### TO BRIBE OR NOT TO BRIBE:

#### WHAT ARE THE EFFECTS OF

#### BRIBERY IN THE SUCCESS OF

### INTERNATIONAL BUSINESS TRANSACTIONS?

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ABSTRACT: International business transactions have grown in leaps and bounds and with this increase so has the incidence of bribery. Bribery has become a notorious problem to both businesses and the countries in which they operate and as a result it hampers the successful performance of such transactions. In addition to creating problems of smooth execution of such transactions, it also leaves the business managers in a dilemma as to whether to bribe or not considering the fact that bribery is an offence in most jurisdictions and also the special treatment the act of bribery offers. This paper focuses on whether to bribe or not and the effects of bribery on the success of international business transactions. An overview of what bribery is will be given, which will then be followed by looking at the provisions of relevant legal instruments which deal with bribery. In addition to this, the effects of bribery will also be considered and whether such effects are positive or negative or a combination of the two. The writer concludes that the decision to bribe or not to is left in the hands of the business manager who is faced between two options which will affect the success of his business transaction.

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## **ABBREVIATIONS**

AUCPCC African Union Convention on Preventing and Combating

Corruption

**FCPA** Foreign Corrupt Practices Act

**JBL** Journal of Business Law

#### 1. INTRODUCTION

There is no gainsaying that international business transactions around the world have increased magnanimously and this increase covers the entire globe. Transactions occur on bilateral, regional and global levels, as well as between developed and developing countries. This has helped stimulate the economies of individual countries and the world at large. The success of every international business transaction depends on myriad factors. One such factor affecting, the success of international business transactions is the incidence of corruption particularly bribery. The problem of corruption has gained momentum and is a, major contributing factor to the moral decadence of an already fractured society. Bribery affects the ethics and professional conduct of businesses operating in the international arena. It is for this reason that the menace that is bribery has gained prominence in the laws and policies of most countries, since no country can survive after the debilitating effects of bribery.

This paper looks at the problem of corruption particularly bribery and its effects on the success of international business transactions. At the outset, the paper will provide a brief insight into the meaning of corruption, classifying the activities that may be seen to constitute corruption paying particular attention to bribery and its features. Following this the provisions of relevant legal instruments touching on bribery will be assessed, in order to determine the effect of such provisions on the incidence of bribery in international business transactions. Legal instruments such as the Foreign Corrupt Practices Act, the OECD Bribery Convention and the African Union Convention on Preventing and Combating Corruption are of particular importance. In addition to this, the writer will examine the effects of bribery on international business transactions first by analysing the relationship between cultural practices and acts that may be seen to be bribery. Secondly, the paper will provide examples of the types of international business transactions, which attract bribery. Thirdly, the paper will include an assessment of the merits and demerits of bribery. The writer will then conclude as whether to bribe or not.

## 2. OVERVIEW OF BRIBERY

The nexus between bribery and corruption must be fully comprehended at the outset of this paper. This is because there can be no bribery without corruption. Corruption refers to the

misuse of entrusted power for private gain.<sup>1</sup> Corruption is a broader term in which lesser evils such as bribery, nepotism and even misappropriation fall under as can be seen from Nye's definition of corruption:

'behaviour which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary or status gains, or violates rules against the exercise of certain types of private regarding influence. This includes such behaviour as bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public funds for private regarding uses)'.<sup>2</sup>

Bribery can also be an offer, a payment or a promise to pay money or goods, favour, an advantage, privilege, property or an object of value to a person in order to influence his views, actions or conduct. Bribery is viewed in two ways. These are bribery according to rule and bribery against the rule. Bribery according to rule is where a bribe is paid in order to receive preferential treatment for something that the bribe receiver is required to do by law. For instance, a builder offers to pay money to a building inspector in order that his building premises are inspected. Bribery against the rule is where a bribe is paid to receive preferential treatment or obtain services for which the bribe receiver is prohibited from doing.<sup>3</sup> For instance, an accused person offers to pay money to the prosecuting officer in order not to get charged to court. For an act to be seen as a bribe, there will be an understanding that the thing offered, paid or promised to be paid is meant to influence the views, actions and conduct of the receiver who if he accepts must reciprocate the gesture by performing the intended act. It is for this reason that general gifts and tips (usually given as a token of appreciation for good services) cannot be considered as bribes.

Bribes are more or less illegal and immoral agreements between the bribe giver and receiver for the performance of an act in exchange for an object of value for the purpose of influencing the receiver views, actions or conduct in order to gain special treatment. In most jurisdictions bribery is seen as a crime, which is punishable by a term of imprisonment, a fine or a combination of the two. The bribe giver and receiver are both culpable and as such most jurisdictions treat them as offending parties. In some other jurisdictions bribery may be

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Transparency International, *How do you define corruption?* at <a href="http://www.transparency.org/news\_room/faq/corruption\_faq#faqcorr1">http://www.transparency.org/news\_room/faq/corruption\_faq#faqcorr1</a> (last visited, June 25<sup>th</sup>, 2009).

<sup>&</sup>lt;sup>2</sup> I. Carr, Corruption in Africa: is the African Union Convention on Combating Corruption the Answer?, March 2007 JBL 116 (2007).

<sup>&</sup>lt;sup>3</sup> See Transparency International, supra note 1.

treated with less severity and may be more acceptable as a norm or part of the society. It is for this reason that bribes in such jurisdictions have been given names like 'grease money' in order to oil the views of the receiver and make him swing into action. Bribery can take place in both public and private capacities. Public capacity involves public officials or people who are being paid by the taxpayer and private capacity involves anyone not being paid by the taxpayer.

The saying 'it takes two to tango' is an apt description of the problem of bribery. This is because there are two sides to it. These are the demand and supply side. The demand side of bribery involves the asking of the bribe by the receiver who can request this bribe for himself or on behalf of someone else. He can also make this request directly or indirectly. If the person demanding the bribe is acting on behalf of someone else he will be seen to be an accomplice to the crime. On the other hand, the supply side of bribery deals with the offer, the payment or the promise to pay the bribe by the giver to the receiver. Similar to the demand side, the giver of the bribe in the supply side can also be acting either for himself or on behalf of someone else or can also give the bribe directly or indirectly.

Bribery can also be viewed vertically from top to bottom and vice versa. Bribery from top to bottom is where the bribery takes place at the highest levels of government and some of the bribe payments trickle down to the lower officials as 'hush money'; while bribe from bottom to top is where numerous bribes are paid to lower officials and a percentage of the payment is passed on to higher officials in the level of hierarchy.<sup>4</sup>

Most international legal instruments deal with the supply side of bribery particularly bribery of foreign public officials. This is because the demand side is usually handled by the laws of the host country or the laws of the country in which the bribe receiver is subject. Some of these legal instruments will form the subject matter of the ensuing chapter.

## 3. RELEVANT LEGAL INSTRUMENTS ON BRIBERY

The legal instruments that touch and concern bribery range from the simple to the extensive. This paper will pay particular attention to those legal instruments that are extensive.

<sup>&</sup>lt;sup>4</sup> E. Moore (Jr), Causes of Demand for International Bribery at <a href="http://ejbo.jyu.fi/pdf/ejbo\_vol12\_no2\_pages\_18-23.pdf">http://ejbo.jyu.fi/pdf/ejbo\_vol12\_no2\_pages\_18-23.pdf</a> (Last visited, July 1st, 2009).

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD CONVENTION)- recognises the problem of bribery of foreign public officials in international business transactions and is regarded as one of the most comprehensive legal documents on bribery. It is for this reason that non-OECD countries such as Brazil and South Africa are parties to it. The convention places an obligation on parties to have domestic laws which make it a crime to offer, promise or pay a bribe to a foreign public official or assist or participate in the act as can be seen in Articles 1 and 2 below:
  - '1. 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.
  - 2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party'.<sup>5</sup>

The convention also creates an obligation in Article 3 for the parties to punish acts of bribery of a foreign public official with effective and proportionate sanctions in comparison to their own officials. The convention also makes provisions for mutual legal assistance even in accounting procedures and makes bribery and extraditable offence. See Articles 8, 9 and 10. With all these in mind the OECD has taken a great step in trying to curb this menace.

• Foreign Corrupt Practices Act- another legal instrument worth mentioning is the Foreign Corrupt Practices Act of the United States (FCPA). As a result of SEC investigations in the mid-1970's, over 400 US companies admitted making

<sup>&</sup>lt;sup>5</sup> OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, November 21, 1997, (entered into force 15 Feb. 1999), at <a href="http://www.oecd.org/dataoecd/4/18/38028044.pdf">http://www.oecd.org/dataoecd/4/18/38028044.pdf</a> [hereinafter, OECD Convention] (last visited, June 26<sup>th</sup>, 2009).

questionable or illegal payments in excess of \$300million to foreign government officials, politicians and political parties<sup>6</sup> and the US government decided to swing into action by enacting the FCPA in an attempt to curb the incidence of bribery of foreign officials by US companies. The FCPA has five elements which are:

- The bribe giver
- A corrupt intent which will establish the fact that the bribe was given to induce favour
- The bribe receiver
- The payment
- For business purposes

The five elements make up the act of bribery under the FCPA. The FCPA also makes it unlawful to pay bribes through a third party for the purpose of bribing a foreign official.

The FCPA makes it unlawful for an individual or company to corruptly offer, pay or promise to pay a foreign official, political party or a candidate for foreign political office for the purpose of influencing an act or decision in his official capacity, induce such foreign official to do or omit from doing any act in violation of the lawful duty of such an official, secure any improper advantage or induce such foreign official to use his influence with a foreign government or instrumentality to affect or influence any act or decision of such government or instrumentality in order to assist such individual or company in obtaining or retaining business for or with, or directing business to any person. The FCPA is a courageous document which has furthered the fight against bribery but the affirmative defences provided for has created a loophole for bribery to still thrive. The affirmative defences are listed below:

- Legality of the payment in the host country
- o The payment should be a legitimate expense
- o The payment should be in support of goods or services
- The payment for the execution of an obligation under a contract with a foreign government institution.

<sup>6</sup> Lay Person's Guide to the Foreign Corrupt Practices Act [hereinafter, FCPA], at <a href="http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html">http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html</a> (last visited, June 26th, 2009).

<sup>&</sup>lt;sup>7</sup> FCPA, Current Through Pub. L. 105-366 (November 10, 1998), United States Code, Title 15. Commerce and Trade, Chapter 2b Securities Exchanges, at <a href="http://www.usdoj.gov/criminal/fraud/docs/statute.html">http://www.usdoj.gov/criminal/fraud/docs/statute.html</a> (last visited, June 26th, 2009).

Anyone of these affirmative defences can be employed by a dubious business to continually engage in acts of bribery to secure preferential treatment overseas. As a result of this, the application of these defences should be limited.

• African Union Convention on Preventing and Combating Corruption (AUCPCC)—
There can be no paper written on bribery without mention being made of the African scenario. The African Union has made a commendable effort in promulgating its own convention on corruption, the African Union Convention on Preventing and Combating Corruption (AUCPCC). African countries are amongst the countries that have suffered and are still suffering at the hands of bribery. This has led to a decay of the moral fabric of the society, damage of good business ethics and general lack of confidence in the legal order and leadership of the country. Article 5 of the convention requires parties to criminalise bribery and other acts of corruption in their domestic laws, establish anti-corruption agencies and tighten control measures for procurement and management of goods and services for the government.

The convention also recognises several acts of corruption which include misappropriation, bribery and nepotism. Article 4 of the convention recognises and criminalises acts such as giving and accepting a bribe whether directly or indirectly, through a person acting as for himself or on behalf of someone else or acting either as a facilitator or an accessory after the fact. Since a bribe involves the acceptance of a payment this convention through Article 6 and 16 has been able to create a provision against laundering the proceeds of bribery as well as confiscating such proceeds respectively. The convention also went further in Article 11 by mandating the parties to criminalise corrupt acts by agents of the private sector which is seen as a laudable step since most international business transactions involve the private sector. The convention through Articles 17 and 18 has recognised the need to reduce banking secrecy and encourage mutual legal assistance to combat the incidence of bribery and other corrupt related acts. It is safe to say that the African convention has been able to address several issues which border on corruption and other related acts. It also creates an atmosphere in which the problem of bribery will be tackled head on. The

<sup>&</sup>lt;sup>8</sup> African Union Convention on Preventing and Combating Corruption, July 11, 2003, (entered into force 5 Aug. 2003), [hereinafter, African Convention] at <a href="http://www.africa-union.org/Official\_documents/Treaties\_%20Conventions\_%20Protocols/Convention%20on%20Combating%20Corruption.pdf">http://www.africa-union.org/Official\_documents/Treaties\_%20Conventions\_%20Protocols/Convention%20on%20Combating%20Corruption.pdf</a> (last visited, June 30<sup>th</sup>, 2009).

only problem now is the seriousness of parties to the convention. Out of the 53 countries in the African Union only 43 have signed it and of those ones only 29 have ratified it. This shows that as commendable as the convention may be action by the parties in combating bribery is still very discouraging.

Having looked at some of the relevant legal instruments touching on bribery a careful consideration of the effects of bribery will be made.

### 4. EFFECTS OF BRIBERY

The act of bribery has become a nuisance to all parties concerned in a business transaction. It leads to a waste of resources, undermines the confidence of international businesses in the legal and political order of the host country as well corrupt the business ethics of the international companies concerned. This in turn affects the investment climate of the host country as well as taints the reputation of the international companies. Before one can lay blame on the host country one must understand the culture of such a country as it relates to bribery.

## 4.1. Bribery, Culture and Reality

Every country has its own distinct culture. Such culture helps determine the level of tolerance that country has towards corruption. This view can be properly understood particularly with countries in Asia and Africa whose culture greatly influences the way they live their lives. For instance, in Nigeria (the Yoruba tribe in particular) people are accustomed to giving thank you gifts after a favour or something has been done for you. For instance, a man buys a new Mercedes Benz C class car as a thank you gift to an official who awarded him a contract worth \$50m. Would such a gift be termed as bribery or an act of corruption? Another instance is in the Hindu culture where teachers are revered and it is common practice for students to give little gifts to their teachers as tokens of appreciation for the knowledge imparted to them. This tradition can be traced back to the Vedic times. The

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<sup>&</sup>lt;sup>9</sup> African Union List of Countries that have signed and ratified the African Convention on Preventing and Combating Corruption, April 13, 2009, at <a href="http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf">http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf</a> (last visited, June 26<sup>th</sup>, 2009).

intention is not to affect the teacher's judgment but to show appreciation. Would such a gift be termed as bribery? A country with a culture of bureaucratic bottlenecks will invite acts of bribery because people and businesses will rather pay the bribe than lose out due to such bottlenecks, particularly if there is a lot of money at stake. Since culture is created over time payments which are made to fast track documents or avoid bureaucratic bottlenecks will be assimilated as part of the culture of transacting business with government departments.

Since culture is dynamic, the realities on ground in a particular country also contribute to its level of tolerance for corruption. The realities on ground can be viewed as:

- Income and Social Inequalities
- Economic Inequalities
- Political Inequalities

Poverty is seen as a motivating factor in many aspects of life such as an individual's innovation to progress or the development of a corrupt mind. For a country in which income and social standing is very important more often than not the 'haves' will show their affluence and wealth and rub it in the face of the 'have-nots' who will be made to feel inadequate and unequal to the former. In their desperation to climb the social ladder, join the haves and 'keep up with the Jones' or at least be close to them, the have-nots resort to corruption in order to augment their meagre salary. This is where bribery comes into play. The have-nots do not see anything wrong with collecting bribes as they view it as one of the essential means of survival.

Another contributing factor to the incidence of bribery is where economic inequalities are prevalent such as preferential treatment being given to a business rival particularly as it relates to trade. This can spur other people to do what is necessary to be able to gain a foothold with the authorities so as to create some form of level playing ground or obtain their own needed advantage. For instance, a trader whose goods are delayed for registration before he can sell will more often than not resort to bribery if he sees that his competitor who has similar goods was able to register these promptly and timely.

<sup>&</sup>lt;sup>10</sup> See Carr, supra note 2, at 115.

Bribery in political circles comes into play when people particularly politicians who are looking for political favours within the corridors of power try to use bribes to gain special treatment in relation to things like political appointments, government contracts or just general influence over the political order in the country. This can also be linked to business transactions particularly if the person or politician involved is acting as a middleman in order to enable a company obtain special treatment or consideration for government contracts especially multimillion dollar contracts.

### 4.2 Bribery in International Business Transactions

Bribery in international business transactions usually takes place in big transactions such as power plant contracts, oil and gas contracts as well as big construction contracts but this is not to say that bribery cannot take place in smaller contracts. Bribery in business transactions knows no bounds and since the primary motive of a business is to make profits, more companies are getting involved in bribery in order to secure contracts especially during the current economic crises where companies will do almost anything to stay in business.

As a result of several legal instruments prohibiting and criminalising bribery, companies have become innovative in their acts of bribery by involving middlemen (who are sometimes called consultants) and terming the bribe payments as consultancy fees in order to evade detection. For instance, Fidelity Information Services a US software company gave Chinese banking officials and their families through a Chinese consultant an array of gifts, including expensive Sony cameras, outfits from Versace and Burberry and perhaps even a \$330,000 luxury apartment in Shanghai<sup>11</sup> for the purpose of securing special treatment.

Most companies see bribery as a legitimate cost of operating in any country particularly in countries blessed with abundant natural resources or with a need to develop modern infrastructure. Countries such as Russia, Indonesia and even Nigeria are blessed with abundant natural resources and are in desperate need of modern infrastructure. The incidence of bribery in business transactions can also be industry related. Industries which are highly capital intensive such as oil and gas, mining and construction have a higher bribery rate than

D. Barboza, *Bribery case exposes corruption in China*, at <a href="http://www.nytimes.com/2006/11/29/business/worldbusiness/29iht-bank.3706707.html">http://www.nytimes.com/2006/11/29/business/worldbusiness/29iht-bank.3706707.html</a> (Last visited, July 1st, 2009).

other industries. For instance, a case involving Albert Stanley former CEO of KBR who pleaded guilty to bribery after masterminding the scheme to secure a massive natural gas contract in Nigeria's Bonny Island, which involved \$180 million in bribe payments to grease the deal.<sup>12</sup> The amounts involved in contracts of this nature coupled with the greed of both the officials and company executives make such industries prone to acts of bribery.

## 4.3. Effects of Bribery

Figure 1: Money Changing Hands



Source: How much does corruption affect business at <a href="http://www.triplepundit.com/pages/how-much-does-corruption-affect-business.php">http://www.triplepundit.com/pages/how-much-does-corruption-affect-business.php</a>

As there are two sides to every coin so are there two sides to every situation. The act of bribery is no exception. With bribery come two different effects, the positive and the negative. The writer will proceed with the positive aspects of bribery first.

The act of bribery is to influence the views and conduct of a person in the position of trust in order to create some form of special treatment. This will help multinationals secure business transactions against rival companies as was evident in a survey carried out by Control Risks Group Ltd and Simmons and Simmons, which said that

'Overall, 43% of respondents believed that they had failed to win business in the last five years because a competitor had paid a bribe...'. 13

It is for this reason that the affirmative defences in the FCPA were introduced to help reduce the loss of business by US companies who felt they were losing out to their counterparts from other countries willing to pay the bribes.

<sup>&</sup>lt;sup>12</sup> Frontline World, *Nigeria: KBR's Bribery, Who Pays the Price? How large-scale bribery by multinationals undermines the developing world*, April 29<sup>th</sup>, 2009 at <a href="http://www.pbs.org/frontlineworld/stories/bribe/2009/04/nigeria-corruptions-collateral-damage.html">http://www.pbs.org/frontlineworld/stories/bribe/2009/04/nigeria-corruptions-collateral-damage.html</a> (Last visited, July 1st, 2009).

J. Bray, Facing Up to Corruption: A practical business guide at <a href="http://www.control-risks.com/pdf/Facing-up">http://www.control-risks.com/pdf/Facing-up</a> to corruption.pdf (Last visited, July 1st, 2009).

Secondly, as a result of poverty or lack of adequate remuneration the people who receive these bribes see the payments as a means of survival, hence, its encouragement by such people.

Thirdly, bribery can be seen to encourage some level of efficiency and help reduce the incidence of bureaucratic bottlenecks especially among government officials whereby paper work is expedited as a result of a bribe being paid or delayed as a result of a bribe not being paid.

Fourthly, bribe income also helps to attract qualified applicants to low paying jobs. Often jobs where the wages are low receive a comparatively large number of applications due to the ability to extort bribes. These jobs include positions with the police, customs, tax office and immigration. To a certain extent this will help reduce the unemployment rate in some countries.

Having looked at the positive aspects of bribery the negative aspects will equally be considered.

Firstly, bribery kills the moral fabric of the society and wreaks havoc on the business ethics and reputation of a company that is caught in the act. This can result in loss of confidence in the company by members of the public and can also lead to loss of business patronage.

Secondly, since bribery has been criminalised in most jurisdictions, the companies engaged in such acts stand the chance of being convicted on such crimes which could lead to large fines or even prison terms as was evident in the Albert Stanley case where he got seven years prison term and KBR was fined half a billion dollars.<sup>14</sup>

Thirdly, with bribery comes waste of resources. This is because the wealth which could have been channelled to achieve better things will be spent on trying to secure business advantages by paying bribes. It can also lead to a loss of business for the host country involved, as incessant acts of bribery will scare business executives from doing business in that country.

Fourthly, bribery may not produce the best man for the job. This can happen by awarding a contract to the person who is able to grease the hands of officials in charge of the contract and not necessarily the most qualified person for the job. With this in mind the companies will consequently perform poorly or perform and ensure that the cost of the bribe is ultimately transferred to the consumer.

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<sup>&</sup>lt;sup>14</sup> See Frontline World, supra note 12.

Fifthly, bribery does not create a level playing ground for all business concerned which can be seen as unfair to other businesses not willing to pay bribes just to secure contracts.

## 5. <u>CONCLUSION: TO BRIBE OR NOT TO BRIBE</u>

Having considered the above facts one must say that the average business manager may find himself in a dilemma of whether to bribe in order to gain business or not to bribe and lose business. Such dilemma must be properly considered in line with the scale of preference of the company involved. Companies are in business to make money but if they keep losing money to other businesses willing to pay the bribes wouldn't they have to rethink? Since a company is a corporate citizen will it not follow the business culture of a country in which it operates where such country does not frown at bribery? It has been said that when in Rome you act like the Romans, are companies also supposed to do the same? Or should the companies follow the concept of utilitarianism which requires a manager to weigh the costs and the benefits of bribery to all those affected by the action or can claims that actions which produce the greatest good for the largest number of people can be morally justified? Or should the companies consider their business ethics and reputation? Or maybe the fear of getting caught and penalised for bribery will discourage the companies from bribing.

In the view of this writer the ultimate decision to bribe or not to is left in the hands of the business manager who has to decide whether to bribe and make good business in order to deliver adequate returns to the shareholders or not bribe and lose business to those willing to bribe all in a bid not to commit an offence and lose business reputation.

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<sup>&</sup>lt;sup>15</sup> P. Herbig, *The Influence of Culture on Bribery: Some Ethical, Socio-political and Economic Considerations*, at <a href="http://www.geocities.com/Athens/Delphi/9158/paper11.html">http://www.geocities.com/Athens/Delphi/9158/paper11.html</a> (Last visited, July 2nd, 2009).

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### **BIBLIOGRAPHY**

### **Primary Sources**

#### **Treatises**

African Union Convention on Preventing and Combating Corruption, July 11, 2003, (entered into force 5 Aug. 2003), [hereinafter, African Convention] at <a href="http://www.africa-union.org/Official\_documents/Treaties\_%20Conventions\_%20Protocols/Convention%20on\_w20Combating%20Corruption.pdf">http://www.africa-union.org/Official\_documents/Treaties\_%20Conventions\_%20Protocols/Convention%20on\_w20Combating%20Corruption.pdf</a> (last visited, June 30<sup>th</sup>, 2009).

Foreign Corrupt Practices Act, Current Through Pub. L. 105-366 (November 10, 1998), United States Code, Title 15. Commerce and Trade, Chapter 2b Securities Exchanges, at <a href="http://www.usdoj.gov/criminal/fraud/docs/statute.html">http://www.usdoj.gov/criminal/fraud/docs/statute.html</a> (last visited, June 26th, 2009).

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, November 21, 1997, (entered into force 15 Feb. 1999), at <a href="http://www.oecd.org/dataoecd/4/18/38028044.pdf">http://www.oecd.org/dataoecd/4/18/38028044.pdf</a> [hereinafter, OECD Convention] (last visited, June 26<sup>th</sup>, 2009).

### **Secondary Sources**

#### **Articles**

#### In a Periodical

Carr, I., Corruption in Africa: Is the African Union Convention on Combating Corruption the Answer?, March 2007 JBL (2007).

#### **Others**

#### **Internet Sources**

African Union List of Countries that have signed and ratified the African Convention on Preventing and Combating Corruption, April 13, 2009, at <a href="http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%2">http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%2</a> OCorruption.pdf (last visited, June 26<sup>th</sup>, 2009).

Barboza, D., *Bribery case exposes corruption in China*, at <a href="http://www.nytimes.com/2006/11/29/business/worldbusiness/29iht-bank.3706707.html">http://www.nytimes.com/2006/11/29/business/worldbusiness/29iht-bank.3706707.html</a> (Last visited, July 1st, 2009).

Bray, J., Facing Up to Corruption: A practical business guide at <a href="http://www.control-risks.com/pdf/Facing\_up\_to\_corruption.pdf">http://www.control-risks.com/pdf/Facing\_up\_to\_corruption.pdf</a> (Last visited, July 1st, 2009).

Frontline World, Nigeria: KBR's Bribery, Who Pays the Price? How large-scale bribery by multinationals undermines the developing world, April 29<sup>th</sup>, 2009 at

http://www.pbs.org/frontlineworld/stories/bribe/2009/04/nigeria-corruptions-collateral-damage.html (Last visited, July 1st, 2009).

Herbig, P., *The Influence of Culture on Bribery: Some Ethical, Socio-political and Economic Considerations*, at <a href="http://www.geocities.com/Athens/Delphi/9158/paper11.html">http://www.geocities.com/Athens/Delphi/9158/paper11.html</a> (Last visited, July 2nd, 2009).

Lay Person's Guide to the Foreign Corrupt Practices Act [hereinafter, FCPA], at <a href="http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html">http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html</a> (last visited, June 26th, 2009).

Moore (Jr), E., *Causes of Demand for International Bribery* at http://ejbo.jyu.fi/pdf/ejbo\_vol12\_no2\_pages\_18-23.pdf (Last visited, July 1st, 2009).

Transparency International, *How do you define corruption?* at <a href="http://www.transparency.org/news\_room/faq/corruption\_faq#faqcorr1">http://www.transparency.org/news\_room/faq/corruption\_faq#faqcorr1</a> (last visited, June 25<sup>th</sup>, 2009).