

## **The global crackdown on corporate bribery**

# **Ungreasing the wheels**

**Governments around the world are making life difficult for corrupt firms**

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Illustration by Claudio Munoz

IF EVER a clash was inevitable between one country's commercial law and another's business culture, it would be between America's Foreign Corrupt Practices Act (FCPA), which seeks to punish firms that bribe government officials, and China, where many businesses are owned by the government and bribery is endemic. A recent spate of prosecutions under the act of firms operating in China and other notoriously crooked places has stoked fear in the heart of many executives. Nor is the crackdown limited to America. On November 18th the British government

became the latest to promise tough new anti-corruption legislation, during the annual Queen's Speech to Parliament.

In 2005 DPC Tianjin, the Chinese subsidiary of a Californian company that makes medical equipment, admitted paying bribes to doctors and laboratory personnel. American prosecutors said this fell under the scope of the FCPA because health care in China is government-run. Yet the Chinese government is involved in much of business life. Last year, for example, Lucent paid a multimillion-dollar fine for "training" trips it had arranged for executives from state-owned telecommunications firms that involved visits to Las Vegas and Orlando, rather than factories.

This year Control Components, a manufacturer of valves for power plants, and several of its employees entered guilty pleas related to bribes allegedly paid to employees at some of China's biggest companies. These included PetroChina, China National Offshore Oil Corporation, Jiangsu Nuclear Power Corporation, Guohua Energy Investment Company, China Petroleum Materials and Equipment Company and Dongfang Electric Corporation.

Two recent cases have further widened the scope of the FCPA. In February ITT Corp settled charges related to payments made by a subsidiary to various Chinese "design institutes", which are linked to the government but do not make big purchases of foreign goods. They do, however, set local product standards and thus can have a huge influence over foreign firms' sales in China. Last year AGA Medical Corporation of Minnesota pleaded guilty to bribing doctors to push medical devices, and officials in China's Intellectual Property Office to push patent approvals. Even though the payments were made by a distributor, the courts still held the manufacturer responsible—a worrying precedent for firms that use agents of different kinds.

The two American agencies responsible for enforcing the FCPA, the Department of Justice (DoJ) and the Securities and Exchange Commission, have both made clear their intention to be even fiercer under the new administration than they were under the previous one. "We will be intensely focused on rooting out foreign bribery in your industry. That will mean investigation and, if warranted, prosecution of corporations to be sure, but also investigation and prosecution of senior executives," thundered Lanny Breuer, the new head of the DoJ's criminal division at a gathering of pharmaceutical bosses earlier this month. America recently prosecuted one of its own public officials under the FCPA. However, although William Jefferson, a former congressman, was sentenced to 13 years for bribery, he was acquitted on the FCPA charge because the \$90,000 in cash found in his freezer, allegedly intended to pay off a Nigerian politician, was never handed over.

Although the FCPA was enacted in 1977, enforcement was patchy until recently. The attacks of September 11th 2001 prompted the authorities to take a much closer look at financial flows to dodgy countries in pursuit of terrorists' funds, revealing lots of corruption in the process. The oil-for-food scandal in Iraq also helped to catch prosecutors' attention, since it involved senior managers at prominent firms. "This was a major trigger for tougher enforcement, as the authorities looked at these firms and asked how far this behaviour extended beyond oil-for-food," says Lesli Ligorner of Paul Hastings, a law firm.

The fines imposed on firms are also getting bigger. In February American courts fined KBR, a construction firm, and Halliburton, its former parent, \$579m over bribes paid to obtain contracts in Nigeria. Last year they hit Siemens, a German conglomerate, with an \$800m fine—the biggest to date. The German authorities also fined Siemens a similar amount.

That case has helped spur more zealous pursuit of corporate bribery in Europe, says Richard Dean of Baker & McKenzie, another law firm. In September British prosecutors secured their first big conviction, of Mabey & Johnson, a bridge-building company, over bribery of foreign government officials. But prosecutors are still weighing politically charged allegations of bribery involving BAE Systems, a defence contractor, and foreign officials. The British government says its proposed new law will close several loopholes and make prosecutions easier.

American prosecutors have made it clear that they will be more lenient with firms that confess possible lapses, rather than waiting to be caught. This month a defence contractor, DynCorp International, did just that. But that means investing in internal monitoring, which can be expensive. Scanning e-mail alone can cost \$200-400 an hour if done by a law firm, and \$50-90 an hour even if a legal outsourcing firm such as the Clutch Group is used.

American lawyers worry that local prosecutors will remain tougher than their counterparts in other rich countries, putting American firms at a competitive disadvantage and deterring foreign firms from listing their shares on American stockmarkets. As one lawyer puts it, “They are catching up, but not that fast.” That may be true. But the more striking trend is that it is getting harder for firms all over the rich world to get away with bribery, which must be a good thing.