

# Emerging Markets Outsourcing Report

Part of the PharmSource ADVANTAGE sourcing intelligence service

## BUSINESS CONDITIONS

### LEVELING THE PLAYING FIELD: HOW TO COMPETE AGAINST A BACKDROP OF BRIBERY

At the recent Swift International Banking Operations Summit in Hong Kong, Dominic Barton, worldwide managing director of McKinsey & Company, told summit delegates that the rising wealth of Asian populations, coinciding with a collapse in consumer spending in the US and Europe, was already changing the global economic landscape. Speakers and delegates alike agreed that Asia was the next economic power and identified China and India as the two economies that will be strongest in the coming years.

This is no surprise to the pharmaceutical industry, where an increasing number of companies are looking to do business or base operations in emerging markets. These moves bring challenges specific to emerging markets, not least of which is the need to compete in economies and countries where corruption is prevalent.

In countries where corruption is seen as the standard, what can businesses do to stay in the game? Companies who want to stay on the right side of the Department of Justice (DoJ), the Securities and Exchange Commission (SEC), and other foreign prosecutors operating under laws similar to the Foreign Corrupt Practices Act (FCPA) yet remain competitive overseas must determine how to level the playing field in these emerging markets.

Michael Hershman, president of The Fairfax Group and co-founder of Transparency International, helps companies deal with this situation. “Any company doing business overseas can take meaningful steps to compete fairly even in an environment perceived as corrupt,” he says.

#### *Do Your Homework*

“It is critical that companies do their research upfront,” Hershman says. Companies should first collect information about the markets they’re entering and become as familiar as possible with the nature and type of risks involved. The Transparency International, World Bank and Department of State websites are good places to begin—each has reports on individual countries and up-to-date surveys that describe the impediments to doing business in each country. In most cases, these reports are generated by sources on the ground in each locale.

Following this basic research, Hershman recommends talking to someone in the U.S. embassy, typically the commercial attache. “Get an on-the-ground perspective about corruption and the perception of corruption in the country. Ask them about your business sector, about your product sector and specifically about the reputation of your competition in the country. Will you be facing companies from other parts of the world? Are they known for using bribes?” In some cases, Hershman adds, companies may decide not to enter a specific market because their competitors’ tactics may be too aggressive and corrupt to counter.

## Emerging Markets Outsourcing Report

If it's a tough country from a corruption perspective but a critical market, companies can take additional steps. Companies should find and hire a business partner or agent in the country to help them do business there. This person should know the market very well and know the standard ways of doing business, as well as the company's policy on corruption. "Companies should do extremely thorough due diligence on any agent or business partner before contracting with them," Hershman warns. The commercial attache at the embassy can, again, be a help in identifying agents or representatives with good reputations and records.

### *Use NGOs to Level the Playing Field*

Once you are ready to do business in the country, there are additional precautions, especially when bidding on contracts or projects against competition that has a reputation for corruption. "Let's say you are bidding on supplying a vaccine to all the hospitals in India," Hershman says, "and your contract will be with the Indian Ministry of Health. You have decided that other companies bidding on the contract may be prone toward violating other anti-corruption laws or treaties. What can you do?" It turns out that there are several options.

First, you can go to a nongovernmental organization (NGO) for assistance—either a local Transparency International chapter or another NGO. Tell them about the situation; for example, that there is a large contract up for bid without a transparent or accountable procurement system or that your company is bidding against either foreign or local competitors that are not known for playing by the rules. Ask the NGO to ask the Ministry of Health to commit to an Integrity Pact. An Integrity Pact is an agreement that, in part, requires:

- ◆ All bidders on the contract to enter into the pact and abide by its provisions.
- ◆ All bidders to agree not to offer any sort of payment or bribe.
- ◆ Any solicitation for a bribe from a government employee or someone acting on behalf of a government official to be reported to a designated official such as the inspector general.
- ◆ All bidders to disclose all agent relationships they have in the country and their terms and conditions.
- ◆ All bidders to have an effective compliance program in place.

In addition, an NGO or independent party can be designated to monitor the bidding process carefully to ensure, for example, that the contract specifications are not skewed in favor of any particular bidder.

"This process can be done in any country and helps ensure total fairness and transparency," says Hershman. "As a matter of fact, just in the last six months, India became the first country to require Integrity Pacts for all national-level infrastructure projects in the country." Another 15 or so countries have used Integrity Pacts, and Transparency International encourages their use as a strong collaborative tool that promotes fairness and discourages corruption.

Suppose, however, the Ministry of Health will not agree to an Integrity Pact. A company's second option is to ask the other bidding companies to make an informal agreement not to seek unfair advantage. Any company that refuses to agree sends up an immediate red flag, and your company can then go to a local NGO chapter and let them know that you are concerned about the possibility of abuse. The NGO can then go to the appropriate regulator or law enforcement agency or to the media to draw attention to the issue. While not as smooth a process as the Integrity Pact, this method is still an efficient way to draw out potential corruption and notify the appropriate authorities. In some cases, media attention can force a company considering a corrupt act to back down.

### *Contingency Plans*

Employee education and involvement are critical for anti-corruption programs and policies to work. Hershman cites the recent Siemens case, where the company discovered more than 4,000 acts of bribery over 10 years. “Everyone in the company was convinced they couldn’t do business without paying bribes,” Hershman says. It turned out to be quite the opposite—but the critical piece was not just telling employees what they couldn’t do, but telling them what they could do instead.

Here are other must-haves for companies looking to go to market in countries at high risk for corruption:

- ◆ Put a comprehensive training program in place for your sales and marketing teams. Make sure that they understand your corporate policy on corruption and that they know what conditions are like in the countries where they will be working. Get them involved at the board or community level in local organizations that fight corruption or with the country’s chamber of commerce. The key here is to ensure that your employees know not only where your company stands, but what is going on in the country.
- ◆ Develop a strong anti-corruption reputation. Get your local employees involved with local anti-corruption organizations and local chambers of commerce. Their involvement sends a strong message to your competitors, both local and global, as well as to the government that your company is committed to operating with integrity. Your employees are then less likely to be shaken down for bribes, as potential bribe-takers will be afraid of the reactions and subsequent consequences.
- ◆ If you will be in the country for the long term, get involved with corporate social responsibility work there. Allocate some of your product at no cost for the public good—such as donating drugs to public health clinics. Building good will can help to neutralize any competitive advantage the competition might have, if they feel they must bribe to win business.

“It can be challenging to do business in difficult countries,” says Hershman. “Your goal is to remove the opportunity for bribery through collaborative action with your competition or through Integrity Pacts brokered through NGOs or to stand out from your competition through your involvement with anti-corruption organizations, good social work, and the building of a strong reputation.” In addition, he notes, it is important for companies to tailor their tactics based on the specific country where they are working. What works in Thailand might not work in South Africa. “This is why research is key,” he says. “Find out what you’re getting into, and then you can plan accordingly and specifically for that market.”

A list of anti-corruption resources is available in the online version of this article at [www.pharmsource.com](http://www.pharmsource.com).