

In today's compliance environment, there is a plethora of providers that offer a multitude of automated platforms for delivering a process driven approach to the challenge of third party management, including 'self-assessments' and 'risk mapping.' While these services might be considered as essential, especially given the magnitude and complexity of a multinational's third party network, are they enough on their own? Will they identify the real-world third party-risks that an organisation might face, which if left unchecked, could cause substantial financial and reputation damage to a company?

Based on my experience, having travelling a decade in the field as an international business executive, and ultimately being charged with anti-bribery offences, I see a number of risk elements that remain unchecked. The purpose of this paper is to reflect upon such areas, to hopefully provide a 'from the trenches' viewpoint to 'close the gap' between compliance processes and front-line exposure. While the six elements of third party risk that I will introduce are by no means exhaustive, they are the ones that I saw frequently and at present what I might consider to be some of the greatest challenges to compliance, audit and investigatory teams.

## WHAT IS THE ROLE OF THE INTERNAL BUSINESS SPONSOR?

First, when I speak of 'third parties', I am focussing on those which in some capacity are representing an organisation in a country, and specifically, for the purposes of business development. In that context, the start of the on-boarding process with a third party, is often with the recommendation or endorsement of an 'internal business sponsor' or company employee. Usually, this commences when the employee has identified an intermediary that he/she strongly believes will be able to provide essential business development services in country, with the goal of targeting and closing business opportunities and transactions. The process often involves the company employee submitting a justification to compliance as to why they think that a given intermediary is necessary, the scope-of-work to be performed, compensation structure, and other information concerning the proposed partner.

But what ***if*** in that process, the employee, through his/her own knowledge of the business partner understands that the value that the intermediary brings includes intertwining corrupt and legitimate business services in order to gain or retain business. What ***if*** that employee, who might be compensated and incentivised on short-term quotas and forecasts, indexed to personal performance, sees that intermediary as the 'shortest distance between two points' in bringing business success? In such cases, your employee is now seeking to on-board a third party knowing that entity is providing corrupt commercial services.

Thus, organisations must consider what role they are assigning to that employee in the vetting, on-boarding and due diligence process. Is that employee a part of the process? Do they have access to the rules, policies and procedures? If so, then you risk the internal business sponsor colluding and conspiring with the intermediary to coach, and if necessary circumvent, the on-boarding process. In other words, the employee and third party become partners in the process in order to get that intermediary 'through the door.'

Accordingly, organisations might consider 'walling off' the internal business sponsor once the intermediary has been submitted as a possible candidate for due diligence and representation, so as to protect the process and integrity of information. Given my own experience, I think such a protocol, as one of the first steps in due diligence, is well advised. As this helps to protect the integrity of honest employees and intermediaries, and prevents the circumvention of even well intentioned due diligence where collusion and circumvention might occur.

## THE THIRD PARTY VIEW OF DUE DILIGENCE AND ANTI-CORRUPTION REPRESENTATIONS

If you provide your third party with company affidavits, representations and agreements that they will abide by international anti-corruption laws and conventions, is that by itself a signal that they embrace the law and your company policy? From my experience, no.

Worse, many third parties embrace a philosophy of "it's not my law" or "it's legal here" with an attitude of "I will sign whatever you want, I just need the agreement to start working." Having personally witnessed such events, I recommend conservatism and caution when weighing the compliance value of anti-bribery contracts, and thinking that they somehow are vehicles for reducing and *passing* risk. While such agreements are clearly essential for a third party compliance programme, they might be considered as *ends* to a successful process, as opposed to the *means* of compliance.

I think recent enforcement actions demonstrate that regulators don't consider such contracts as sufficient on their own merit. In addition, such agreements can lead to a sense of complacency among compliance personnel that present great financial and reputational peril. Compliance teams should ensure that third party due diligence and anti-corruption communications are an ongoing component of their programme. Communication regarding policies and codes along with due diligence at just the time of third party on-boarding is not sufficient.

## VETTING AND FORGETTING

A story from the field: A third party was not doing much business and when asked about the lack of business activity, responded (to paraphrase) "well, there was just an election, and the new people at the Ministry are on my team and they know that once they get seated in procurement, that they only have a few years to make their pensions, so things will really start to move in a few months. "The part I didn't paraphrase was "make their pension." This is an iconic example of how regime change can criticaly alter where a third party might be on the continuum of corruption. Thus, in this case, while a due diligence programme at the time of on-boarding might not have picked up any association with politically exposed personnel, failing to monitor the agent on an ongoing basis would have been an enormous 'miss' given the referenced election.

> **"Organisations should not think of risk and due diligence as ending when the relationship is formalised; the *failure* to follow-up, monitor, and set up 'triggering events', including random sampling, all as part of an on-going process, sets up an enormous exposure to corruption risk for an organisation."**

In addition, recent compliance surveys have also identified how third party monitoring is conducted far less than initial due diligence. Organisations should not think of risk and due diligence as ending when the relationship is formalised; the *failure* to follow-up, monitor, and set up 'triggering events', including random sampling, all as part of an on-going process, sets up an enormous exposure to corruption risk for an organisation.

## MAPPING RISK

Clearly, all risks cannot be treated equally. We only need to look at the multitude of third parties, the countries from which they originate and the services they provide to come to the quick conclusion that "all risks are not equal." But beware of how you treat 'low risk' third parties and what you think of as 'least common due diligence denominator' in how that risk is evaluated. I was charged for bribery offences that occurred in New York and Holland, to name a few. While those locations might not be mapped as high-corruption risk, it is a cautionary tale about not being complacent or breezing over risk in what might be considered as low risk regions. Thus, organisations should be cautious about thinking of any region or third party as being so low on the 'risk index' as not to conduct any due-diligence.

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## LOGIC

Sometimes a source of excellent due diligence and red-flag identification is your own sense of logic. If an employee brings you a 'deal' from a third party that looks too good: perhaps the price seems too high for the quantity, or the quantity does not seem appropriate given the market size, then proceed with caution. I once remember a particular sale where the pricing seemed at odds with the quantity, and I thought it peculiar that the intermediary did not try to negotiate for a lower price, where one would have been afforded (given the volume). I would find out years later that it was indeed a corrupt transaction. If it does not make sense, even if the transaction is highly profitable and easy to complete, ask the tough questions to your front-line manager: "explain how we got this order" before you give him/her that 'high five.'

> "If it does not make sense, even if the transaction is highly profitable and easy to complete, ask the tough question to your front-line manager: "explain how we got this order" before you give him/her that 'high five.'"

## THE VALUE OF SELF-ASSESSMENTS

While self-assessments have their value in the matrix of risk, they should be used with great caution. Would a self-assessment of an office supply provider in Scandinavia be appropriate? Probably. But what about an intermediary in South America that is providing introductory and business development services to a pharma company? Probably not. But I have seen cases where self-assessments in high-risk categories have been used and where third parties have *actually* sent those assessments to company employees to complete. I think that story sends a powerful message. I would treat a self-assessment like a credit application, in that it is a *trust* but *verify* endeavour.

"I have seen cases where self-assessments in high-risk categories have been used and where third parties have *actually* sent those assessments to company employees to complete. I think that story sends a powerful message."

There is a great deal of data which can be included in a self-assessment which saves the organisation time and expense, including credit references, bank accounts, ownership, other supplier relationships, and a history of successful transactions. The listing of other supplier association is significant, as the reputation of a third party can be measured by the reputation and integrity of previous and current partners. Once that information has been listed, a proper due-diligence programme will 'drill down' into details and verify whas been provided.

## BEST PRACTICES

As some of these events, including my own charging document, demonstrate, due diligence on all third parties, even those in "high integrity regions," remains necessary. As stated by Angel Gurría, OECD Secretary-General, when delivering the Launch of the OECD Foreign Bribery Report, (2 December 2014, Paris, France), "The evidence shows that corruption occurs everywhere." That does not mean that you have to treat all intermediaries everywhere in the world as an equal risk, but the Secretary-General does speak to the need to conduct due diligence on *all* your potential partners, which can then be escalated given the service, industry and region.

In addition, carefully consider how self-assessments are utilised in that escalation and segmentation of risk.

Given the history of enforcement actions, as well as how a third party can move on the 'continuum of corruption,' the need for a monitoring process has never been greater. Having a due-diligence process that is focussed on events up until the intermediary 'gets to the door' but does not address and monitor business activity once the partnership commences, is fraught with peril and risk. I have seen multiple mechanisms that have been used *post-due-diligence,* including contract modifications, scope-of-work agreements, and dummied up retainers, to name a few, which would have been red-flagged with a robust monitoring process. Carefully consider how third party transactions, engagements and acivities are monitored and audited throughout the life of the relationship.

As for your company employees, they have a job do to: develop the business. They are not auditors, lawyers or investigators. You are compensating them, often with lucrative packages, to develop the business. While they have a critical role in helping to identify the best in-country partners and assets to facilitate growth, they can also be 'irrational calculators of risk' especially when compensated onto short term growth. Protect them, and yourselves, by 'walling them off' the due diligence process once they have made their recommendations. Remind them to be patient while your risk and compliance teams do their work.

Finally, there is no substitute for knowledge and awareness as articulated through a third-party training programme. Your third parties are your partners, and treating them as such shows your commitment to ethical business practices. It not only demonstrates to your third parties and company employees your dedication to ethical and legal business customs, but it adds yet another significant layer to your own compliance efforts by shielding yourself from intermediaries who look to circumvent your processes. Corrupt intermediaries will resist training and monitoring programmes; having a robust protocol will be a significant addition to your existing efforts.

**"... the Secretary-General does speak to the need to conduct due diligence on *all* your potential partners, which can then be escalated given the service, industry and region."**