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When it's so broke, you can't fix it: The decision not to do business in highly corrupt countries

The collapse on April 24, 2013, of the garment factory in the Rana Plaza complex in Dhaka, Bangladesh, resulted in the death of more than 1,120 workers. A few months later, Nike Inc. announced its decision to sever ties with its key garment suppliers in Bangladesh, "[i]n effect, conced[ing] that problems outsourcing production to the country couldn't be easily fixed."[1] Transparency International described the challenge as "a global garment supply chain bedeviled by endemic corruption."[2] But this problem is not unique to Bangladesh or the garment industry. There are countries and industries where corruption is so rampant and corporate compliance such a challenge that companies decide to exit the country or not enter it at all. So the question becomes, when does a company like Nike reach the point of knowing that "it's so broke it can't be fixed?"

According to TI's Corruption Perceptions Index, Bangladesh scores only 27 points in a scale of 0-100, and is ranked 136 from a total of 177 countries. "To get a factory up and running [in Bangladesh]," explained Iftekhar Zaman, executive director of Transparency International (TI) Bangladesh, "factory owners can pay as much as US$25,000 in bribes for 14 different categories of permits from 17 public agencies across 11 ministries. When there are greater risks, such as not having an emergency exit, the amount of the bribe often gets bigger, but the factory stays open."[3] According to Mr. Zaman, Rana Plaza was constructed on illegally occupied land in collusion with the politically powerful and runs in defiance of regulations and building codes with the help of corrupt officials.

In 2013, Dhaka only had 22 safety inspectors for 17,000 factories and workshops. To this day, Rana Plaza's owner has not yet been convicted. TI has made recommendations for legislative and regulatory improvements to combat corruption, such as replacing the current factory oversight system with a one-stop-shop garment ministry with sufficient resources and staff and tougher enforcement and penalties for negligent factory owners.

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[1] Shelly Banjo, *Inside Nike's Struggle to Balance Cost and Worker Safety in Bangladesh*, The Wall Street Journal, April 21, 2014, http://online.wsj.com/news/articles/SB10001424052702303873604579493502231397942.

[2] Iftekhar Zaman, *Guest post: corruption rampant a year after Bangladesh factory collapse*, Financial Times, April 24, 2014, http://blogs.ft.com/beyond-brics/2014/04/24/guest-post-corruption-rampant-a-year-after-bangladesh-factory-fire/

[3] *Id.*

TI has also recommended that global clothing brands work with the government and suppliers to deliver higher safety standards and combat corruption. Although Nike and Walt Disney decided to exit the Bangladeshi garment industry following the Rana Plaza incident, retailers including Wal-Mart Stores Inc, Hennes & Mauritz AB, and 170 other similar companies stayed.

When do you decide to go?

In determining whether to enter or exit a market plagued with corruption, companies should assess whether it is possible to reduce or eliminate current corrupt practices, using the following key factors.

Business footprint

One factor to consider is the size of the company's market share. How much real leverage does it have to position itself vis-à-vis its competitors, third-party service providers, customers, and the government in reducing the use of corrupt practices? In justifying Nike's decision to exit Bangladesh, Hannah Jones, Nike's head of sustainable business, explained that "Bangladesh isn't [Nike's] fight. It can better use its resources in countries where it has a bigger footprint."[4] Nike and Walt Disney, for example, while huge international players, had limited economic impact in Bangladesh.

The garment industry in Bangladesh contributed approximately 80% of Bangladesh's total export earnings between 2009 and 2010.[5] Given the economy's reliance on the industry, if either of these companies had had a larger market position or if they, and a number of other competitors, had adopted a joint position against corruption, they may have had an impact. Without market clout, the government has little reason to listen.

Political will

A second factor as to whether it is possible to operate without corruption in a highly corrupt country is the government's will to combat corruption. Even in countries with a high degree of historic corruption, if lawmakers have created the legal framework to combat corruption and implemented an effective system to enforce the laws, a company can be supported to operate non-corruptly. A look at the laws on the books and the role that the government, the judiciary, and the police play in enforcing (or choosing not to enforce) these laws, will tell a company whether to enter the market. In China, for example, many have argued that there is now a true will to change corrupt practices that has started to result in tangible and widespread enforcement action. Without an ally in the government, national or local, reducing corruption will be an uphill, and perhaps impossible, battle for companies.

Competitors

The majority of companies that stayed in Bangladesh after the Rana Plaza incident came together and signed five-year agreements pledging to help fund improvements and draw up safety standards, including the Accord

[4] Banjo, *supra* note 1.
[5] Data provided by the Board of Investment, Bangladesh, Prime Minister's Office, last visited May 18, 2014, http://www.boi.gov.bd/index.php/potential-sector/garments-and-textiles

on Fire and Building Safety in Bangladesh. Companies must assess how willing their competitors are to get on board with reducing corruption. Bangladesh is an example: after Rana Plaza, the international media demanded immediate reform leading the majority of multinational companies outsourcing garment production to Bangladesh, to come together in an unprecedented way. But this will not always be the case, and it may not be feasible to fight a one man's battle.

Profit assessment

In determining whether a company can operate without relying on corruption, companies need to consider whether alternatives to the corrupt practices exist. This may mean, for instance, selecting service providers, intermediaries, business partners or suppliers that do not rely on bribes to government officials; or bringing in-house certain activities of a supply chain to obtain more control. This will necessarily require a profit assessment, and it may be that the alternatives are too costly.

Too high a price to pay?

If the decision is made to stay and try to operate non-corruptly, there is still a risk of costly enforcement action as enforcement agents may not be sufficiently impressed by the company's efforts to combat corruption when a country or industry is endemically corrupt. Wal-Mart, for example, entered into a venture agreement with Indian retail giant Bharti to build and operate cash and carry superstores in India. Following an internal bribery investigation that led to the suspension of "consultants," including middlemen in government offices, Wal-Mart dissolved its partnership with Bharti, spending over US$334 million to do so.

Not every company can operate in every country and effectively manage corruption risks. Companies should understand their limitations and those of the countries and industries in which they seek to operate. Because sometimes, it is just too broke to be fixed.

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