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CORRUPTION SCHEMES REVEALED: ANALYSIS OF FCPA CASES

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A mia madre,
da sempre e per sempre.

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INTRODUCTION

Corruption, which is generally defined as "the abuse of public power for personal gain or for the benefit of a group to which one owes allegiance" (Dye and Stapenhurst, 1998), is a global widespread phenomenon that has a major impact on economic activities, since it arguably drives the cost of doing business up by more than 10%, and the society as a whole.
In order to understand the magnitude of this issue, it is worth mentioning that the World Economic Forum estimates that the cost of corruption is close to US$3.6 trillion, which is equivalent to more than 5% of global GDP. Therefore, corruption is a serious problem that affects both developing and developed countries, where institutions are weak and the market is not functioning properly.

It involves several schemes, ranging from invoice kickbacks to bid rigging, which ultimately allow to conceal the malfeasance. Based on that, it is crystal clear how accounting may turn out to be misused and therefore foster corrupt acts. However, the literature shows that there are many red flags one should take into account which could point to bribery and are indeed related to accounting. In consistency with the latter stance on the role of accounting in curbing this global scourge, the literature provides evidence for how accounting practices help detect dishonest behaviour.

In order to tackle the issue of corruption and possibly take action against it, having a clear idea of the methods used to cover it up is extremely important. Thus, "what are the most recurring ways companies use while engaging in corruption schemes?" is the main question my work is going to address. Nevertheless, corruption typically occurs in secret and comprehends deception, so measuring and studying it is quite challenging. In particular, my thesis aims at dealing with it by analyzing the Securities and Exchange Commission (SEC) enforcement actions in accordance with the Foreign Corrupt Practices Act of 1977 (FCPA), due to a lack of a similar recent inquiry. Firstly, the choice of FCPA cases relies on the fact that the FCPA itself is considered to be one of the most prominent examples of anti-bribery legislation, along with the UK Bribery Act of 2010. Secondly, the research is based on corruption perpetrated by corporations, leaving out enforcement actions against individuals. Thirdly, considering that the FCPA prohibits businesses from bribing foreign officials, the conclusions will likely be more comprehensive and stand on more solid ground in an international setting.

In this regard, my thesis is structured as follows. Chapter 1 explores the concept of corruption, its causes and consequences. Chapter 2 investigates the role of intermediaries in the corruption network and the importance of red flags, which trigger thorough controls, with respect to the literature on these topics. Chapter 3 focuses on the FCPA, with an examination of its anti-bribery provisions, which make it unlawful for individuals and businesses to bribe foreign government officials with the intention of obtaining or retaining business, and its accounting provisions, which require that issuers keep accurate books and records and adopt adequate internal controls. Chapter 4 includes an in-depth investigation of the FCPA cases with the purpose of drawing conclusions and answering the aforementioned research question.

CHAPTER 1: THE PHENOMENON OF CORRUPTION

In the international stage, corruption has been getting more and more attention since the late 1980s. In particular, following consultations by a Working Group on Illicit Payments in 1989 and its final recommendations in 1994, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions entered into force in 1999 and have been adopted by 44 signatories (all 37 OECD countries plus Argentina, Brazil, Bulgaria, Costa Rica, Peru, Russia and South Africa). It is noteworthy that the OECD Anti-Bribery Convention is the first and only international, legally binding instrument focused exclusively on the supply of bribes by individuals or companies to foreign public officials. In its Preamble it expresses concern for the harmful effects of corruption, considered to be the underpinnings of the overall Convention, which in turn requires state parties to pass legislation that would make illegal any form of bribery of foreign public officials and apply sanctions against this crime (Bukovansky, 2006; OECD, 2014).

In addition, the United Nations, after a failed attempt to address this "insidious plague" (United Nations, 2004) before the General Assembly in the early 1970s and the subsequent 1975 Resolution, called on member states to tackle corruption with a Resolution that would become an annual event starting in 1996. Only a few years later, in 2003, it adopted the United Nations Convention Against Corruption, entered into force in 2005, which is the only legally binding global anti-corruption initiative, and, as of 6 February 2020, includes 187 countries. Besides criminalizing the phenomenon itself, the UN Convention stresses the importance of preventive measures and international cooperation (Bukovansky, 2006).

In the wake of these major multilateral initiatives, some others were launched, such as the Council of Europe's Criminal Law Convention on Corruption in 1999 and the African Union Convention on Preventing and Combatting Corruption in 2003. Also, the European Parliament and the Council of the European Union adopted a breakthrough Directive (European Directive 2014/95/EU) requiring large companies to include anti-corruption information in their annual reports from 2018 onwards (Hassan and Giorgioni, 2019).
Finally, it should be recalled that in 2015 the United Nations adopted the Sustainable Development Goals as part of the 2030 Agenda for Sustainable Development, where Target 16.5 is "substantially reduce corruption and bribery in all their forms" (Andersson, 2018).

Chapter 1 will give a definition of corruption, investigate its causes (both at micro- and macro-level), describe its dominant forms, explain its major drawbacks, and finally it will examine which industries are more vulnerable to this crime.

Definition

Corruption is generally defined as "the abuse of public power for personal gain or for the benefit of a group to which one owes allegiance" (Dye and Stapenhurst, 1998). However, this definition does not take into account the private sector, which is marked by corrupt acts as well. Thus, it might make sense to expand the definition in harmony with the Asian Development Bank (cited in Krambia-Kapardis, 2016):

"Corruption involves behaviour on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed".

Similarly, Transparency International refers to corruption as the "abuse of entrusted power for private gain"[1].

Once grasped the meaning of corruption, there is an important distinction to make between petty corruption and grand corruption: the first one being "everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens", whereas the latter being any act of corruption committed by relevant institutions and high-level officials (Locatelli et al., 2017).

Moreover, there is a point to make, that is the distinction among:

- Procedural corruption, in which individuals engage for personal gain, often owing to a lack of formalized procedures within the organization;
- Schematic corruption, which is spread throughout the organization and so normalized, usually due to the institutional environment in which the company operates;
- Categorical corruption, which is frequently observed in multinational corporations, as a result of different institutional strength and cultural background in the specific country where a subsidiary is located (Aguilera and Vadera, 2008).

Causes of corruption

Identifying solutions to a problem requires knowing its root causes. In fact, only through analysing the causes of the problem, appropriate interventions will be carried out. Therefore, this paragraph will explore both macro-level factors and micro-level factors that determine whether corruption is high or low in a country and it will explain why individuals or entities are motivated to bribe.

[1] See: https://www.transparency.org/en/what-is-corruption

Macro-level

Transparency International, which is deemed to be the most active non-governmental player in promoting accountability and monitoring corruption worldwide, annually publishes a ranking of countries in terms of the level of corruption perceived by managers, public officials and civil society, known as the 'Corruption Perceptions Index', using data gathered by independent and reputable institutions, for instance the World Bank. In its latest report, it scores 180 countries and assesses the impact of corruption from 100 (very clean) to 0 (highly corrupt) and, according to the peculiar level of corruption countries share, there are several common characteristics to point out.

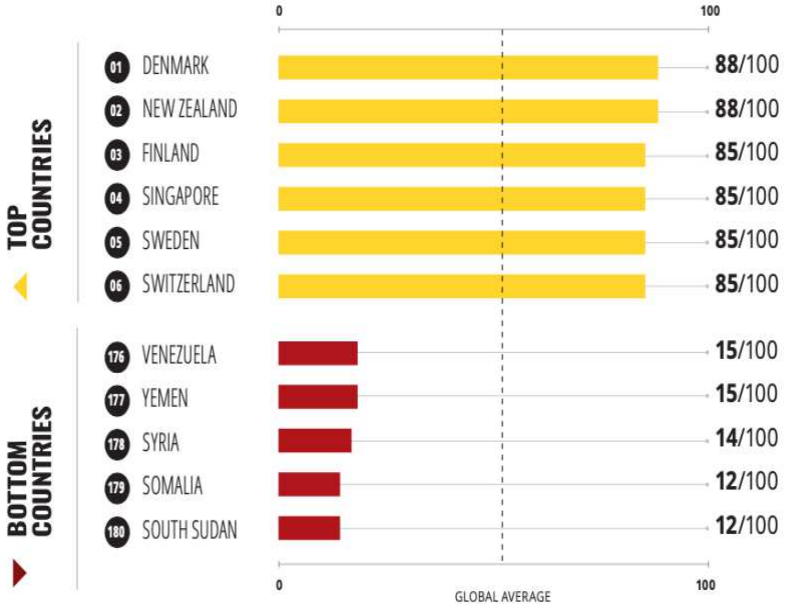

Figure 1. *Top countries and bottom countries in terms of CPI.*
Source: Transparency International, 2021.

Figure 1 suggests that the most corrupt countries are those countries characterized by low-income levels and by weak economic and political institutions, given that they significantly limit competition (Svensson, 2005).

Developing this concept further, Beets (2005) analyses the reasons why some public officials accept or even demand bribes and finds five main explanations.

First of all, public officials may not be constrained from accepting bribes, that is preventive and enforcement measures are too weak. This, in turn, could be due to insufficient financial resources allocated to eradicate corruption and due to the fact that developing countries usually

have a feudal and paternalistic type of society. In other words, corruption perception is lower in those countries that have:

- a constitutional monarchy or a republic form of government;
- been independent for a relatively long time;
- not had recent changes in their constitution;
- relatively large government expenditures; and
- successfully fostered and consistently protected political rights and civil liberties.

Next, poverty plays a crucial role, since government officials may not receive an adequate salary with respect to the cost of living and so may be motivated to engage in corruption. Overall, corruption perception is lower in those countries that have:

- a larger GNP;
- a smaller consumer price index;
- lower inflation;
- more imports and exports;
- a lower unemployment rate;
- more available food, higher quality food; and
- more electricity and petroleum.

Then, geography may be related to the level of corruption as well. Firstly, tropical agriculture is characterized by weak soils and high soil erosion, which result in low food production. Secondly, diseases spread more frequently in tropical areas and are often transmitted to human beings. Thirdly, most of the world's population have been living in temperate areas for centuries contributing to enhancing living standards. Consequently, corruption perception is lower in those countries that:

- have cooler climates;
- are further north; and
- are located relatively far from the equator.

Finally, cultural value systems could either tolerate or fiercely condemn bribery, depending on countries. In brief, corruption perception is lower in those countries that have a population that tend to:

- be relatively urban;
- have relatively large percentages of citizens aged 15-64;
- have relatively more citizens either employed or seeking employment;
- have smaller households;
- have lower fertility rates;

- have relatively long life expectancies;
- have relatively small percentages of national consumption attributable to the wealthiest citizens; and
- donate economic aid to other countries.

Likewise, following Herzfeld and Weiss 2003 (cited in Krambia-Kapardis, 2016), richness of natural resources, for example oil and gas, is another factor to regard as relevant, because extractive industries are extremely prone to corruption and search everywhere for valuable resources to exploit. Additionally, as per Tanzi 1998 (cited in Krambia-Kapardis, 2016), decentralization increases corruption, in view of the fact that it could exacerbate incentives for local bureaucrats. Conversely, Changwony and Paterson (2019) assert that, if the information role of accounting is strong enough, the implementation of monitoring mechanisms could prove effective in increasing public officials' accountability and so decreasing corruption. Furthermore, plurality of political parties and press freedom are associated to low levels of corruption. Also, penalty systems, institutional controls and the leadership's behaviour affect the level of corruption of a country.

In conclusion, there are several factors that could possibly explain why corruption tends to be high in one country whereas low in another one. Some of them concern institutions, government policies, inadequate controls and sanctions, an undeveloped society, low wages of government agents, and a general lack of transparency (Reichborn-Kjennerud et al., 2019).

Micro-level

It is important to narrow the focus of the sample, namely from society as a whole to individuals, in order to lay the building blocks for understanding the substantial motives governing human behaviour and, possibly, having a larger picture of the dynamics of a corruption network, which will be discussed in Chapter 2.

Klitgaard 1996 (cited in Dye and Stapenhurst, 1998; Martinez-Vazquez, Boex and Arze del Granado, 2007) argues that corruption is positively correlated to the extent of monopoly power of public officials and to financial discretion and negatively correlated to accountability. More precisely, monopoly power tends to be large in highly regulated economies. Discretion is substantially larger in developing nations than in developed ones and depends on the effectiveness of anti-corruption monitoring and punishment, so where controls are in place the potential gain from bribes is lower. The degree of accountability relies on preventive and

detective controls. As a result, in order to constrain corruption, policies should reduce an official's monopoly power with a market-oriented approach, discretionary power by means of administrative reforms and they should increase accountability by promoting the role of watchdog agencies.

In short, a person or an entity would engage in bribery if they have discretionary power, they could eventually obtain some economic benefits by exercising their power and they perceive a low probability of detection by the judicial system (Malagueño et al., 2010).

In accordance with Gorsira, Denkers and Huisman (2018), there are three types of theories to take into consideration:

- Social theories, which state that an individual's moral conduct is tied both to their own personal beliefs and convictions about the negative consequences stemming from their illegal acts and to the perception of the way other people act.
- Criminological theories, which highlight the concept of opportunity to engage in criminal acts, along with the motivation to do so (i.e. social theories), so that individuals could think they would be able to really behave that way.
- Economic theories, which underline the role played by incentives, made up of (perceived) costs, like the probability of detection and the severity of punishments that could be inflicted, and (perceived) benefits, such as expected profits from bribes.

Going into details, people act in a certain way due to the fact that they egoistically want to obtain some sort of gains, they want to maximize the organization's profits (given that they feel a strong sense of attachment to the organization), or they want to benefit the sub-group they work for within the organization. Speaking of opportunity, it may derive from the way an industry is structured, the way laws are enacted, or organizational culture, that is if corruption is not only accepted, but also embedded in the organization. As for organizational culture, Liu (2016) analyses a large sample of publicly traded U.S. companies and finds that a one standard deviation increase in a company's corruption culture is associated to an increase in the likelihood of the firm's misconduct by 2-7%.

As reported by the OECD (2014), using data from enforcement actions against 263 individuals and 164 entities between 1999 (when the OECD Anti-Bribery Convention entered into force) and 2014, entities or individuals would engage in corruption practices in order to obtain public procurement contracts for 57% of total cases, carry out the customs clearance procedure for 12% of total cases, get preferential treatment for 7% of total cases, get access to confidential information for 4% of total cases.

Companies, in particular, bribe with the purpose of obtaining or retaining business (including, for example, access to licenses or other restricted goods), or maintaining high prices or a market for obsolete products (Sikka and Lehman, 2015, cited in Jeppesen, 2019).

After committing corruption, individuals need to find a way to legitimate their acts and may even reach the conclusion that their behaviour is perceived as business as usual (i.e. rationalization). Some of the tactics they implement include:

- Denial of responsibility, which emerges when they feel that they have no choice but to bribe, for example as a consequence of intense pressure from top management's expectations, financial straits, or the perception that their peers act analogously.
- Denial of injury, which comes from the fact that bribers claim that no one is harmed or there is no direct victim after they engage in such acts.
- Denial of victim, that is the actors believe that the violated party deserved whatever happened to them.
- Social weighting, consisting of either condemning the condemner (legislation is too vague, dated or not properly enforced), or selective comparison to other people arguing that others' behaviour is even worse.
- Appeal to higher loyalties, which regards the pretense that bribers attempt to realize something of greater value that may justify the crime.
- Balancing the ledger, which is about the actors asserting that they deserved to gain even more due to their significant effort put into their work (Aguilera and Vadera, 2008; Anand, Ashforth and Joshi, 2004).

To conclude, the combination of incentive, opportunity and rationalization is deemed to explain why individuals or corporations engage in corruption schemes.

Forms of corruption

Corruption can be broken down into four main classifications: bribery, illegal gratuities, economic extortion and conflicts of interest.

Bribery

Bribery is the most common form of corruption and is defined as the offering, promising, giving, receiving, or soliciting of anything of value to influence an official act. However, it is worth noting that many bribery schemes are orchestrated with the aim of influencing a business decision and therefore are referred to as commercial bribery schemes. In terms of the object of the exchange, besides cash there are many advantages, for instance free holidays, extravagant

gifts, employment, political and charitable contributions, inside information or the promise of a benefit in the future.
Most of scenarios, in particular, involve invoice kickbacks or bid-rigging schemes.

Kickback schemes are undisclosed payments made by vendors or vendor accomplices to employees who are in charge of approving purchases.
As shown in Figure 2, they usually involve the submission of overpriced or fictitious invoices for goods and services (overbilling schemes). In order for the whole process to go as smoothly as possible, the bribee certainly needs to have approval authority (i.e. ability to authorize purchases), otherwise they need that the supervisor is heedless, or they even decide to create false documentation.
A slush fund is often created, so that a sum of money that is set aside as a reserve and not accurately recorded can be used to pay for corrupt practices. Another way to circumvent accounting controls is to use a shell company, namely an entity without active business operations and many assets, especially in cases involving the purchase of services, since they are intangible and therefore it is difficult to detect unlawful aspects.
Furthermore, directing extra business to a briber may also result in an overbilling scheme. In fact, after bribing an employee of the purchasing company, a vendor does not have any more competitors to beat in the marketplace, so they ultimately end up raising prices with the aim to cover the payment of the bribe (Locatelli et al., 2017; Tackett, 2010; Wells, 2017).

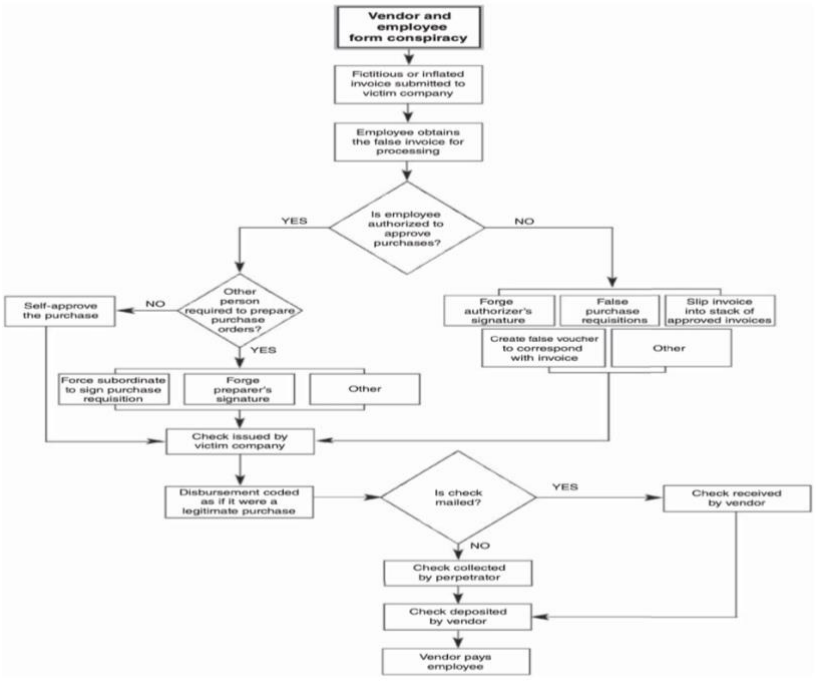

Figure 2. *Kickback schemes.*

Source: Wells, 2017.

Bid-rigging schemes are used to evade the competitive bidding process and can be classified on the basis of the stage of the bidding process itself. Fundamentally, competitors decide in advance who will submit the winning bid.

More specifically, in the pre-solicitation phase, a corrupt employee of the buyer can be paid to convince their employer that some goods or services are necessary when they are not actually. Another case is when the briber asks for tailoring of specifications, namely the requirements for winning the contract. Some of the methods used are: a) prequalification procedures that could leave out some competitors, b) deliberately writing down imprecise specifications, or c) paying for reading the specifications in advance.

Then, in the solicitation phase, bidders may agree to split up contracts so that each one of them gets a fair share of work (i.e. bid pooling). Alternatively, bids could be submitted by fictitious suppliers, so that competitors do not have any incentive to participate. Moreover, restricting the time for submitting bids is another strategy, since only the vendor is aware of the terms of the contract ahead of time. Also, the bribee may decide to solicit bids in obscure publications.

Finally, in the submission phase, the vendor could pay an employee of the purchaser for ensuring the receipt of a late bid or postponing the bid opening date (Tackett, 2010; United Nations Global Compact, 2013; Wells, 2017).

Figure 3. *Bid-rigging schemes.*

Source: Wells, 2017.

Illegal gratuities

Illegal gratuities differ from bribery due to the fact that something of value is given with the purpose of rewarding a decision made by a public official that has presumably favored the giver (Wells, 2010).

Economic extortion

Economic extortion involves a party demanding an up-front payment from another in exchange for a favor and usually leads to some harm if the deal does not go through (Wells, 2010).

Undisclosed conflicts of interest

Conflicts of interest arise when a person with a formal responsibility to serve the public takes part in an activity that irreversibly jeopardizes their judgement, independence and objectivity. This occurs when the person or entity has a conflicting interest and because of that they breach the duty (Locatelli et al., 2017; Wells, 2010).

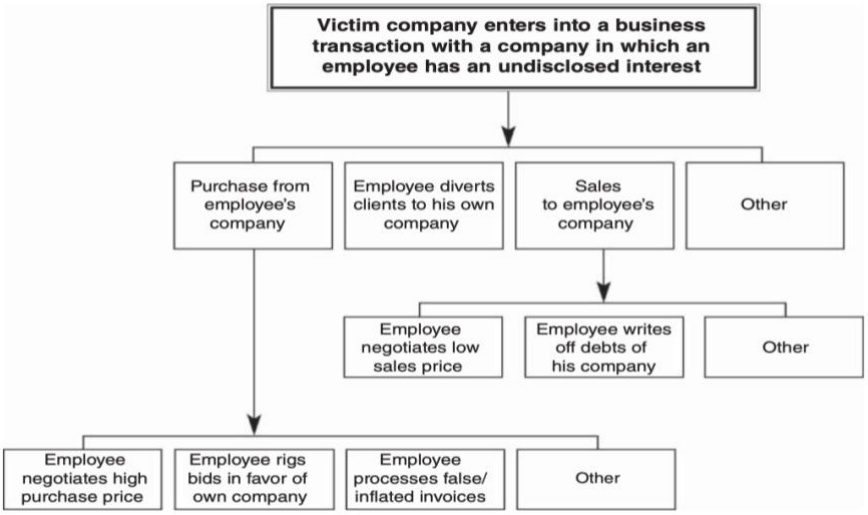

Figure 4. *Conflicts of interest.*

Source: Wells, 2017.

In addition, the United Nations Global Compact (2013) look on revolving door and patronage as forms of corruption.

As for revolving door, it is the "movement of high-level employees from public sector jobs to private sector jobs and vice versa". This movement could indeed undermine the public official's impartiality.

As for patronage, it is described as "favoritism in which a person is selected, regardless of qualifications, merit, or entitlement, for a job or benefit because of affiliations or connections". The latter one is typically known as a political type of corruption and can be further classified into: nepotism (with respect to persons favoring relatives), clientelism (with respect to persons favoring individual clients) and favoritism (with respect to persons favoring certain social groups).

Consequences of corruption

Corruption is regarded as a crime that has an enormous negative impact on society and economics, as mentioned in the introduction to this thesis.

It contributes to increasing inequality, exacerbating poverty, and hinders developing countries in their efforts to become more industrialized, due to the fact that well-positioned officials take advantage of their activities at the cost of the rest of the population. In short, it holds back political and economic development (Everett, Neu and Rahaman, 2007; Krambia-Kapardis, 2016; Locatelli et al., 2017).

Going further, Mauro 1995 (cited in Locatelli et al., 2017) asserts that corruption is negatively correlated with the investment rate, hence with economic growth. Speaking of growth, Mo 2001 (cited in Locatelli et al., 2017) finds that a 1% increase in the level of corruption leads to a 0.72% reduction in the growth rate.

Since this thesis is primarily focused on the public sector, with bribe payments directed to foreign public officials, it may be relevant to dig into it.
When corruption exists, its harmful effects kick in immediately and lead to a vicious circle. In fact, it decreases public revenue and increases public spending, and by diverting the share of spending on services such as education and healthcare into corrupt payments, it lowers income levels, educational attainment and therefore growth. Also, all of this contributes to fiscal deficits deteriorating progress.
Moreover, it undermines the role of government in enforcing contracts and protecting property rights, reduces the legitimacy of the market economy, creating corrupt monopolies, and of the government itself, which is not trusted any longer, influencing policy making and analogous decisions.
Considering that corruption is extremely high in public works contracts and construction, as it will be investigated in the forthcoming section, according to Tanzi and Davoodi 1998 (cited in

Locatelli et al., 2017), corruption is correlated with higher public expenditures to finance projects, lower public revenues, lower expenditures on operation maintenance and lower quality of infrastructure, which by the way means failure to meet safety standards. Furthermore, corruption impacts on project performance by means of delaying delivery times, opting for sub-optimal projects, and favoring inefficient firms because of their connections (Locatelli et al., 2017). It is worth pointing out that, as quantified by the OECD[2], public procurement accounts for 12% of GDP in OECD countries.

On the business side, Lambsdorff 2003 (cited in Locatelli et al., 2017) finds that a 1-point increase in the level of corruption on a scale from 0 (high corruption) to 10 (no corruption) decreases productivity by 2%. Also, especially small-sized companies are discouraged from expanding into new markets if they perceive that corruption is high over there. As a result, foreign investment significantly decreases in a high-corrupt country, given that corruption is treated as a tax. This of course translates into missed opportunities for those firms that do not engage in corruption schemes.
Additionally, corruption dislocates trade at the global level, owing also to the fact that it allows companies to illegally export resources (Everett, Neu and Rahaman, 2007; Hassan and Giorgioni, 2019; Krambia-Kapardis, 2016; Locatelli et al., 2017).

In brief, corruption has several harmful effects. Among them the most relevant ones concern the misallocation of resources, the creation of barriers to foreign direct investment and misleading public policy, which in turn hamper economic growth and development.

Industries

In 2011 Transparency International published its fifth (and latest) Bribe Payers Index, where it asked 3,000 business executives to rank countries (representing 80 per cent of the total world outflow of goods, services and investments) and industries according to their perception of the likelihood of firms from a certain country or business sector to bribe abroad.
The main finding is that bribery is perceived to be common across all sectors, with no sector scoring above 7.1 on a 10-point scale (where 10 means never corruption and 0 always corruption).

[2] See: https://www.oecd.org/gov/public-procurement/.

RANK	SECTOR	SCORE	NUMBER OF OBSERVATIONS	STANDARD DEVIATION	90% CONFIDENCE INTERVAL	
					LOWER BOUND	UPPER BOUND
1	Agriculture	7.1	270	2.6	6.8	7.4
1	Light manufacturing	7.1	652	2.4	7.0	7.3
3	Civilian aerospace	7.0	89	2.7	6.6	7.5
3	Information technology	7.0	677	2.5	6.8	7.1
5	Banking and finance	6.9	1409	2.7	6.8	7.0
5	Forestry	6.9	91	2.4	6.5	7.3
7	Consumer services	6.8	860	2.5	6.7	6.9
8	Telecommunications	6.7	529	2.6	6.5	6.9
8	Transportation and storage	6.7	717	2.6	6.5	6.9
10	Arms, defence and military	6.6	102	2.9	6.1	7.1
10	Fisheries	6.6	82	3.0	6.0	7.1
12	Heavy manufacturing	6.5	647	2.6	6.4	6.7
13	Pharmaceutical and healthcare	6.4	391	2.7	6.2	6.6
13	Power generation and transmission	6.4	303	2.8	6.1	6.6
15	Mining	6.3	154	2.7	5.9	6.6
16	Oil and gas	6.2	328	2.8	6.0	6.5
17	Real estate, property, legal and business services	6.1	674	2.8	5.9	6.3
17	Utilities	6.1	400	2.9	5.9	6.3
19	Public works contracts and construction	5.3	576	2.7	5.1	5.5
	Average	6.6				

Figure 5. *Perceptions of foreign bribery by sector.*

Source: Transparency International, 2011.

Figure 5 illustrates that agriculture and light manufacturing are perceived to be the least bribery-prone sectors. Conversely, the public works contracts and construction is the worst one.

Taking into account the sectors of utilities, real estate, property, legal and business services, oil and gas, and mining, which are also perceived as being very corrupt, in addition to public works contracts and construction, it is worth underlining that these sectors are all characterised by large size in terms of investment expenditures and significant government involvement and regulation, both of which provide opportunities and incentives for corruption. Interestingly, with respect to the impact on society, the decisions made by extractive industries as well as construction companies tremendously affect the well-being of future generations.

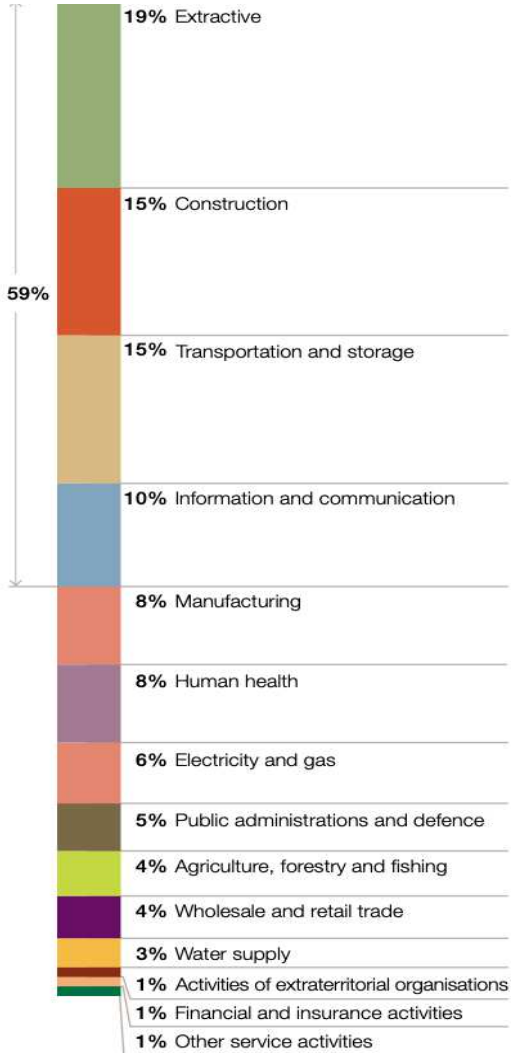

Figure 6. *Enforcement actions against foreign bribery by sector.*

Source: OECD, 2014.

On the other hand, the OECD (2014) findings (Figure 6) diverge from those data. In fact, bribery is observed mostly in the extractive sector (making up the 19% of total cases), construction (15%), transportation and storage (15%), and information and communication (10%).

Moreover, with respect to the disbursement of bribes as a percentage of the transaction value per sector, the report illustrates that the extractive sector together with the wholesale and retail trade sector and administrative service activities are characterized by the highest percentage, respectively 21%, 19% and 17%, contrasting with education and water supply, where bribes both amount to 2%.

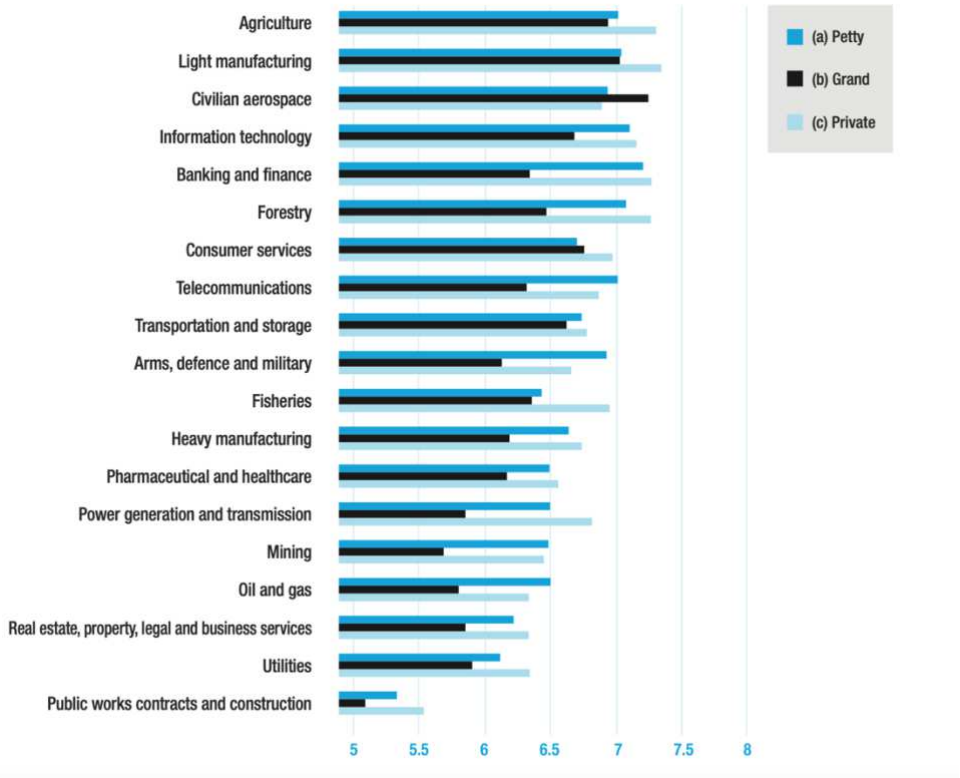

Figure 7. *Perceptions of foreign bribery by type of corruption.*
Source: Transparency International, 2011.

From Figure 7 it follows that the most common type of corruption (in 17 sectors of the 19 surveyed) is perceived to be grand corruption, meaning that firms pay bribes to influence high-ranking politicians over policy, regulatory and/or legislative decisions. It should be stressed that the banking and finance sector, telecommunications, power generation and transmission, forestry, oil and gas, and mining stand out as the six sectors for which grand corruption is seen as noticeably more common than petty and private-to-private corruption. These sectors are characterized by the fact that large investments are required and there are many specific laws to abide by.

At the same time, improper contributions to low-level public officials, for example to speed up administrative processes or to obtain licenses, are perceived as almost as common as the ones to high-level public officials.

Talking about the public works and construction sector, which ranks last, there are some features that make project more or less vulnerable to corruption, as specified by Locatelli et al. (2017):

- Size: it is more feasible to hide bribes in large projects than in small projects.
- Uniqueness: analyzing costs for a project that is unique is much harder.

- Government involvement: public agents can use their arbitrary power.
- Number of contractual links: each one of them is an additional chance for engaging in corrupt acts; also, tracing of payments in such a fragmented industry is quite difficult.
- Project complexity: mismanagement often occurs when complexity is high.
- Lack of frequency of projects: firms may be even more willing to award a contract when a project is essential for their survival.
- Culture of secrecy: costs may not be disclosed.
- Entrenched national interests: public officials choose a national firm, even though this is not the most efficient one, claiming that they want to protect national interests.
- Lack of due diligence: it certainly provides an incentive to pay bribes.
- Integrity: corruption may be more or less tolerated differently among countries.

CHAPTER 2: INTERMEDIARIES AND RED FLAGS AS THE BUILDING BLOCKS OF CORRUPTION NETWORKS

Many corruption schemes take place over a certain period of time and are well-established practices meant to avoid detection. The literature makes reference to them as 'corruption networks', which originate from social interactions and accounting practices.
In particular, Neu et al. (2013) describe the features of how a corruption network comes into existence.
First of all, mastering accounting is a key factor, owing to the fact that it allows the "generation, circulation, and repatriation" of the illegal proceeds within the network.
Then, social interactions revolve around the accomplishment of those accounting transactions.
Finally, this mechanism becomes a pattern of how people or businesses interact with each other.
Put differently, for instance, social actors could record multiple accounting entities or several accounting transactions in order to increase expenses and hide the factual nature of the transactions. If many individuals or entities (typically through intermediaries) are involved, the whole process is of course facilitated and established, so that it is repeated again and again.

Bearing in mind the previous rationale, it gets clear why the present chapter will center around the role of intermediaries and the main ways accounting is used to conceal bribe payments.
More specifically, Chapter 2 will start off by speaking of intermediaries and finish off by dealing with red flags.

Intermediaries

Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions requires that:

> "Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business" (OECD, 2009a, p. 4).

Correspondingly, Article 16 of the United Nations Convention against Corruption stresses the role of intermediaries in corruption schemes as follows:

> "Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business" (UNODC, 2004, p. 17).

Thus, only from these two articles, anyone can see that globally there is huge concern about hiring an intermediary for business-related matters undertaken abroad.

Definition

Since there is no legal definition of an intermediary, it is useful to take into consideration the one provided by OECD (2009b, p. 5), for which an intermediary is described as "a person who is put in contact with or in between two or more trading parties. In the business context, an intermediary is usually understood to be a conduit for goods or services offered by a supplier to a consumer". In harmony with it, Spulber 1996 (cited in Drugov, Hamman and Serra, 2014, p. 79) defines an intermediary as "an economic agent that purchases from suppliers for resale to buyers or that helps buyers and sellers meet and transact".

The aforementioned definition includes "agents, sales representatives, consultants or consulting firms, suppliers, distributors, resellers, subcontractors, franchisees, joint venture partners, subsidiaries and other business partners including lawyers and accountants. Both natural and legal persons, such as consulting firms and joint ventures are included" (OECD, 2009b, p. 5).

Exploring some figures about the main types of intermediaries, it may be interesting to consider that, according to the OECD (2020), an intermediary was involved in 81% of the 115 enforcement actions between 2014 and 2018, with regard of the 44 countries making up the OECD Anti-Bribery Convention. It is worth comparing this finding with the similar data collected in the Foreign Bribery Report, where 75% of total cases between 1999 and 2014 involved an intermediary.

In particular, in 41% of the 304 cases involving an intermediary, these intermediaries were agents (like "sales and marketing agents, distributors or brokers"). Another 35% of types of intermediaries used were corporate vehicles (like "subsidiary companies, local consulting firms, companies located in offshore financial centres or tax havens, or companies established under the beneficial ownership of the public official who received the bribes"). Then, in 6% of cases intermediaries were represented by lawyers, in 3% of cases by family members of the public official, in 2% of cases by associates, and finally in 1% of cases by accountants (OECD, 2014).

It appears that sponsors are frequently used to engage in bribery schemes in public procurement (OECD, 2009b).

Rationale behind hiring an intermediary

When a firm decides to enlarge its business and start operating in foreign countries, it may face a dilemma about whether to employ intermediaries or vertically integrate its units, when the latter is feasible. Many firms choose or are induced to go for the first option, which will be analyzed in this paragraph.

Hiring an intermediary is an accepted way of doing business and sometimes it represents a vital practice with respect to international flows of goods, services and investments. In brief, intermediaries are considered to be key facilitators in allowing transactions to occur among different countries.

There are undeniably several reasons for hiring an intermediary, either legitimate or not (or even a combination of both).

Speaking of the first ones, actual persons or legal entities decide to use persons acting on their behalf because of the intermediary's expertise and knowledge of a market, culture, obligations or procedures in a foreign country, therefore intermediaries are frequently called upon in those circumstances such as conducting market research, making a deal, offering legal advice, etc.
As a matter of fact, intermediaries significantly reduce negotiation costs (direct travel and personal expenses included) and most of all costs associated to moral hazard by a foreign counterpart in a transaction, which are definitely high when a person or legal entity expands their business into other countries.
For example, companies and individuals may decide to use intermediaries for the advantage consisting of time savings in licensing procedures. According to the World Bank Enterprise Surveys (World Bank, 2012, cited in Fredriksson, 2014), senior management spends 4.2% of its working week in handling government regulation requirements in high-income OECD member states and this percentage goes up to 9.8% with respect to the world average, with a peak of 12.7% in Latin America.
In addition to this, intermediaries may have good contacts with bureaucrats and may have experience in processing many requests simultaneously. Interestingly, in certain countries the employment and intervention of intermediaries is even mandatory for any sort of business transaction within the local market (OECD, 2007).

However, the use of intermediaries is mostly associated to foreign bribery, due to their influential position in a specific country or their good personal relations with public officials, and due to the fact that they eliminate uncertainty in terms of whom and how much to bribe and the execution of a transaction, and significantly reduce the risk of detection, as a consequence of their involvement in the foreign country and deep knowledge of its practices. As for the risk of detection, this is further lowered since a principal may distance themselves from the crime in the case when the bribery network is exposed, because they are not directly liable for the malfeasance. In general, the client expects the intermediary to hide the bribery act and behave as discreetly as possible, offering a sort of insurance against detection and conviction. This is enabled by the agency agreement itself, which aims at giving a plausible justification for the appointment of the intermediary, laying out the tasks the agent is expected to perform and the amount of the fee for the service rendered, and may even include integrity provisions that could eventually allow the actual briber to claim ignorance of any wrongdoing before a court (OECD, 2007).
Investigating the latter use of middlemen, Drugov, Hamman and Serra (2014) study how sponsors may contribute to more corruption. Following their analysis, intermediaries act as

experts in a market or a country and receive ‘fees’ or ‘commissions’ for regular services (rather than ‘bribes’), so they are perceived as professionals carrying out their duties rather than illegal activities, without exposing the briber behind the scheme. Most importantly, they may create some psychological distance between the actual person responsible for a corrupt activity and the corrupt activity itself, namely the client only indirectly engages in corruption.
Again, as mentioned in the previous paragraph, if the use of intermediaries is required by a foreign legislation, corruption may be seen as an ordinary practice and therefore institutionalized.

Modus operandi

The OECD Report on Typologies on the Role of Intermediaries in International Business Transactions (OECD, 2009b) delineates three basic bribery schemes with the presence of middlemen:

- Family members, friends and others who are somewhat affiliated to the public official are used to mask a bribery-tainted transaction and act as intermediaries. The company is aware of their identity and transfers the amount of the bribe (upon which it has agreed with the public official) to them by means of fake invoices. After that, these intermediaries pass the bribe on to the public official.
- Intermediaries not providing any identifiable service are often hired and appear to render a legitimate service. In this case, they charge firms by means of invoices for never rendered services and pass the monies on to the public official. Again, fake documentation (frequently with vague language such as ‘consulting fees’) constitutes a normal practice to hide these illegal transactions.
- Intermediaries providing a combination of legitimate and illegitimate goods and services, namely persons that actually offer some kind of service, but of an illegal nature. In this case, fake documentation is also used, but the total price of the contract is made up of a portion for the middleman. Certainly, the scope of work is either false or vastly exaggerated and the remuneration is disproportionately high.

More specifically, there are some adjustments to the three basic schemes illustrated by the OECD, as specified in the Report itself.
For instance, in many cases, many intermediaries are involved in order to better disguise the bribery scheme by making the series of financial flows impenetrable, or to bribe different public officials at the same time.

As stated above, bribes are usually routed via several bank accounts (through intermediaries) or invested into complex financial products before the recipient can have them.
Furthermore, slush funds (i.e. off-the-books accounts), opened in offshore financial centres with strict banking secrecy regulations or ineffective disclosure requirements, are commonly used in order to ensure secrecy. With regard to this aspect, lawyers take part in the scheme by setting up shell companies which are indeed conduits for illicit financial flows, and auditors are asked to issue an unqualified audit opinion granting the conformity to accounting principles (OECD, 2020).

Dealing with the involvement of intermediaries in a bribery network

Having grasped the role of intermediaries and their implications, it is evident that that making intermediation activities illegal could potentially remove one of the ways corruption is perpetrated (due to the fact that detection is facilitated and therefore moral costs for the bribe giver and bribe recipient soar) and decrease the level of corruption, at the cost of eliminating the benefits provided by intermediaries that do not engage in corruption. However, this would not necessarily eradicate corruption fully, as some intermediaries may exploit new methods for arranging criminal transactions, so what seems more effective consists in strictly regulating the role of intermediaries, for example by requiring intermediaries' registration as such and establishing higher standards of accountability and bookkeeping for their activities (Drugov, Hamman and Serra, 2014; Graf Lambsdorff, 2013).
Of course, it would be extremely helpful to hold principals accountable as well if a person acting on their behalf is convicted. Generally, national laws state that companies are liable if they "knew or should have known" that the behaviour of the intermediary was illegal. Depending on the severity and certainty of punishment, firms may decide to establish anti-corruption codes and compliance systems that could lead to identify some red flags and thus to internally investigate whether an intermediary had engaged in corrupt acts. Once ascertained the criminal conduct, firms usually cooperate with prosecutors in order to maintain a good reputation and have sanctions reduced (Graf Lambsdorff, 2013).
Anyway, as already mentioned, there are some controls to put in place and some red flags that could point to bribery. For example, intermediaries who:

- provide insufficient information;
- can promise sales because of right connections;
- are tied to a public official with whom the firm is negotiating;
- request very high fees in return for comparatively insignificant consulting services;
- work in a country characterized by a high level of corruption;

- have already breached anti-bribery laws (Hasker and Okten, 2008; OECD, 2009b).

To conclude, intermediaries are key actors in corruption networks, since they are often hired especially when companies need to interact with foreign public officials or have to deal with an intricate set of legislation in a foreign country. With respect to them, one should have in mind some specific indicators suggesting the likely existence of corruption in order to further look into the whole scheme, if any, and connect all the dots. To be specific, companies should implement due diligence procedures for employing intermediaries, from initial selection, appointment through a written contract, and remuneration to monitoring their activities during the execution of the contract.

Red flags

Detecting corruption schemes is extremely important. In fact, on one hand, it allows to condemn the actors involved and, on the other hand, it provides an insight into the practices carried out by those actors.

Owing to the fact that bribery is a complex issue to investigate and that very frequently transactions are kept off the books or difficult to gauge in terms of their value (especially when it comes to estimating the value of services), it may be useful to observe and collect information regarding the phenomenon from enforcement actions in order to be able to recognize it and try to curb it as well. Thus, this section will explore those early warning indicators (i.e. the so-called red flags) that could indicate the presence of corruption or that the risk of corruption is either higher than is generally tolerable or has increased over time.

First of all, it is worth noticing that red flags can be distinguished into four main categories, as specified by Kenny and Musatova (2010):

1. Unobservable red flags, which may not be identified in the course of ordinary supervision but may be discovered during the process of gathering evidence in the investigation of corruption cases or when there are only allegations of corruption. For instance:
    a. any kind of pressure on the bid evaluation committee;
    b. falsification of curriculum vitae, especially with respect to the person employed to offer consultant services;
    c. false information of the firm that was awarded or is very likely to be awarded government contracts in terms of financial resources and/or business certification;

    d. public officials or their family members or friends getting a financial interest or employment in a contractor or subcontractor.
2. Uncollectible red flags, which are difficult to assess using objective criteria and/or are hard to spot in the course of standard monitoring, even though most of these red flags are already observable during regular supervision. For instance:
    a. the publication of a contract notice in local, regional or even national journals with restricted circulation;
    b. requiring excessive previous experience compared to the what is needed for tendered goods, services or works;
    c. failure to promptly provide clarification when asked to do so;
    d. failure to guarantee secure storage of and limited access to bids submitted.
3. Potentially irrelevant red flags, which typically denote weak or bewildering reporting. For instance:
    a. not including the names of the bid evaluation committee members in the bid evaluation report;
    b. failure to show the ranking of quotations received.
4. Observable, collectible and relevant red flags, which should be explicitly listed in bid evaluation reports, as they are the result of an objective analysis, and can be easily expressed. For instance:
    a. number of submitted bids;
    b. ratio of actual bids to the number of firms that bought bidding documents;
    c. time between bid award and actual contract signing date;
    d. ratio of non-responsive bidders to total bidders;
    e. whether international companies submitted bids in the case of international competitive bidding contracts;
    f. difference between cost estimate and the winning bid;
    g. difference between contract award and final contract amount.

As the purpose of using the tool of red flags is to uncover corrupt activities, the focus of this section will be laid on observable and collectible red flags that could help achieve the aforementioned objective. In line with this consideration, Tackett (2010, p. 7) draws attention to some red flags and lists them:

- “abnormal prices for goods or services”;
- large payments split into several tranches;
- “employee’s addresses or phone numbers matching a vendor’s”;

- employee maintains a very close relationship with vendors or customers;
- buyers spending more money than they can afford to spend;
- repeated transactions with sellers that offer substandard products;
- very restrictive bid requirements;
- short amount of time for submitting bids;
- a late bidder is awarded a contract;
- clear pattern of rotation among bidders.

Moreover, the United Nations Global Compact (2013, p. 54) finds some other red flags, such as:

- "business in countries with a history of corruption";
- "excessive reliance on intermediaries";
- association between intermediaries and public officials;
- "payments to offshore banks";
- large charitable donations in foreign countries;
- extravagant gifts.

Red flags in organizations

The professionals in charge of detecting corruption are known to be auditors, both internal and external. The latter ones detect bribery schemes less often than the first ones, due to the fact that they mostly focus on materiality misstatements in books and records rather than on a bigger picture of a firm.

Nevertheless, sometimes evidence of corruption appears in a firm's financial statements, so following Jeppesen (2019), there are some recurring misstatements to analyze, both in the bribe-giver's organization and in the bribe-recipient's organization.

Going into detail, the bribe-giver's organization could make four major mistakes.

First of all, the briber may record the disbursement of the bribe as a commission, a consulting fee, or any sort of payment in exchange for an intangible service. Arguably, the reclassification of the bribe as a legal transaction and therefore accounted for in the books and records represents a classification error. In this case, financial auditors are very likely to detect the misstatement.

Yet, the briber is aware of the risk of detection and, as a consequence, keeps the transaction off the books by using slush funds, made up of the proceeds from undisclosed revenues or payments

of fictitious costs. Due to the secrecy of these transactions, financial auditors may not be able to detect slush funds.

Another type of error, especially with regard to nepotism, clientelism and favoritism (i.e. political corruption), concerns mainly the efficiency, effectiveness and overall performance of the organization, in view of the fact that some employees were hired because of their connections instead of their merit.

Also, in the case of political corruption, undisclosed transactions with related parties could be a signal of corruption, such as when a firm buys goods or services from a related party at a very high price (compared to market prices) or when sells goods to a related party at a very low price (in comparison with market prices).

Speaking of the bribe-recipient's organization, misstatements include excessive purchases of goods or services, purchases of goods and services at a very high price (compared to market prices) and purchases of goods of substandard quality. As for goods, examining inventory could help understand whether the price paid was way above the market price (because of too few goods recorded as inventory) or whether the items delivered were of substandard quality. As for services, it may useful to assess the amount of proceeds for services, whether fees were disbursed in cash to tax havens, or check whether competition among various vendors was really in place.

In particular, in public procurement, which will be discussed in details in the following paragraph, corruption may translate into economy issues, like budget overruns, too high expenses, the lack of a competitive bidding procedure, or increasing costs after the bidding procedure is concluded. Also, it may result in efficiency issues, like enormous idle capacity, very high maintenance expenses, or low quality of infrastructure. Finally, it may even result in effectiveness issues, like inexistence of measurable performance indicators, low quality of services provided.

In conclusion, financial auditors play a crucial role in determining what red flags they encounter and detect bribery in financial statements. When they evaluate the corruption risk to be quite high, they should go through all documents and contracts, check documentation with respect to the bidding process, review bank accounts for extraordinary transactions, trace payments from or to offshore companies, and ask intermediaries about their remuneration (Khalil, Saffar and Trabelsi, 2015).

Red flags in public procurement

Public procurement is one of the areas that are most prone to corruption, as highlighted in the previous chapter, due to its intrinsic properties and features, and the main area on which this dissertation is focused. From construction to healthcare and education, the public sector needs to purchase goods or services in order to make a country function properly, so it involves a considerable amount of financial resources and interests at stake.

It is therefore extremely important to identify some indicators that could reveal the presence of corruption in every stage of the overall process and involve bypassing competition.

As per Ferwerda, Deleanu and Unger (2017), when public agents decide to make a purchase, they may be tempted to look after their own interests rather than opting for a specific good or service based on a policy rationale or a particular need to satisfy. In this case, one should assess whether paralysis is observed in evaluating the tender supplier or whether there is any evidence for conflict of interest, such as public agents being shareholders of any of the bidding companies.

After that, when it comes to defining contract characteristics, public officials may design the tender essentially as to give an advantage to a bidder instead of meeting a particular need. In this stage, one should take into consideration, for instance, whether there are any elements that favor a special bidder over the others.

Later on, during the contracting process, public officials may restrict competition in such a way that proposals cannot be submitted as the legislation requires or only a contractor is selected among the many willing to provide a good or service. In this case, one should evaluate, for example, if the set of bidders has been considerably limited to exclude the bids from unwanted bidders on formal grounds, if the time span for submitting bids was long enough, if the size of the tender is remarkably large, if some bids were submitted after the deadline and not rejected, if some non-winning bidders filed a complaint against the bidding procedure, if firms colluded by means of a cartel in order to limit competition and get their own share of profit.

Once the contracting process has come to an end, the winning bidder is designated. In this case, the evaluation criteria adopted may not be transparent and explicit in tender documents, so one should appraise whether all bidders were aware of the contract award and its justification. In particular, it is worth noting that, if evaluation criteria are not related to price, contract awarding becomes undeniably subjective and so it is likely to favor the well-connected firm over the other tenderers. Another method used to disguise corruption is found in withdrawing and re-launching the same tender, principally when unwanted bidders couldn't be excluded from taking part in the submission phase.

Finally, when everything is done, renegotiations constitute a risk that could severely impact the substance of the contract and therefore the bidding procedure. Also, monitoring agencies may

be prevented from pointing out any significant change in the contract characteristics. In this phase, one should analyze any inconsistency in the contract itself, like items not mentioned in the bid requirements, any alteration in the scope of the project, or any change in the amount of estimated costs.

To summarize, red flags represent a good signal for potential phenomena of corruption and they can certainly be seen as first-line indicators shedding light on corruption schemes when it comes to inspecting contract awarding in public procurement. Having said that, even though some red flags are spotted, they may be due to the specificity of a particular business rather than due to the existence of corruption.

CHAPTER 3: THE FOREIGN CORRUPT PRACTICES ACT

The world has been highly interconnected since the middle of the last century, which has made US lawmakers aware of how widespread the phenomenon of corruption is, depending on many characteristics, previously described in Chapter 1.
Over time, American firms have realized that operating in other countries is a challenge in relation to adapting to various regulatory and enforcement environments, not to mention cultural aspects.
Having said that, the US government expects enterprises and individuals to abide by US laws, regulations and rules, not only while conducting their business inside the United States, but also while engaging in transactions overseas and still having to file information, documents or reports with the competent authority, and, as for enterprises, the US government expect them to try to bolster their internal accounting controls.

The Foreign Corrupt Practices Act of 1977 (FCPA) is recognized as the forerunner of modern anti-corruption laws and, more specifically, it addresses the plague of international corruption. More concretely, the FCPA makes it a federal crime to promise, offer, or make a bribe, either directly or indirectly, to a foreign government official with the intention of obtaining or retaining business or securing an improper business advantage. Furthermore, it requires American and non-American companies that trade securities on US stock exchanges to have accurate books and records, and to maintain an adequate system of internal financial and accounting controls.
Speaking of its structure, the Act is divided into two major parts, namely the one containing anti-bribery provisions, under which the Act was named, and the one related to accounting and internal controls provisions.

Chapter 3 will begin by giving an historical overview of the FCPA, with its two main amendments, occurred respectively in 1988 and in 1998. It will then explore the FCPA's anti-bribery provisions, explaining their meaning and implications. After that, it will move to the FCPA's accounting provisions, unfolding the books and records provisions and the internal controls provisions (including a list of the most recurring red flags associated with corruption), and clarifying the rationale behind them. Next, it will focus on enforcement authority (in relation both to the criminal enforcement and the civil one) and types of resolutions available to the US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), which share responsibility for enforcement of the FCPA. Finally, it will conclude with criminal

and civil penalties imposed for breaking the FCPA's anti-bribery provisions and accounting provisions.

The DOJ and the SEC published a Resource Guide to the Foreign Corrupt Practices Act in 2020, which will provide the basis for the present chapter, along with other sources.

History of the FCPA

The United States Congress enacted the FCPA in 1977, after revelations of widespread global corruption involving more than 400 US corporations that admitted to making questionable payments overseas, amounting to over $300 million. The underlying reasons for which US multinationals perpetrated this kind of crime were to procure or maintain business, deliberately avoid the payment of foreign taxes and/or influence or expedite ministerial matters at the lower levels of foreign governments.

It all started with the investigation by the Special Prosecutor into illegal domestic political campaign contributions connected with the Watergate scandal, in the early 1970s. In particular, the Special prosecutor found evidence of wrongdoing with respect to unreported donations to the Committee to Reelect the President: US firms had placed money into foreign banking institutions in order to do so (i.e. the so-called slush funds). The Securities and Exchange Commission (SEC) was instantly warned about the aforementioned illegal deposits and launched a voluntary disclosure program that even confirmed that many US companies had engaged in illegal practices in other countries.

Since then, the problem of corruption caught the attention of the press, which began to report corruption-related scandals nearly every day between 1975 and 1976. The US government was deeply concerned about what could seriously pose a threat to its integrity and authority and jeopardize its role as a world leader. Thus, in 1976, the US Senate Foreign Relations Committee, the Senate Banking, Housing and Urban Affairs Committee, the House International Relations Committee held several hearings that ultimately proved that many US individuals and businesses had bribed foreign government officials, which in turn paved the way for the FCPA.

In 1977, the Senate passed Bill S. 305, which laid out the scope of what would become the FCPA, namely anti-bribery and accounting provisions. Speaking of the first ones, US companies were prohibited from committing bribery overseas. As for the latter, companies were asked to keep accurate books and records and establish a system of internal controls and were discouraged from knowingly falsifying their books and records and from circumventing or failing to implement adequate internal controls (Vanasco, 1999).

Congress passed the Foreign Corrupt Practices Act Amendments of 1988 that added two affirmative defenses to charges of corruption:

- The local law defense, which means that a person charged with making illegal payments in another country under the FCPA of 1977 is allowed to claim that those payments were actually lawful under the foreign country's written laws and regulations. Since the written laws and regulations of countries do not usually tolerate corrupt transactions, the local law defense is rarely applied.
- The reasonable and bona fide promotional expense defense, which means that payments associated with identifiable business motivations (for example, travel expenses to visit a company's facilities or to attend a meeting) are deemed legal if they meet the criteria of reasonableness and bona fide expenses.

Ten years later, in 1998, the FCPA was amended again to conform to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. More specifically, the FCPA's scope was enlarged to "include payments made to secure any improper advantage", to reach anyone found guilty of paying bribes while in the United States, to consider "public international organizations in the definition of foreign official", and to "apply criminal penalties to foreign nationals" acting on behalf of US companies (United States Department of Justice and Securities and Exchange Commission, 2020, p. 3).

Anti-bribery provisions

As stated in the introduction to this chapter, the first section of the FCPA includes the anti-bribery provisions, which essentially make it unlawful to bribe a foreign official for business purposes.

In general, it may be useful to split what constitutes an FCPA bribery violation into its five defining elements, which will be developed later:

1. a regulated party, directly or indirectly,
2. makes an offer/payment/gift, promise to pay/give, or authorization of the payment of any money/of the giving of anything of value
3. to a foreign official
4. with a corrupt intent to influence any act or decision
5. in order to obtain or retain business.

First, the FCPA's anti-bribery provisions apply to persons and entities that are regulated parties, meaning that they are issuers, domestic concerns, anyone that is in the United States, or even

their delegates (United States Department of Justice and Securities and Exchange Commission, 2020).

More specifically, an issuer is a corporation that has issued securities in the United States or that is required to file periodic and other reports with the SEC. Said otherwise, the FCPA applies to companies that have "securities listed on a national securities exchange in the United States", or companies that have "securities quoted in the over-the-counter market in the United States" (United States Department of Justice and Securities and Exchange Commission, 2020, p. 9).

A domestic concern is:

> "any citizen, national or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization or sole proprietorship that has its principal place of business in the United States, or that is organized under the laws of a State of the United States or a territory, possession or commonwealth of the United States" (United States Department of Justice and Securities and Exchange Commission, 2020, p. 10).

A person is defined as an individual who is not comprised in the previous categories.

It may be interesting to highlight that the FCPA explicitly prohibits corrupt payments made through intermediaries and that the company hiring the third party may be held responsible for their crimes and therefore be subject to fines or penalties (United Nations Global Compact, 2013; US DOJ and SEC, 2020).

Second, the FCPA prohibits paying, offering, promising to pay or offer, or authorizing to pay or offer money or anything of value, such as extravagant gifts (i.e. different from tokens of esteem and gratitude, which are appropriate to provide), travel and entertainment expenditures, scholarship to a foreign official's relatives, charitable donations, and loans at favorable interest rates.

In this regard, it is worth pointing out that the FCPA excludes grease payments demanded by low-level officials for clerical work, mainly because of the lack of corrupt motive, the nature of the recipient's employment, and the absence of a business purpose. Facilitating payments are usually made to foreign officials only in furtherance of routine governmental action, such as processing papers, obtaining permits or licenses in order to allow a person to do business in a particular country, and providing phone service, power and water supply.

Third, the FCPA expressly prohibits only corrupt payments to a foreign official. This term broadly includes: "a) any foreign official; b) any foreign political party or official thereof; c) any candidate for foreign political office" (United States Department of Justice and Securities and Exchange Commission, 2020, p. 19).
Based on that, the FCPA applies both to low-ranking foreign officials and high-level foreign officials.

Fourth, the person promising, making or authorizing a payment must have a corrupt intent, which means that they are aimed at wrongfully influencing the bribee to misuse their official role.

Finally, the payment must be associated with a business advantage, consisting in obtaining business, retaining business, or directing business. The prohibition extends to payments to gain favorable tax or customs treatment as well (United States Department of Justice and Securities and Exchange Commission, 2020).

Accounting provisions

The second section of the FCPA contains accounting provisions with the purposes of strengthening the system of corporate accountability and encouraging transparency, considering especially that companies used to conceal bribes by falsifying their books and records.

It imposes two primary components: record-keeping provisions and internal controls provisions.
Under the first one, issuers must "make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer" (United States Department of Justice and Securities and Exchange Commission, 2020, p. 98), whereas under the latter, issuers must "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances" of management's control and authority over the company's assets (United States Department of Justice and Securities and Exchange Commission, 2020, p. 98).

The books and records provision requires that issuers must maintain strict accounting standards, record all transactions, keep receipts and other relevant documents, and adopt a set of record-keeping policies, in order to avoid to incur into three major forms of impropriety: failure to

record illegal transactions; falsification of records to disguise unlawful transactions; creation of records that are quantitatively correct but qualitatively incorrect. If a public company fails to disclose illicit payments in filings required by the securities laws, it can be prosecuted by the SEC, which, in any case, may order the disclosure of questionable payments, owing to the fact that investors have a right to be fully informed about all relevant facts in terms of the integrity of the officials dealing with their companies (Wells, 2017).

Following the analysis of the Criminal Division of the US DOJ and the Enforcement Division of the US SEC, bribes have been mischaracterized, for instance, as: "commissions or royalties, consulting fees, sales and marketing expenses, travel and entertainment expenses, rebates or discounts, after sales service fees, miscellaneous expenses, customs intervention payments, and intercompany accounts" (United States Department of Justice and Securities and Exchange Commission, 2020, p. 40).

Interestingly, under the FCPA, a conviction may even be secured for false accounting instead of foreign bribery. This means that, under the books and records provisions, it is not necessary to demonstrate that the entity or person under indictment is liable for a specific act of bribery, but establishing evidence that incorrect documents were created or provided is what is needed to apply the FCPA.

On the contrary, unlike the United States, many other countries are characterized by more stringent rules, according to which the prosecution is required to prove the illegal nature of every single activity before concluding that the accused engaged in corruption. Put differently, they have to show that falsifying books and records paved the way for a crime, like forgery of documents. Next, they have to make clear that disregarding accounting rules resulted in developing a corruption scheme.

In brief, the FCPA allows for merely proving that the accused maintained false books and records, whereas in other countries each individual taking part in a corruption network must be found guilty. Of course, it goes without saying that the more intermediaries engage in the bribery scheme, the more complicated it gets to corroborate the existence of corruption (OECD, 2009b).

The internal accounting controls provision entails that firms must implement robust compliance programs and take all the necessary measures to ensure that also their consolidated subsidiaries and affiliates have strong internal control mechanisms, so that financial statements could eventually deemed to be reliable.

In particular, the quality of a compliance program is determined by an enterprise's risk assessment, which constitutes a fundamental part of the compliance program itself. In an effort to obtain a solid risk assessment and the right allocation of resources available to the most vulnerable areas, companies should refrain from taking a one-size-fits-all approach without taking into account the company's specific risk profile. As for assessing corruption risk, the evaluation should include industry, country, nature and size of transaction and amount of intermediaries' compensation, which are typically the most common factors raising concerns.

It is worth listing some red flags that could be very useful to perform a sound corruption risk assessment.

Broadly speaking of the FCPA's anti-bribery provisions, there are some activities or conditions that increase the likelihood of a possible violation. They include:

- The intermediary refuses to certify compliance with the FCPA's provisions
- The intermediary refuses to disclose information in relation to their relationship with or interests involving foreign government officials
- The intermediary does not have the necessary qualifications to carry out the activities for which they are hired
- The intermediary is related to a government official
- The level of corruption in a country is high
- The level of corruption or the amount of FCPA enforcement actions with respect to a certain industry is high
- The intermediary requires to get their compensation either in cash or to untraceable funds in their country or in a tax haven
- The company heavily relies on politicians or government contacts rather than on a skilled workforce
- The company does not have a credible market strategy, especially when it aims at expanding its business abroad
- The company tends to hide the intermediary
- The company's history of FCPA violations

As for the FCPA's accounting provisions, there are several red flags of corruption which may reveal a violation of the FCPA. For instance:

- Vague payment descriptions
- Inaccurate payment descriptions
- Frequency of general-purpose accounts (such as miscellaneous expenses)

- False or incomplete expense account reports
- Travel expenses for which there is little information
- Over-invoicing or falsifying invoices
- Lack of a number of transactions in books and records
- Documents not showing the fact that the company has been supported by a third party in doing business abroad

According to the SEC, in order to assess the adequacy of an internal control system there are some factors to vet, like the communication of corporate procedures, the integrity of people working for the company, the level of accountability, and the objectivity of the internal audit department. Moreover, since the collection of enforcement actions shows that intermediaries are commonly used to camouflage the payment of bribes to foreign officials in international business transactions, due diligence should assess the risks connected to third parties in depth. (United Nations Global Compact, 2013; United States Department of Justice and Securities and Exchange Commission, 2020; Wells, 2017).

Enforcement authority

The DOJ and the SEC share enforcement authority for the FCPA's provisions.

More specifically, on the one hand, the DOJ is responsible for criminal enforcement of the FCPA over public companies and anyone employed by or acting as an agent for the issuer. Furthermore, the DOJ has both criminal and civil enforcement responsibility for the FCPA's anti-bribery provisions over domestic concerns (i.e. US citizens, nationals, and residents and US businesses and their delegates) and certain foreign individuals and businesses that violate a FCPA provision within the territory of the United States.

On the other hand, the SEC has only civil FCPA enforcement authority over issuers and their delegates, due to the fact that giving the SEC responsibility for enforcing criminalization programs would divert the SEC from its main duties, which consist of protecting investors and maintaining fair, orderly and efficient markets. It can analyze tips, complaints, and referrals regarding allegations of foreign bribery and eventually refer criminal matters to the DOJ and it is indeed in a relatively superior position to do so, since it already has books and records of reporting companies at its disposal.

Overall, strictly speaking, the DOJ is mainly focused on dealing with anti-bribery provisions, whereas the SEC oversees the accounting ones (United States Department of Justice and Securities and Exchange Commission, 2020; Vanasco, 1999).

Types of resolutions

There are several types of resolutions available both with the DOJ and the SEC that are worth mentioning as they lay the foundations for Chapter 4, which will examine certain FCPA violations.

First of all, it may be useful to make a distinction between resolutions with the DOJ and with the SEC, as a result of the fact that they have different enforcement authorities.

Speaking of the DOJ, it may opt for resolving criminal FCPA matters against businesses or individuals "either through a declination or […] through a negotiated resolution [leading to] a plea agreement, deferred prosecution agreement or non-prosecution agreement" (United States Department of Justice and Securities and Exchange Commission, 2020, p. 75).

In many cases, the DOJ decides not to bring an enforcement action, following a thorough analysis of the following factors:

- the agency's enforcement priorities;
- the features of the criminal conduct;
- the person's or company's history of criminal behaviour;
- the existence and effectiveness of corporate compliance monitoring;
- the individual's or company's timely, voluntary self-disclosure of the conduct;
- "the person's or company's willingness to cooperate with the government" (United States Department of Justice and Securities and Exchange Commission, 2020, p.76);
- the potential consequences stemming from the resolution.

A plea agreement is a deal between the defendant and the prosecutor, i.e. the DOJ. In a typical plea agreement, the defendant agrees to plead guilty and is convicted of the charged crimes hoping to receive a lighter punishment.

A deferred prosecution agreement (DPA) allows a prosecution to be suspended for a defined period, provided that the defendant meets certain conditions. In particular, the DOJ files a charging document with the court, but at the same time it calls for postponing the prosecution in order to allow the defendant to clarify their behaviour and intentions. A DPA results in making the defendant pay a fine, team up with the government, confirm the facts supporting the charges, implement a compliance program and honor remediation commitments.

A non-prosecution agreement (NPA) implies that the DOJ abstains from filing charges, despite having the right to do so, so that the defendant could prove their good behaviour over the specified term of the NPA. In exchange, just like a DPA, an NPA generally requires the defendant to agree to pay a monetary penalty, collaborate with the government and finally enter

into “compliance and remediation commitments” (United States Department of Justice and Securities and Exchange Commission, 2020, p. 76).

Speaking of the SEC, it may decide to pursue or decline to bring an enforcement action. In the first case, it could move forward with a civil injunctive action, civil administrative action, deferred prosecution agreement, or non-prosecution agreement, whereas in the latter it could close an investigation without any enforcement action, taking into account, for example, the statutes or rules potentially violated, whether the conduct could be investigated efficiently, and how strong the evidence supporting the violation is.

In a civil injunctive action, the SEC seeks an order by a court commanding or prohibiting a specific action. The SEC can obtain disgorgement of profits derived from illegal acts, pre-judgment interest and civil money penalties.

A civil administrative action, which is litigated before an SEC administrative law judge, is a request from the SEC consisting in a cease-and-desist order, against a company, from any current or future violations of federal and state securities laws and it provides for various remedies. Taking regulated persons and entities into account, remedies include “censure, limitation on activities, suspension of up to twelve months, and bar from association or revocation of registration” (United States Department of Justice and Securities and Exchange Commission, 2020, p. 78). As for professionals, in addition to censure and suspension, remedies can result in “barring them from […] appearing before the SEC” (United States Department of Justice and Securities and Exchange Commission, 2020, p. 78). Again, as in civil injunctive actions, SEC can ask for disgorgement, pre-judgment interest and the payment of civil monetary penalties.

Under a deferred prosecution agreement, the SEC declines an enforcement action against a person or firm if they “cooperate in the investigation, enter into a long-term standstill agreement” (i.e. an agreement that suspends limitation periods in order to give more time to decide upon the legal proceedings to the parties involved), abide by specific “prohibitions and/or undertakings during the term”, and either admit or do not deny the underlying facts that the SEC deems to be in breach of federal and state securities laws (United States Department of Justice and Securities and Exchange Commission, 2020, p. 78).

Under a non-prosecution agreement, the SEC agrees not to bring an enforcement action against a person or company if they cooperate in the investigation and “comply with […] [certain] undertakings” (United States Department of Justice and Securities and Exchange Commission, 2020, p. 78).

Penalties

FCPA violations of both the anti-bribery provisions and the books and records provisions lead to criminal and civil penalties for companies and their individual officers, directors, employees, and agents.

As already stated, with regard to criminal actions, only the DOJ is responsible for the criminal prosecution of FCPA violations regarding domestic concerns and foreign companies and nationals.

In details, criminal penalties are computed as follows:

- "for each violation of the anti-bribery provisions, corporations and other business entities are subject to a fine of up to $2 million", [whereas] "individuals, including officers, directors, stockholders, and agents of companies, are subject to a fine of up to $250,000 and imprisonment for up to five years";
- "for each violation of the accounting provisions [when any person willfully and knowingly makes false and misleading statements], corporations and other business entities are subject to a fine of up to $25 million", [whereas] "individuals are subject to a fine of up to $5 million and imprisonment for up to 20 years" (United States Department of Justice and Securities and Exchange Commission, 2020, p. 69).

Speaking of civil actions, both the DOJ and the SEC can go forward with them. In particular, the DOJ typically enforces civil actions "for anti-bribery violations by domestic concerns and foreign nationals and companies for violations while in the United States", whereas the SEC enforces civil actions "against issuers for violations of the anti-bribery and the accounting provisions" (United States Department of Justice and Securities and Exchange Commission, 2020, pp. 70-71).

Specifically, civil penalties are calculated as follows:

- “for violations of the anti-bribery provisions, corporations and other business entities are subject to a civil penalty of up to $21,410 per violation, and individuals, including officers, directors, stockholders”, and “agents of companies, are similarly subject to a civil penalty of up to $21,410 per violation, which may not be paid by their employer or principal”;
- “for violations of the accounting provisions in district court actions, SEC may obtain a civil penalty not to exceed the greater of (a) the gross amount of the pecuniary gain to the defendant as a result of the violations or (b) a specified dollar limitation. The specified dollar limitations are based on the nature of the violation and potential risk to investors, ranging from $9,639 to $192,768 for an individual and $96,384 to $963,837 for a company” (United States Department of Justice and Securities and Exchange Commission, 2020, p. 71).

CHAPTER 4: ANALYSIS OF THE LATEST SEC'S FCPA ENFORCEMENT ACTIONS

From Chapter 1 to Chapter 3, corruption has been dealt with from a theoretical point of view, in the sense that the literature, on which the chapters have relied, has been explored and later introduced, without raising doubts from a practical point of view.
Thus, it seems important to take into consideration some real examples of corruption, which will shed light on the characteristics of the way this crime is committed.
The source of the data used for this goal comes from US legislation and case law, considering that the FCPA, which has been deeply analyzed in Chapter 3, is the major example of an act addressing the issue of corruption and, in doing so, it gives a big picture of the phenomenon in the world, since it regulates international corruption cases.

The present chapter includes an analysis of the latest SEC's FCPA enforcement actions, precisely from 2017 to 2019, against business entities.
Firstly, the selected cases will be briefly described with the purpose of having a clear picture of how a corruption scheme has been orchestrated, making use of the concepts explained in the preceding chapters.
Secondly, the main findings will be discussed further.
Finally, the limitations connected to the analysis carried out using the aforementioned sample will be taken into account.

Data

The present study includes SEC's FCPA enforcement actions against 33 different public companies between January 2017 and December 2019, listed in the table below (Table 1) and taken from the SEC website[3].

COMPANY	YEAR	NAICS	CORPORATE HEADQUARTERS	NATIONALITY OF FOREIGN OFFICIALS
Ericsson	2019	51	Sweden	China, Djibouti, Indonesia, Kuwait, Saudi Arabia and Vietnam
Westport Fuels Systems, Inc.	2019	45	Canada	China
Barclays	2019	52	United Kingdom	Hong Kong and South Korea
Quad/Graphics, Inc.	2019	32	United States	China and Peru
TechnipFMC plc	2019	22	United Kingdom	Iraq
Juniper Networks	2019	51	United States	China and Russian Federation
Microsoft Corporation	2019	51	United States	Hungary, Saudi Arabia, Thailand and Turkey
Walmart Inc.	2019	45	United States	Brazil, China, India and Mexico
Telefônica Brasil S.A.	2019	51	Brazil	Brazil
Fresenius Medical Care AG & Co.	2019	33	Germany	Angola, Benin, Bosnia and Herzegovina, Burkina Faso, Cameroon, Chad, China, Gabon, Ivory Coast, Mexico, Morocco, Niger, Saudi Arabia, Senegal, Serbia, Spain, Turkey
Mobile TeleSystems PJSC	2019	51	Russian Federation	Uzbekistan
Cognizant	2019	54	United States	India
Polycom	2018	33	United States	China
Centrais Eléctricas Brasileiras S.A.	2018	22	Brazil	Brazil

[3] https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml

Vantage Drilling International	2018	21	United States	Brazil
Stryker Corp.	2018	33	United States	China, India and Kuwait
Petróleo Brasileiro S.A.	2018	22	Brazil	Brazil
United Technologies	2018	33	United States	Azerbaijan, China, Indonesia, Kuwait, Pakistan, South Korea, Thailand
Sanofi	2018	32	France	Bahrain, Jordan, Kazakhstan, Kuwait, Lebanon, Oman, Qatar, Syria, United Arab Emirates and Yemen
Legg Mason	2018	52	United States	Libya
Credit Suisse Group AG	2018	52	Switzerland	China
Beam Suntory Inc.	2018	31	United States	India
Panasonic Corp.	2018	33	Japan	Unspecified
The Dun & Bradstreet Corp.	2018	56	United States	China
Kinross Gold	2018	21	Canada	Ghana and Mauritania
Elbit Imaging	2018	23	Israel	Romania
Telia	2017	51	Sweden	Azerbaijan and Uzbekistan
Alere, Inc.	2017	33	United States	Colombia, India and South Korea
Halliburton	2017	21	United States	Angola, Iraq and Cyprus
Orthofix international	2017	33	Curacao	Brazil and Mexico
SQM	2017	21	Chile	Chile
Biomet	2017	33	United States	Argentina, Brazil, China and Mexico
Cadbury limited	2017	31	United States	India

Table 1. *Selection of the latest FCPA enforcement actions.*

In Table 1, the first column contains the sample taken into consideration for the purpose of this thesis, the second column gives the year when the resolution was announced by the SEC, the third column shows the North American American Industry Classification System (NAICS)

codes, whose first two digits designate the business sector in which a firm operates (for details see Appendix 1), the fourth column indicates the country where a company has its headquarters, and finally, the last column is for the nationality of the foreign official who received money or anything of value from a company.

As for the industry sector, it may be interesting to underline that 12 out of all 33 companies (more than a third of the sample) are manufacturing enterprises and 6 conduct their business in the information industry sector.

Furthermore, most of companies (16 out of 33) are headquartered in the United States and foreign officials are mainly Latin American, Asian and Middle Eastern nationals.

Summary of cases

In this section a summary of each FCPA case will be provided, so that the following analysis will be better understood.

Cadbury Limited

Cadbury Limited, an English company operating in the food industry also in India through a subsidiary and that would be acquired by Kraft Foods Inc. (which would become Mondelēz International Inc. in October 2012) in early February 2010, wanted to increase its production capacity in India. However, in order to do so, it would need to obtain more than 30 licenses and approvals, so it decided to hire an agent that would help it reach its goal. The intermediary had some contacts with the government and, for example, it asked the company to pay $110,446 only in the first months of 2010 as consultancy fees that the agent immediately withdrew in cash to most likely pass on to an Indian official.

In 2017, the company entered into a cease-and-desist order with the SEC for violating the books and records and internal controls provisions and it had to pay $13,000,000 to the SEC (Securities and Exchange Commission, 2017a).

Biomet

Biomet is active in the healthcare industry, particularly providing medical devices to hospitals. It engaged in a large-scale bribery schemes to secure sales in Argentina, Brazil, China and Mexico.

In Argentina, the company recorded the payments of 15-20% of its sales to doctors working in public hospitals as royalties or other sales and marketing expenses. It allegedly paid out $436,000 to gain at least $4,360,000 from selling its devices.

In Brazil, Biomet sold its products through its local subsidiary, that made frequent and large cash payments to physicians working in public hospitals, totaling $1,100,000 to get approximately $3,168,000 from sales.

In China, it also conducted its operations through its subsidiaries. It disbursed around 15-20% of its revenues to doctors working in public hospitals and recorded these payments as rebates, consulting fees or entertainment expenditures. Also, the company paid for doctors' travel packages.

In Mexico, the corporation, through its foreign subsidiary, paid about $980,774 to customs officials to smuggle unregistered and mislabeled devices into the country and it earned $2,652,100.

In 2017, Biomet entered into a cease-and-desist order with the SEC, agreeing to pay $13,022,805 (Securities and Exchange Commission, 2017b).

SQM

Sociedad Quimica y Minera (SQM), a multinational mining and chemical company, made payments to the country's politicians or political candidates (even through their family members) for approximately $14,750,000. It made use of fake invoices that eventually allowed the firm to record them as financial/engineering services that had not been rendered, and consulting fees in its financial statements.

In 2017, the SEC filed a cease-and-desist order and imposed a $15,000,000 civil penalty (Securities and Exchange Commission, 2017c).

Orthofix International

Orthofix International is a medical device company that profited from corruption in Latin America.

In Brazil, it hired agents that would bribe doctors in public hospitals to use the company's products. In details, intermediaries would be given 33-42% of sales and have to make payments of 20-25% of sales to physicians. The company improperly recorded the payments as commissions, discounts, consulting fees and administrative expenses, and it obtained about $2,928,000.

In Mexico, Orthofix International's subsidiary bribed hospital officials in order to obtain and retain business for $397,000, made up $317,000 for promotional and training expenses and $80,000 for gifts and travel costs. In particular, as for the former, employees wrote checks to themselves for cash advances and later they submitted false receipts for imaginary expenditures.

In 2017, the company entered into a cease-and-desist order with the SEC and agreed to pay more than $14,000,000 for breaking the law (Securities and Exchange Commission, 2017d).

Halliburton

Halliburton, an oil field service company, bribed foreign officials for business purposes.

In Angola, the company paid $3,705,000 to a company owned by former employee and friend of an Angolan government official to secure contracts.

In Iraq, it made corrupt payments through intermediaries for customs-related advantages.

In Cyprus, the company was granted constructing permits just a couple of days before a new act was passed that would have been an impediment to the company.

In 2017, Halliburton agreed to pay $29,200,000 to settle FCPA violations with the SEC (Securities and Exchange Commission, 2017e).

Alere

Alere, a medical manufacturer, violated the FCPA in Colombia, India and South Korea.

In Colombia and in India, the company engaged in corruption building up a network that could allow it to sell its products.

In South Korea, it recorded revenues in advance for products that were still stored in warehouses or not delivered to the customers.

In 2017, Alere agreed to pay $13,023,885 to the SEC, which filed a cease-and-desist order (Securities and Exchange Commission, 2017f).

Telia

Telia, a telecommunications provider, paid bribes to foreign government officials in order to get access to the local telecom market.

In Azerbaijan, it made payments for about $709,000,000 and employed a close contact of the President to easily obtain permits and licenses.

In Uzbekistan, it paid approximately $331,000,000 to a shell company beneficially owned by an Uzbek official, also a family member of the President of the country, recording them as consulting fees.

In 2017, Telia entered into a cease-and-desist order with the SEC and agreed to pay around $965,000,000 for violating the FCPA (Securities and Exchange Commission, 2017g).

Elbit Imaging

Elbit Imaging paid over $27,000,000 in consultancy fees to third parties for a real estate project in Romania through a subsidiary.
In 2018, the company agreed to a cease-and-desist order with the SEC and to a penalty of $500,000 (Securities and Exchange Commission, 2018a).

Kinross Gold

Kinross Gold, a gold mining company, perpetrated corruption in Ghana and in Mauritania aiming at obtaining or maintaining business.
In Ghana, it paid for extra travel expenses to the mine to a customs official even when he didn't go and visit the mine. Kinross Gold, through an intermediary, also blocked a bill that would prevent the company from increasing its business. It also hired another middleman to expedite the process of getting work permits for its employees.
In Mauritania, the company awarded a $50,000,000 logistics contract to a shipping company that was well connected to the government, in spite of requiring higher expenditures.
In 2018, the SEC filed a cease-and-desist order and asked the company to pay $950,000 for breaching the FCPA's provisions (Securities and Exchange Commission, 2018b).

The Dun & Bradstreet Corp.

The Dun & Bradstreet Corporation, a multinational provider of business information, was active in China through two subsidiaries, which made corrupt payments to government officials with the purpose of acquiring data, in terms of non-disclosed financial statements information and non-public consumer information, that would allow to better address the Chinese market. It recorded these bribes as legitimate business expenses in its books and records.
In 2018, the company entered into a cease-and-desist order and agreed to pay a $9,221,484 penalty (Securities and Exchange Commission, 2018c).

Panasonic Corp.

Panasonic Avionics Corporation, a subsidiary of Panasonic Corporation, paid millions of US dollars to purported sales consultants, including a foreign government official for $875,000, in order to have contract advantages.
In 2018, the SEC filed a cease-and-desist order in which it also ordered the company to pay a $ 143,199,018.93 penalty (Securities and Exchange Commission, 2018d).

Beam Suntory Inc.

Beam Suntory, a company that produces alcoholic drinks, through its Indian subsidiary bribed government officials, via third-party agents, in order to obtain licenses to operate in the country. Intermediaries used to inflate invoices to get the funds to make corrupt payments, amounting to millions of US dollars, to officials and the company recorded these payments as selling and distribution expenses.

In 2018, the company agreed to a cease-and-desist order and a payment of approximately $8,000,000 to the SEC (Securities and Exchange Commission, 2018e).

Credit Suisse Group AG

The financial institution hired over 100 individuals that were somewhat related to government officials in order to obtain investment banking mandates in the Asia-Pacific region.

In 2018, it paid more than $30,000,000 to the SEC for violating the FCPA (Securities and Exchange Commission, 2018f).

Legg Mason

Legg Mason, an investment management company, through its subsidiary, made a partnership with Société Générale to pursue business in Libya. The French institution received investments from Libyan officials that would in part allocate to Legg Mason's funds.

Legg Mason's subsidiary got $31,600,000 from this bribery scheme.

In 2018, the SEC filed a cease-and-desist order requiring the company to pay a $34,502,494 penalty (Securities and Exchange Commission, 2018g).

Sanofi

Sanofi, a pharmaceutical company, engaged in corrupt payments in many Middle Eastern and African countries, via local subsidiaries in order to secure contracts there.

The bribery schemes developed in various ways. For example, in Kazakhstan, several distributors colluded to get Sanofi products with a discount and decided to bribe government officials along with the company in public tenders. In Lebanon, Sanofi increased the prescription of its products after bribing physicians working in state-owned hospitals. In other countries, fake receipts were submitted by doctors and recorded in the company's books and records as reimbursement for travel and entertainment.

In 2018, the company was charged with a $25,206,145 penalty by the SEC, which filed a cease-and-desist order (Securities and Exchange Commission, 2018h).

United Technologies

United Technologies, a corporation operating in the aerospace industry, took part in several bribery schemes via intermediaries.

In Azerbaijan, the United Technologies subsidiary disbursed over $11,800,000 to unqualified middlemen to obtain a $14,600,000 contract for public-housing elevators.

In China, the company hired an agent that provided confidential information concerning Air China tender, which eventually allowed United Technologies to win the tender. Furthermore, the firm recorded expensive gifts to airline executives as event sponsorship expenses for a golfing event.

In China, Indonesia, Kuwait, Pakistan, South Korea and Thailand, the company recorded more than $134,000 as legitimate travel and entertainment costs that, on the contrary, were illegal.

In 2018, the SEC filed a cease-and-desist order with a $13,986,534 (Securities and Exchange Commission, 2018i).

Petróleo Brasileiro S.A. (or Petrobras)

Petróleo Brasileiro S.A., an oil and gas state-owned company, created a massive corruption scheme in Brazil, consisting of about $3,000,0000,0000 in bribes paid to government officials, including two former Presidents, and extravagant gifts, such as Rolex watches, extremely fine bottles of wine and helicopters.

More specifically, the company worked with suppliers to drive up the cost of infrastructure projects, leading to an estimated $2,500,000,000 overstatement of assets. Moreover, the company's books and records significantly misled US investors by disclosing false information in a $10,000,000,000 stock offering completed in 2010.

In 2018, the SEC issued a cease-and-desist order and asked the company to pay about $933,500,000 as a penalty for breaching the FCPA (Securities and Exchange Commission, 2018j).

Stryker Corp.

Stryker Corporation, a medical device company, engaged in corruption in India, China and Kuwait.

In India, the subsidiary submitted overinflated invoices for orthopedic products to hospitals, which passed them on to patients, who in turn passed them on to insurers for reimbursement.

In China, 21 sub-distributors were not either approved or trained as required by the company's policy and the subsidiary falsified accounting entries in order to conceal their involvement in the sales process.

In Kuwait, the subsidiary paid out more than $32,000 to foreign officials to attend the company's events, when these expenses had already been paid.
In 2018, the SEC filed a cease-and-desist order and required a $7,800,000 payment (Securities and Exchange Commission, 2018k).

Vantage Drilling International

Vantage Drilling International, an offshore drilling company, decided to bribe government officials and executives with $31,000,000 via shell companies and bank accounts in Switzerland, Panama and Monaco, for the Titanium Explorer deal in connection with Petrobras, whose estimated revenues were of approximately $1,600,000,000 during the eight-year contract.
In 2018, the company agreed to pay $5,000,000 in disgorgement to the SEC as a result of a cease-and-desist order (Securities and Exchange Commission, 2018l).

Centrais Eléctricas Brasileiras S.A.

The company's nuclear power generation subsidiary got $9,000,000 in illicit payments by construction bidding companies for a power plant construction project and recorded the bribes as service expenses. In particular, contract prices considerably increased and sham invoices were used.
In 2018, the company entered into a cease-and-desist order with the SEC and paid a $2,500,000 penalty (Securities and Exchange Commission, 2018m).

Polycom

Polycom, a telecommunications company, conducted its business in China through a subsidiary, which was involved in a corruption scheme. In fact, the company offered discounts to Chinese distributors assuming that they would use savings to bribe government officials, who could eventually make consumers buy Polycom's products.
In 2018, the SEC issued a cease-and-desist order and reached a settlement with Polycom for a $16,306,336 penalty (Securities and Exchange Commission, 2018n).

Cognizant

Cognizant, a technology company, authorized bribes to Indian officials, also through its subsidiary, with the purpose of obtaining permits and licenses for the construction of commercial buildings in the country that resulted in approximately $16,400,000 of profits. It improperly classified the sums disbursed, for $3,600,000, as legitimate business expenses.

In 2019, the company entered into a cease-and-desist order with the SEC and agreed to pay a $25,167,368 penalty (Securities and Exchange Commission, 2019a).

Mobile Telesystems PJSC

Mobile Telesystems PJSC, a telecommunications provider, generated more than $2,400,000,000 in revenues after making illegal payments of at least $420,000,000 to a public official in Uzbekistan, also via its subsidiary. Bribes were characterized as acquisition costs, option payments, purchases of regulatory assets, and charitable donations in the company's financial statements.

In 2019, the SEC filed cease-and-desist order fine asking Mobile Telesystems PJSC for a $100,000,000 payment (Securities and Exchange Commission, 2019b).

Fresenius Medical Care AG & Co.

Fresenius Medical Care AG & Co., a medical device company, also through its subsidiaries located in various countries (all mentioned in Table 1), bribed healthcare personnel and government officials for approximately $30,000,000, in order to boost sales of its products. The methods used to hide illicit payments were mainly sham consulting agreements, travel expenses, expensive gifts, donations and sponsorships. Overall, it gained more than $141,200,000 in profits.

In 2019, the company entered into a cease-and-desist order and agree to pay $147,000,000 to the SEC (Securities and Exchange Commission, 2019c).

Telefônica Brasil S.A.

The Brazilian subsidiary of the telecommunications company bribed 93 government officials with World Cup tickets and hospitality for $621,576, and 34 government officials with Confederations Cup tickets and hospitality for $117,230, which added up to $738,806. The company's objective consisted in influencing politicians to pass legislation regarding the company.

In 2019, the SEC filed a cease-and-desist order requiring a payment of $4,125,000 (Securities and Exchange Commission, 2019d).

Walmart Inc.

Walmart Inc., a retail corporation, engaged in various illicit payments across the world through its subsidiaries.

In Mexico, it paid out more than $24,500,000 in order to obtain business advantages and pursue rapid growth in the country. More specifically, bribes were channeled through agents that actually took a 6% commission and later passed what was left on to government officials.
In Brazil, it made illegal payments to get government permits to construct two stores for a total of $500,000.
In China, it bribed public officials to obtain government permits with gifts and entertainment expenditures.
In India, it made payments worth millions of US dollars to obtain government licenses and facilitate the shipment of goods through customs.
In 2019, Walmart Inc. agreed to pay more than $144,000,000 to settle the SEC's charges (Securities and Exchange Commission, 2019e).

Microsoft Corporation

Microsoft Corporation, a technology corporation, engaged in illegal transactions for business-related reasons.
In Hungary, the subsidiary used third parties to record services that could not be rendered but that would generate profits to pass on to government officials, and it collected $13,780,733 in profits from discount requests that would not actually benefit end consumers, but government officials.
In Saudi Arabia, the subsidiary diverted $440,000,000 meant to be used for marketing expenses to pay for trips, laptops, furniture and other gifts for government officials.
In Thailand, around $100,000 were diverted from training end customers to paying for travel expenses of employees of non-government banking customers.
In Turkey, the subsidiary approved an additional discount in a transaction with an unauthorized third party for a government tender, but it was not clear whether the discount was passed on to the government customer.
In 2019, the SEC issued a cease-and-desist order and reached an agreement with Microsoft Corporation for a $24,000,000 penalty (Securities and Exchange Commission, 2019f).

Juniper Networks

Juniper Networks, a technology company, took part in corruption schemes in order to achieve a business advantage.
In Russia, the subsidiary increased discounts on sales to customers made through its partners. However, these discounts were transferred into an off-the-book account that was used to pay for trips for government officials.

In China, the subsidiary improperly paid for government officials' travel expenses that had been previously approved for a smaller total amount.

In 2019, Juniper Networks reached an agreement for a $11,745,018 penalty with the SEC (Securities and Exchange Commission, 2019g).

TechnipFMC plc

TechnipFMC plc, an oil and gas company, was the result of a merger between Technip S.A. and FMC Technologies Inc. in 2017.

As for the latter company, based in Iraq, it bribed government officials through an intermediary (compensated for over $794,000) to secure contract awards and mischaracterized the payments as legitimate expenses in its books and records. The whole sum of alleged payments to government officials corresponded to more than $69,000,000, including improper employing family members of public officials.

In 2019, the SEC filed a cease-and-desist order imposing a total of $5,061,906 fine (Securities and Exchange Commission, 2019h).

Quad/Graphics, Inc.

Quad/Graphics, Inc., a marketing solutions and printing services company, perpetrated a corruption scheme via middlemen to secure business.

In China, the subsidiary made illicit payments amounting to $182,000 to government officials and gained $1,087,322 from this illegal activity.

In Peru, the subsidiary, making use of fake or disproportionate invoices, spent over $1,000,000 in bribes and was enriched by over $4,400,000.

In 2019, Quad/Graphics, Inc. entered into a cease-and-desist order with the SEC and was required to pay $9,895,334 (Securities and Exchange Commission, 2019i).

Barclays

The English bank was found guilty of hiring 17 candidates connected to government officials with the purpose of obtaining or retaining business in Hong Kong and South Korea.

In 2019, the SEC issued a cease-and-desist order and demanded a $6,308,726 payment (Securities and Exchange Commission, 2019j).

Westport Fuels Systems, Inc.

Westport Fuel Systems, a company operating in the transportation industry, made illicit payments to a government official in China aiming at securing business in the country and

receiving a cash payment from the company's shares transferred into a Chinese private equity fund where the public official held a financial interest. In order to do so, the company disguised the private equity fund's identity in its books and records.

In 2019, the company was required to pay a $4,046,000 sanction according to the SEC's cease-and-desist order (Securities and Exchange Commission, 2019k).

Ericsson

Ericsson, an ICT provider, made illicit disbursements of approximately $62,000,000 to obtain or retain business in different countries and gained $427,000,000 from corruption.

In details, it hired intermediaries through whom it bribed government officials thanks to commissions for services that had never been rendered, slush funds, misleading transactions and fake invoices.

In Djibouti, the company submitted a bid for a networking contract from which it would expect large profits. Later on, it reached a deal with a consulting company owned by a family member of a government official, with the sole purpose of channeling bribes, for a total of around $2,100,000.

In Saudi Arabia, the subsidiary made $40,000,000 payments to public officials to secure contracts that would generate $700,000,000, making use of intermediaries. Also, it paid for expensive trips for public officials and their spouses.

In China, the subsidiary covered travel expenses for public officials and their wives, even creating a false travel agency to funnel the illicit payments. In addition, it bribed government officials through third parties for $31,500,000, recording the transactions as service fees.

In Vietnam, the company bribed public officials by means of intermediaries that apparently performed a consulting service, but they didn't as a matter of fact.

In Indonesia, the subsidiary paid $45,000,000 for consulting services that had not been delivered, in order to conceal entertainment expenditures in which the firm incurred for public officials.

In Kuwait, the subsidiary made improper payments of $450,000 to a consultant that didn't provide any service, but was affiliated to a public official. After receiving confidential information, the company submitted a bid and finally won the contract worth $182,000,000 (Securities and Exchange Commission, 2019l).

Discussion

The previous section is useful to make some considerations with respect to the latest features of the SEC FCPA's enforcement actions, since corruption schemes evolve over time.

Speaking of the nature of bribes, most of them involved cash or anything of value such as gifts, trips, or even offering a job to someone who is affiliated to a foreign public official, for several purposes, which can be summarized in obtaining and retaining business, awarding a contract, customs clearance, obtaining licenses or permits, expediting the process of getting visas, or trying to influence amendments to a certain law.

Most importantly, for the topic of the present thesis, the way bribes were collected needs to be pointed out. In accordance with the literature, the bribe payments made in the cases described above consisted of covering legitimate business expenses, like consulting fees, administrative expenses, marketing expenses, travel expenses, donations, sponsorships, relevant discounts or royalties. Thus, during the process of auditing books and records, whenever a large amount is recorded as one of the aforementioned expenditures, that should shed light on a potential FCPA violation.

Of course, companies never incurred in these costs, but agreed with a third party to characterize bribes in such a way that due diligence could not discover the underlying illegal practices. Therefore, the intermediary usually submitted fake invoices so that they could collect money and give it to the final recipient, namely the foreign public official.

All of the cases were more or less structured corruption networks, meaning that there was at least one third party taking part in it, except for Credit Suisse and Barclays, which were subject to the FCPA enforcement actions for employing individuals connected with foreign government officials. In many cases, there were two or more intermediaries that passed on bribes to the public official, identified as consultants or local agents in the selected cases.

Intermediaries were expressly used to funnel anything of value, primarily cash, to public officials, so it didn't make any difference if they weren't qualified to perform the service that would ultimately result in the false invoice (which could contain a very general description), such as in the United Technologies and Ericsson cases. The payments were sometimes made to offshore financial centres, like in the Vantage Drilling International case, and/or from off-the-books accounts, which are accounts that are not recorded in the briber's books and records, just like in the Juniper Networks case.

Most of the cases referred to a subsidiary located in another country, due to the fact that in many instances corruption may arise in countries that do not share the same values as the parent's and where corruption is embedded and even accepted, especially in the case of countries showing high income inequality.

From the previous analysis, I collected the available information in terms of the amount of the bribe and the benefit associated with it, namely the profit a company yielded.

Interestingly, by computing the average benefit-bribe ratio for 5 of the FCPA cases for which information was completely available, I obtained a mean of 20.8 %, with a standard deviation of 3.77%. Arguably, even though the number of cases can't be used for statistical analysis, the result is in line with OECD (2007, p. 47) estimates.

COMPANY	COMPUTATIONS	BRIBE	BENEFIT	BRIBE/BENEFIT
Ericsson		62.000.000,00	427.000.000,00	0,145199063
Quad/Graphics, Inc.		1.182.000,00	5.487.322,00	0,21540562
Fresenius Medical Care AG & Co.		30.000.000,00	141.200.000,00	0,212464589
Cognizant		3.600.000,00	16.400.000,00	0,219512195
Biomet		2.516.774,00	10.180.100,00	0,24722488
Mean	0,20796127			
Standard deviation	0,03771554			

Limitations

This study presents some limitations, starting from the number of FCPA cases included, which is intentionally small, owing to the fact that the focus is on the latest developments, if any, of corruption practices.

Also, only the SEC's enforcement actions were taken into account, due to the fact that the agency is the primary responsible for violations of books and records and internal controls provisions, the main area of interest of this dissertation.

Finally, the SEC investigates many cases of alleged corruption, but it does not bring enforcement actions against all of them, as stated in Chapter 3, so publicly available information seems to be lacking of a source of information stemming from non-selected cases (for which the agency does not disclose data). Yet, available information may prove to be relevant when it is in harmony with other findings.

CONCLUSIONS

Corruption is a global threat that severely impacts on many aspects of the society as a whole, namely individuals and organizations put together.
In order to tackle this issue, getting to grasp the functioning of a corruption network is essential, bearing in mind that there are many factors determining its severity, as discussed in Chapter 1.

Corruption itself is treated as a crime in many jurisdictions, but still in a pretty opaque way, also owing to the fact that the phenomenon is very hard to investigate for its own nature. Said otherwise, the actors involved in a corruption scheme are not incentivized to reveal the way a network is organized and carries out its activities.

It follows that collecting all the available information, even if little, is of the outmost importance. This is the reason why the most prominent law against corruption, i.e. the US FCPA, has been taken into consideration and, in particular, with regard to SEC's enforcement actions against corporations.

The role of intermediaries has been found to be extremely critical, since they are the ones that facilitate the transfer of anything of value between two parties and allow for corruption to be easily perpetrated over time. They make use of various tools to disguise the illegal transaction, which have been explored. As a consequence, an auditor performing due diligence should be aware of red flags that could lead to corruption, especially if a company conducts its business in a very corrupt country.

The present thesis is descriptive and aims at giving a contribution to the recent literature on the topic of the different ways a firm can engage in bribery schemes, providing real examples. Research could develop further taking into account, for instance, other anti-corruption laws and their related case studies.

APPENDIX 1

Code	Industry Title
11	Agriculture, Forestry, Fishing and Hunting
21	Mining
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale Trade
44-45	Retail Trade
48-49	Transportation and Warehousing
51	Information
52	Finance and Insurance
53	Real Estate Rental and Leasing
54	Professional, Scientific, and Technical Services
55	Management of Companies and Enterprises
56	Administrative and Support and Waste Management and Remediation Services
61	Educational Services
62	Health Care and Social Assistance
71	Arts, Entertainment, and Recreation
72	Accommodation and Food Services
81	Other Services (except Public Administration)
92	Public Administration

NAICS code list.

Source: https://www.naics.com/search/.

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