

Anti-corruption summit—international co-operation and co-ordination

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Corporate Crime analysis: How are countries around the world co-operating in the battle against corruption? Quinton Newcomb, barrister and director, and Mick Stefanovic, head of corporate investigations at Fulcrum Chambers, outline the challenges faced in pursuing co-operation and co-ordination to protect countries from corruption.

Are countries doing enough to work together to tackle corruption?

Initiatives such as the World Bank's biennial International Corruption Hunter's Alliance and the US Securities and Exchange Commission's Foreign Bribery and Corruption Conference (both restricted to law enforcement/prosecution/corruption agencies—including the development banks) demonstrate that, at least amongst the enforcers, there is a very concerted effort to find ways to work together to pursue cross-border corruption cases.

However, the very fact that this summit has been organised reflects a near universal acknowledgment that more could be done at the political level to bolster the enforcement efforts. Not only is corruption harmful to global development, but, as reflected by the letter from leaders at the business and civil society to the *Financial Times* on 11 May 2016, it is damaging for business. Hence there is considerable pressure upon the politician to deliver more action, not just more words, from this summit.

The current, Panama Papers-led, pressure upon governments to bring an end to tax havens and to increase transparency of beneficial ownership (which was already well underway in Europe, by virtue of the Fourth Money Laundering Directive (EU) 2015/849 may lead to measures which will assist in tackling corruption. However, it will be insufficient for individual countries, or groups of countries, to make incremental changes of this nature if there is not a truly international drive to improve transparency in business in this way. While there are very good examples of countries working together, even those with effective working relationships in this sphere will be striving to improve their cooperation—in particular, to reduce the delay in the formal transmission of evidence (as opposed to the sharing of intelligence) from one state to another.

What are the challenges in pursuing co-operation and co-ordination?

The biggest challenges for the authorities where international cooperation and coordination are required tend to be:

- different levels of cooperation that jurisdictions are willing to engage in, and
- delay associated with securing the cooperation via often tortuously slow mutual legal assistance treaty (MLAT) requests

This has an impact both on the authorities and the subjects of investigations as, in a many cases, it has the effect of delaying the ultimate decision upon the fate of the investigation—while, in the meantime, uncertainty over the company's fate continues. An obvious concern is that countries where bribery and corruption is most likely to occur also tend to be jurisdictions with under-resourced law enforcement regimes, in addition to a lack of political will to provide effective cooperation. The challenge will be to convince those jurisdictions that combatting corruption will have long-term benefits for their reputation and improve their appeal as business partners to international business and credible financiers alike. If these jurisdictions do buy in to enhancing their ability to tackle corruption at home, they need to be able to rely upon assistance and support from countries with more sophisticated tools to tackle corruption.

Are there examples of particularly good co-operation in this sphere?

By way of recent example, it is clear that in advance of the Standard Bank deferred prosecution agreement (DPA) there was effective cooperation between the Serious Fraud Office (SFO), the US Securities and Exchange Commission, and the Tanzanian Prevention and Combatting Corruption Bureau, which allowed a swift settlement in the UK.

There are also a number of ongoing SFO investigations—Rolls Royce being an obvious example where it has been necessary for them to liaise closely with a number of different jurisdictions. Time will tell how effectively the SFO have managed to coordinate with their counterparts in those jurisdictions, and how willing the relevant foreign law enforcement authorities have been to assist. In addition, we think that it will only be a matter of time before corruption-specific law enforcement initiatives, such as the International Foreign Bribery Task Force (US, UK, Canada, Australia) and the European Cross Border Bribery Task Force, tap into existing law enforcement co-operation networks such as the European Joint Investigation Teams, and use organised crime style methods (including intercept evidence), to yield impactful results.

It is also important to remember that not all successful foreign bribery cases are initiated, or even led by, law enforcement. For example, the World Bank's External Investigation Unit has firmly established itself as a facilitator of cross-border interagency co-operation. The World Bank's teams of multi-disciplinary civil/common law investigators have the inside knowledge on development projects and loan agreements with governments, a healthy budget to enable them to travel to where they need to be, and (as reaffirmed in last month's Canadian Supreme Court decision of *World Bank Group v Wallace* 2016 SCC 15) archival and personnel immunities. This means that World Bank's investigators can gather actionable intelligence without resort to MLAT requests, and then pass that intelligence onto any, and all, appropriate law enforcement authorities to conduct their own parallel investigations—this all without fear that they will be forced to identify their sources.

To what extent does politics shape the ability of nations to co-operate to tackle corruption?

In order to facilitate effective cooperation between nations, the political will to tackle corruption in each individual state must be present. We often talk to corporate clients about the importance of the tone from the top in ensuring that their employees feel supported and empowered to conduct themselves in an ethical way, and in ensuring that they are neither subjected to pressure nor incentivised to engage in unlawful conduct as a part of doing business for their employer.

The same principles clearly apply to governments. Politicians in the highest offices of government must set an example by conducting themselves in a way that is scrupulous and beyond reproach, and set the tone from the top, by insisting on the highest ethical standards on those in office below them. If even the political leadership of a government engages in corrupt behaviour then it is impossible to expect officials, often relatively poorly paid but with the power to influence the award of lucrative public contracts, to behave any differently.

If individual states get their own tone from top right, and this is reflective of a genuine political will, then cooperation becomes easier. There is less likelihood of suspicion of foreign authorities, and less fear of what may be uncovered about the regime's own officials. Indeed, there will be active encouragement and support for foreign law enforcement authorities who identify corrupt officials—decisive action taken against those officials will be seen as an opportunity by the receiving state to further improve its culture and demonstrate to the world and, in particular, to big business that it is serious about tackling corruption.

What would you like to see on the agenda at the summit?

Many corporate clients in particular would welcome evidence of a real political will to expedite international co-operation, in order that investigations into corporate offending can be concluded swiftly which, in turn, will reduce the length of time for which such companies will, for example:

- have to wait before the prosecution authorities indicate whether theirs is an appropriate case for a DPA
- suffer the reputational harm of lengthy investigations, and/or
- suffer the associated reluctance of investors, financiers, and in some cases consumers, to associate themselves with the entity in question

Expedition should not, of course, be to the detriment of transparency, and proper provision for legal and procedural safeguards for suspects, in order to ensure that the inappropriate use of coercive powers by foreign governments in the name of international cooperation does not go unchecked. However, more can be done to ensure that justice is delivered more quickly for suspects in international corruption investigations.

Interviewed by Hannah Thompson.

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