

## How bribing can lead to extortion

The problem is that once a company starts bribing, it will always be asked for more. It will not only have to pay to obtain contracts or licences or to start up factories, etc., but once local administrators, subcontractors and others in the business and social surroundings find out that the company pays bribes, scores of other people will find (or invent) an excuse to “kindly” ask for “favours”. New artificial barriers will be erected, so that someone can show up to solve the problem. In short, if a company starts bribing at the outset, it will be subject to extortion throughout the years of the project’s operation.

A company should also be prepared for some nasty experiences if it pays one solicitor of bribes but rejects another. It is easy for a disgruntled party to throw metal parts into machines, flatten tyres, put sugar into the tank of a car or delay the delivery of supplies.

Time and again, a “rejected” solicitor of a bribe will produce evidence – whether true or false – that a company has bribed an official or a private business person of the host country and show this evidence to this company with the intention of blackmailing it (by threatening to inform the press, the public prosecutor, the tax office, for example). Often companies will give in and pay and pay again. This also opens opportunities for blackmail, requests for protection money and longer-term industrial espionage.

## Solicitation: the consequences

When faced with solicitation, companies can find themselves facing different predicaments:

- ❖ Solicitation can be made indirectly and implicitly, often via middle men. Companies are often told, or strongly led to believe, that with out payment of bribes, their planned business transaction will not be accepted.
- ❖ Often insufficient evidence is available to prove a case of solicitation. Therefore, companies may be reluctant to report incidences of solicitation for fear of facing defamation lawsuits.
- ❖ Extortion is not considered to be a defence against bribery under the relevant international conventions. Therefore, companies that give in to demands for bribes face the threat of criminal prosecution.

When demands for bribes are made in the early stage of business transactions, companies typically try to safeguard their business interests. If they turn to their home government for help, they face a dilemma – they have to guard against reprisals, such as the disqualification of the concerned company from the bidding process. On the other hand, if companies have already made large investments in a project, this renders it more difficult for them to resist extortion at a late stage of the venture.

## A definition of extortion

“Extortion is unlawful exaction of money or property through intimidation or undue exercise of authority. It may include threats of physical harm, criminal prosecution, or public exposure. Some forms of threat, especially those made in writing, are occasionally singled out for separate statutory treatment as blackmail.”

*Britannica Concise Encyclopedia*

## Other difficulties in dealing with solicitation

- ❖ In many countries it is difficult to obtain quick and reliable information about the true costs of obtaining tender documents, licences, etc. Ideally, such information should be provided by the relevant authorities, ministries, etc.)
- ❖ Solicitation is often hard to identify when it is part of an on-going business relationship. A company may be in such a relationship for some time and not be aware that certain payments made in exchange for services rendered may be for the benefit of a public official and constitute a bribe.
- ❖ Invoices from agents may include items for “commissions” or “fees” which can be legitimate payments for services rendered – or may, in some instances, be disguised bribe payments. Accounting procedures aimed at greater transparency often do not detect instances of solicitation, because companies may not always know whether the fees paid are legitimate government requirements (e.g., fees to obtain documentation during a bidding process) or payments demanded by officials to improperly influence the outcome of a decision (e.g., fees in exchange for being short-listed or selected in a bidding process). Companies need to be sufficiently diligent to distinguish legitimate payment from the creation of slush funds.
- ❖ Even in countries where there is generally little enforcement of anti-corruption laws, the police and judiciary can be extremely efficient – “if they want to get you”.

## Public and private extortion – case studies

- ❖ A government official asks for bribes as a condition for granting permits to conduct business. Payments are to be made in cash or by purchasing paintings at excessive prices. In addition, he offers his services to identify potential business partners – for a fee;

- ❖ In a public procurement process, bidders have to pay a “reasonable fee” to obtain copies of necessary documentation. Later, they are asked to pay a substantial amount to be put on the short list and an even greater amount to win the bid;
- ❖ A manager of a supplier asks for a bribe to provide urgently needed materials;
- ❖ Employees organize a network to obtain kickbacks from their company’s suppliers. The purchase prices are increased accordingly;
- ❖ An employee of a big corporation extorts suppliers to pay money into his account and provide travel vouchers for his family; to form another company (with himself as a major shareholder); to give him thousands of shares of a major supplier of his own employer;
- ❖ A company needs formal authorization to obtain export credit insurance for a project close to realization. As this authorization is not dealt with, a middleman offers his services “to solve the problem” for USD 1 million – payable offshore;
- ❖ A company suggests that granting an unsecured loan at favourable terms to a member of an influential family will ensure the unhindered acquisition of a substantial part of an infrastructure company;
- ❖ A machinery company pays low salaries, but provides generous incentives for individual performance. The sales manager has been reproached for poor performance. With a new contract in an emerging market, the frustrated manager pays a large bribe and secures a nice kickback for himself. A competitor learns about this and blackmails the director, who – over the next three years – divulges almost all of the company’s secrets, including technical drawings.

## **What companies can do on their own**

Even in notoriously corrupt societies, there are businessmen doing good business without having ever paid bribes. They have declared from the beginning that their corporate policies and principles forbid them to bribe, and they have kept their word. At the beginning, they were possibly viewed with some curiosity or suspicion by the potential solicitors of bribes, but their position was (mostly) respected. These businessmen promised impeccable quality, timely delivery (unless hindered by bribe solicitors), good, long-term after sales service, spare parts supply, etc. Everyone in the market knew that they were keeping their word, and their refusals to pay bribes were accepted.

Companies can lessen their exposure to solicitation by their own efforts. The following measures can substantially reduce the likelihood of solicitation from government officials and others: