

CROSS-BORDER INVESTIGATIONS

23 Jun 2017 Nicola Sharp, Syedur Rahman.

What has become known as the “Car Wash” is a saga of \$5 billion in illegal payments to company executives and political parties that has seen many of Brazil’s super rich jailed. More than 1,000 politicians have been accused of taking bribes from a meat-packing firm, 50 congressmen have been accused of corruption and four former presidents have been investigated. Huge damage has also been done to the reputations and finances of some of the world’s largest companies.

An investigation by Brazilian police into low-level money launderers and black market money dealers led to the uncovering of a web of corruption involving directors of Brazilian petroleum company Petrobras. These directors were overpaying on contracts to companies, whose senior figures then funnelled a share of the money into secret slush funds. These funds were then used by the Petrobras directors to fund election campaigns for their allies in what was a huge web of business and political corruption.

It was a scheme that involved both extremely complex movements of finances and very low-tech transporting of taped-up “bricks” of money in order to avoid detection.

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Petrobras
accounted
for
an
eighth
of
all
investment
in
Brazil,
provided
hundreds
of
thousands
of
jobs
in
construction,
shipyards
and
refineries
and
had
business
links
with
many
major
foreign
companies

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– many of whom now face enquiries about bribes they paid to secure contracts with the firm and others linked to it. As an example, evidence has been discovered of one construction company that had a specific department that paid \$800M in bribes for 100 contracts in a dozen countries over a 15-year period.

International Investigations

The scale of the scandal means it goes way beyond Brazil's borders and involves many companies around the world. As a result, it now involves the law enforcement authorities in a large number of countries.

In previous decades, this may have caused problems when it came to coordinating an international, cross-border investigation. But nowadays, the authorities that investigate business crime are increasingly keen and able to share information swiftly with their foreign counterparts.

This makes cooperation between those enforcement agencies more effective; which is necessary because bribery, fraud, money laundering and many other types of serious and complex business crime are often international in nature. Such cooperation is probably going to become a more common occurrence, as agencies increasingly look to counterparts in other countries to aid their investigations.

From the point of view of anyone facing an international investigation, they need legal representation from solicitors who are able to construct and coordinate an international defence case. This means a defence team capable of handling a case that involves investigations, evidence and legal arguments that may cross borders and involve law enforcement agencies from a number of countries.

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Defence

Cross-border investigations are set to become more common. Globalisation has made it more likely that someone will commit crime in more than one country where they do business. Improvements in investigation and enforcement – in some countries, at least – make it more likely that such business crime will be detected and prosecuted.

This means that anyone mounting a defence to such a cross-border investigation has to be aware not only of the criminal law in many countries but also issues such as the standards of compliance expected when it comes to business crime and the extent to which material is legally privileged.

It may mean creating a defence team that boasts local legal expertise, experience of negotiating with the relevant foreign authorities and experts in particular professional fields, such as forensic accounting.

Any defence in a cross-border investigation requires the relevant expertise and experience but also an ability to coordinate activities and responses to lines of questioning that may come from various authorities in numerous countries.

This may not always be easy. But a well thought-out and coordinated defence stands a far better chance of success than a knee jerk response to allegations that come from two or more countries.

Negotiation

Having represented clients in many such cases, we can say that there are also a number of techniques which go beyond issues of law that can aid a defence team's chances of gaining the most favourable outcome.

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The jet engine manufacturer paid £671M to settle allegations of bribery around the world that dated back many years. Rolls-Royce did not report the wrongdoing itself. It was left with no option but to admit it once the evidence was in the hands of the Serious Fraud Office (SFO). And yet it was not prosecuted – it was given a deferred prosecution agreement (DPA) and even received a discount on the fines imposed on that

negotiation. Part of this was due to what was called in the DPA judgement the “extraordinary skills cooperation” it offered the authorities. Once the allegations were put to Rolls-Royce, it did all it could to assist the investigation.

Rolls-Royce had also removed a large number of senior staff it regarded as being involved in the bribery. It introduced new, tougher measures to prevent any future wrongdoing. This was viewed by the SFO as a genuine attempt to improve the culture of the company.

the best possible outcome. Its proactive stance also saw it bring in Lord Gold to review its anti-corruption procedures – a measure that further indicated to the authorities that it wanted to put right the wrongs.

Such measures can all be viewed as well-intentioned, genuine attempts to prevent further bribery or as efforts to boost Rolls-Royce’s negotiating position when it came to seeking the most favourable outcome possible with the SFO. Maybe they were a bit of both.

What can be seen as a negotiation tactic, however, is Rolls-Royce’s emphasis on the fact that it employs 50,000 people and that any damage suffered by it would ultimately affect those jobs and those of many more people in its supply chain.

It was an argument that was acknowledged in the DPA settlement – outlining the value of carefully-devised negotiation tactics.

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Tactics

It is unlikely that many companies facing a cross-border investigation will have the massive corruption problems of Petrobras.

But it is worth nothing that, like Petrobras, Rolls-Royce was facing allegations of bribery in various countries, illegal payments to officials and accusations that it had hugely damaged international markets. And yet Rolls-Royce escaped prosecution and the heaviest of fines that could have been imposed.

This can only be out down to the careful coordination of its defence and the shrewd manner in which it negotiated: the essential tactics when managing a response to allegations that cross borders.



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Nicola Sharp is a Legal Director at Rahman Ravelli whose expertise in international fraud, civil recovery and business crime has seen her highly rated in international legal guides. Her experience of leading the most involved and sizeable commercial and financial disputes has led to her being in demand from corporates and large organisations.

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Syedur Rahman is a Legal Director at Rahman Ravelli with a great depth of experience in top-level global investigations and corporate crime. Legal guides have highlighted his achievements in the fields of worldwide asset tracing and recovery, high-stakes commercial and financial disputes and cross-border investigations.

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