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by Duncan McCampbell

Preventing corruption in multinational corporations: A very different game, Part 2

- » Multinational companies (MNCs) must take a different approach to compliance when they are operating outside of their headquarters country.
- » MNCs under-resource and under-emphasize both domestic and foreign Compliance functions for a variety of reasons.
- » U.S. laws prohibiting foreign corrupt practices place Western MNCs at particular compliance risk.
- » The approaches currently used to prevent foreign corruption are of dubious value.
- » A new, more culturally engaged approach to foreign corruption prevention is required.

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Identity-based compliance: A new approach for foreign corruption prevention

Last month, in Part 1 of this series, we reviewed the five reasons why achieving



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foreign compliance is often a strange or difficult undertaking for a Western multinational company. In Part 2 of this series on global compliance, we discuss the unique compliance risk represented by foreign corruption.

One of the greatest challenges for Western corporate compliance professionals is preventing employees in foreign countries (where corruption is generally a larger risk than here at home) from engaging in corrupt business practices. Many Western countries, including the US and UK, have enacted tough laws that make it a crime to bribe foreign government officials. Still, in many countries, corruption is a common, accepted (and, indeed, indispensable)

practice among local companies, people, and government officials. This is especially true in the developing world.

The US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act are just two examples of laws that make it a crime for a person or a corporation to make payments of money or something else of value to a foreign government official for the purpose of obtaining some desired action or outcome. In the last decade, US authorities have dramatically increased FCPA investigations, prosecutions, and penalties. According to the FCPA Blog, 27 companies paid about \$2.48 billion to resolve FCPA cases in 2016, making it the biggest enforcement year in FCPA history.

The FCPA and related laws are big challenges for compliance professionals working in Western multinational companies. With economies sluggish across much of the developed world, Western multinational companies are entering the promising and often corruption-wracked markets of the developing world in search of growth, resources, and new opportunities.

Foreign corruption is relatively easy to define but difficult to prosecute, because the prohibited actions usually occur in foreign countries where Western anti-corruption officials have no authority to investigate. Prosecutors focus on financial information in the company's required securities filings. There are several elements that must be in place in order for a particular transaction or illegal relationship to be investigated by Justice Department and Securities and Exchange Commission prosecutors under the FCPA:

- ▶ The giving of value by a publicly traded company. The payment can be almost anything of value—money, securities, vacations, a job for the children of a connected official. Since the FCPA is based upon violations of U.S. securities law, the company must participate in the US securities market, but needn't be U.S.-domiciled.
- ▶ A payment to a government official (or his/her family) who personally retains the thing of value.
- ▶ The resultant desired action by the government official. The action must be something that the government official would not normally do, such as granting customs clearance for a prohibited shipment or issuing a business license to a company that does not meet the normal qualifications for licensure. "Grease payments" —the speeding up of a normal official act, such as the expedited processing of a passport application—do not constitute bribery.

With almost no substantive case law built up around vague statutory language, a "violation" is almost whatever federal prosecutors say it is.

The FCPA has been criticized for many reasons. Enforcement actions never go to trial, invariably settling without significant findings of fact and law. With almost no substantive case law built up around vague statutory language, a "violation" is almost whatever federal prosecutors say it is. Companies that must comply with the FCPA also compete with companies based in countries—China comes immediately to mind—that either do not have foreign anti-corruption laws or that selectively enforce the anti-corruption laws

that they do have. How do Western companies do business in the developing world, compete with companies from other countries, and still comply with anti-corruption laws?

Western multinational corporations have, to date, taken two approaches to the challenge of foreign

anti-corruption laws:

- ▶ **Attempt to circumvent the laws by paying bribes through intermediaries.** This is the failed approach taken by the giant French industrial group, Alstom SA (now a part of GE), which in 2014 paid a record fine of \$772.3 million for bribing government officials around the world to secure lucrative contracts. According to the *Financial Times*, Alstom tried to hide its bribery scheme by hiring consultants who acted as the conduits for bribes to government officials. Company financial records revealed the code names of some of the "consultants," which included "Mr Geneva," "Mr Paris," "London," "Quiet Man," and "Old Friend."

► **Conduct global anti-corruption training for employees.** This training, created and conducted by Western compliance professionals (usually lawyers and HR professionals) for non-Western employees, comes in two varieties.

- *Rational approach.* Early attempts to influence employee attitudes about corruption took a rational route: educating employees about (a) behaviors that constituted corruption and (b) the consequences they and the company should expect if they were caught and prosecuted for corrupt acts. The notion was that these employees would assess the risks of getting caught and conclude, rationally, that the risks outweighed the potential benefits. This approach hasn't proven very effective in the places where corruption is a big problem. Non-US employees see this as American law, and the foreigners sent there to explain it, as an imposition of Western cultural values on a society that has its own, well-developed—and quite separate—value system.
- *Values-based approach.* More recent anti-corruption training has attempted to prevent corrupt acts by appealing not to a law (which for some people—especially to people living outside the U.S.—seems an abstraction) but to an employee's own values. This approach is potentially

It is created by people from the developed world based on the erroneous assumption that employees in the developing world share their values.

more impactful than the rational approach among people living and working in Western cultures, for reasons we will discuss later. The values-based approach, however, has one profound limitation. It is created by people from the developed world based on the erroneous assumption that employees in the developing world share their values. In places where corruption is a problem, many employees don't know any other way of doing business and thus don't necessarily *personally* see anything wrong with corrupt business practices.

Most Western multinational companies recognize that foreign anti-corruption programs haven't had much, if any, impact on employee

behavior in the places where corruption risk is highest. However, many companies carry on with the costly and largely ineffectual programs in the mistaken belief that, if the company is ever prosecuted by federal authorities for foreign corrupt practices, they can mitigate fines and other penalties by showing that they had at least made a good faith attempt to address the problem with training. This belief, however, is not supported by prosecution trends and the literature of FCPA compliance.

Proposal: A culture-based approach to anti-corruption compliance

The chief problem with both the rational and values-based approaches to employee corruption prevention is that both are profoundly culturally tone-deaf. The issue

begins with a law—the FCPA—that is firmly rooted in the individualist, universalist, rules-based culture of the US. The law’s burdens are carried abroad by companies to places where corruption is a daily fact of life—simply another way to get something done.

The Western lawyers who create and pursue the current approaches to corruption prevention seek to achieve the impossible:

Using Western tools to modify the values and behaviors of employees who don’t form their values in the same way that Westerners do. The cultural gulf doesn’t prevent companies from forging ahead with expensive and largely ineffectual anti-corruption training programs. It is, after all, what they know and how they operate at home.

In hotel conference rooms around the world, Western compliance professionals try to get their overseas employees to adopt two vital—and for those employees, often strange—streams of Western culture: (1) that all people are individuals, free to independently form their own identities and values, and (2) that there are universally applicable rules that everyone must follow.

Employees—especially in Asia and many parts of Africa—will simply nod their heads and wait for the lawyers to get on the plane and then go back to their day-to-day cultural realities. There must be a better way, and there is. Two vital resources help us understand this problem and to craft an appropriate response.

It has been proven that there is a high correlation between collectivist culture and the prevalence of corruption.

Hofstede’s Culture’s Consequences

Dutch social scientist Geert Hofstede spent the early part of his career at IBM in training and workforce development roles. In the mid-late 1970s, IBM was one of the world’s largest multinational corporations, with offices in virtually every national capitol. After leaving IBM, Hofstede returned to the company with an idea: To conduct research with thousands

of IBM’s employees worldwide in order to learn more about differences in national cultures. IBM agreed, and a few years later, Hofstede published *Culture’s Consequences*.¹

Hofstede’s work, together with the enormous body of research arising from it, form the cornerstone of cross-cultural understanding for multiculturalists and social psychologists.

Hofstede should be

required reading for every multinational CEO.

Hofstede divided the world of workplace culture into four dimensions:

- ▶ Individualism/Collectivism
- ▶ Power/Distance
- ▶ Uncertainty Avoidance
- ▶ Masculinity

All of Hofstede’s dimensions are important to the multinational corporate compliance professional. But two of them, Individualism/Collectivism and Power/Distance, warrant particular attention because of the fact that they are the dimensions that most starkly divide Eastern and Western thought.

Importantly, it has been proven that there is a high correlation between collectivist culture and the prevalence of corruption.² When

you understand the collectivist mind-set, you are several steps down the road to crafting solutions to the corruption risk your company faces in many parts of the world.

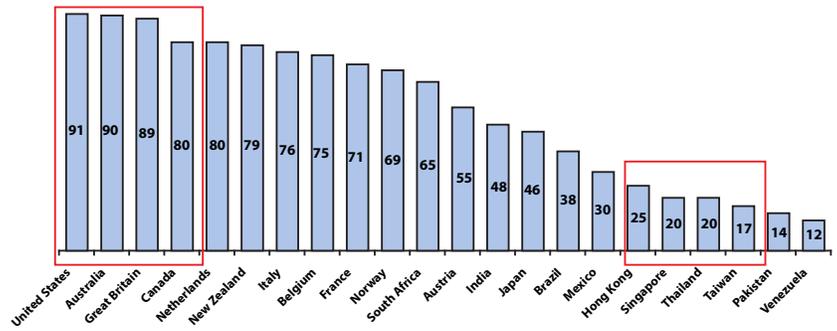
Individualism/Collectivism

Western cultures are overwhelmingly individualistic. Eastern cultures, and many Latin American and African cultures, are majority collectivist (see Figure 1).

Hofstede found that the United States, with its cultural emphasis on liberty, freedom, and individual initiative, was (and probably remains today) the world’s most individualist country, closely followed by several other major Western countries. At the other end of the Individualism/Collectivism index are mainly Eastern collectivist cultures (see Figure 2). Mainland China is not represented because the country was not accessible to Western researchers in the mid/late 1970s, but the majority Chinese collectivist cultures of Hong Kong, Taiwan, and Singapore are represented in the study.

As explained by American social scientist Richard Nisbett in his seminal book, *The Geography of Thought*, collectivists (who are mainly Easterners) and individualists (exclusively Westerners) have very

Figure 1: Country Individualism Index



Source: Hofstede

different values and see the world in very different ways.³ Descended from the Greek notion of individual agency, the individualist believes fervently (and Western corporate HR doctrine, for more selfish reasons, reinforces this) that they are in charge of their own life and career development. The individualist glories in individual achievement and pushes out at limits and boundaries to attainment. Status is earned, not conferred. The individualist values liberty and freedom above all else.

The collectivist gladly relinquishes a degree of personal autonomy to achieve a higher ideal: social harmony. Confucian thought, prevalent throughout much of China’s long history, emphasizes respect for authority, personal responsibility, and acceptance of one’s place in a relatively rigid social hierarchy, hence the Chinese government’s recent and transparently

self-serving revival of Confucian principles. The collectivist achieves meaning, forms values, and even derives personal identity by and through membership in a group—the collective. A person can be a member of several collectives. And because the member’s values, behavior—even

Figure 2: Indexes

Individualist	Collectivist
Insistence on freedom of individual action	A preference for collective action
Desire for individual distinctiveness	A preference for blending harmoniously with the group
A preference for universal rights, egalitarianism and achieved status	Acceptance of hierarchy and ascribed status; accepting one’s “share” of rights
Liberty	Harmony
A belief that the rules governing proper behavior should be universal	A preference for particularistic approaches that take into account the context and the nature of the relationships involved
Objects are discrete. They have essential properties and are subject to classification	The world is a mass of substances rather than a collection of discrete objects

identity—are the product of relationships within the collective, it is possible for the collectivist to *actually be a different person depending upon his/her setting*.

The notion that someone can be different depending on their setting is the hardest concept for a Western individualist to grasp. Imagine the challenge facing a Western compliance professional. Can a corporate compliance regime succeed when the literature is clear: collectivists will, true to their culture, behave differently and even modify their identity depending upon their setting? The answer is yes, and happily so, as we shall see. But before we try to achieve compliance in an Eastern culture, we must first discard the individualist underpinnings of current compliance approaches. We find it expressed in this fairly typical statement from a Western source on business ethics and leadership:

The ancient Greeks, especially Plato and Aristotle, created most of our vocabulary of virtue. For them, virtue was no mere philosophical consideration. They believed that certain kinds of deeply ingrained, moral attitudes and behaviors were necessary for a civil society to function. They called these dispositions virtue, or more specifically, ‘moral excellence.’ These moral dispositions were practical, specific and verifiable. . . . While effective leaders manifest a range of attitudes and behaviors necessitated by situational contingencies, the same, *stable core configuration* of deep, moral capacity drives effectiveness in all leadership situations⁴ (emphasis added).

To the individualist, the essential characteristics of a person are completely independent of the person’s setting. This is the Western notion of integrity.

The same person moves from setting to setting—the office; the home; the church, temple, or synagogue—without changing. Again, Nisbett:

To the Westerner, it makes sense to speak of a person as having attributes that are independent of circumstances or particular personal relations. This self—this bounded, impermeable free agent—can move from group to group and setting to setting without significant alteration. But for the Easterner (and for many other peoples to one degree or another), the person is connected, fluid and conditional.

[To the collectivist] the person always exists within settings—in particular situations where there are particular people with whom one has a relationship of a particular kind—and the notion that there can be attributes or actions that are not conditioned on social circumstances is foreign...⁵

Conclusion

So, given all of this, how does one achieve compliance in a collectivist culture? Here is the key: do the opposite of what Western corporate compliance programs do. Influence the employee through the collective and avoid appeals to the employee’s rational choices or individual identity and values. *

Next month, in Part 3 of this series, we will discuss a new approach to achieving corporate compliance among employees in collectivist cultures.

1. Geert Hofstede: *Culture’s Consequences: International Differences in Work-Related Values*, SAGE, 1982.
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3. Richard Nisbett: *The Geography of Thought: How Asians and Westerners Think Differently... and Why*, Simon and Schuster, 2010.
4. Mark McCloskey: *The 4R Model of Leadership: A Virtue-Based Curricular Model for Business Education in a Global Context*, Proceedings of the ASBBS Conference, February 2009.
5. Richard Nisbett: *The Geography of Thought: How Asians and Westerners Think Differently... and Why*, Simon and Schuster, 2010:50.