

## *Transparency International 2011 Bribe Payors Index Report*

Last week Transparency International (TI) released its Bribe Payors Index 2011 (Index). It represents the fifth such report issued by TI, the most recent previously released in 2008. In the introduction, TI says that the Index “ranks 28 of the world’s largest economies according to the perceived likelihood of companies from these countries to pay bribes abroad. It is based on the views of business executives as captured by Transparency International’s 2011 Bribe Payors Survey. The countries and territories ranked in the Index cover all regions of the world and represent almost 80 per cent of the total world outflow of goods, services and investments.” It also relates the perception of bribery “across business sectors.”

TI released the report because it believes that “bribery has significant adverse effects on public well-being around the world. It distorts the fair awarding of contracts, reduces the quality of basic public services, limits opportunities to develop a competitive private sector and undermines trust in public institutions. Engaging in bribery also creates instability for companies themselves and presents ever-growing reputational and financial risks. This is particularly relevant in light of recent anti-bribery reforms in a number of key countries around the world, such as in China and the UK.” It ends with its recommendations which both the private sector and governments can do to help lessen or eradicate the “prevalence of foreign bribery around the world.”

The survey for the Index asked more than 3,000 business executives (Respondents) worldwide about their views on the extent to which companies from 28 of the world’s leading economies engage in bribery when doing business abroad. The score for each country is based on the views of the business executives who had come into contact with companies from that country. At the bottom of the list were companies from Russia and China which were perceived to be “the most likely” to engage in bribery abroad.

The Index had five key findings.

1. There was clear evidence of bribery between private companies. More than one-third of the respondents in the Index reported that to help their companies grow business they were prepared to offer cash payments, gifts or hospitality to help win business. More ominously, more than one quarter of the respondents reported that they did not “trust their management to behave ethically.”

2. There was no improvement seen since the previous index released in 2008. When looking at changes on a country-by-country basis, no country has seen a change in its prior score from 2008. India’s score improved the most with an increase of 0.7, but it still remains near the bottom of the table.

3. The business integrity of a company is generally related to the perceived business integrity of its home country. An important first step in the fight against foreign bribery is that the home country government “must have an effective anti-corruption system in place. Home governments must set an example to companies by prohibiting corruption within the public sector and upholding high standards of integrity with no impunity.” In order to change the behavior of companies, one of the things needed is a strong legal framework in their home country making such conduct illegal.

4. Companies from China and Russia were perceived as the most likely to pay bribes. TI has particular concerns with the reported findings regarding Russia and China as both of their economies have grown rapidly over the past decade. This gives their actions wide implications beyond their domestic economies. Further bribery and corruption by companies from Russia and China “are likely to have a substantial impact on the societies in which they operate and on the ability” or other companies to compete fairly in those countries.

5. While the payment of bribes is prevalent across all business sectors it is perceived to be the most prevalent in the public works and construction sectors. TI notes that the public works and construction sectors are usually involved in high-value investment and significant government interaction and regulation, “both of which provide opportunities and incentives for corruption.” Further, the public works and construction sectors are also “particularly important from a development perspective, as they require decisions to be made with respect to the use and ownership of a country’s core resources and infrastructure.” This means that the public works and construction sectors will have significant consequences for the well-being of future generations of the countries in which they are involved. With bribery seen as widespread in public works and construction sectors, “countries working with foreign companies should be conscious of bribe paying and not tolerate unethical practices.”

The Index ended with recommendations for both companies and governments. While I found some of the recommendations for both groups unrealistic, I do believe that several are realistic and can be reached so that a company can remain competitive.

For companies, such recommendations include:

- Bribery and corruption risks must be assessed across companies’ entire supply chains;
- Companies should undertake due diligence, as appropriate, in evaluating prospective contractors and suppliers to ensure that they have effective anti-bribery programs;
- Companies should make known their anti-bribery policies to contractors and suppliers and contractually require equivalent standards”; and finally

- Companies should empower whistleblowers who experience or witness bribery and corruption through an effective and, if appropriate, anonymous whistleblower mechanism.

For governments, such recommendations include:

- Strengthening of national anti-bribery and anti-corruption legislation, including the banning of all facilitation payments; and
- Making illegal private sector bribery.

I found the TI Index report to be quite enlightening and useful. It will help inform the compliance practitioner on both the underlying legal basis of many international anti-bribery and anti-corruption initiatives and provide concrete steps to build or enhance a compliance program around. Its larger role may be to inform government regulators on companies from countries listed in the Index or market sectors which may be more prone to bribery and corruption. For laws which are both supply and consumer side based, such as the UK Bribery Act, it may point regulators to companies and sectors which may well bear scrutiny for companies over which they hold jurisdiction.

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