

“Why Bribe?”

Anti-corruption is a critical issue for today's businesses after the recent fraudulent corporate scandals. Despite all the cultural differences and interpretations across the globe, attitudes of condemnation towards bribery and corruption are remarkably similar around the world. Why then is bribery still so pervasive in some cultures?

A market exchange, a gift or a bribe?

Generally speaking, a business person pursuing a business deal is mainly interested in a commercial transaction and profit accumulation, whereas a gift exchange remains *hors-de-prix* and corresponds to a quite different logic of social and personal recognition. In short, market and gift exchanges significantly differ. A gift usually bans any form of commercial realm.

Nevertheless, gifts are an everyday activity in most communities, especially more traditional ones. These gift exchanges can be considered the glue of social relationships and are increasingly symbolic expressions of interpersonal and social relationships. Gifts constitute a community, a society in which *com-munia* – the Latin word *munia* can be translated as gifts – are shared and exchanged. Gifts-giving and gifts-given subordinate instrumental interests to the creation of social alliances.

Where loyalty still plays an important social role, such traditional societies or closed business networks are logically more prone to favor corruption as a way to express their personal acknowledgement than rule based contractual relationships. Loyalty, friendship, kinship and personal obligations are considered far more relevant and valuable in those cultures than distinct codified responsibilities. Gifts are proper rewards for assistance and services rendered in traditional societies. Taking advantage of this thinking, high-level officials have no qualms about making the system work to their benefit. They will use strong networks and a web of patronage to guarantee loyalty from their subordinates. Instead of a system of meritocracy, it is a loyalty to and trust in family, friends and superiors that are the hallmarks of such personalized communities.

At the point of manipulating social relationships, a gift may turn into a bribe. The inherent temptation to sell something which is forbidden provides an indication of the roots of bribery. The commoditization of a gift transforms a relationship based on respect and commitment into one which can be negotiated and priced. Most gifts are given openly while bribes are almost never disclosed and remain hidden without witnesses. Often, bribery is defined as ‘the abuse of public power for private benefit’. A gift becomes a bribe when public office turns into private gain in the darkness of discretion. Bribery is nothing but the temptation and attempt by officials to sell what is not sellable. It is always dressed up as some kind of market or bribery exchange. Indeed, bribery usually aims to be perceived as an alleged gift or alternatively needs to be hidden to avoid detection. Business people bribe public officials or other executives to obtain a favor or to avoid a

cost. Bribes are driven by selfishness while avoiding any form of accountability, sometimes pushed by the presumed need to survive and often stimulated by mere greed.

However, to suit one's convenience, it is pure hypocrisy to use pseudo-traditional gift rituals to justify illicit exchanges. Unfortunately, the phenomenon of bribery is not marginal anymore, but has flooded some societies with such ferocity that it endangers the tissues of the community and economic mechanisms. Whoever has power and money – usually interlinked – can buy what appears not to be sellable, even relationships and social recognition. Such corrupt practices cause reputation risks and have proven to be inefficient in the longer term. Surveys show that the more managers spend time to “convince” officials, the less (cost) efficient those companies are. Moreover, there is enough global consensus that corruption and bribery generate considerable inefficiencies and inequalities in organizations and institutions, negatively affecting overall performances and undermining a good reputation.

People are quite creative in disguising the real character of the illegal and often immoral bribe exchange through a variety of euphemisms. When I recently arrived at the Jakarta International airport, I was asked for some “*uang meroko*”, some money for a cigarette, in return to get my eligible business visa stamp on my passport. Apparently, immigration officials are extremely well trained to detect a special sign in your passport for having “given a fee” on a previous trip to entry or exit the country. The immigration officer was expecting a one hundred thousand Rupiah note - corresponding to eleven US dollar - folded into the passport, which would have done the trick. But being aware of the danger to be in for a roller coaster the next time once one has “given” and knowing that I still had a “virgin passport”, I gently and politely dared to decline the request “to give this time” and got through anyway. On another occasion, I was told by the director of Unilever in South East Asia that Unilever duly paid its yearly corporate taxes, worth almost 0.60% of the total tax revenues in Indonesia. Unilever did not give in to tax officials' pressure to “share the potential negotiable gain”. It used its commercial and financial power to resist corruption and subsequently enhanced its corporate reputation. Smaller businessmen and corporations may not be in such a powerful corporate position to show prowess against the bullying of corrupt officials.

Bribes, grease money or extortion?

To what extent does bribery differ from extortion? Bribery implies an assumed (illegal) agreement, whereas extortion is forced upon the victim. Extortion occurs when an official demands payment or a gift for services rendered in the course of his duty. Extortion could therefore be defined as the act of threatening harm to another in order to obtain benefits to which one has no prior (legal or even moral) rights whatsoever. Giving in to extortion could be excused on legal and moral grounds under certain circumstances whereas offering or accepting a bribe can hardly be condoned on any legal or moral basis.

In practice, it is hard to distinguish a bribe from extortion. Trying to release imported containers in Jakarta will require some serious juggling with custom officials. Most likely, the foreign or even local businessman will be extorted a considerable expediting fee to free his goods from the Batavia harbor. Facilitation or grease payments, involuntary in nature, may be viewed as a sort of extortion payment rather than bribery. Not completely surprising, such smaller facilitation payments to “guarantee” and grease administration functions are exempted from the American Foreign Corruption Practices Act (FCPA) and OECD anti-bribery conventions, and thus, legally permissible. That does not ethically justify those grease payments.

How to reduce bribery?

Essential for a well-functioning market system is the equality of treatment and equality of chances to all participants: hence, keeping each other at “arm’s length” to secure a safe appropriate and legal distance. Bribery undermines this principle of equality by allowing some favored ones to stand ahead of others and not be treated alike.

How to curb bribery? The fight against destructive bribery is, indeed, intimately linked with the reform of the state. Developing strong institutions is a crucial factor in controlling bribery. If the development of such institutions were to be compromised, unethical behavior would be expected. Unless the media discloses corrupt behavior and unless the courts are impartial and independent in dealing with corruption to ensure that graft does not pay in the long run, the incentives and temptations to convert (public) power to personal gain would grow unchecked. Hence, setting up disclosure mechanisms will encourage a basic culture of justice. The *monopoly* power of a public official or any powerful agent will need to be kept in check and or to be reduced. In addition, any exchange should definitely be made *accountable* by clear codes of conduct which can be sanctioned in case of trespassing. Finally, it is imperative to institutionalize accountability mechanisms at different levels of government and limit *discretion* by more openness and disclosure of their activities to counter the secrecy of bribery.

Assume three main potential deterrents that potentially could curb bribery: (1) legal sanctions likely tempering potential misbehavior, (2) moral virtues and social norms prohibiting unethical behavior, and finally (3) the fear of losing one’s good reputation.

Since bribery is conceptually closer to a pure economic exchange than to a gift exchange, one might do well to apply the rules of accountability and transparency of a legitimate commercial exchange. Free-riding bribery can be curtailed by the same *rules and sanctions* as those applicable to a commercial exchange. A competitive market system is driven by individuals who are accountable for their actions under the transparency of impartial rules of law. Therefore, it would be more beneficial if respectful businessmen and public leaders were to make serious attempts to move away from such poisonous “gifts” and were accountable for gifts given and received. Appropriate and strict implementation of the existing laws would definitely deter potential corruptors. Moreover, the last couple of years, quite a number of companies have

internally established rules of conduct and codes of conduct. Corporate executives are legally bound to comply with these internal company rules and regulations. There is a growing trend in corporations to have specific managers in charge – “CEOs” or chief ethics officers - to watch over the compliance of legally and morally acceptable corporate behavior. In less sophisticated environments, the chances to be caught red-handed by law enforcers, prosecuted and legally punished in court are unfortunately rather limited.

Secondly, we can assume that *social rules* and *moral virtues* aim at preventing socially improper and immoral behavior. Moral guilt and shame are possible deterrents which may temper or even prohibit such unwanted behavior. A virtuous person who has internalized specific social rules and or moral values may resist the temptation to give or receive bribes.

Transparency of rules and the implementation of laws on the one hand and good virtuous leadership serving as an example on the other hand may be part of a socio-economic policy to reduce bribery. Efficient and transparent management of public resources would not only foster accountability and socio-economic efficiency but also build trust and confidence in the responsiveness of government structures. Officials should be trustworthy and virtuous agents of the state, not ‘trustworthy’ friends of relations, whereas the business people should become trustworthy and accountable for their actions. Reality shows us that business people in most nations, especially developing countries, are not without morals and ethics, but they have a very real business necessity to make ends meet. So when corrupt public officials or multinationals in the supply chain press business professionals, corners are often cut to meet these demands, which quite often implies some form of bribery.

Notwithstanding the importance of institutional sanctions and the daily application of social norms and moral values, it is especially the fear of losing one’s own ‘*good reputation*’ that ultimately may deter the asocial and immoral act of bribery. Out of self-interest!

Why not to bribe?

Recent surveys show that trust in the integrity of business leaders has been dramatically eroded over the last couple of years. The age-old respect for leaders in business or public life has been tainted by the numerous recent corporate scandals across the globe. Their corporate reputation has nosedived. As a result, politicians and lawmakers are demanding more stringent reporting and control mechanisms in an attempt to restore the *reputation* of the corporate world. Bad corporate reputation hurts. People are expecting solid financial results from business, yet they are also expecting that attaining these healthy financial returns can only be through fair play and socially responsible conduct. Hence, creating a *good reputation* is about creating certain soft capital and generating value for the firm. A socio-economic reputation is built by demonstrating integrity as in the commitment to socio-economic principles and environmental values, beyond targeted public relations exercises and tactic motives. Someone with high integrity not only has discerned about what is ethically acceptable, but will also act in a relatively consistent ethical

manner even under adversity. Integrity creates goodwill and ultimately enhances the reputation of the organization. When an organization can convince its key constituencies that its products and services not only match but exceed those increasingly more demanding socio-economic expectations, the organization has created reputational capital which will enhance its financial performance. Johnson & Johnson's recent payoff admission that foreign subsidiaries may have made improper bribery payments related to the sale of medical devices overseas lead to the dismissal and early retirement of its responsible executives. The subsidiaries' actions broke J&J's corporate visionary and ethical policies and fell within the jurisdiction of the FCPA, which bars publicly traded companies from bribery officials in order to obtain or retain business. Because of J&J's excellent (ethical) reputation, its shares hardly fell on the NYSE. Its formidable reputation functioned as an insurance policy and prevented a drastic decline in confidence. Its integrity and firm ethical values functioned like an immune system neutralizing harmful viruses.

Regulations such as the Sarbanes Oxley Act (SOA) - applicable to all US listed companies - and the International Accounting Standards (IAS) principles – from which some are turned into specific legal rules under American influence – are obvious legalistic reactions to the endemic danger of risk inflation and unethical mismanagement. Although those regulations may reduce some risk and may increase some control - at an enormous operational cost for many companies – they do not specifically address reputation risk. The US listed ING holding for Real Estate Management for instance spent more than € 130 million last year to merely comply with both SOA and IFRS (International Financial Reporting Standards, based on IAS). However, its Dutch CFO was not convinced that mere compliance with more strict rules and regulations will make top executives more ethically responsible.

Sure, business people care about their *reputation*. They may become more legally accountable in order to avoid severe corporate and often personal legal liabilities. But at the highest management level, there exists enough ingenuity and creativity to find loopholes in the letter of the law, deliberately amending the spirit of the law. As long as pure short term profitability and related bonus maximization are the critical success factors by which those corporate executives are judged, businessmen are not expected to become examples of moral integrity. Profitability has often been manipulated to achieve these expected results. We all know of performance-driven executives who have unwittingly encouraged and endorsed behavior that inflicted major and sometimes irreversible reputational damage on their firms.

Nevertheless, everyone has the fiduciary and moral duty to preserve and safeguard the integrity and confidence in the institution or organization for which one works, either public or private. A growing number of risk-averse corporations realize that investing in an anti-corruption culture can help to avoid the unpleasant after effects of a lost “good reputation”. The belief in moral values, adding considerable tangible and intangible value to an organization, goes beyond mere compliance. And while many governments and its public officials continue to drag their feet,

a growing number of companies are rising to the challenge, as they become aware that reputation does affect the bottom line.

Peter Verhezen
peter@verhezen.net
February 28, 2007