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The American University in Cairo
School of Global Affairs and Public Policy

Promoting corporate intelligence in Italy to improve stability in the Middle East

A project submitted to the
Public Policy and Administration Department
in partial fulfillment of the requirements for the degree of

Master of Global Affairs, with concentrations in international security

by
Antonio Giuseppe Di Pietro

Fall 2015

ABSTRACT

Most national and international legislative instruments impose a duty to conduct appropriate due diligence when doing business, in order to hold each company accountable for the malicious activities of its partners. This project's main argument is that formal due diligence is not enough when it comes to preventing corrupt business behavior, particularly when dealing with highly corrupt environments. Starting with an analysis of the Italian legislative efforts, this project demonstrates how the promotion of corporate intelligence into standard business practice could fill the gaps left by due diligence. Emphasis is placed upon the adoption of corporate intelligence among SMEs, given their being the proven stabilizers of society. This project presents a number of recommendations to the Italian government, the law enforcement agencies and corporate intelligence firms of how to promote corporate intelligence and, therefore, security in the Middle East.

*Alla mia famiglia.
To my family.*

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1. Introduction

This research proposes a different approach to the securitization of the Middle East. Starting from the idea that corrupt business practices negatively affect international security and national stability, a series of recommendations are made in order to improve anti-corruption efforts. While most doctrines focus on the development of national infrastructures to do so, this research is based on the idea that changes made in the legal framework of a country, such as Italy, may have positive repercussions on the way business is conducted abroad – namely in the Middle East.

The conceptual arguments are based on the idea that each government makes a choice on how to capitalize from corrupt business practices: it may choose to be the beneficiary of the revenues of corruption, or to cash in from the fines imposed on those who are corrupt. The latter case is that of Western or westernized systems, where anti-corrupt practices see their strongest development and enforcement. These provisions diversely require companies to carry out a number of checks before doing business with another company; they also hold the companies liable for any wrongdoing of a business partner, whom they have not properly investigated. The starting point for the research is an analysis of how the current control practices, the so-called *due diligence*, may satisfy the requirements of the law whilst still not fully satisfying the needs of businesses.

This study unifies the expertise of professionals in the field of corporate investigations, with the on-field experience of the researcher with Kroll, a leading corporate intelligence company, in order to understand the obstacles that businesses encounter in the current legal system, and what changes should be made at the government, law enforcement and corporate intelligence company level. This research corroborates these findings with established scholarly work, as well as practitioners' manuals and publications. The research does not only define the difference between corporate intelligence and due diligence – a

theme that today appears almost untouched – but it also shows, where possible, how the acknowledgment of an enhanced set of controls in the public and the private sectors could benefit both. The fundamental constant is the cooperation between these sectors, which currently appears, all too often, to demonstrate an antagonist relationship, going as far as rivalry in some cases.

The argument is divided in three sections: the first aims to give an overview of the current state of the regulations in two countries. Italy is chosen as an example of a country with a Western approach to corrupt practices. It is also facing an economic downfall, and could benefit from a strengthening of its revenue streams; therefore it also has an interest to strengthen its enforcement of the rule of law concerning corrupt practices. The United Arab Emirates (UAE) is chosen as an example of a Westernized approach to corrupt practices. It is also currently recovering from a period of economic crisis. Both countries have something to learn from each other; the policy recommendations made for Italy could be taken into consideration by the UAE in the development of its future regulations. In this section, how the current regulations establish a set of fixed checks to be performed as a checklist exercise is explained.

The second section is a case study: the example chosen is the long-standing ties between the Italian mafia and the traffic of toxic waste to Somalia, in exchange of weapons for local extremist groups. With this example it is possible to understand the weakness of the due diligence assessments required by the law, concretely, especially in the case of criminal events that were officially unreported but were unofficially exposed. Moreover, the link between corporate investigations and international security is reinforced.

The third section finally shows the benefits of corporate intelligence assessment. The idea of flexibility in checks is introduced to explain how a company should make an assessment and when to use this tool, also in consideration of its costly nature. The means of

investigation that characterize corporate intelligence are also shown, namely the use of public records, the media, human intelligence and technological platforms, along with their limitations. With this analysis, the research underlines the obstacles to the diffusion of this tool, but also argues how its effectiveness can be improved when its use is included in the company's code of conduct.

In conclusion:

- (i) The Italian legislator is prompted to:
 - a. Enhance the provisions against accounting fraud;
 - b. Diversify the sanctions' spectrum;
 - c. Incentivize the disclosure of corrupt practices;
 - d. Incentivize the use of corporate intelligence;
- (ii) Law enforcement agencies are prompted to:
 - a. Establish formal relationships with corporate intelligence companies.
- (iii) Corporate intelligence companies are prompted to:
 - a. Embed in-house data analytics tools;
 - b. Invest in the development of SME-specific products.

2. Client

Kroll has been operating in the field of corporate investigations and risk consulting since Jules B. Kroll established it, in 1972, in New York City. To date, it boasts 52 offices positioned both in the developed and emerging markets of 29 countries. It has operated in every geographic region, servicing both governments and businesses. Kroll has more than 2.800 employees, all with have extremely diverse backgrounds; ranging from accounting to forensic investigations, to strategic consulting and information technology, political science, law and economics.

During the merger-mania of the Seventies, Kroll pioneered investigative due diligence. When the Western markets slowed down at the beginning of the nineties, and those regimes started falling apart, Kroll retained its worldwide recognition through success in high profile assignments such as the uncovering of the assets hidden by Ferdinand Marcos, Jean-Claude Duvalier and Saddam Hussein, the negotiation of kidnapping cases in Brazil and the security revamping at the World Trade Center after the 1993 terrorist attack. More recently, Kroll has focused its efforts on growing its business as a technology-based intelligence company. Today its diversified business is focused on investigations, cyber security, due diligence, compliance, security risk management, data recovery and e-discovery.

In the last five years, Kroll has focused on the promotion of its corporate intelligence sector. The company offers transaction intelligence, compliance consulting and investigative services, for commercial value and litigation support, during different phases of the business life cycle of its clients. Its clients include major global corporations, law firms, government institutions and equity houses. Kroll's unique feature is its level of access to sources; on one hand, it draws publicly available information from a comprehensive set of proprietary databases and on the other, it relies on a network of external investigation specialists to gain insights on specific industries or geographies, collecting information locally and receiving feedback on the field.

Its products are delivered through four practice areas:

- (i) Investigation and disputes (I&D) – depending on the region of interest, Kroll offers a wide range of investigative services, which may range from reputational intelligence to market entry and transaction intelligence, as well as litigation advisory and financial investigations. Lately, Kroll has been pushing its cyber intelligence products, thanks to the cooperation with its sister company Kroll

Ontrack, which provides cyber security consulting services and other Information Technology (IT) services.

- (ii) Compliance – the company offers consulting and guidance on anti-bribery and anti-money laundering regulations, also providing its clients with related services such as vendor screening and third party risk assessments;
- (iii) Information security – thanks again to the cooperation between Kroll and Kroll Ontrack, the company offers information assurance and IT security compliance services, as well as data breach response and resolution; while Kroll Ontrack deals with the technical side, Kroll takes care of the human intelligence aspect of the breaches;
- (iv) Physical security – particularly in the United States, and less overseas, Kroll provides threat assessment services, as well as security engineering services and guidance during the development of security policies and procedures.

Kroll's Milan office holds much history and experience relevant to on-field investigations, mainly focused on gathering business intelligence and uncovering corruption in, and for, the Italian Public Administration. Kroll's business has grown exponentially during the economic crisis that hit the country in 2007, because of a higher risk of fraud at a time when companies could not afford it. The Milan office is headed by Marianna Vintiadis, Kroll's country manager in Italy who is also responsible for operations in Austria and Greece, as well as Spain and part of the Balkans.

Kroll's Dubai office quickly gained high profile assignments that made it a hub of investigative consulting services in the Middle East, despite only having been registered in the federal financial free zone of the Dubai International Financial Center only since 2007. The Dubai office is specialized in investigative business intelligence consulting; it informs those clients willing to embark on investments in emerging markets or challenging

environments about commercial, regulatory and reputational risks. Yaser Dajani is the managing director and head of the firm's Middle Eastern operations. Both the Milan and the Dubai office report to the Europe, Middle East and Africa (EMEA) coordination office, which is based in London. The Europe, Middle East and Africa managing director of the investigation and disputes branch is Tom Everett-Heath, while Kevin Braine is the EMEA managing director of compliance.

3. Background

3.1. Fighting corruption to promote security

After the terrorist attacks of September 11, 2001, Ronald Noble, at that time Interpol's Secretary General, underlined how "the most sophisticated security systems, the best structures, or trained and dedicated security personnel are useless, if they are undermined from the inside by a single act of corruption". He proposed investing in people before intelligence infrastructures (Noble, 2001, p. 1). The fight against terrorism, insecurity and conflict in general is clearly double-threaded to the fight against corruption. However, the infinite complexity of corruption as an "artifact of social and political organization" (Warburton, 2001, p. 221) makes it difficult to tackle through the traditional system alone, and its two-sided nature makes it even more difficult to detect.

Corrupt business practices may be approached as either an economic concern or a values issue. The former approach covers the debate with a veil of technicality, trying to make a calculation of the benefits over the costs of such behaviors (Bayar, 2009). On the other hand, when approaching the topic as a matter of values – the so-called 'business ethics' – the debate is often overshadowed by other priorities; the introduction of a set of business values into a given system is postponed until other security issues are overcome, as they appear more urgent (Chayes, Carson, Mangan, & Lopez, 2014).

However, scholars (Forrer, Fort, & Gilpin, 2012) have linked higher levels of perceived corruption, as included in Transparency International's Corruption Perceptions Index, to higher levels of violence and instability. They foresee a trend of growing importance of the private sector in influencing public security policies. There is a need to reassess the elements of instability and to understand that corrupt business practices are a security concern. Part of the modern conflict management doctrine debates that corruption can be a stability factor in challenging environments, since it splits the pie among the competing elite. However, those who are not members of the elite become the victims of the corrupt system and, going to the farthest extreme, are those who will join an insurgency or legitimize a coup. Sixty-five percent of the countries of the Middle East and North Africa (MENA) region ranking low on business ethics, and in the lower half in the scores regarding the ease of doing business, also rank medium to low in the United Nations Human Development Index (Bishara, 2011, p. 229).

Putting corruption indexes and violence indexes side-to-side shows that their relationship is tight; a recent study by Prof. Sarah Chayes of the Carnegie Endowment of International Peace did exactly this. She showed how "twelve of the fifteen lowest-ranking countries on Transparency International's 2013 CPI are the scene of insurgencies, harbor extremist groups or pose other grave threats to international security" (Carnegie Endowment for International Peace, 2014, p. 11). However, the CPI cannot be seen as an authoritative analytical tool, and it was never meant to be such.

Because of the harsh social environment created by systemic corruption, those who are not elite members struggle. For this reason the first actors in the market to be affected by corrupt practices are family businesses and small and medium enterprises (SMEs). Paradoxically it is them who are those reportedly crucial to the stabilization of societal dynamics, as they are the true originators of diffused welfare especially in the developing

markets. It will be seen how these are also the business sectors where it is harder to implement control schemes and sound anti-corruption empowerment policies.

Both belligerence and corruption have a spillover effect, and their combination acts as an instability multiplier. Das and DiRienzo, as well as others, analyzed how the spatial decay of corruption in the Middle East is even larger than that of instability, as it reaches 4.400 km (Das & DiRienzo, 2012, p. 512). The paper will argue that it is imperative that the fight against corruption, and therefore the promotion of stability and security, must happen globally and regionally at first. Single nation-wide regulations can be a great tool for this purpose thanks to their international scope of action, as already shown by the United States' Foreign Corrupt Practices Act (FCPA). The common belief is that the solution lies within a democratic governance, since its checks-and-balances allow the defeat of the protectionist tactics employed by the power-holders. Under this idea, Western policy makers expect Middle Eastern authoritarian governments not to regulate the use of corrupt business practices. Contrarily, business laws make it possible to leverage greater revenues against cleaner business relationships, regardless of the governance model.

3.2. The choice of revenue streams

The presence of corrupt practices in public-to-private and private-to-private relationships is often perceived as a failure of the system. It is perceived as a product of grievances, as a way to build unofficial ties and to secure business where the economy is insecure. For this reason, the phenomenon is contrasted by the civil society alone, that tackles the small scale technical deficiencies of the public administration through capacity building programs (Carnegie Endowment for International Peace, 2014, p. 10).

In the Middle East, an average of six percent of a company's revenues is lost in bribes, and this amount can rocket up to twenty-five percent in some more challenging

political environments (Bishara, 2011, p. 227). The criminalization of corruption in the mind of the public has shadowed its nature; in some markets' dynamics corruption does not work against the system but *is* the system. Choosing corruption means choosing a precise revenue stream, in the same way as cashing in fines obtained as a consequence of the enforcement of anti-corruption regulations. The authoritarian elites of the Middle East oppose anti-corruption schemes because these would lead to changes in the society's control structure that would threaten the persistence of their power. Corporations and SMEs that engage with emerging markets may feel that systemic corruption is cultural, and its cost is a necessity to be taken into account when dealing with local governments or companies. This research argues that the engagement in corrupt practices does not depend directly on culture or history, but on a rational choice of revenues and societal dynamics for power stabilization. At the same time, it should be understood that contrasting corruption is an arbitrary choice of revenue streams itself.

The private sector sits in the middle of this contrasting environment, especially companies that are trying to expand into emerging markets. On one hand, they face the threats coming from the regulatory requirements that, if they are not met, can lead to massive fines and reputational downfalls. This can raise the costs needed to shelter operations from practices that may be considered negatively, thus creating even more challenges to the already delicate operations overseas. On the other hand, companies are required to engage in corrupt practices in order to keep afloat in a market where this is the norm.

3.3. The growing importance of corporate governance codes

The threat that corrupt practices pose to the corporate environment is changing over time, both qualitatively and quantitatively. In 2012, a survey carried out by Deloitte, sixty-two percent of the executives interviewed “were not very confident in the ability of their company

to manage compliance and integrity related risks” (Deloitte, 2012, p. 4). In 2015, Kroll reported in its Global Fraud Report that fraud from within the organization is the most worrying, as it affected four in five surveyed companies (Kroll, 2015, p. 9), even if the level of confidence reported by Deloitte three years before grew to sixty percent. As the private sector’s awareness grows, diverse sector-specific approaches develop answers to these threats, protecting companies and securing their investments. Regulations struggle to keep up with this fast-paced evolution of threats, and the civil society works to fill the gaps.

Parallel to law-grade instruments to fight corruption, a large number of soft instruments have been provided by international organizations, governmental agencies and the civil society. In particular, the management doctrine has well established the role of corporate governance in combating corrupt practices. Notwithstanding this, in an interview, Yaser Dajani of Kroll underlined how Middle Eastern companies perceive Western regulations as an imposition, or don’t consider them at all. Thankfully, a thorough analysis of the doctrine regarding corporate governance best practices reveals that the debate is finally focused on how to serve individual companies’ interests, rather than merely transferring international standards to local business structures (Boubaker & Nguyen, 2014, p. 550). The issue with the previous approach was that the creation of one globalized index to evaluate corporate governance and benchmark the features of companies with such international index (transcending, however, the local economic culture and structure) appeared fair for multinational corporations, but actually impacted SMEs negatively, as these standards did not appear scalable (Bishara, 2011, p. 244). As previously mentioned, in the MENA region, especially, SMEs are the core of economy. For this reason, the international community, and governmental organizations in particular, have increasingly developed guidelines to promote and influence the creation of corporate governance codes, but with a cultural-relative tone.

The question on how to develop corporate governance in the Middle East has been posed recently. The original input has come from Egypt and Oman, who developed the first codes in the early 2000s (Koldertsova (Amico), 2011). Some scholars, however, notice that this development has halted since the Arab Spring, due to the generalized feeling of doubt that it instilled in the population, which has “resulted in a profound questioning of the economic and social pact” (Boubaker & Nguyen, 2014, p. 547). It should be positively noted, however, that to date the debate is very much alive, and Yemen is the only country in the region that lacks a securities regulator (Boubaker & Nguyen, 2014, p. 549). At the same time, while economic crime has globally increased, the Middle East has experienced a decrease of seven percent since 2011, as reported by the firm Pricewaterhouse-Coopers in 2014 (Pricewaterhouse-Coopers, 2014a).

A focus on the UAE shows that, even if the government integrated anti-corruption provisions in the Federal Penal Code as early as in the 1980s, the true enforcement of such norms has only become tangible since the financial crisis hit emerging markets in 2008. Unfortunately, the case of the UAE is that of the implementation of international standards of practice, imported as-is. The dichotomy between these imported ideas is not paired with the needs and traditions of the society (Bertelsmann Stiftung, 2014, p. 25), and the institutional framework still relies on elitarian mechanisms.

3.4. The shift in the burden of investigations

Anti-corrupt practices legislations, with the FCPA in the lead, have enacted a shift of responsibility in the investigation of business partners. This new regulatory environment has empowered the compliance department of companies with a new responsibility: companies are now tasked with controlling the activities of their subsidiaries and third parties, and they

are considered directly responsible for any wrongdoing. The FCPA, which has been around since 1977, has seen a boost in its application since 2001 and the rise of the war on terrorism.

Today corporations with operations abroad are required to evaluate the risk of each activity and, depending on the likelihood of involvement in corrupt practices, they must proceed to an assessment of each risk with proportional due diligence. While this principle of flexible risk assessment allows for better resource allocation, it also creates a glass ceiling over the expansion of SMEs to emerging markets, as they often cannot afford the costs of the required enhanced due diligence associated with a higher corruption risk. At the same time, the steep fines that come with non-compliance create reasonable fear. On top of this, the reputational downfall that comes with corrupt practices does not make it worthy to expand.

Companies that can afford to engage in these costs often divide their due diligence into two parts:

- (i)* Everyday due diligence is taken care of by in-house compliance experts, who rely more on off-the-shelf database-based products, or who make use of IT specialists for business analytics, in order to be able to carry out due diligence over huge amounts of subjects at minimum cost;
- (ii)* The assessment of high risk profiles is outsourced to external corporate investigation companies, as they offer tailored solutions for the assessment of internal or external threats, relying on their global network of sources and in-house intelligence specialists, accountants, former law enforcement agents, lawyers, journalists and business consultants.

4. Literature review

4.1. *The security-business link*

Chayes established a link between systematic corruption and international security (Carnegie Endowment for International Peace, 2014): she argues that it is a primary role of States to influence one another through the use of anticorruption regulations, in order to drive all countries towards a unified approach to the issue. She corroborates her statements saying that countries make a choice as to which revenue streams to benefit from, and anticorruption regulations are meant to influence these streams.

However, most doctrines link corruption to security, as it is the instrument for criminal organizations financing. Thachuk, focuses on combating corruption in order to curb terrorism financing; her ideal scope of intervention is the public sector (Thachuk, 2005). Others understand corruption in their structure of criminal networks (Cartier–Bresson, 1997; McIllwain, 1999), but there is a more recent trend to analyze these networks outside of the strict framework of corruption, through quantitative tools such as social network analysis (Kirchner & Gade, 2011). However, corruption is usually understood as a social process and, especially in the Middle East, it appears justified by a cultural relativist approach (Situngkir, 2004; Warburton, 2001). Chayes strongly opposes this trend.

The role of the private sector in promoting security is fairly new to academia, but it has quickly gained exposure in professional publications and practitioner-oriented guidelines. Most of the publications have been drafted by civil society (Transparency International, 2009; United Nations, 2005), in the attempt to trigger ethical behavior especially in those companies involved in emerging markets.. A sub-set of publications deals with the issues faced by companies' involvement in procurement as part of international missions where they are particularly exposed to corruption (Transparency International UK, 2014b).

A different approach is taken by those scholars who envisage the presence of a corporate foreign policy (Fort & Fort, 2015; Forrer et al., 2012; Fort & Schipani, 2004). Their idea is that businesses are in a strong position to promote peace and security - namely through their engagement in peace making, peace keeping, and peace building - because of their influential role in economics. They also underline the interest of these companies to flourish, which can only happen in peaceful economies. This can be seen as a counter-argument to the ethical behavior doctrines (Bishara, 2011; Colondres & Petry, 2014).

4.2. Anti-corrupt practices regulations

The constant, as examined by Graycar's leading doctrine, is that corrupt practices bring "capacity loss" for the public sector, while benefiting only the private side (Graycar & Villa, 2011, p. 434). This nature of 'bad governance' makes it necessary for the public sector to tackle this issue both with legislative and policy instruments.

The regulatory review is operated in three completely different ways by scholars and professionals, which, however, complete one another:

(i) The legal approach analyzes the current regulations in order to make recommendations, either on their application, or on their future development. This literature is divided into three fronts: [a] the largest deals with the issues of the United States Foreign Corrupt Practices Act, always showing how its enforcement has grown in the past years, but either underlining its downfalls making recommendations for specific revisions (Barker, Pacini, & Sinason, 2012; Yockey, 2011; Deming, 2006; Cascini & Vanasco, 1992), or giving insights to businesses on how to comply with the law in a cheaper fashion, seeing compliance as risk management (Cassin, 2014; Park, 2012; Bishara, 2011; Biegelman & Biegelman, 2010); [b] the second front deals with the current state of the regulations globally, mostly reviewing and comparing the differences without making further comments (Prieß, 2014;

World Economic Forum, 2014; Baker&McKenzie, 2014), or lightly remarking the need for further development issuing recommendations; [c] the third front analyzes the existing regulations in the Middle East, and in the UAE specifically (Bellin, 2012; Gillespie, 1987; Hassaan, 2013; Koldertsova (Amico), 2011; Wold, 2011). A few scholars, such as Eicher, also link the legal heterogeneity of anticorruption regulations to business cultural differences (Eicher, 2009).

(ii) From a business point of view, the focus is on either the extrinsic impact of regulations on companies' practices, or on the intrinsic issues that companies face when complying with different regulations. Both approaches are pursued mainly by practitioner-oriented publications. [a] The former 'extrinsic' approach tackles the regulatory issues that companies may face when expanding abroad, with a focus on the Gulf (Gaeta, 2012; Loughman & Sibery, 2012), while most professional publications tackle specific issues such as risk disclosure levels (Kamal Hassan, 2009) or credit risk management (Masood, Al Suwaidi, & Darshini Pun Thapa, 2012) to advise perspective clients on the regulatory risks of Middle Eastern markets. [b] The 'intrinsic' approach, conversely, aims at describing the elements of a company that are fundamentally necessary to face emerging markets' risks, and advocates a necessary innovation of corporate governance structures (Boubaker & Nguyen, 2014; Hassan Al-Tamimi, 2012; Adawi & Rwegasira, 2011).

(iii) The civil society, and the scholars that advocate for its involvement in the anticorruption action, focus on the importance of innovation in public policies in order to involve businesses in the control process (Does de Willebois & World Bank, 2011; ILO Regional Office for the Arab States & UNDP Regional Bureau for Arab States, 2013; Transparency International, 2009), as well as massive "name and shame campaigns" (Thachuk, 2005, p. 151).

4.3. *The role and evolution of corporate controls*

Most risk management firms periodically issue surveys about current risks arising from fraud; some of them focus on a global overview of risks (Kroll, 2014, 2015); others divide these risks by geographic region (Pricewaterhouse-Coopers, 2014a, 2014b, 2014c); a minority surveyed clients in order to gain insights into the best practices used to manage these risks (Control Risks, 2011; Protiviti, 2014).

The shortcomings of current due diligence procedures are tackled in two different ways:

- (i) most scholars elaborate new ways to improve the due diligence process (Butcher & Bernstein, 2007; Gleich, Kierans, & Hasselbach, 2010; Ramón-Llorens & Hernández-Cánovas, 2012; Volkov, 2015; Volkov & Weiss, 2015), and advocate for the implementation of this step into the standards of practice, underlining how still there is a lack of proper controls by the private sector;
- (ii) others criticize the current state of the art, and propose to go “beyond checklists” and to embrace tailored corporate intelligence procedures (Yong, 2013).

The actors of due diligence are also understood differently: (i) auditors have traditionally been seen as the gatekeepers of the company (Halbouni, 2015; Hanim Fadzil, Haron, & Jantan, 2005), while (ii) there is a growing trend towards recognizing the role of corporate investigation companies and their expertise (Coburn, 2006; Schneider, 2006). A completely different stance is taken by those scholars who intend to promote whistleblowing practices (Hunton & Rose, 2011; Tudu & Pathak, 2014); here, the protagonist is the whistleblower and the investigations that follow his or her declarations come after.

The methodology of corporate controls is rarely broken down into steps, and almost all the publications suggest guiding principles but advocate for tailored solutions. However,

publications that discuss investigation methodologies usually focus on one specific tool to prove or disprove its effectiveness. The trending instruments are social network analysis (Kirchner & Gade, 2011), predictive techniques (Baesens, 2015), the implementation of confidential reporting channels (Johansson & Carey, 2015) and other organizational behavioral analysis procedures. Access to information is always regarded as the first step in a control program. Transparency International has issued a review of current legislation across 15 countries regarding classified information, in which it exposes a number of issues regarding information availability for those corporations involved in defense contracts (Transparency International UK, 2014a).

4.4. Summary

The literature exposes two recently established nexuses: scholars have linked international security with anticorruption regulation, and professionals have recognized the role of corporate controls in strengthening their market positioning. Following these established links, it is possible to further develop theories about how one country can make use of its anticorruption regulations to promote ethical business behavior in another country, therefore strengthening – or building - the state of security of the latter.

5. Methodology

Different methodologies have been used for this kind of research in the past, and each one had a different purpose. Qualitative approaches are not necessarily the predominant type, since business topics are usually tackled by economics and management scholars. For this reason quantitative studies suit their benchmarking ends well. However, by focusing on the use of qualitative paradigms, researchers have made use of interviews, case studies or sociological assessments tied to geography. These three instruments function well to assess

the motivations and propagation patterns of corruption, as well as to study the effectiveness of different regulatory frameworks.

As per Creswell's leading doctrine "a qualitative study is defined as an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with words, reporting detailed views of informants, and conducted in a natural setting" (Creswell, 1998, p. 15) Such methodology appears effective and coherent with the purpose of this research. Specifically, when trying to establish an influential connection between self-established phenomena such as securitization and corporate investigations, it appears useful to retain a holistic approach. Their individual complexity, their legal implications, their social impact and the reason behind their pros and cons can only be reflected well through a multi-focal analysis. Conversely, the qualitative methodology, as described by Creswell, involves an immersion of the researcher in the natural setting of the phenomenon. For this reason, the research envisages the direct participation of the researcher in the activities of the research client.

The choice of the tools used for this research has been made on the basis of the researcher's competencies and on the expected validity of the information obtained. The research has been conducted making use of three instruments:

- (i) Interviews with selected experts;
- (ii) Field experience with the client;
- (iii) Professional-oriented literature and pre-conducted surveys collection.

A case study has been included to show the repercussions of the current policies in place. However, the case study cannot be considered a research tool since it was used to reinforce and clarify the argument, and it was not a product of the research data itself.

5.1. Interviews

Interviews were conducted and had four objectives:

- (i) To explore the role of the regulatory framework in influencing corporations' behavior;
- (ii) To explore the best practices of corporate intelligence from a number of leading firms;
- (iii) To examine the pros and cons of increased private companies participation in anti-corruption enforcement efforts;
- (iv) To foresee the public policy developments related to the activities of risk management consultancies.

The set of questions for each interview changed depending on the area of expertise of the interviewee and on the specific issue that was to be examined in depth. The interviewees are divided into three categories:

- (i) Corporate intelligence professionals – both experts in management positions and staff level were interviewed in order to build an informal investigations' workflow of their experience in an effort to learn about the best practices from professionals from leading consulting companies;
- (ii) Risk management professionals – professionals with peculiar expertise in the assessment of risks were interviewed. Their contributions appeared particularly valuable in order to understand how the market of compliance is drifting, and the power of public records. Moreover, great insights were provided on the implementation of regulatory frameworks in the Middle East and in Europe;
- (iii) Law enforcement professionals – prevalently former members of law enforcement agencies with expertise in the field of white-collar crimes were interviewed. While

general contacts in this sector were often turned down, it was possible to secure truthful insights when a higher degree of confidentiality was ensured.

5.2. *Fieldwork*

The leading method of research to address the research question was fieldwork experience. The researcher was immersed in the experience of a financial analyst for the client, Kroll, a leading corporate investigations company, and worked on a number of real-life cases.

The fieldwork experience lasted for three months. The first and the third months were spent at the Milan office, and the second one in Dubai. The researcher reported directly to the country managers for the entire duration of the experience. The type of work carried out included due diligence assignments and asset tracing preliminary assessments. The experience gave an understanding of the needs of the clients, of the volatility of the market and the need for tailored solutions. A comparison between the two environments gave incomparable insights into the different approaches of the two offices, and of the different requests made by clients. Working side by side with Kroll allowed an understanding of existing gaps in the regulatory framework, of the limitations of the systems and of the practical necessities of corporate investigation firms. Additionally, day-to-day activities allowed insights from staff members to be gained, on which most of the recommendations laid out in the conclusion have been shaped.

5.3. *Pre-conducted surveys*

Each year Kroll publishes a number of reports concerning the issues of corporate investigations, giving particularly detailed insights into anti-bribery and corruption policies and their implementation. Since the research aims at not only describing the informal investigation methodologies for compliance, but also at analyzing the gaps in the compliance

policies of a company that leave it vulnerable to malicious behaviors, this appears to be a good opportunity to gain insights whilst leaving the companies anonymous to the researcher himself. The benefits of pre-conducted survey analysis can be understood in the fact that:

- i)* The surveyed companies are likely to have answered to the questions truthfully, due to the trust built through the business relationship between Kroll and its client;
- ii)* The surveyed companies remain anonymous, thus stimulating truthful insights;
- iii)* The surveys are conducted for business purposes; therefore the categorization of the data matches the practice-oriented tone of the research.

Similar surveys from other companies have been used, especially to compare the results in a given timeframe, or to compare geographic differences. The use of diversely sourced surveys reinforced their validity, since the results of same-year same-place surveys show almost no difference between different companies' reports.

5.4. Case study

The research is based on two ideas:

- (i)* The existing link between malicious business behavior and international security issues;
- (ii)* The inability of the checklists, drafted by the law, to prevent the establishment of partnerships with actors involved in corrupt practices.

To prove how current due diligence checklists are unable to cope with the complexity of corrupt business practices, especially if they cross borders, one case study was selected. Exposing the long-standing partnership between the Italian mafia and Somali organized crime shows how such relationships have been formally undetectable for a long time, but informal means of investigations – such as the reliance on media or human intelligence – could have been able to uncover most of them.

The case used was selected because it was possible to retrieve recently declassified official reports and information; the case has developed over a long period of time, therefore a great amount of media and public records is available.

6. The regulatory environment

The first step is to analyze the current state of the legislation, to benchmark the effectiveness of current provisions. To do so, this section attempts to understand the reasoning behind the law, and to see the level of relevance that is given to effective company control programs by the law.

A comparison is made between the Italian legal environment, which is the one that is analyzed in the project, and Emirati anti-corruption efforts. The UAE represents the business hub of the Middle East; therefore understanding how the regulations fit within this context is useful in grasping the limitations to the application of other countries' regulations. Moreover, the comparison is made to inspire further research. As the UAE's anti-corruption efforts are thriving there is a unique chance to influence this system to grow in the direction that is most beneficial to regional security.

6.1. Hard law requirements and consequences

Creating a legal obligation of due diligence is crucial. On one hand, this creates an obligation of knowledge; this does not mean that without the management is necessarily willfully blind, but this step ensures that the company develops a proper and organized information acquisition process within its operations. Due to the importance of providing the court with the information gathered before the deal, it becomes impossible for the private actor to "legitimately plead ignorance regarding the background of a client or the source of his or her funds" (Does de Willebois & World Bank, 2011, p. 24). On the other hand, since the

company gathers and organizes the information, these potentially corroborate the public sector's intelligence at minimum cost.

In the following paragraphs, international, Italian and Emirati legislations associated with fighting corruption will be analyzed, with the purpose of highlighting either an obligation to perform due diligence, or at least to seek preventive measures. It will be shown how most legislations distinguish between public-to-private and private-to-private corruption, and almost none provides prevention-specific controls. It will be clear how the anti-corruption strategy is responsive, through the use of harsh sanctions.

6.2. The international binding instruments

At the international level, a number of instruments have been developed to bind countries to the fight against corruption. The most notable is the 1997 Convention on Combating Bribery of Foreign Public Officials in International Transaction, developed by the Organization for Economic Co-operation and Development (OECD), which strongly influenced following international and national legislative interventions. However, the nature of the convention as a “starting point” is clear, and numerous scholars and organizations have criticized its inadequacy in covering foreign subsidiaries and foreign political parties, its lack of provisions against facilitation payments and private-to-private corruption, and its lack of provisions regarding preventive measures, with the exception of some accounting provisions (Biegelman & Biegelman, 2010, p. 106).

The United Nations (UN) intervened in 2003, with the endorsement of the UN Convention Against Corruption, which was adopted on December 14, 2005. The convention was announced as “the first global instrument designed to assist Member States to fight corruption in both the public and private sectors, and given the inclusion of a mechanism that allows countries to recover billions in stolen assets, is considered a landmark achievement”

(United Nations Information Service, 2005). At the same time, the United Nations included an anti-corruption principle in the United Nations Global Compact, the policy initiative of the organization to support corporate citizenship worldwide; the Global Compact calls companies “to align their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment, and anti-corruption” (United Nations, 2005).

At the European level, the 1997 European Union (EU) Convention on the Fight Against Corruption criminalizes public and private, direct and indirect corruption. Of particular interest is that the Convention assigns criminal liability to the management, for the actions of their employees. However, it does not express an obligation of the member States to also criminalize the management for the actions of the third parties. With that, the EU adopted the 1995 Convention on the Protection of the Communities’ Financial Interests and the Fight Against Corruption and its two protocols, and the 1997 Convention on the Fight Against Corruption involving officials of the European Communities or officials of Member States. In response to these conventions, the Council of Europe (CoE) issued a Criminal Law Convention on Corruption in 2002, in order to strengthen the provisions on monitoring and enforcement; the United States also signed it, in October 2000. To date, the CoE has corroborated the Convention with the Civil Law Convention, the Committee of Ministers’ Resolution (99)5 establishing the “Group of States against Corruption”, the Committee of Members of the CoE’s Resolution (97)24 establishing twenty guiding principles for the fight against corruption.

6.2.1. The global influence of the FCPA

The 1977 United States Foreign Corrupt Practices Act has inspired each and every following legal instrument, national or international. Scholars link this law with the 2005 United Kingdom Bribery Act (UKBA); it is also a source of innovation for the anti-corruption

doctrine. Following Chayes's definition of revenue streams, the FCPA created the conditions necessary for the State to capitalize on the fight against corruption, whilst curbing terrorist financing. Because of the latter reason, it is no surprise that enforcement of the FCPA has lately reached an all-time high, whilst in 2000 only one case was pursued by the federal government, in 2009 there were 67 cases filed by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) (Barker et al., 2012, p. 44). In 2015 alone the SEC pursued 9 cases (Securities and Exchange Commission, 2015). The rise in the average number of fines imposed on companies has also grown exponentially, due to a willingness to disgorge the profits obtained through corrupt practices. The unfortunate record is still held by Siemens, which paid \$1.6 billion to the US and German governments for a case of bribery (Barker et al., 2012). Also, in 2010 the DOJ used undercover operatives from the Federal Bureau of Investigations (FBI) for the first time, to enforce the FCPA provisions. In that case it carried out the arrest of 22 executives of companies in the defense industry (Henriques, 2010).

The FCPA can be summarized into two provisions:

- (i) Anti-bribery provisions: a company cannot offer anything of value to a foreign official, this being a public official of another country or of an international organization, if this would trigger a misuse of power benefitting the company;
- (ii) Accounting provisions: if any payment, for whatever reason, is made to a foreign official, this must be reported in the company's financial statements.

The bodies responsible for the enforcement are the DOJ and the SEC. The first pursues criminal behavior, the latter engages in civil actions. While the evidence obtained by the DOJ has been used regularly by the SEC, it remains more difficult to prosecute a company on the basis of the anti-bribery provisions because it is more difficult to obtain evidence of criminal conduct (Deming, 2006).

The *mise-en-place* of proper due diligence before the DOJ knocks on the door is crucial. Mark Mendelsohn, former lead prosecutor of the DOJ for FCPA matters, stated that one of the first things he did was ask for a due diligence report (Moritz & Block, 2008); in particular, he would assess:

- (i) The information available to the company regarding its partner;
- (ii) The nexus between the company and the foreign official;
- (iii) The reputation of the target company.

What becomes clear, then, is that a company must have knowledge of the malicious behavior, and it has a duty to perform due diligence to gain such knowledge. However, the mere lack of proper due diligence, in the United States, cannot satisfy the “knowledge” requirement, since this requires “recklessness plus conscious disregard with the aim of avoiding the truth” (Barker et al., 2012, p. 48) as established by a federal court. Therefore, this requirement is flexible in its nature too; as such recklessness must be weighted against the past record of the management, and the personal history of each member of the board.

The preventive nature of the FCPA is what makes it a good support for the cause of this research. Its ability to prevent corrupt practices, therefore, lies in the *de facto* obligation to establish a compliance program with which companies identify high-risk operations and perform regular anti-corruption audits. The existence of such a program significantly impacts the likeability and scope of the charges brought by the DOJ and the SEC (McNulty, 2006, p. 12); moreover, the benefits of due diligence, as it will be shown further on, are not limited to the prevention of the compliance risks.

However, the costs that a company must take into account to build a thorough compliance program are considerable, and some scholars believe that zero-tolerance FCPA enforcement raises the costs of monitoring operations, and “ultimately poses a risk of over-deterrence” (Yockey, 2011, p. 1). High levels of enforcement may even defeat the purpose of

the law to create a fairer market, and its repercussions have the same outcome as corrupt practices. Businesses may prefer to appear unprofitable to avoid any involvement in corruption or risky activities (Bishara, 2011, p. 237).

6.2.2. The Italian legislation

Italy ranked 69th out of 175 countries in the Transparency International 2014 Corruption Perceptions Index (Transparency International, 2014). In 2011, the organization's Bribe Payers Index ranked Italy 15th out of 28 countries, with a score of 7.6 out of 10 (Transparency International, International Secretariat, 2011). To date, Italy is one of the lowest ranked countries in Western Europe for corruption (where the lower, the worse).

The relevant anti-corruption provisions can be found in the Italian Criminal Code, in the Italian Civil Code and in the legislative decree 231 of June 2001 (d.lgs. 231/01). In particular, while the penal code criminalizes corrupt practices on Italian and foreign soil, the d.lgs. 231/01 also encourages the creation of compliance procedures and controls through the liability of companies and management for the actions of employees and third parties.

A look at anti-bribery regulations summarizes the *ratio* kept by the Italian legislator well with regards to the criminalization of corrupt practices. The main difference sketched by the law is between private-to-public and private-to-private corruption. The difference is not only substantial because of the actors that can be pursued, and with regards to the sanctions, but especially because the former is considered a crime, while the latter is defined as a civil liability for the company, and a criminal one only for the individual. Moreover, the criminal liability of the individual has even been introduced only recently, with the reform of Article 2635 of the Civil Code as made by the Law 190/2012.

Furthermore, it is to be noted that the Italian law punishes all the actors involved equally: in the emblematic case of bribery, for instance, both the giver and the receiver face

the same consequences. Additionally, while no difference is provided for the prosecution of Italian and EU officials, non-EU foreign officials are exempted from punishment in the event of occurring corrupt practices. This obligated choice is a clear consequence of the limits to sovereignty, as one of the Italian Criminal Code's founding principles is that of territoriality¹. However, it could be argued that the extension of the criminalization of conduct to a non-EU official could be possible with a broad interpretation of the *locus commissi delicti* definition, which could envisage such criminalization based on the repercussion of the foreign criminal conduct on the Italian economy and companies.

Actors	Type	References	Consequences for company
Private to Public	Active Passive	Criminal Code (Art. 317, 318, 319, 319 ^{quater} , 320, 321, 322); d.lgs. 231/01 (Art. 25)	Alternatively or additionally: ² <ul style="list-style-type: none"> • fine of 200-600 quotas;³ • temporary suspension; • suspension/revocation of authorizations or licenses; • prohibition from doing business with the public administration; • exclusion/revocation from subsidies; • prohibition from advertising the products.
Private to non-EU Foreign Official	Active		
Private to EU Foreign Official	Active Passive	Criminal Code (Art. 322 ^{bis})	Alternatively or additionally: <ul style="list-style-type: none"> • fine of 200-400 quotas; • in case of considerable profit after the commission of the crime, the sanction may be increased by 1/3.
Private to Private	Active Passive	Civil code (Art. 2635); d.lgs. 231/01 (Art. 25)	

Table 1: Criminalization of bribery in the Italian legal system.

Once the criminalization scheme behind the Italian system has been understood, it should be noted that companies, as legal entities, are entitled to a series of protections. Specifically, it appears relevant to our cause that the adoption and implementation of an effective and systematic compliance program makes it possible for the company to be exempted from

¹ Italian Criminal Code, Art. 6.

² Other measures may be also undertaken as a pre-judgment remedy.

³ The value of the quotas ranges from a minimum of € 258,00 to a maximum of € 1.549,00.

liability that arises from the actions of its management. The lack of such a program does not constitute a crime itself, but it would also not satisfy the requirements for liability exemption. (Baker&McKenzie, 2014, p. 63). It has become a standardized practice to corroborate company policies with such compliance programs, but their effectiveness is worrying. Moreover, the lack of a regulator with exclusive jurisdiction for corrupt practices leaves the issue to the competence of the individual judge; on the other hand, it makes it possible for every prosecutor to open an investigation.

There are three conclusive considerations to this brief analysis, which will be crucial to shape the final recommendations:

- (i) In a legal context where both active and passive corruption are prosecuted, it is clear that none of the parties involved is encouraged to speak up; public prosecutors have often been able to detect corrupt dynamics emerging from accounting fraud investigations, and by following the money trail. While this type of fraud has been decriminalized for several years, in 2015 the crime of accounting fraud was reintroduced, but it is still seriously lagging behind, as was also stated by the preoccupied *Corte di Cassazione* (Ferrarella, 2015);
- (ii) Equal sanctions for active and passive actors involved in corrupt practices appear inconvenient, as they promote closure and do not make it convenient to speak up. At the same time, prosecutors that find themselves in need of information cut deals with one of the parties, without following strict legal boundaries. Whistleblowing appears protected but not encouraged;
- (iii) The application of the theory of the choice of revenue streams does not seem completely applicable: the Italian legal system implements anti-corruption laws, and at the same time does not invest in the prosecution of corrupt practices. This way, it lies in a limbo where it does not capitalize in either direction; the

consequence is that it neither promotes nor expresses interest in the fight against corruption.

6.2.3. The Emirati anti-corruption legislation

It seems very useful to draw the empirical concepts formulated in the earlier sections down to the reality of the situation in one of the most recently emerging markets. The Gulf region has been drawing the attention of the world in the last twenty years, due to its unparalleled growth and impermeability to regional turmoil. Particularly, the UAE emerge positively, as Qatar is the runner-up, despite its growing international recognition as a decisive diplomatic ally of the West in the region; Saudi Arabia is often perceived as having restrictive regulations; Bahrain and Kuwait are affected by constant political struggle, and Oman cannot be considered as financially capable as its neighbors. The UAE's gross domestic product has increased more than eight-hundred percent since 1995, thanks to the exploitation of oil reserves, but also because of its massive trade liberalization policies (Bertelsmann Stiftung, 2014, p. 4). The economic attractiveness of the UAE is reflected in the fact that more than 3,000 foreign companies are currently operating in the country, accounting for sixteen percent of total investment inflows to all Arab economies (Uddin & Hassan, 2013, p. 2).

However, "the shift from a controlled to a free economy has increased the potential for risk" (Adawi & Rwegasira, 2011, p. 274). Even if such high-liberalizations make it possible to adopt national laws and regulations in line with those of the international counterparts (Aljifri & Hussainey, 2007, p. 883), with regards to anti-corrupt practices rules has proved incredibly difficult due to the radicalization of corrupt business practices in the country, and in the Middle East as a whole, as they are seen as "the way to make things happen", particularly in the oil, pharmaceutical, automotive, defense, health care and industrial goods sectors (Loughman & Sibery, 2012, p. 275). Additionally, within the

political system, the ruling families of the UAE have felt “little necessity (...) to substantially raise the institutional capacity of governmental organs” (Bertelsmann Stiftung, 2014, p. 4).

The Emirati government, however, has implemented a number of legal tools to fight corrupt practices, especially in the last decade. Notably, it has ratified the UN Convention against Corruption, and joined the Arab Anticorruption and Integrity Network. The recently established State Audit Institution, the authority in charge of auditing the use of public finances, was tasked in 2012 with the drafting of a first national anticorruption legislation, but it has since remained inactive (Kroll, 2015, p. 73). Also, a number of other calls for fresh anticorruption laws have remained unanswered. Therefore the UAE has remained formally tied to a mix of provisions coming from different regulations. However, these shortcomings have also been paralleled by nation-wide interventions and federal authorities specifically aimed at fighting corruption. Particularly in Dubai, and after the real estate crisis of 2008, the transparency of governmental bodies has increased, placing stricter controls on financial services and oil and gas services (Loughman & Sibery, 2012, p. 279). The main anticorruption provisions today in force are:

- (i) UAE Constitution, Article 62, prohibiting Ministers from performing financial or commercial work and from participating in commercial transactions with the government;
- (ii) UAE Federal Law 1/2004 on combating terror crimes, which contains provisions on money laundering and terrorist financing;
- (iii) UAE Federal Law 2/2006 on combating cybercrime, which contains provisions on bribery and embezzlement, as well as money laundering and fraud;
- (iv) UAE Federal Law 21/2001 on the civil service, regulating the roles of civil servants and their behavior;

- (v) UAE Federal Law 4/2000 concerning the Emirates Securities and Commodities Authority and Market;
- (vi) UAE Federal Law 3/1987, establishing and enacting the Emirati Criminal Code;
- (vii) Civil Transaction Law 5/1985 on the criminal liability of the employer for the misconduct of the employee.

As a general rule, both management and employees of a company are liable for the criminal conduct of a business. The UAE Commercial Companies Law specifies that all companies, “regardless of their structure, is criminally liable together with their representatives” if they violate any of the before mentioned provisions (Baker&McKenzie, 2014, p. 124).

The UAE regulator also made the choice to divide corrupt practices on the basis of the involvement of the public sector through its officials. Once again, a look at the anti-bribery laws makes the stance of the legislator clear; unfortunately, it is not a straight-forward job to gather and understand the actions envisaged in the law as criminal conducts, and it is even harder to foresee the relative consequences. The provision on private-to-private bribery as included in Article 236 of the Criminal Code for example, appears to consider only the acceptor of a bribe as criminally liable; however, the Commercial Companies Law and Federal Law 4/2000 state that any entity can be considered liable both for its actions and inactions that result in the facilitation of such practice. The issue becomes even more unclear when trying to sketch the rules against bribery of foreign officials, since the UAE has ratified the UN Convention against Corruption, but has not issued a separate law to implement it. A legal review by the international firm Baker&McKenzie underlined how the existence of compliance programs in no way affects the extent of criminal liability for the involvement in corrupt practices (Baker&McKenzie, 2014, p. 127). However, a huge peculiarity of the Emirati legal system is that the public prosecutor holds a high degree of discretion over the

cases to be pursued in court, and this principle has led to large inconsistencies in the interpretation and application of the law.

Actors	Type	References	Consequences for people (companies not clear)
Private to Public	Active Passive	Criminal Code, Art. 5 (and laws related)	Alternatively or additionally: <ul style="list-style-type: none"> • Confiscation of the sum accepted; • Fine of the amount of the bribe; • Imprisonment from 5 to 10 years for the public official; up to 5 years for the briber.
Private to Private	Passive	Criminal Code, Art. 236	Alternatively or additionally: <ul style="list-style-type: none"> • Confiscation of the sum accepted; • Fine of the amount of the bribe; • Imprisonment up to 5 years.

Table 2: Criminalization of bribery in the Emirati legal system.

The peculiar character of the Emirati environment is that both politics and business are conducted at a personal level and, in some respects, there may be double standards when it comes to local Emiratis versus foreigners, and between foreigners themselves. The guiding principle of stakeholder interaction, specifically in the UAE but also in most Middle Eastern countries, is *wasta*: this concept “defies easy translation, but is at its essence a notion of family obligation and nepotism, as well as social power and influence”. The obligatory nature of favoritism is proportional to the social ranking and ties of an individual, which often is used to influence public officials in the process of performing their duties.

In summary, it is important to observe that, in the UAE, anti-corruption and corruption coexist fairly coherently, both as well-managed revenue streams and as power stabilization tools. Ms. Vintiadis, of Kroll, described corrupt practices as short-term strategies, which affect the success of the long-term strategy that is compliance. This definition appears of particular relevance when applied to the economic behavior of the UAE. The controlled nature of companies operating in this market implies that “short-termist

behaviors are less frequent than in jurisdictions with dispersed ownership” (Boubaker & Nguyen, 2014, p. 556); therefore, the economic strategy of the UAE entails:

- (i) The implementation of anti-corruption schemes to capitalize on fines and on the attraction of foreign investments;
- (ii) The durability of elitarian corruption dynamics in order to ensure power stabilization and short-term capital gain.

The developing nature of the Emirati legal system, the evolving concept of transparency, the absence of “relevant precedents, the lack of a litigation culture and the lack of institutions such as shareholder associations all act as barriers” (Boubaker & Nguyen, 2014, p. 557). Some scholars doubt the willingness of the current government to engage in a long-term development of the institutional framework, whilst seeking instead just “good financial position of the country” (Bertelsmann Stiftung, 2014, p. 25). In conclusion, it is possible to understand that in the UAE the real issues are those of the newcomers to the market. At the same time, the low investment allocation of foreign portfolios in the region makes it hard to influence governance culture and balance visions.

6.3. *Conclusion: business ethics as compliance checklists*

“Any law, regulation or policy is only as good as its enforcement” (Transparency International, 2009, p. 157). More and more, compliance with anti-corruption regulations and risk management are becoming two sides of the same coin. This is because the main reason for the private sector to perform the controls required by the law is to reduce the risk of being fined, which would ultimately impact the short-term return on investment and the long-term reputation of the business. However, this idea is not as straightforward as it may seem. When a company faces different obligations arising from many fronts; from the laws of the country of operations, to those of the country of origin, to those of the international community, to the

guidelines issued by pan-national organizations, and hundreds of recommendations on good governance, the cost of compliance becomes very high. Sometimes, it appears less expensive just to be fined. However, the growing prosecution of corrupt practices has cornered larger companies particularly, and has made them rationalize their due diligence policies in order to find the cheapest way to comply with the law, while still being able to carry out proper due diligence in bulk.

Parallel to this, governments have understood the need to simplify and organize compliance requirements. They have produced a number of guidelines for the end-employee, both for companies and for the public officers who need to check piles of paperwork every day. This has resulted in the issue of checklists; companies are required to answer a specific set of questions and for each question to provide some paperwork that justifies the answer. To certify that a third party is not affiliated to the mafia, for example, the company will need to acquire a pre-compiled form from the public administration that states so. Of course the procedure is based solely on formal elements of investigations, such as past record or the presence of off-shore financial activities. It could not be any different: the public sector must ensure the highest level of justice and fairness in the risk evaluation, and it cannot rely on informal data such as an Internet search to adjudicate the cleanliness of a deal. However, reducing due diligence to a checklist exercise severely threatens the effectiveness of the law and, in particular, the investments of the private sector.

7. Case study: mafia toxic waste and weapon trafficking to Somalia

To showcase the consequences of bureaucratized due diligence, the case study of Somalia and waste trafficking has been selected. An analysis of the unresolved and long-standing issue of illicit waste dumping in Somalia, by the mafia, in exchange for weapons, has shown how a company wanting to do business with any of the many protagonists of the following

scandals, would not have been aware of their involvement if it followed standard practice (or at least it would have had plausible deniability). Ultimately, this case illustrates the need to institutionalize a further level of control when dealing with high-risk environments.

7.1. Summary of the events

On March 20, 1994, the Italian journalist Ilaria Alpi (Ilaria) and her cameraman Miran Hrovatin (Miran) were driving through the city of Mogadishu (Somalia) in their Toyota vehicle en route to the Amana Hotel. They had just returned from Northern Somalia, where they had interviewed “the Sultan of Bosaso” Abdullah Mussa Bogar. The two were in the country to investigate the operations of the UN mission to Somalia, “Restore Hope”, in which the Italian military also participated. They planned to return to Italy the following day. Close to the hotel, a Land Rover blocked their way, and at least seven people opened fire with AK47s, killing Ilaria and Miran; the murderers then fled the scene. In 2014, the Italian government declassified around 8,000 documents and reports. Since that day, for twenty years judiciary investigations have followed one after another, to such a point that two years after the events Giuseppe Pititto, assigned to the case by the general prosecutor Michele Coiro, ordered the exhumation of the bodies. The Sultan of Bosaso was accused of being the instigator of the murder, but the charges were later dropped.

The government constituted a parliamentary commission of inquiry but, after investigating the murder from 2003 until 2006, under the coordination of Carlo Taormina (Taormina), it did not reach a unanimous verdict. However, the official position was that the murder was to be considered a failed attempt to kidnap the journalists by Somali pirates. For some time, Taormina also corroborated the thesis that the two were in Somalia on holiday, and that the allegation of an execution was just media speculation. The judiciary investigations brought Hashi Omar Hassan (Hashi) to Rome in order to testify on alleged

violations of human rights carried out by the Italian military on Somali population. The man was arrested and prosecuted for the murder of the journalists but was acquitted in a first instance. He was sentenced to life imprisonment after an appeal, and then to 26 years by the *Corte di Cassazione*. The case was then re-opened in an attempt to find the other members of the commando and to look into the reasons for the murder, with no results.

In 2010, the media reported a possible re-opening of the judiciary proceedings: Ali “Gelle” Rage Ahmed, the main accuser of Hashi, was brought to court and charged with slander. Ilaria’s mother, Luciana Alpi, still believes that Hashi was just a scapegoat. The murder of Ilaria and Hrovatin is just one of the many mysterious deaths linked to the traffic of toxic waste and weapons to Somalia. Also Natale De Grazia, captain of the port captaincy of Reggio Calabria, should be remembered, as he was poisoned on December 13, 1995, on his way to La Spezia to report on the illicit trafficking of toxic waste, and on his findings about 180 ships maliciously sunk together with their toxic loads. In this instance, the public prosecutor in charge of the investigation, Gaetano Pecorella, described the death of the captain “one of the unresolved mysteries of” Italy.

7.1.1. Toxic waste and weapon trafficking to Somalia

Between 1988 and 1994 Greenpeace made public 94 cases, concluded or attempted, of toxic waste trafficking towards the African shores, totaling more than 10 million tonnes. Some ships, after years of sailing and numerous failed attempts to drop the load in exotic areas, dumped the load in unknown areas, or inexplicably sunk in clear weather conditions, without sending rescue signals, and without crew onboard. None of these sunken ships has ever been located. In the second half of 1988, more than 364 barrels filled with toxic waste were found on the Turkish coast of the Black Sea; most of the waste, if not all, came from Italy

(Greenpeace, 2010). It became clear that illegal disposal agreements were in place between Italian companies and Somalia, but the role of the governments was never exposed.

At the beginning of the Nineties, the director of the United Nations Environmental Program (UNEP), Mustafa Tolba declared in an interview, during a seminar at the International Center for Forestry Research in Nairobi, that he was aware of at least one million tonnes of toxic waste illegally dumped in Somalia by Italian companies. Although he did not reveal any names, he stated that the perpetrators were “traffickers seeking big profits, able to kill whoever gets in their way” (Ansa, 1992a). The UNEP re-published the statement, without adding any details. The Somali provisional Ministry of Health engaged in this fight with the signature of an agreement, but without adding information about its content. However, the Egyptian newspaper Al Hayat, published the entire contract, on September 9, 1992, where the Somali government delegated the construction and management of a toxic waste treatment plant to the Swiss company Asher Partners-Lamonta until 2011. The plant would have had the capability to manage 500,000 tonnes of toxic waste per year, and the contract included a provision which stipulated that involvement in any illegal activity would lead to termination of the concession. The Italian Minister of Foreign Affairs at the time, Emilio Colombo, was on his way to Nairobi at that very time and declared that he was not aware of such a contract, and that he was unpleasantly surprised that such news was released on the occasion of his visit. Both the provisional president of Somalia Ali Mahdi and his opponent, Mohamed Farah Aidid, then declared that Italian companies took advantage of the ongoing conflict to dump waste in the Indian Ocean in exchange for weapons to the armed groups inside the country (Ansa, 1992b). However, the abovementioned contract was signed by Ezio Scaglione, an Italian honorary consul to Somalia, who was also an associate of Guido Garelli and Giancarlo Marocchino. These two men, who were close to Ali Mahdi, were later arrested a number of times for very different reasons, the first being illegal trafficking of

nuclear waste and trafficking in firearms. However, they were also found to be tied to the secret service agencies of different countries, from Italy, to the United Kingdom and the United States (Scavo, 2011).

In 2000, the Italian association named after Paolo Borsellino, a judge who lost his life in 1992 in a mafia retaliation attack, organized a public debate in which Massimo Scalia, at that time president of the Parliamentary Commission on the *ecomafia*,⁴ revealed that the commission had submitted a large amount of evidence to the judiciary that linked the Sicilian mafia with the waste treatment industry. In particular, he stated that from the evidence presented it had emerged that there were strong ties between special waste treatment and the illegal trafficking of weapons, underlining how one of the main hubs of such traffic was found in Somalia.

Similarly, in 2005 the World Wide Fund for Nature (WWF) issued a press release publicly asking the Italian government to disclose its knowledge about the illegal trafficking of waste, and it released the names and roles of the actors involved, such as the Swiss company Oceanic Disposal Management (Ansa, 2005a). At the same time, the ongoing Parliamentary Commission for the investigation of waste dumping followed the links between waste trafficking and Centro Enea, exposing the fact that the Antimafia Districtual Directorate (DDA) had been aware of the involvement of the establishment in the traffic of nuclear waste to Somalia since 1999, but also of plutonium to Saddam Hussein's Iraq (Ansa, 2005b).

With time, many other names came out of the reports from environmental organizations or from the press in general. To date, however, the convictions are still few, and disappearing documents are many (Ansa, 2014). Moreover, as recently as on October 6, 2015, a shipment of used vehicles belonging to the Italian Army was stopped at the port of

⁴ Sector of the mafia dealing in the trafficking of environmentally hazardous substances.

Salerno, allegedly on its way to the Somali extremist group Al Shabab; the Customs Agency also reported shipments of toxic waste disguised as furniture, constantly intercepted on their way to the African countries. (Ansa, 2015).

7.2. *Conclusion: the limits of checklists*

In the case presented, a company with good intentions would never have spotted the blatant criminal behavior of the parties involved, if it had based its due diligence only on the checklists provided by the public administration. Compliance with the law would have not meant shelter from wrongdoing. Especially in this case, informal sources such as blogs, environmental organizations' reports and news sources would have been crucial to the understanding of the events the of the people involved, as they reported names and facts that were not being judicially pursued. Formal compliance does not seem to have been sufficient to stimulate further research on the side of the companies, who would have merely performed governance on paper, whilst "governance in spirit" (Boubaker & Nguyen, 2014, p. 559) would, conveniently, have not been present at all.

8. The further step: corporate intelligence

Companies have three different interests that lead them to investigate their business partners: (i) fear of being fined, in case they do not comply with the necessary legal provisions; (ii) fear of a bad reputation, since being associated with corrupt partners would mean losing the trust of their current partners and customers; (iii) willingness to gain leverage to be more competitive and maximize returns.

Currently, the legal provisions leverage the first two types of interest in order to enforce anti-corruption regulations. The third one, however, is left to the judgment of the company that decides how and when to engage in activities that allow it to gain that sort of leverage; these activities consist of intelligence-gathering and business analytics. A

corporation is able to gain true insights about a business partner or a given environment through the use of these tools and, clearly, it is in the interest of the company for them to be as detailed as possible.

This project argues that, in addition to the fear of being fined, companies should be incentivized in their pre-deal intelligence operations – so-called *corporate intelligence* - since the information gathered through these mechanisms can be relied on, and easily goes beyond the basic checks currently required by the law. This section explains when corporate intelligence should be carried out (‘flexible risk assessment mechanisms’), what it entails, and its limitations. In conclusion, a number of obstacles to its implementation, as a standard of practice, are outlined.

8.1. Implementing flexible risk assessment mechanisms

As implied in the previous paragraph, risk management is a process, and it must be assessed in steps. Failure to manage risk effectively can result in great financial losses, as well as decreased shareholder value, reputational repercussions on both the brand and the managers, the dismissal of current management and, “in some cases, the destruction of the business” (Rao & Marie, 2007, p. 1). Today, established best practices make it safe to say that before engaging in any due diligence, the risk of the deal or of the target company must be assessed properly. Looking at the requirements of the FCPA and the UKBA it is possible to see how a proper risk assessment procedure is also the first step for compliance.

This preliminary step allows the company to recognize and acknowledge anomalies and red flags, therefore allowing a selective process of investigation. It is clear how this phase is crucial. Too strict standards will waste the company’s money in unnecessary due diligence, where too loose standards will underestimate risks and expose the company to harsh repercussions. Understanding the scope of this flexibility principle is crucial for the

assessment of the true final cost of the deal. On this point, Wold stated that even if “doing what you are capable of is not insurance”, this is “the best measure against corruption when dealing with third parties” (Wold, 2011, p. 107). Moreover, a tailored corruption risk assessment might not necessarily spot red flags. It could also reveal a flourishing market that was not considered before, or a favorable condition of stability in an emerging market (Control Risks, 2011, p. 5).

Doctrine has covered the content of risk assessment and risk scoring programs well. However, it falls short as concerns the different degrees of response triggered after the risk is assessed. Concerning the management of the risk related to corrupt practices our research distinguishes three tiers:

- (i)* Compliance – Regulatory risk management involves the checklist exercise that was described in the previous section. This first step is divided into different sub-steps, such as resource allocation to the compliance department, training, cooperation with law enforcement bodies, etc. However, the end objective is always to analyze the law that affects a deal, to weigh the costs of non-compliance against the cost of full compliance, and to make a choice about which boxes to tick, and how to tick them cheaply. The underlying interests of this step are those of the public sector, which promotes its agenda through the enforcement (or without) of these provisions.
- (ii)* Due diligence – Due diligence can, of course, be carried out for the sole purpose of compliance. However, the due diligence envisioned in this step represents the extra step that the company takes, to discover more about its interlocutor before closing a deal, or before changing the strategic allocation of its assets. The underlying interests of this step are those of the company itself, which proactively engages with the investigation of its internal and external partners and its third parties in

order to corroborate its compliance program, but also to discover elements useful to the deal. This extra step has many sub-steps, because of the principle of flexibility that will be summarized at the end of this section.

- (iii) Corporate intelligence – A company can go well beyond the mere collection of information, if it is willing to learn about the reality of things. After it gathers information, it will rearrange them in a way that is useful to anticipate risks, boost commercial competitiveness, secure litigation black holes, and generally augment investment awareness. Formally, this step is still referred to as “due diligence”, even if some audacious professionals have given it different names. Among the most popular: Navex Global and Control Risks call it “enhanced due diligence”, Deloitte “business intelligence” and Kroll “corporate intelligence”. Kroll’s wording is the one used throughout this research, since the process that it entails goes well beyond regular “due diligence”, and it is not tied necessarily to Information Technology and data mining like “business intelligence”. Corporate intelligence makes use of both technology and human elements, and may not be engaged for compliance reasons.

8.2. *The reasons for engaging*

The imposition of the due diligence requirement on paper “is not enough” (Does de Willebois & World Bank, 2011, p. 24). While off-the-shelf due diligence products, that focus on ticking the boxes according to the requirements of the regulations, are surely useful to for the first phase of risk assessment, as “generic toolkits for resisting corruption” (Control Risks, 2011, p. 3). However, as FCPA-like legislations develop and expand, a company must be able to assess each risk it faces with an individualized approach.

This idea is reinforced by the case of waste dumping in Somalia, but it does not need to be understood under such extreme circumstances. Most emerging markets are characterized by the presence of a “shadow economy”, meaning “an economic activity that is not illegal per se, but which is carried out at least partly below the radar of official statistics and regulations” (Transparency International, 2009, p. 83). While the shadow economy across Asia, also known as the informal sector, accounts for an average of one third of the GDP, in Africa it reaches and easily surpasses forty percent (Transparency International, 2009, p. 83) In the latter case, aiming due diligence at compliance will not give real insights into the business that is being carried out, and will cause not only the failure of proper business analytics, but also to will miss important investment opportunities simply for the lack of knowledge of the operational environment. Engaging in these markets would not be a blatant violation of the law, but it would still damage the company on the long run.

With regards to the UAE, the shift from “due diligence” to “corporate intelligence” occurred after the financial crisis hit the Gulf economies in 2008. A number of lessons have been learned since then, even if the absence of proper risk management processes was not the factor that motivated the market fall. When companies in Dubai were asked how they identified risk, in 2007, almost all insurance companies preferred the use of risk checklists. The banks preferred the mixed use of financial statement analysis and credit score models. A focus on Islamic finance firms revealed that risk assessment was not usually embedded in the business processes, nor was its tools known by management (Rao & Marie, 2007, p. 4). Mr. Dajani, from Kroll, explained how the drive for stronger controls was brought about by the losses suffered by companies with the explosion of the market bubble, and was not necessarily motivated by long-sighted governance change, but rather by a protectionist feel with regards to the reduced finances. The change in corporate governance was, however, a relevant consequence.

A further step is to understand how the implementation of new rules, regarding enhanced controls of business partners at the governance level, can constitute corporate intelligence material. From here, it will be shown how such implementation at the Western level can reduce risk in the Gulf.

8.3. *Corporate intelligence as a process*

The particular flexibility of the needs of a company, that requires investigations of any sort as well as the complex set of competences required to carry them out, increasingly demanded for companies to entrust external firms to deal with the cases. Surprisingly enough, scholars have lessened their attention to the study of the processes involving corporate investigation firms, and in general to those organizations in the private sector that provide “more sophisticated investigative and risk management services that target more serious and complex crimes”.

These “gatekeepers” take the form of auditing firms, law firms, rating agencies, banks and press agencies, as well as civil society organizations and governmental agencies. Together they constitute a multifaceted market of investigative services, and create what Transparency International calls a “corporate integrity system” (Transparency International, 2009, p. 43). Traditionally this system has been led by auditors, being perceived as “pervasive” and “severe” (Halbouni, 2015, p. 117) in the detection of fraud. However, since corrupt practices are deceptive in nature, those engaged “will understand the audit process and develop schemes to circumvent the system” (Koltsov, 2013, p. 31). As a response, there has been a growing trend, in the past decade, to use investigation firms in order to detect and respond to suspicious business activities. Schneider attributes this trend to three factors: (i) the “real and perceived” increase in economic crimes; (ii) the need for “highly specialized expertise” and, especially, to (iii) the “inability of the State to unilaterally cope with the rising

tide of economic crime”, which entails a endemic reluctance to cooperate with law enforcement (Schneider, 2006, p. 287).

The elements that allow a corporate intelligence firm to be entrusted with the investigations of a company are three:

- (i) In-house expertise – the presence of a broad skillset within the firm allows for ready-to-deploy personnel in a large number of cases. Since understanding the requests of companies and responding properly often requires approaching the issue from many different angles, keeping an eye out for different red flags while respecting numerous and very diverse regulations, the people involved must be professionals characterized by experience, specific knowledge of the field of the company, but especially an investigative attitude. Having these resources readily available, not only in the employee-base of the firm, but also through a broad network of handpicked consultants, can really make a difference in terms of the time and radius of any response.
- (ii) Global reach – as markets evolve and expand, a company may often rely on national business strategists, but may face worrying situations when doing business abroad. When a company decides to hire an investigative firm, it expects to receive answers about the current political, economic, and social situation from any corner of the world. Most cases have a kind of foreign involvement, the most common being the delivery of assets to the so-called “off-shore markets”. It is crucial for an investigative firm to be able to deliver in a timely manner, and a worldwide presence and expertise appears fundamental to do so.
- (iii) Access to sources – As seen, the main limitation on official information gathering is that official sources, when present, are not enough to gain real insights about a target company or a given market. Information must be mined from the details

contained in public records, together with the media narration of events, and completed with fieldwork to retrieve it from sources on the ground. An investigative firm must have the necessary expertise to know where to find the information in any system, how to combine it, and how to benchmark it with the intelligence present among the people on the ground.

It becomes clear that corporate intelligence cannot be compared to due diligence, as its scope is not defined by the requirements of the law, but it is a process *per se*. A minority of scholars foresee the necessity, in the next decade, for large corporations to implement investigative capabilities in-house, which will act “as an insurance policy for their own survival” (Coburn, 2006, p. 351). However, the complexity of these operations and the peculiar expertise needed to conduct them make it easier to outsource corporate intelligence to specialized firms. Compliance is one part, but corporate intelligence becomes capable of much more since, if carried out properly, it can give a holistic overview of the environment in which a deal is investigated.

8.3.1. Issues with searches of the public records

The starting point for any investigation is to search the records publicly available. These records vary, and are placed under the control and management of different public authorities. The first issue is to know where to look, as it may not always be clear. However, this is not the highest hurdle for an investigator to jump. In the countries that host the most emergent markets, public records are scant, or simply non-existent. Without thinking too far from the basics, international watch lists may also appear simply too complicated to use. While unified search systems have been developed for law enforcement, the private sector is left to dig into the scant tools at its disposal, which are often difficult to gain access to and to use, thus limiting access to information that could be vital. Moreover, public records in

developing countries can be easily manipulated, therefore they are not reliable. Everett-Heath and Dajani of Kroll testified how, in the UAE, the increasingly obligatory corporate disclosure mechanisms are paralleled with elitarian control on what is disclosed. Fieldwork experience has also revealed that access to these records is incredibly difficult if only for reasons of bad informatics.

8.3.2. Issues with the press and other media

The media reflect not only facts, but also society's perception of those facts. Because of this, newspapers, blogs, conference talks and any kind of media record can constitute an incredibly valuable tool for the understanding of events and the reputation of a target company. In the case of waste-dumping in Somalia, most of the names of the companies and people involved in the facts were published in the media long before they were officially released to the public – and most still haven't been released officially due to privacy laws.

The first issue that an investigator faces when interpreting facts in the media concerning the reputation of a subject or company is the partiality of news. Everett-Heath of Kroll summarized it well how “the media always serves *a* purpose; but it is not *the* purpose” (Everett-Heath, 2015). For this reason, the retrieved information will have big gaps, especially in the explanation of events. Moreover, the investigator will need “to factor into that the motivation of individual journalists” (Everett-Heath, 2015). Therefore, the investigator will not only have the duty to report the statements of the media, but also on the “whys” and “hows” of such statements, and to link these reasons to the deal that the client is trying to engage in. Different media produce different qualities of information; Everett-Heath also differentiated between “negative facts” and “negative noise” (Everett-Heath, 2015). Both of them must be analyzed and reported to the client, and both of them can be more or less damaging to his or her reputation. While an investigator must be able to retrieve and select

appropriate information, a corporate intelligence analyst must also be good at linking this to the client's needs.

The second issue is the language/cultural barrier. While it is possible to retrieve news articles about the same facts in different languages, and a company's ability to rely on an international employee-base may allow some gaps to be filled, many informal news providers, such as blogs and vlogs, report facts with dialects, or make reference to locally known facts or ideas. What may constitute a minor red flag for the casual reader could be understood as the symptom of a greatly corrupt system by someone with local knowledge of the social dynamics. This is particularly true in the analysis of reputational intelligence. A good understanding of the social dynamics that form reputation are fundamental in foreseeing the repercussions of doing business with the target company.

The third issue with media sources is the volatility and dynamicity of news. Media profiles change overnight. During the researcher's experience with Kroll, for example, the media uncovered a huge financial scandal involving a company that a client had made a request to vet, just the day before presenting the results of the investigation to the client. In the same tone, the American investigative firm Protiviti brought the example of Bernie Madoff who, if investigated before December 10, 2008, would have been reported as the former president of NASDAQ, and an excellence of the securities industry; the day after he was on every newspaper as the fraudster who stole more than 50 billion American dollars thanks to a massive Ponzi scheme (Lenzner, 2008; Protiviti, 2014, p. 11).

8.3.3. The role of human intelligence

The main characteristic of corporate intelligence is the use of human source enquiries to fill the information gaps and to gain the tools required to interpret information in the field. This critical stage is carried out differently between corporate intelligence firms, and the way this

is done, as well as the quality of the sources, is often what makes a firm successful or not. In the case of Kroll, for example, human intelligence is gathered thanks to the global presence of the company, which relies on subcontractors in almost every country of the world. Contrary to common belief, human intelligence gathering is very rarely pursued by covert means. Moreover, in many countries covert private investigations are illegal, and severely punished. The risk of conducting illegal activities falls not only on the people involved, but also on the investigative firm; if the client is exposed, the firm will most likely suffer from massive reputational downfall.

Therefore, there are four characteristics of proper human intelligence:

- (i)* The closer the better – in order to investigate a company or a person, the best intelligence can be retrieved from the people closest to the target. However, this may be hard to do without alarming the people involved and without risking compromising the position of the client who requested the investigation. While there are no fixed rules on how to choose sources, a good investigator will be able to understand where he can retrieve information from safely.
- (ii)* Sources must be diversified – often the range of sources from which is possible to retrieve information is limited. Different links should be investigated, in order to gain the broadest possible range of opinions.
- (iii)* Prejudices must be reduced to a minimum – while the quality of the human intelligence mostly depends on the personal abilities of the investigator, he or she must be careful not to influence the source with his or her knowledge of the facts.
- (iv)* Reporting must be thorough - since human intelligence gathering constitutes the most expensive step of intelligence gathering, it is usually left till last, in order to gather all the preliminary findings first, and to benchmark them with the information mined on the field after. However, there might be the tendency to

confirm the initial ideas, instead of taking the new information to reinterpret the known facts. This should not happen, and the investigator is required to start with a fresh mind, in order not to stretch the new information to fit the old report. In some cases, it may be good practice to let another investigator take over this part.

8.3.4. Database-driven information gathering

Social media platforms are incredible tools for human intelligence assessments. Given the growing “share-mania”, the Internet is filled with personal information that has been freely disclosed by those directly concerned or by their friends and acquaintances. This is available to everybody, through open source tools and it is possible to collect that information that people publish and to put them together, *de facto* gathering usable intelligence.

With this example in mind, let’s apply this concept to the traces left behind whilst navigating the Internet, and which are memorized by databases, websites visited, searches made, language used and how it is used. In addition to this, let’s add the information that can be found in the media and in public records. Finally, let’s add all the other information that is publicly available but usually ignored. In Dubai, for example, every time an official document is lost, the owner must make a public announcement before being able to receive a new one. This concept of huge, fetch-all databases containing all kinds of information has been exploited by law enforcement agencies for decades. The example of the different NSA’s profiling tools as exposed by Edward Snowden comes first. However, this methodology is well known in the private sector as well. In an interview, Michael Olver of Pacific Strategies and Assessments (PSA) described how the last decade has been characterized by the establishment of a growing number of technology-driven firms, which gather data from any possible source and throw it into a database, to make it available to companies or investigators. He even described how one particular firm started out by collecting the

schedules hanging outside every Emirati court, since companies did not have a duty to disclose their involvement in litigation, but it was possible to read out the names of the parties involved and type of hearing from those schedules (Olver, 2015).

These databases make use of two different kinds of information:

- (i) Structured data – meaning all that information that “lies within a record or file” (Koltsov, 2013, p. 31): financial statements, vendor lists, real estate records;
- (ii) Unstructured data – meaning all that information, such as emails, press articles, radio interviews that must be processed to identify specific patterns or sentences before being inserted into a database.

While some firms’ business is that of filling in global databases, the real power lies in business analytic. These processes rely on complex algorithms to profile users, to learn and foresee their behavior. With regards to anti-corrupt practices investigations, “examining raw business data provides evidence-based inferences that can verify or disprove” a particular strategy. However, it is surprising to see that business analytics have not yet been implemented as a standard of practice, mainly since “there is a lack of understanding on how analytics” work (Koltsov, 2013, p. 30).

8.4. Current obstacles to corporate intelligence

8.4.1. For the company in business

Fear of disclosure of findings - Most legislative efforts are reactive. This approach entails that the judiciary and the law enforcement agencies are culturally tied to the idea of prosecuting criminals, rather than seeking justice. As Vintiadis from Kroll analyzed, in the case of internal investigations, any voluntary disclosure will lead the public prosecutor to think that there is much more that has not been disclosed, and he or she will push even harder to investigate the wrongdoing (Vintiadis, 2015). It is clear that a company will not disclose any

fact regarding its business other than the mandatory, in the hope of not being exposed. However, the skepticism of the public prosecutor is not just a matter of culture. Article 132 of the Italian Criminal Code states that “the public prosecutor has an obligation to enforce the penal action, and to this end he will start the investigation whenever he receives a service of offence notice”.

Prohibitive costs - The difference between due diligence and corporate intelligence reports is to be found not only in the content, but also on the price tag. While a due diligence report may cost as little as a few hundred American dollars and be delivered in a few hours, a thorough corporate intelligence report may take many weeks, and prices may range between 5,000 to 75,000 American dollars, depending on the amount of people involved in the investigation, the documents collected and the time spent connecting the dots. While a bigger company may be able to afford these costs for a number of deals selected thanks to the principle of flexibility formulated in the early chapters of this research, SMEs find it very difficult – if not impossible - to make this a routine practice. As was also stated earlier, SMEs are the actors in society that must be most empowered with the tools for economic stability, as they are those who make the greatest contribution to security and social stabilization in countries that face strong economic and political hardships.

8.4.2. For the corporate investigation company

Prosecutions of investigative firms – Most Middle Eastern legislation provides strict controls, or even outlaws private investigations. While corporate intelligence firms are usually registered as risk management firms or consultancy firms, this limitation still means that most of the human intelligence tools commonly used by investigative firms are out of the equation, or must follow prohibitive rules. It becomes particularly problematic when the same firms,

with different offices in many countries, are allowed to disclose certain findings in one country, but may face tough sanctions in the other.

Lack of an accessible intelligence infrastructure – The centralization of controls by law enforcement agencies does not match the diffused nature of information. Reluctance to cooperate may have different reasons: for instance, Schneider believes that it comes from the perception that the private sector “has intruded on the traditional domain of the public police”, and from the “concomitant trepidation among law enforcement personnel that an increase in private policing will mean a diminution of the stature, power and resources of public police” (Schneider, 2006, p. 306). However, the informal talks that were carried out for the purposes of this research revealed less reluctance than expected, and the comments of the professionals interviewed reflected hope, especially since many are former policemen and already cooperate with their former colleagues on a day-to-day basis.

8.5. *Summary: the benefits of corporate intelligence*

The means to gather corporate intelligence, as shown, are many and issuing another checklist would be rather pointless. In fact, the power of corporate intelligence does not reside in the means themselves, but in the expertise that it is carried out with and the “nose” for red flags of the professionals involved. This is the main difference with due diligence. The purpose of due diligence programs is to satisfy a fixed set of legal requirements, therefore the tools that are used must be the focus, since on the day that wrongdoing is uncovered, the court will look at *how* a company performed its checks. However, since the purpose of corporate intelligence is to empower a company with knowledge about a business partner, a market, or new possibilities, carrying out the checks required by the law is an added value, but the focus is shifted to the truthfulness of the end result. Information that has been mined and modeled for

corporate intelligence purposes is not meant to satisfy the law, but to give true insights; the latter, however, happens to satisfy the law as well. Moreover, since the aim of a corporate intelligence firm is that of satisfying its clients, it is safe to think that investigations will be carried out legally – since the client’s reputation is at stake – and thoroughly – since offering good products is what keeps the firm running.

9. Recommendations

9.1. To the Italian legislator

Enhance the provisions against accounting fraud – Following the trail of money embezzled via accounting fraud may lead to the discovery of corrupt practices. Enhancing these provisions would mean giving the judiciary the tools to investigate further. Paralleling these provisions with stronger protections for whistleblowers would then increase knowledge of wrongdoing, and would provide more starting points for investigation.

Diversify the sanctions’ spectrum – implementing mechanisms of leniency for those who come forward first can be a great tool to uncovering corrupt practices. Suggestions have been made in the direction of the inclusion of rewards for individual informers (Transparency International, 2009, p. 64); however, the gradual implementation of these provisions is fundamental in ensuring proper application.

Incentivize the use of corporate intelligence – The effective implementation of compliance programs should be rewarded. An additional step is to promote the use of enhanced investigations with greater rewards, such as the inclusion in ethical whitelists, or the cancellation from ethical blacklists. Sharing the information with law enforcement could also constitute a ground for taxation benefits. Finally, stronger financial benefits should be given

to SMEs that engage in effective controls of their partners, in order to promote their involvement in the fight to corrupt practice.

Incentivize disclosure of corrupt practices – Article 132 of the Italian Criminal Code leaves room for discretion within the limits of the law. With the development of an ad-hoc legislation to promote disclosure of wrongdoing, it should be provided a power of discretion for public prosecutor, which may choose to rely solely on the reports issued by an investigative firm. This provision should include the requirements of such report to qualify for such summary judgment, with a particular focus on the treatment of evidence materials.

9.2. To the law enforcement bodies

Establish formal relationships with corporate intelligence companies – the adoption of intelligence led policing (ILP) frameworks has been advocated for many years. This methodology is based on the ideas of risk assessment and risk management; therefore it is easy to be adopted by - and attractive to - private investigative firms. However, “collaboration and the sharing of information and intelligence are critical to the success of ILP (Budhram, 2015, p. 6). With ILP, the use of social network analysis (SNA) has become increasingly popular among business intelligence firms, and it could also be implemented as a common language between the private and the public sector as a way to share information.

9.3. To the corporate investigation company

Embed in-house data analytics tools – investing in platforms for data analytics, especially with the purpose of mining information from unstructured data, would allow for more successful investigations. Moreover, such tools appear useful when the client-base and target companies recur, since it allows information storage that can be automatically embedded in

future searches. This technique may be particularly relevant when applied to social network analysis, since it would allow the mapping and prediction of the relationships of a given subject. With time, it would become easier and easier to identify the individuals that constitute the intelligence fulcrums, therefore to identify human sources faster and more effectively.

Invest in the development of SME-specific products – It is possible that the increase in the need for corporate investigations will trigger an increase of large corporations' in-house expertise. This phenomenon will most likely affect those corporate intelligence firms that rely solely or mostly on a client-base made up of larger companies. To contrast this reduced demand, an investment should be made to re-brand the corporate intelligence firm, and to make it attractive to SMEs.

9.4. Conclusion

Both the public and the private sectors are prompted to engage in radical but coordinated changes, where cooperation and communication are keys for success. However, despite the scientific nature of this project, it should be understood that an approach too radical might end up being idealistic, and not realistic. While the reforms proposed, especially at the legislative level, may have the depicted benefits as first consequences, the historical and social environment in which they are enacted may curb the upsides. For instance, the introduction of a principle of discretionary prosecution would surely promote autonomous disclosure of wrongdoing, but would also present unfortunate risks of corruption of the members of the judiciary, or favoritisms in general.

In the same way, even if the corporate intelligence firms are never directly prompted to share their information with the public sector, the changes proposed in this project would

enhance their relationship with law enforcement; without an the extension of the attorney-client privilege discipline to these firms, the duty of loyalty to their clients would prevent any form of cooperation with the law enforcement agencies.

This project aims at sketching a systemic reform in order to show how cooperation is possible and mutually beneficial. Particularly, it aims at demonstrating how in the global efforts to stabilize the Middle East, a number of steps can be taken also within the boundaries of each country willing to contribute, while enhancing their rule of law.

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Annex I - The role of private corporate investigators in the system

Interview with Marianna Vintiadis, Country Manager for Italy at Kroll Associates, Oct 19, 2015

I: Would you like to tell me about Kroll and what is your role in the company?

M.V.: I have been working for Kroll for approximately 12 years now, and I am currently head of the Milan office. The Milan office has the responsibility for a number of other territories too: Greece, Spain and some commercial developments in the Balkans and Central and Eastern Europe. Quite coverage, and there are limited resources. A lot of our work here is protecting companies from taking risk that could otherwise be avoided. This can take different forms, one of which can be a basic understanding of security and protection of people, all the way to pre-transaction work, such as due diligence and compliance work that assist companies in identifying certain red flags before making some decisions.

I: What I am looking for is to understand the shift in state regulations that started in the Seventies but found its boom only in the last years. For this shift, the burden of preventive investigations of white-collar crimes has been put on the companies themselves, rather than on the State.

M.V.: I think there has been a bizarre interplay. For example, the Foreign Corrupt Practices Act (FCPA) clearly induced companies to undertake certain types of checks. Other things came: for example, anti-money laundering legislation post 9/11, which also played big role inducing people to conduct certain checks and know their client prior to accepting them for

business. You are absolutely right: there has been a very clear institutional regulatory shift, for which the burden goes back to the corporations rather than to the state.

I: What are the tools that companies have to do so, since they need, of course, to mirror those of the government's law enforcement bodies? How is your job different from that of the police?

M.V.: In the private sector, a company may not have the same powers; you may have the duties and responsibilities as according to the law, but you may not have the powers. In reality, a lot of what is required is for the company to simply to conduct the check, but the research itself has been done by the State. So, for example, you are required as a bank to make sure that you are not providing finance for terrorism, but you do that by checking a list that has been put together by a government or an international body: you are not required to compile the list yourself; you are not required to identify Mr. X or Mr. Y as a terrorist and conduct an investigation. All you need to do is to make sure you have checked that this person has already been deemed associated with terrorism by your government.

I: Your colleague Kevin Braine said once in an interview to Compliance Week that “you need to understand the level of diligence to conduct relating to who you are dealing with”. What are these levels? If you say that a company just needs to fill in a bunch of checklists and do some paperwork”, why are there levels at all?

M.V.: Back to the regulatory issue: the basic level would be to do exactly what the law requires – check the lists: check that there isn't an ongoing sanction, check that this person isn't on the FBI most wanted list. These are all published information, work carried out by

someone else; but we may want to take an additional step because, by definition, anyone who is on the list has already been found out, so you are just double checking to make sure that you are not, by chance, by accident or by ignorance getting involved with someone who is already known or indicated to be involved in something which you shouldn't be involved in. But what about the guy who today is not on the list but will be on the list tomorrow, because they simply haven't caught up with him? Additional steps on reputation and an understanding of business practices and past record might help to form an idea of the risk of somebody who is likely to end up on the list tomorrow. That's what you are trying to mitigate: you are trying to mitigate the damage caused by something that you may not have known for a fact today but there may have been sufficient information around for you to be able to understand that pretty soon somebody was going to be found out.

I: But then, a piece of the puzzle is still missing: we are saying that it's the interest of the regulatory system to prevent corruption because of purely publicistic needs of protection of the civility of the economy; on the other hand, we are saying that companies have a direct interest to conduct higher due diligence. I guess the company is not really keen to waste money for public needs, but it's more keen to save money and make profit. So, why are these actions important for the corporate itself if it's not required by the law? Isn't there more profit for companies who are involved in corrupt practices, than for those who are not?

M.V.: The FCPA and other similar types of legislation were set up in such a way that it doesn't make it in your interest, it makes it compulsory for you to check, and you are responsible for the actions of your intermediaries to a very large extent. As a result, this has removed the element of discretion and has taken away the possibility of a company to say "I didn't know". This is exactly what this law was designed to stop you from doing. It says: you

have a duty to check, and you are liable because your partners are doing this on your behalf, and you are the one profiting for this. Now, whether this will always work and how you defend yourself is a large, complicated matter. But the point is that the laws themselves make it part of your business to check and to do everything you can to stop these people from behaving in a certain way.

I: Should the State be doing it rather than imposing the burden of control on companies?

M.V.: This is a very good question, and it is one that I am sometimes in two minds about. But truth is that for States it is very difficult, very expensive and it requires collaborations of many different forces to conduct an international enquiry. An American policeman can't go and conduct his investigation in Paris all of a sudden; he needs to cooperate with a local agency, and this made enforcing rules on international corruption very difficult. As a result, in an international effort to combat corruption, the idea of involving companies actively in this process was possibly the only way.

I: One school of thought states that corruption is good, because it facilitates the economic transactions. If the legislation wasn't there, would companies still be interested in fighting corruption?

M.V.: First of all you need to make a distinction between what is known as facilitation payment and "hard" corruption; some legislations will allow facilitation payments. A facilitation payment will give you expedite service if wanted; it will give you the opportunity to do something faster and cut through bureaucracy because you have paid somebody to do work that was legal in the first place. So, for example, you need to get a license to do

something in a certain country and it takes six months to usually get it; if you give the guy fifty dollars maybe you can get it in a month.

That's very different from corruption in the sense of not being entitled to receive the license in the first place and paying somebody to get it: both involve bribing a public official, but "oiling the wheels" facilitates the process, while the other one is there to give you an unfair advantage - because the license belonged to somebody else, because you wanted to get it when you shouldn't have, because you are attacking protected forests, or whatever; two very different processes. From the corporation's point of view, sometimes you can pay a small sum and you are allowed to do something completely legal and extremely profitable; a company, in theory, could have good reasons for not being particularly aware about corruption and not wanting to combat it.

When these things become systemic, it becomes quite complicated. Also if you are a victim of fraud, you have no way of combating the issue because whatever you have done and whatever advantage you have obtained has been obtained unfairly. From my personal perspective, a market where players play by the rules is always going to be simply more efficient and more transparent. The reality is, in so-called "one-shot situations", whoever pays the biggest bribe gets the prize: for example, gets in and builds the power plant for a region where there was space for just one. These are the situations where corporations have an unfortunate incentive to behave this way.

I: What I get is that bribery is a short term strategy to gain immediate benefits, but in the long term a company might lose money because of fines, or because someone else bribes more. Guaranteeing a fair market means investing in a more stable market, therefore long term benefits. Am I right?

M.V.: Yes: today you might have won because you paid the bribe first, but tomorrow you are going to be really annoyed when somebody else pays the bribe before you, and you are cut out even though you had the better product.

I: We said that we have formal checklists on one side; we will call those “means of formal investigations”. Then there are a number of informal investigations that are carried out that give more insights on the business partner. What are the informal investigation methodologies?

M.V.: The first distinction we need to make is between officially recognized sources and others that may exist but you don’t know what value to attach them. For example, if a bankruptcy register says that you have had seven companies that went bankrupt – that is an official source. In extreme cases it may have been manipulated or altered, but under normal circumstances the official register is what gets checked and the result is what it is.

Then, you may have another type of information, like a blog: somebody makes an allegation in a blog. Is it significant? Is it not significant? Is this a first warning sign or something that is going to become huge, or just a mad man who just published something random in bad faith? This is something that is unofficial, that requires analysis, that is sometimes anonymous and sometimes isn’t. The same applies to the part of the press: clearly the press in Italy is not considered an official source, but also there are press articles that go more in depth and reveal where the sources come from, and others that are a lot vaguer in their allegations and accusations. Again, an understanding of what has been said is part of an informal check – informal as in “not formally sourced information”.

Then there is a certain level, quite important, which is an attempt to understand the circumstances that pose somebody close to a problem: to give you an example, I might be the

person that went bankrupt, and therefore, my name is all over the press; and you may have been my chief accountant. A key question here is what was your role in the bankruptcy, if you had any. That is purely a piece of information that could be critical in a company that is considering doing business with you and would like to avoid any reputational fall out, for you to be called the fraudster tomorrow. In this case, the informal source can be an interview with you: it doesn't have to be something exotic or something very complex; it can just be bringing the person in and asking the straight question, but it is not going to be a formal source, since it would be a matter of perception. Unless there has been an inquiry, and a judge at the end making a final judgment, assessing your role in something would be discretionary.

I: The main criticism that law enforcement investigators make is that private corporate investigation companies are posing as judges, without the guarantees of the law, speculating allegations in an informal way, but that still have the same impact as formal allegations. What is the issue with this policy and how can the two worlds match?

M.V.: First of all, when we are looking for evidence, we are bound by the same rules that bind the police: that has to be clear. Any evidence that I may collect in the context of an internal investigation, which then the company wants to produce in court is not valid if it turns out that I have collected it not using the regular guarantees. So, it renders the job completely pointless. This has to be made very clear.

It becomes very clear that we have less access in the course of conducting a corporate investigation than law enforcement. Under certain circumstances, law enforcement can ask for electronic payments, for example. This is entirely out of bound of private sector: there are limits to what can be done within the menu. What can upset the police is that sometimes

investigators - not Kroll - would use informal information gathering techniques, which are illegal, to understand the results: maybe they hack into a private e-mail or listen to an answering machine to try and find out whether someone is involved in something or not. They may not be able to use that evidence in court, but it would help reducing the people that are not involved, or identifying potential culprits; their idea is to get to the culprit first, and then work backwards to prove it formally. This is not to be done: if found out it is very bad practice, and it can undermine the work that has been collected legally; if anybody finds out that their email has been hacked, the entire investigation will fall apart and the reputational fall out for the company would be enormous. It is not only about whether it can be done or not: it is about the fact that if you get caught, the entire thing collapses very badly.

Going back to what we were discussing earlier, since we started on compliance checks: you are right, compliance checks are based on informal ways. When you conduct a due diligence, which requires a reputation interview on the market this is not evidence, this is opinion. This is purely opinion and this needs to be absolutely clear. The underlying principle of this work, I think, and the reason why this is used as guidance, and only guidance, is that usually markets understand their actors. People are not fools, and all you are doing in the course of due diligence is collecting information that a lot of people in the market know; it just has not been put together. For example, I know that you actually have nothing to do with this case because I used to work next to you and the day you read the information on the news, I heard you exclaim, "Ah! That's what he was doing every night after 10 o'clock". So, I have a view and I have circumstantial evidence. You could have been very smart and done this deliberately knowing that somebody else might come and in an interview people around you trying to find out more; but there are ways. And if you worked for twenty years, there are other people from previous employment that would have an opinion on how you work and whether you were fair. The other thing is that you can take other elements of people's

behavior that may not have past performance and that may not pertain in this specific case to form a broader picture.

I: What are the methodologies that Kroll uses to investigate a target company, to assess if it raises red flags?

M.V.: In reality, the instruments are available to everybody, because what we do is collect information that is in the public domain. This can be formal, like registries, or informal, like the Internet; in certain circumstances we supplement this work by conducting interviews. The art is the key here: it is not what tools you have, anyone can have those tools; there is no proprietary special Kroll database. Kroll subscribes to a number of commercial databases available, again available to anybody who wishes to subscribe to them. What one does is to try and identify the famous red flags, and this is where the art comes in, because red flags are not pre-determined: clearly if a law says that you are not allowed to conduct a certain type of business if your company has been bankrupted in the last five years, and you are doing it, that is a red flag; evidence of breaking the law is clearly a red flag.

Evidence of doing something to get around the law, is also a red flag, and a very important one: you may see somebody who, for no good reason, will have an offshore structure controlling a local entity in a country where this is not allowed. In these cases, you are seeing potential evidence of somebody behaving improperly; he may not have been caught, it may be difficult to prove, but you do get a sense that there may be something wrong there.

The same applies with the pay structures. Some companies are very open in their reporting, in their control structures, some companies are truly opaque. Anything opaque

raises questions on why it is going on; there may sometimes be good reasons, but we need to find them, and it still would be a preliminary red flag.

The third area of investigation, of course, depends on the specific business: if I am looking at a company that is a mining company, I may be looking for its environmental record. Whereas, if I am looking at a consulting services firm, its environmental record may not be that important and I may not be looking for evidence that it is using underage labor to deliver its services. I may be looking for that, instead, when I am looking at clothing companies, for example.

The fourth and final area of investigation relates to how broad are the considerations: you mentioned earlier human rights violations; while this can have legal implications, there may be more specific reputational fall-outs to do with a particular mood of a particular time. There was a time where we kept hearing about underage children working – making shoes or clothing etc. - it has been a while that there haven't been many of these scandals. I don't think it is because they have disappeared, or that it's not happening: it is because we are focusing on other areas. So, there may be a set of checks that one does regularly and there may be a set of checks that are done either because it's a particularly hot area or time, or because of a client asks specifically for this.

I: Is there a geographic relativity over the way investigations are conducted and the methodologies used?

M.V.: Yes, there is a huge difference from place to place, because there are so many local factors that can affect risks. In Italy we know that certain areas, not just geographical, but also economic, may be more targeted by organized crime more than others. As a result, the investigation procedure will be looking for elements that might suggest the presence of

organized crime in certain types of due diligence. In other countries, like in the Middle East, you may be looking at government ties, tribal issues, ties to government and ruling families for example, trying to understand whether you are dealing with something that will be construed as a public sector company or not. There are cases in Spain where we will be looking at financing of terrorist groups; we would not necessarily be doing this as a priority in many Italian due diligence reports. If we are looking at the potential acquisition of a small company producing ceramics, we will not be conducting a special investigation into terrorist financing under normal circumstances: the territory will absolutely determine what the risks are, and the local knowledge would also determine what to look at. I wouldn't be in any position today to go and conduct even a very basic due diligence in Dubai: I wouldn't know where to start.

I: Do you conduct geographic specific training programs for your workers or they are already selected from different environments?

M.V.: A combination of the two things: for many territories we recruit locally for the linguistic competence, but we will also hire people specifically looking at their expertise to develop a particular area of a particular office. Also there are generalists, and there are large offices, which work on different technical projects within a particular territory, therefore also technical expertise may be necessary; cyber can be one of them.

I: How do the market projections affect the work of Kroll?

M.V.: The work can vary. I certainly saw an interesting development since the crisis in Italy: when margin of loss become tighter, people become more interested in tightening controls.

You may consider it normal to lose about five percent of your stock to petty theft or whatever, if you are a company selling clothes; when things become complicated, you might want to reduce that amount and you become much more careful at how it happens, and how you can stop it.

I: Expanding on this, another kind of loss can be reputational exposure. One current hot topic related to reputational exposure is the implementation whistleblowing policies. How do you believe companies are respondent to the implementation of whistle blowing practices? Implementing whistle blowing policies for a company means not only carrying out investigations outside, but also investing its own company. What is the difference in the two jobs?

M.V.: In whistle blowing, there are two things to consider: willingness, and local laws and ability to conduct certain types of investigations. For example, the introduction of whistleblowing legislation is very new to Italy; and about the willingness of the companies to investigate these allegations I think it is too early to tell how quickly it is going to be established and how systematic this might be. The way the legislation works is affording protection and regulating the protection that can be granted. It doesn't really incentivize people or instruct companies to set out such sort of hotlines or other means. So, it is very different for example from some of the American systems where people are encouraged to blow the whistle and are even sort of rewarded for example for telling on certain types of financial crimes. This is not what we have in Italy, and it is up to the private sector to determine how much we are going to see in terms of investigative activities.

I: Where do you see the anti-corrupt practices system to be in ten years? Is the system going to merge private sector and public sector towards something that is more of a cooperative relationship, or is it still going to be like today, where corporations do business and the public sector does government?

M.V.: You raised a very good point. Technically speaking, the situation is already set-up: private investigators in Italy, for example, have in their statute that they must cooperate with the state. In fact, this bond is even stronger than this: they are not allowed to refuse cooperation when requested, as it was always thought that they could be an extra arm. Now, if they are competing on the same investigation, there is an issue, which has a lot to do with the local mentality: in Italy, the typical attitude of the companies, the managers and the lawyers I have spoken to, is that to avoid presenting the outcomes of their internal enquiries to the public prosecutors during a judicial proceeding.

The true belief is that the prosecutor will assume that if they disclose this much, the real problem is an order of magnitude greater than what is being disclosed, and they will dig deeper and deeper. Therefore, it is much better to let them do their thing, because they are going to do it anyway, and they may at the end of the day find what you would have found. This is the problem: there is nothing in the Italian legislation that will allow a company to avoid prosecution by self-policing and presenting the outcomes, and the moment you present this kind of information to the public prosecutors, because of their lack of procedural discretion they have to start an investigation. My understanding is that statutes in other countries will allow you to conduct your internal investigations, present them under certain conditions, and present the results and use them in parts to cooperate with the authorities and find a settlement, which may even keep you entirely out of court.

In Italy, there are no incentives in self-policing: I think because white-collar crime is a very nasty beast and usually involve very good lawyers as well; it is very hard to get convictions against prosecutions. Self-policing and finding some common solution would avoid a lot of money of the tax payers, because at the end the corporations will have done the job themselves. In Italy, as I said, it would involve massive changes in the statute, so I am not sure how that would be possible.

I: Can we say that private investigators support the law enforcement activities for the protection of security, though?

M.V.: A lot of what is in compliance involves security considerations. What in fact we are doing by doing a simple check is stopping them in working with you. That alone is a massive change between the past, where I could pretend I didn't know somebody was a mafia, or I didn't know somebody was selling nuclear secrets. Clearly, though, what we are doing is investigating corporate issues - fraud, bankruptcies. We are not out there to find out who is selling nuclear secrets. That is not really what we do on a day-to-day basis. If you are a smart investigator, in certain circumstances you may put together enough information to find out something that is very relevant; interestingly, we have no obligation to disclose this to anybody. By the way, I think that is right: I am not a policeman, and I am not afforded the same degree of protection; if I go and spill the beans, I am dead. It is very, very serious to kill a policeman, and everybody knows that. It is not very threatening to kill an investigator.

I: Source enquiries – what are they? How are they conducted? Who conducts them?

M.V.: Source enquiries are interviews. The art is in identifying the right people. But the interviews are just very standard interviews. In most countries they are conducted overtly, including in Italy: you cannot lie about who you are, so they are conducted very openly. You may not want to give away the entire background on what you are doing, or you may want to keep your client's name confidential, but you are quite openly interviewing people and asking them to collaborate. You have to be persuasive and you have to be good at asking the right questions and soliciting replies. The biggest part is identifying the right candidate and getting them to speak to you.

I: How is this different from regular private investigations?

M.V.: In the Italian market, very few people actually conduct investigations from scratch, just a few private investigations companies. They essentially do two things: they follow people, often for marital disputes but also for business reasons, and this is surveillance; or, they try to understand people's track records and reputation, which is not really something that is done at all, unless it is in a formal setting or a legal dispute. Within this, they conduct different source enquiries, meaning that they use their network of sources that will provide you the information that under normal circumstances is protected. Many times they offer something that they shouldn't, and you don't want to do that.

Annex II - Conducting corporate investigations in the Middle East

Interview with Tom Everett-Heath, Regional Managing Director for EMEA at Kroll Associates, October 23, 2015

I: I am attempting to investigate the ties between international security, public policy making, and corporate investigations. What I mean by this is that when you look at compliance requirements, what you see is an extensive list of paperwork and forms to provide. In addition to this, companies perform a number of checks that are not required by the law. They are taken into account to make a better business. If I am a business involved in corrupt practices, it is potentially less profitable than it was twenty years ago.

T.E.: You are addressing a very large and complicated question, and I will start by saying that I share your cynicism. There are a bunch of imperatives which are not fully aligned from the perspective of private sector business: on one hand you have various governments, various jurisdictions who are invariably reacting to historic events and creating a regulatory environment which imposes certain burdens on private sector actors with regards to how they conduct their business. You can see their logic: the government says that there have been scandals in the past about X; in turn, they say “we are going to change the law and we are going to change the regulatory environment to make sure companies don’t do things which allow X to happen again.” This approach is always basically reactive to previous events.

There is a long history there, particularly in the financial services sector, also relating to bringing corruption charges against foreign officials and even private sector actors. You have a government imperative to do this, which is by definition shaped around making laws - and the minute you start making laws, you end up telling companies that they have to do certain things. From the private sector perspective, you have got a very different imperative:

on the one hand, you have your response to the regulatory environment, so there are things that companies have to do to make sure that they are set up in a way such that their internal processes and procedures don't break the law (i.e.: banks have to do due diligence properly, making sure they have got the correct paper work relating to politically exposed parties and those that "extra" things). It is an exercise in making sure you are compliant with the law, and it is a process.

You also have a completely different imperative, regarding how to do business well: how does a company both, on one hand avoid negative risks that come from transacting in certain ways with certain people, and on the other hand (and it is a positive thing and it gets forgotten when it comes to the idea of investigation for information gathering), make sure they are doing the best thing in the best way for themselves?

These imperatives are not always aligned. The latter imperative is very rarely aligned with the regulatory environment the government sets up. If you add a further layer of complexity, obviously you have the variations in the regulatory requirements in various governmental jurisdictions, which sometimes are flatly contradictory. Other times they are set at hurdle levels so low that there have never been cost implications to the business that is actually threatened by the underlying risk factors. There are various tensions existing in our current model.

I: What is the role of Kroll in this system?

T.E.: We have multiple roles within the system. Back to what we were talking about before with regards to regulatory burdens at that the most simplistic level, we provide consulting services to clients who are seeking to make sure that they are abiding by the regulatory requirements of the jurisdictions in which they operate. For example, if you are a bank and

you are on boarding a new client, there are certain pieces of information you are legally required to have. Thus, we help those institutions, those clients, to gather that information and to make sure that all is properly recorded in order to allow them to proceed to a transactional relationship with their own clients. So we are consultants. You could think about it being an outsourcing of a process that could probably be done internally by them themselves, but we can - by dint of scale, expertise, and reach - do this more efficiently than they could do themselves. Clients outsource their internal compliance obligations to us.

That is level one. And at the next level, we are the providers of consultant services around the more private-sector-driven questions that evolve. Basically, we help companies to manage their risks through a better understanding of the situation and the relationship they are seeking to engage in by having a broader set of knowledge and information around that before they make a decision. If you are a private equity firm looking at buying an asset in Ghana, there are a lot of things you will need to know about what you are buying and the environment in which the corporate entity operates; that, will not be easily or readily available through disclosures, data rooms, or what your other advisers - be they lawyers or whatnot - are going to tell you. So clients will come to us and say, "Kroll, here are a bunch of questions, here are a bunch of things we need to understand". Some of them could be as simple as explaining the political environment in Ghana, or it could be explaining the policy divisions in Ghana related to transactions; it could be detailing the competitive landscape, or it could be helping in developing a deeper understanding of the track record, reputation, and management of the asset they are buying; it could be explaining to them how there are opportunities to buy longer-term acquisitions in neighboring jurisdictions to better leverage the yield of what they are doing. It's giving them a clearer line of sight on the broader environment of transactions based on hard-to-acquire information and again allowing them to

make better decisions. By understanding the jurisdictional barriers within as well, they will be avoiding some risks.

In my opinion, the end result is that they have learnt very good things about the structure of the business deal. For example, let's say the government obtained a secured contract that would allow them to discuss the deal differently to get a better return. So, sometimes it is positive. It is about shining light in certain transactions allowing either a bad deal to be avoided or a good deal to be done differently and better.

I: Since the shift in responsibilities for directing companies in avoiding corrupt practices has moved from the state to the companies themselves, has the change made companies rely not only on themselves, but also on Kroll for risk reduction?

T.E.: Yes, it has. It depends on the economic model we are starting in: if you are starting in an aggressively capitalistic model, then you could argue that the risks sat with the private sector entity fully. However, due to the danger of systematic damage, a number of governments in aggressive capitalistic models have taken on the responsibility to impose limitations in the form of regulations that will prevent reckless risk-taking by corporate entities, which would be damaging for the broader economy and the society at large. So the government is saying there are certain things that you have to do before you can conduct certain transactions.

Depending on where you start, you could say the risk originally sat in the private sector, but the government took a view that it also bears risk from a standard perspective. To manage that risk effectively, they impose regulations to secure compliance as you described. We don't accept lies as a transfer of liability: we are offering intelligence, and it is up to the client to decide on how they act on that. They can make bad decisions despite what we told

them; it is up to them. It is not a full transfer of responsibility; it is a transfer of the responsibility of gathering the intelligence in the first place, gathering the information and processing and analyzing it.

I: Is the state giving up a responsibility, or does the state have another role in this picture, being at the same time regulator, entrepreneur and client?

T.E.: Be careful: again, it depends on where you are in the world. If you are dealing in a command economy, what the state is doing is subtler: it is imposing a regulatory obligation or legal obligation onto the private sector and saying, “it is up to you how you discharge your responsibility, up to you how you manage this process: if you want to do this, you can; if you want to use external consultant like Kroll, you can; but it is your job as a private sector to abide by the higher or aggressive hurdles of regulations around how you do business. Go do it yourself however you want, but it is your job to make sure you do it right; if you don’t, we will fine or jail you”.

I: Since an economy like the UAE, which was ranked one of the cleanest countries in the world by Transparency International, may be using a different model, does one need an United States’ Foreign Corrupt Practices Act (FCPA) modeled law to regulate malicious business behavior?

T.E.: The FCPA is a widely studied thing: the way it is used now, and the way the Department of Justice (DOJ) in the United States (US) uses it now, have evolved enormously over the last thirty years. If you really want my cynical view, this has become a tool for the extension of US interference on one level: it is saying “this is our concept of practice and we

are imposing this on the rest of the world”. On a very cynical level, it has become a profit center for the US government: you look at the size of the fines imposed by the DOJ in settlements and it is very hard to imagine they are not making considerable profits. Depending on the tracked information, you can see the scale of the fines imposed on certain banks for regulatory breaches: they are eye-wateringly large. Such fines are in no way reflecting the cost of government with regards to the regulatory framework. But that is a sidetrack I am being drawn down which I probably should avoid.

I: Do you believe that anti-corrupt practices legislation is and can be a form of foreign policy?

T.E.: Yes, I think there is no doubt about it at all. You mentioned Transparency International in the UAE, and there is an important point that you need to understand about it: the index they produce has a really important word that gets glossed over and neglected. The specific term is the “perception of corruption index”, not “corruption index”. This is a very important distinction because firstly it is impossible to measure corruption: I can’t give you a percentage, but I can tell you that most corruption is never detected, and therefore, you can’t measure it.

I: Would you say that that index is really reliably indicative of the reality of things be it related to the UAE or the Middle East, even if not all the countries are involved?

T.E.: Really, not at all. In fact, it actively makes a mess of it. Because, by dint of being a perception of corruption index, it is based upon the perceptions of the respondents to the surveys upon which the index is based. In my experience, India is one of the truly most

endemically corrupt countries in the world; so endemic is the concept of corruption in India, that there are many aspects of corruption that are not considered as corrupt in India. If you look at the index, India comes out in the thirties-something, and there are many countries that are below India on that list of perception of corruption that are far less endemically corrupt than India. Basically, India is so corrupt that you don't think it is corruption in India. This, to me, very much undermines the usefulness of the Transparency International index. I'm not saying I have got a better idea, don't get me wrong: I don't know how you can produce a corruption index, but I have been doing this job for more than ten years: we investigate corruption and I see where we do so; we do a lot of due diligence and we do a lot of research, and it is entirely anecdotal.

I: Does this put into jeopardy the idea of evolution of the law or of avoiding the corruption if it is not measurable?

T.E.: I guess. I suppose the issue is that I have a problem on ranking this sort of things: I think the approach - if there is a unified approach to take at all - is that first principle: is corruption bad? The answer "yes" is not necessarily for the reason people think it is bad: it is presented by some governments as being some sort of moral absolute bad thing. By definition, that is not absolute, that's subjective, and it will vary from wherever you are in the world to wherever else you are in the world.

The problem with corruption is that within a capitalistic model it actually leads to bad allocation of resources and it creates systematic risks, which are bad for the country: this is a good reason to fight corruption. If you know that, to a lower level it actually ends up being a very inefficient way of running a business: if you are a contractor working in various jurisdictions and you are constantly paying bribes to secure contracts, this is bad economics;

it is bad for you as a contractor and it is bad for the country and the entity of contracting wing. They, by definition, will see a lot of leakage in economic benefits from both the buyer's and the seller's side. It gets wrapped up in a moral claim, which is potentially quite distorting as it presents corruption as being an absolute bad. It is not an absolute bad.

I: Is corruption necessarily wrong, as some schools of thought say, or does it affect economic growth only in certain economic systems?

T.E.: Corruption is always inefficient: it leads to bad decision making about the allocation of resources in the ordering of contracts. It is always a bad thing in that sense.

I: In addition to your experience of being in Eastern Europe during the political transition, you have also worked in the Middle East for nearly twenty years. How are informal investigations affected by social-political situations and the general public approach to the private sector?

T.E.: These observations are based on what clients say to me, and there is no academic research basis. The starting point is the regulatory requirement, meaning what you have identified or not in relation to national businesses and their compliance requirements.

Clients are constantly trying to work out what is their regulatory requirement, because they have various levels of jurisdictional exposure. You can have, for example, a European entity based in Italy, that has sufficient jurisdictional footprint in the United Kingdom (UK) and the US and is conducting a transaction in Egypt: the first thing that company would do is assessing internally what is the highest regulatory threshold that they need to satisfy out of all of the various authorities they are subject to. It is not an easy task: in this example the Italian

company would be subject to Italian law, but also to EU law; the US footprint makes it subject to the FCPA obligations, and they have the UK footprint which makes it subject to the Bribery Act (UKBA), which is the most aggressive of all the legislations. They also have to worry about the Egyptian law as well when operating in Egypt.

Out of that set, probably the Bribery Act is going to be the most onerous in terms of making sure they have done their due diligence effectively and paid off their regulatory obligations. Their first question will be probably about that, the regulatory environment. For a good sensible private sector this would be quite easily done, as it is built into its processes and systems, and it just wants to make sure that they are compliant with the highest threshold of regulatory intrusion.

The next question of a client is how to get enough information to allow him to make primarily a decision whether there are other risks that sit beyond those thresholds, which could create either a significant financial or reputational or legal liability. There are many things that could go wrong that are not covered off by those regulatory obligations: often companies don't worry about that, but they should. When we look at a deal in a market that would simply go well, we best gather the information we need to make a good decision about how we shape instruction for these transactions. We understand what information do we need, how can we legally gather that information, and how can we feed that into what we think about the deal as a whole.

I: In your 2013 talk at Cairo's Euromoney Conference, you discussed the "perception gap", which is the difference between perceived risk and real risk, and how the media influences that gap. How does Kroll conduct reputational analysis or risk assessment in the Middle East if the media is unreliable?

T.E.: The media always serves “a” purpose; but it is not “the” purpose. I use the word “media” with a small “m” and in the broadest possible sense. Let’s stick with the Egyptian example: in doing a reputational analysis, by definition you have to have a good look at the extent to which your subject has a profile in the English and Arabic language press; you will look at the social media sites; you will look at blog sites commentary; you will look for extra starting points for a profile built on the subject. It is going to get you sometimes somewhere - often nowhere - and you cannot rely on what is in the media to be regarded as being absolutely true or comprehensive, but we could have a long conversation on the problems of the media in the Arab world. You will gather what you could do regardless of the public domain footprint.

For a starting point, there will often be contradictions in the media profile, and there will often be big gaps, lack of explanation of events; you have to factor into that the motivation of individual journalists and the media that are publishing various forms of opinion that you are citing in this profile. And you have to cross-reference them. So there is no shortage of examples of people, who have negative media profiles, but those negative profiles on deeper examination and analysis appear made simply to damage certain actors and this is part of your report back to the client. It is a complicated equation, because on one hand we have had projects in which we reported to clients an intervention that there are a number of allegations of wrongdoing against the subject, and we have gone on to say that we had investigated these more deeply and we thought we could explain why those allegations had been made, as we had other reasons to believe that actually the allegations were false. That doesn’t actually necessarily solve the client’s problem, because if there is negative commentary - negative noise - around a potential counterparty, even if it is not true, it doesn’t mean it is not going to be damaging for the business.

So you have to address that level of opportunity, therefore you go beyond the media, into human source enquiries: we have networks of people, and we look to develop what we call “human source intelligence”, that hopefully goes deeper into the issues raised in the public domain. Often, particularly in the Middle East, it also identifies issues that have never been reported in the media - and frankly, never will be reported in the media - and seeks to explain them too. We have to be often careful to report and how we explain this to our clients, since usually we are not in a situation where we can prove out what these sources are telling us: we are reporting to our clients what people are telling us; we are not often in a position to say with any definitive legal certainty that what we are reporting can be regarded as fact. These facts are not being tested or caught, and actually in the Middle East there are a number of jurisdictions where it will be dangerous to actually rely upon judicial proceeding thinking that it has been accurate, as these themselves are open to influence and corruption. So you are dealing with derivatives of derivatives. What we are seeking to do is to try and get a cross reference and fill that into an understanding which will allow our clients to make more educated decision.

I: What other tools would you say are different between the Middle East and Europe?

T.E.: There are a whole bunch of differences: if you take the broad palette of information sources available, you have everything from media stuff, to corporate record stuff; you have litigation histories, and within the litigation history, depending on where you are in the world, there are greater or lesser riches of information that can be gathered. With a computer and a name and a social security number in the US, vast amounts of information could be gathered. You can sit down and try this in Syria, for example, and you will know the square root of nothing by doing that.

The major difference is in what we can easily call public record: court filing, corporate registry information, literal goals, residential address information, and all this sort of stuff. In some jurisdictions, if a person wants to change that information, they can change it. In other jurisdictions, like in Western Europe, you can't change that; you can't decide that your conviction for fraud never happened once you have it removed; you can't go back in and have corporate registry data all sorted because you have a friend in the ministry who can remove your name from the ownership of the business. In some jurisdictions you can, and that is part of the process of triangulating and cross-balancing your information: you are trying to get multiple source points, multiple touch points of information that would allow you to build up a picture that won't be complete, but with a lot of cross references you can get some concepts that, in the end, are reliable.

I: Is source enquiry the crucial tool for due diligence in the Middle East?

T.E.: It's a very important part of enquiry, but it comes with some problems, too. You have to understand the motivation of people you are talking to: if they really do have access to certain information you want, they've got to give it to you reliably, and why would they ever do that? Source enquiries do play a far more important role. A general observation, a sound observation, is that in Western Europe information is institutionalized: there are processes; there are structures. If you go into the Middle East, information is general observation; information intelligence sits with individuals. Individuals are more important than institutions, and it is a key distinction about how we go about the work we do.

I: What are Middle Eastern companies' best practices for gathering information, be it for the law or marketing purposes?

T.E.: I will back up and give you an answer to a different question first, then I will come to that. So in terms of differences, what you see really can be shaped by who is asking the question and why.

Western businesses' starting point for the requests of information is usually around a regulatory compliance driven requirement: it is often a lot narrower, process-oriented thing. Then the most sophisticated questions get bolted on top of that regulatory requirement for information. And as a result they are often confused in their objectives, because one is the regulatory and the other one is good intelligence around the deal, which are actually different things.

A different thing is dealing with multi-national business active in the Middle East, since you have this tension that exists between the core and the periphery: the head office, which might be in New York, London or wherever, has got its outside view of operations in the region of the Middle East. Local management in the region will have a different set of issues in its head, but it is still having its decision-making shaped by the ability to explain stuff to the corporate core, which sits outside the region. We are often used to help bridge that gap that exists between those two issues.

To get back to your direct question, one of the things that is interesting is that because there is a considerably lighter domestic and cultural regulatory set of obligations composed on indigenous companies in the Middle East, when they come to us, they are usually coming to us not because of their regulatory obligations, but actually because they genuinely want to know, because they are trying to do a good deal. They are trying to make money; they are trying to deal with the right people; they are trying to maximize the benefits for them in structuring a deal well.

I: I do see that. As far as security-related checks on companies, do those businesses in the Middle East are more stringent because of threats of terrorism or individuals' ties to radical groups?

T.E.: This is a good question, and the answer is more nuanced than you might expect. When multi-national companies ask those questions, they are usually asking them actually from the regulatory perspective, as you correctly have identified. In a way that I find surprising sometimes, they are happy with a "public record" answer. Therefore, what they are actually asking is if anybody has reported their counter-party as being involved in terrorist financing or money laundering or things like that: if there is no media report, they are not being tried, and they are not on the sanctions watch list, then the answer is "okay, on we go". They are not asking themselves if these subjects have actually been involved in this sort of stuff in a way that has not yet been reported, and they tend to have quite a low barrier for concern around that.

Within the Middle East, indigenous clients – since they have a natural understanding of the limitation of the public records - when they do want to know, they really want to know; they are far more likely to commission us to conduct far more detailed and intense investigative methodologies to answer those questions, because they actually want to know. They don't want to know if it has been reported: they want to know if the counter-party is actually involved in terrorist financing, and so they want us to dive deeper and be more rigorous in addressing those questions than an international counter-part.

I: It is fascinating how culturally relative this aspect is. Do Middle Eastern businesses *really* want to know this because they do not want to deal with that particular world even if that means losing money or not getting the deal through?

T.E.: Yes, but that also feeds back to bad economics, because the last thing you want to tell them is to join a \$200 million joint venture only to discover six months later that the counterparty is actually on the watch list. That is a really bad piece of economics, because you won't have any business left. But I think they do have a better natural understanding of the limitations of the public records, because they live in a world where public record is limited and they understand their instincts, and so they tend to ask better and more detailed questions.

I: Let's consider how the Eastern part of the world, with countries like China and Iran, is being push and pulled by international relations and foreign policy developments. How do these dynamics affect businesses? Are they going to be westernized even if the public sector is not westernized? Will these new dynamics capitalize the business even if the governments are not capitalized? In the UAE we saw that, but what about the rest of the Middle East?

T.E.: It is an interesting question, and there is no simple answer. I mean, underpinning any attempt to the answer is the reality of the globalization of trade, and also the dollarization of trade. You can call it neo-imperialism or what you want, but this does give Western jurisdictions an ability to export their regulatory environments: if you are doing your deals in dollars, dollars get traded to New York; that is recourse to your authorities. America is still the largest economy in the world; Western Europe still produces a considerable amount of the cutting edge and technologically and heavy industry and market. These are big markets, and if you want to play in those markets, or if you are dealing with dollars and euros to a lesser extent, then you are going to get sucked into the regulatory world created in Western Europe, and that is very hard to avoid.

The flip side of that is, of course, that the rise of the Asian economies and their ability to project their economic firepower into the emerging markets - particularly Africa and the Middle East - is changing the nature of that balance. You can't as a country choose the East and reject the West: it is not as simple as that, because there is still great reliance on both the markets for source technology and capital, and it cannot be avoided. So, if your question is who is going to win that cultural war, the answer is nobody. It is going to get involved in an ever-more complicated dance for the people who are trying to play both sides of the equation.

I: Do you feel there are certain things that just can't be globalized about the Middle East, about the culture and the people?

T.E.: Absolutely! This is in itself an oversimplification of a very complicated thing. I think of it as a triangle with three points: Western geopolitical-economic influence on the development of the states; the influence by China and the other eastern economies; and the indigenous environment you are describing. What has changed in the last twenty years, in my perspective, is that the points of that triangle have moved, and the triangle changed its shape, but all the inputs are important. You could add more points and stop it being a triangle and become a rectangle if you start thinking about Russia's reengagements in the Middle East and all different sorts of factors that are neither Eastern nor Western nor indigenous, but actually of growing importance. Yet what you have is the area contained within the triangle, rectangle, have it what you want to have: it changes shape as those points move; they are all mutually influencing each other. I don't think that is going to be any different twenty years from now than what twenty years ago: there will be external influences; there will be indigenous influences, and all that you have is a change in this Euclidean chain.

I: What is your view on where all this is going and on where the relationship between the foreign policy and corporate policy control is going?

T.E.: I think one of the things worth remembering, and I find it the most interesting part, is an obvious thing: the government is a very slow moving elephant; the private sector is always more nimble. That nimbleness is expressed both on the good side and the bad side: most private sector businesses are usually more sophisticated than the governments that are seeking to regulate and make them do things; they are usually ahead of what the government is trying to get them to do. The corollary of that is, of course, that the people who are the negative forces in this equation - the people who are involved in money laundering and terrorist financing and corruption and fraud - they are also fast-moving and faster-moving than the government; they will adapt their practices and they will adapt their approaches, and they will be again above and beyond and outside in their operations most of the time. Government moves slowly, but the positive forces of the private sector and the negative forces of - let's loosely call them - criminals, are fast-moving and nimble and freer. As the process advances, the government is always catching up, it is never ahead of. That is the important thing to remember.

Annex III - Compliance and Public Policy

Interview with Kevin Braine, Managing Director and Head of Compliance, EMEA, at Kroll Associates, October 22, 2015

I: Why are corporate investigation companies needed?

K.B.: There are three main reasons why corporate investigations companies provide a much needed standalone service to businesses.

The first is wanted expertise. It's not practical for any company, aside from perhaps the very biggest of organizations, to employ a large team of experts just in case they have to deal with situations, which hopefully won't occur very often in the life cycle of a normal company. For most businesses it's just too expensive to employ in-house expertise. If they do this they are essentially paying to have a constant ability to react to, investigate and monitor what are essentially extraordinary "black swan" type events where they probably won't – and shouldn't - be affected either now, or in the foreseeable future.

The second thing that gives our industry its *raison d'être*, is the fact that most companies want a second objective independent opinion. Sometimes a company can be faced with real or even alleged adverse behavior; it could be corruption, it could be anti-competition, it could be fraud, it could even be something that is not a criminal or legal issue but just deeply embarrassing to them. In these cases they often need to satisfy their shareholders, both politically and internally, so they would like to have a totally objective third party look at the problem for them.

Sometime it's just a "belts and braces" effect. It's either to support or disprove the conclusions that their internal company risk team might have reached. In many cases, the internal teams are actually desperate to outsource this to an objective third party, because

what they might have been asked to look at is too much of a political “hot potato” within their own organization. There might be too much commercial pressure, or general pressure from the rest of the business to ensure the investigation reaches a certain outcome. It is much easier for an external party to come in and point to failures, rather than it is for an internal department that probably cohabits with the people who may have done something wrong.

The last aspect is regulatory pressure. The regulators have piled on the responsibility for companies to comply, and to show that they are working hard to comply, with a whole set of regulatory requirements. In many cases, it is actually written explicitly into the guidelines in the UK Bribery Act (UKBA): you can only comply if you use an objective and credible third party; it doesn't matter if you have a fantastic team who is able to investigate and conduct due diligence on your behalf internally. In some instances, the regulators will say that to be truly effective the investigation should have been carried out by a third party. These are the three main strands that give investigative firms and consultancies a reason for being.

I: Even though we know that laws such as the UKBA and even the US Foreign Corrupt Practices Act (FCPA) enforce the need for third party interventions, do you think it's fair to ask normal sized companies to make these, sometime expensive, investigations?

K.B.: A lot of national and supra-national anti-bribery and anti-corruption type legislations and regulations actually introduce, or even stipulate, the principle of proportionality. Here we can cite the UKBA again, mainly because it is one of the most recent legislations.

There is an understanding that small-medium enterprises (SME) will just not be able to conduct the same levels of checks and compliances as a regulated financial institution or a larger listed entity of a certain size and scale. There is also a concept of proportionality when

it comes to the amount of work that you need to do to satisfy a regulator, to at least show you have tried. In principle, you are not expected to do that much due diligence or extra research and investigative work for relationships which you can justify as low risk, according to a logical set of criteria.

This introduces another key concept, both within the FCPA and the UKBA (and in some of the Italian legislations as well), that is the concept of risk assessment. It doesn't matter what you do, but you have to be able to demonstrate that there was a logic to your approach. Should the regulator knock on your door and say: "Why did you start working with Mr. Di Pietro, but only conduct these levels of checks on him"? If the answer is "Because Mr. Di Pietro fit nicely in this risk assessment, which meant that according to our process we only had to verify his identity and do some basic Know Your Customer (KYC), which we did through the contracting process and we didn't see the need to do anything else" then that is the type of response that the UK regulator, for example, might consider as being a demonstration of adequate procedures.

I: I remember an interview where you stated exactly that, about the Kroll's Third-Party Risk Assessor, when you said that every company needs to assess which level of due diligence to apply in each specific case.

K.B.: To reiterate, every time new regulatory requirements are introduced you will get industry associations crying out that this is going to make their sector or their industry uncompetitive. You will have business leaders going on the record to complain that it is a burden on them and on some smaller players. In truth, there has *been* an associated cost to the type of regulation we are talking about that has grown steadily over the last fifteen years. If you go back fifteen or twenty years, you would find that the average Italian manufacturing

company, who is maybe operating only regionally and who is below a certain size, wouldn't feel the need to have a full time senior employee wearing a specific "risk management hat". It wouldn't need to employ a couple of people to administer new processes that are driven purely by regulatory requirements.

Finally, there is an additional cost but the industry, that has developed over the last twenty or thirty years, around this consulting servicing, has developed specifically because it is a more efficient way of managing that cost.

I: When I think about Kroll's Third Party Risk Assessor from an academic perspective I see a need for uniformity in the definition risk, and as concerns the criteria of which level to apply to what risk and what level of due diligence to apply to which case. Does this indicate a lack of clear criteria in the regulatory system, or is it just a way to make it cheaper and simpler for the final user?

K.B.: I think it is a bit of both. Every compliance officer you might speak to will complain about the fact that there are still no clearly accepted standards, which regulators will commit to. They won't say "If you do this, in this manner, we will consider that you are compliant". It is very much left to individual companies to decide how much they have to do, what they have to do and in most countries they have to rely on principles rather than guidelines. Again this is mainly for anti-bribery and anti-corruption type legislations.

I: You said that another reason corporate investigation companies exist is to provide a second objective opinion. Because corruption and bribery affect the system, shouldn't it be the role of the judiciary or the police to investigate it, instead of shifting the responsibilities to companies?

K.B.: In principle, absolutely, however in practical terms, most law enforcement agencies and judiciaries simply don't have the capacity to look at everything. A great deal of the work that is generated by the regulations is actually work trying to identify potential failures or to trying to prevent a company getting into a situation where it might be non-compliant. Those agencies are not interested in people coming to them to ask them to arbitrate on matters which turn out, in the end, to be non-controversial or absolutely fine and compliant.

What does happen, sometimes, is that in some cases, in order to get the judiciary interested in considering whether to not to take action, there is quite a strong onus put on corporate entities to present a nicely researched and pre-packaged file as a starting point, essentially to get regulators "out of bed". That is one of the things that our work is used for.

There is a massive resource issue, whether it's in Italy or France or Germany. Even in the US, which arguably has a better structure for providing more resources and has enforcement arms that have more "teeth", they have to be highly selective about the matters they get involved in. They'll tend to only pick and run with cases where they feel confident of a clear, definite and relatively easy win.

I: Depending on the culture you'll find different policies for investigation firms in each country with different laws governing them. How can a policy about investigation firms, and their involvement with legislation and the authorities, establish a balance between private interests and public interests, and be a reflection of these interests too?

K.B.: This is a good question and I don't think there is a right or wrong answer. Let me give you an example instead.

For the past five years, the Serious Fraud Office in the UK has gone out of its way to adopt a more American attitude and to strongly broadcast the message: “If you spot something wrong as a firm or as an advisory firm working with one of your clients, come to us first and disclose it, collaborate and it will make everything far better in the long run”.

Then, in March, there was a change in personnel. A new head of regulatory enforcement started at the Serious Fraud Office. His first public act was to address a large cross-section of 250 legal counsels and compliance offices and to tell them that from that moment, on the minute they saw a problem they weren't to do anything at all, but rather they were to disclose everything to the Serious Fraud Office. He said they should not attempt to look into the problem further themselves. In fact, he urged them to come to the Serious Fraud Office even if they only had a suspicion that something might be wrong. He further stated that if they started looking into the problem themselves, or if they asked their advisors to start looking at it on their behalf, the Serious Fraud Office would consider that to be an obstruction of justice and the counsel or compliance officer may be considered to have contaminated what the Serious Fraud Office would view as a crime scene.

This is a complete overnight change in tone from an agency where the rules and the guidelines haven't actually changed. However, its suddenly gone from a possibly over optimistic “let's all work together” type of attitude to a new and very strong message sent out saying from now on we are the “be all and end all” and you can't do anything yourself. The end reaction, I suspect, was cooperation with law enforcement, both from investigative firms and from our clients. Ultimately we'll encourage our clients to cooperate or to disclose if we come across things, which is we think ought to be flagged to the authorities. But we can't make them do it.

I: Was business itself affected by this new attitude?

K.B.: So far, no. I think it has been viewed as posturing essentially by individuals rather than a significantly change in the regulatory environment.

I: Yes. I suppose there are procedures that change depending on the policy, for example different legal limitations and so on.

K.B.: There are licensing requirements for investigative work in some countries. For example, in Italy or in France, you have to be a licensed *agent de recherche* to do certain types of investigative work. The rules are very different from country to country. I think that what is key here, and this really does affect all investigative work no matter who does it, is whether it's done in house or by a company like Kroll, is the ever-shifting quicksand that is privacy laws.

I: I know that Kroll's London office deals with the compliance frameworks that are used in the rest of Europe and the Middle East. Where do these compliance frameworks come from?

K.B.: We work on many levels. On one hand, we are a global organization, so we rely on a global set of policies and procedures that are rolled out across the whole firm. We try to make these as all-encompassing as possible. Of course that still means that from country to country, we adopt rules and regulations that might not be relevant locally, but that we adopt voluntarily. As an example we might subscribe to stricter rules, simply because they are applicable in the US. So we take on that burden here in the UK even though, according to UK law, a UK incorporated entity wouldn't necessarily have to apply them. Similarly when it

comes to things such as privacy and human rights, we fall back on the principles of European wide legislation.

For some specific things that are very relevant to our work, such as data protection, we work on the basis that by being UK data protection compliant, we are broadly-speaking compliant. The fact that the UK Data Protection Act (UKDPA) is based on a European convention that is meant to be replicated across every country means we can say that if we are compliant here and that if we stick to the same rules across Europe, we will be compliant there also. Realistically speaking, in places such as Germany or France, we go beyond the UK requirements because those countries are stricter in their interpretation of the same European guidelines. What is throwing a massive spanner in the works at the moment is the recent challenge to the safe harbor rules that are, essentially, the way that most companies regulate their data exchanges with the United States in particular.

At the moment, the whole of Kroll is fully compliant with some specific US sanctions, in particular against Iran or let's say, Cuba. These sanction rules are much stricter than those of the FCPA itself or the Italian or French or British or even EU sanctions. We try to stick to global standards wherever possible; we have some regional variations, because we have to, but we try to keep them to a minimum.

I: Besides the compliance requirements imposed by the law, what are those elements of Kroll's compliance policies or framework parts that are not formally included in the law, but you have included because you consider them best practice and/or convenient for the clients?

K.B.: There are a number and, although it's slightly off topic, I will say that one more recent development is that we are seeing compliance being viewed suddenly as a competitive advantage. To give you some basic examples, we are now seeing that large fast-moving

consumer goods (FMCG) companies, for example, are pushing their compliance program and their ability to stay on top of best practices, when it comes to regulatory requirements, as a way to become more attractive to their customers or to their shareholders.

As for Kroll, and this is true for most investigative firms, and Kroll is no absolutely no exception here because of the business that we are in, we actually go out of our way to reassure clients that by working with us you are working with an organization that will do its utmost to stay on the right side of any of the applicable legislations. In many instances our clients hire us to safeguard their reputation, in some way or another. If we did anything that could be construed as unethical, we become a risk to our clients' reputation; they are very cynical about it and look at it just in terms of commercial impact, so that would be disastrous. That goes way beyond the risk of having a slap on the wrist from the regulator or being fined: it would be a brand destroying exercise for us. We see a lot of companies beginning to take that on board, and treating compliance not just as an obligation to keep the regulators happy, but a competitive advantage, that helps build consumer confidence essentially.

I: So, if I have understood this correctly: although the public sector gave the private sector a new responsibility that could have been considered a burden, the private sector itself is now promoting this new responsibility of self-compliance and it is regulating itself in a new market of compliance. Is that correct?

K.B.: Yes. They are doing it because, ultimately, if you look at it from a very commercial point of view, when a company has an obligation to do all sorts of things and to set up controls and processes, to spend time and effort and sometimes a considerable amount of budget, in order to be as compliant as possible, they have realized they would get a better return on their investment if they use that, not just to keep the regulator happy, but to

advertise themselves as a better company to work with or work for, or to purchase products from.

I: I'd like to revisit the geo-economic aspects of Kroll's business. For example Kroll has a very different role in Italy where we have a, hopefully temporary, crisis of decline in the economy the UAE where you have a rising economy. In a crisis market, clients are more careful with investments, so they hire Kroll to manage their risks better. In a climbing market, Kroll becomes more of a business intelligence firm that works on the competitiveness of companies. Is this a fair description?

K.B.: I think you have described it very well. We have a skill set that, thankfully, is relatively protected against boom and bust cycles, general economic boom and bust cycles.

As you quite rightly pointed out, part of our business is driven by the appetite of firms to grow and expand into new markets, to develop new relationships. They ask companies like Kroll to screen these relationships for potential issues. These are things that you will see in a boom cycle, either for a sector or an economy or a region; increased activity, more M&A, companies expanding into new sectors, going into new countries, developing new lines.

In a sort of economic contraction phase, you suddenly see much more demand for more defensive types of investigative services. To give you another example, if you take the private equity sector of about ten years ago, the margin and the amount of financial engineering that was possible back in those days, meant that a successful private equity firm could essentially make ten investments in a year, have four succeed and the rest flop horribly and make still an extremely good return for its partners or employees and shareholders. Fast-forward ten years and the same company, investing in the social same sectors, would probably find that the financial engineering options are much more limited. So now, in order

to make money, they need to generate real growth in their portfolio companies, and their margins are much, much, much slimmer. It is much harder to get a return on an investment. This means that if you are only making ten investments a year, you need to make damn sure of that at least eight of them will break even, if not grow, otherwise your whole business model is threatened. That's the defensive mindset that means where they might have been happy to operate where there were much higher potential risks, there is a lot more work being done upfront now to highlight things that might go wrong.

I: Are there checks that you believe are required in one place or another in the EMEA region concerning security and human rights?

K.B.: Yes: for a start there are specific human rights legislations that have come in that are forcing companies to think a lot more about human rights and criminal exploitation of labor, in particular; not just in their enterprises, but in their supply chain. That makes some industries quite vulnerable. If you are a company that essentially relies on either a product or a service that is produced by third parties on your behalf, and by using some sort of very low skilled, low paid sort of labor intensive situation, for example agriculture, then you have a real risk from a human rights point of view.

Anybody who is buying, let's say, cotton from Turkmenistan, or yellow cake from Mali, or shrimp from Thailand, is potentially exposed. They have a very real security risk because most of the shrimp fishing industry in Thailand is essentially manned by Burmese slave labor. Additionally the working conditions of people picking cotton in Turkmenistan is known to be atrocious. Mali is one of the few countries in the world where you can actually legally own another person. Although slavery is not on their statute books, you can be born a

slave in Mali and it's not illegal in the strict terms of local law, and it's also absolutely common practice in most of the country.

So these are thoughts and risks that companies actually react to now, much like the sort of obligations companies have when it comes to corruption and bribery. You can't let somebody do it on your behalf: you are responsible if you benefit from the act. There is a lot more emphasis and a lot more legislation coming into place now to say that you can't just buy things, goods or services from people who are doing things that you wouldn't do yourself. If you do, and you haven't looked into it, you will be held responsible. I think this is a sensible and good thing, especially in a world where the supply chain is becoming more global and it's much harder to have visibility over where the actual goods come from; where your shoes are actually made or your shirt is being stitched or your cotton is being picked, and that sort of thing.

I: When it comes to security issues, are any kinds of security related checks that are not formally included today, but that should be?

K.B.: I think one of the things to consider is international sanctions. If you are in Turkey, there is nothing wrong for a Turkish company selling goods and services to Iran. In fact, Turkey is Iran's largest foreign partner. If you are in the US and you are planning to do exactly the same thing, it is illegal and it is a criminal offence. There are lots of regional variations.

I: I can't decide myself where these security specific checks should belong. I see that if a company can't do something they just outsource the task to a company that can do it for

them. So, should these checks belong to the formal side of checks of compliance or to the informal side?

K.B.: It's essentially a very difficult question. Different organizations will try to tackle this in different ways.

One of the things that is really worth remembering is the fact that compliance and the extent to which a company tries, or doesn't try, to be compliant with national or international legislation, formal rules or informal best practices, is essentially down to each individual company's risk appetite. That risk appetite will change over time. So you could argue, just again to come up with a practical example, that the real estate investments arms of big financial services firms in Europe, about ten years ago, had a phenomenal risk appetite. They were going right, left and center and financing extremely high-risk real-estate projects. Real estate was a winner every time. Everyone was making money and no country was too risky, no type of transaction was too risky. After the shock of the financial crisis, these very same entities, these very same departments within the big banks, became incredibly risk averse. So they now apply an extremely conservative reading of legislation which hasn't changed at all, and which in their most bullish days they would have said "we are willing to stretch our interpretation of this particular legal requirement and so we will go ahead with this transaction", whereas now the minute it becomes a grey area they might just say no straight away.

I: What you are suggesting, if I get it right, is that it's not the company that should change its policies, but it's the regulations that should cause the change in companies.

K.B.: Yes.

I: So, it's 2015 but anti-corruption and bribery regulations are still from the beginning of the 1970s, well, the big ones. Where do you think the regulations should go?

K.B.: I think you have a relatively pessimistic view on things, in this instance. Looking backwards, again in a very broad and a very general manner, the first anti-corruption law really came about in the Seventies. There was no enforcement at all until the Eighties, and even then not very much, when it was only US driven. Now fast-forward to 2015, where China, Russia, Nigeria, France, Italy and the UK have all upgraded their legislations to try to tackle corruption.

There are countries which had no enforcement at all five years ago, that suddenly have regulators and enforcement agencies that are funded, motivated and beginning to have a little bit of success. In places like Denmark and Hungary there has been a lot of progress made. The general public is a lot more sensitive to these issues that it was.

Back in the early Eighties nobody really cared about how the UK managed to sell \$3.4 billion worth of arms to the Saudis. Nowadays that particular arms deal is still being debated and viewed in a much more critical way. The UN highlights this in numerous reports and there are some really good studies being done that point to a direct correlation between what they describe in the UN charters as grand corruption and political and economic instability in emerging markets.

I think that concept has moved on from some theory dreamt up by bright people looking at it from an academic point of view in supra-national bodies like the UN. Now it's accepted and it has entered the general consciousness of at least the Western European and North American population. I think there could be more political will to do something about it; yes, legislation has been implemented but is totally ineffective in some cases; yes, a lot of

companies talk a good game but don't do much more than make polite statements about the fact that they are trying to be compliant; but that is still a huge amount of progress from the bad old days.

Annex IV - Corporate needs in the Middle East

Interview with Yaser Dajani, Head of Middle Eastern Operations at Kroll Inc, Dubai office, Nov 18, 2015

I: What is the role of corporate investigations in the Middle East? In England, the UKBA requires a third party assess the risks of a company's doing business with another. Compared to this, what is the role of corporate investigators in the UAE?

Y.D.: Very little is done for compliance reasons. A lot of the work that we do in the Middle East is for multinationals and we also work for indigenous clients. Let me break down our clients a bit, just to put them in the proper context.

There are multinationals who are based in the Europe, the United States and a small amount in Asia; those would be the primary regions. They are here because they would like to explore different opportunities in the Middle East and they require us to help them navigate various opportunities. So we've got that one particular basket and I'll revisit it a little later and break it down even more. This will give a broad picture of what Kroll Dubai does.

We've also got international clients and multinational clients who are already based here in the region and who are looking at transactions within the region, or they have certain problems in the region. That's the second basket.

The third basket is made up of indigenous clients who, in the same way as the second basket of clients, they too are looking for business opportunities, and are therefore considering transactions within the region, or to solve problems that they face within the region.

Then there's a fourth basket made up of indigenous clients who are looking to enter a new market outside this region.

So, let me take the first category, that being multinationals looking at opportunities either inside the region or outside. They usually take one of two forms: (A) they want to appoint a third party as a distributor or an agent or (B) they are looking to set up a joint venture with a third party, that is with a local company. More often than not, the work that we do for them is not driven by regulatory requirements, but rather it is driven by questions they have in relation to *commercial viability*.

Don't forget that there are usually three moving parts: there are advisors, who advise on transactions; there are the lawyers; and there are the financial people to advise with respect to acquisition and other M&A activities. Then there are people like us, who provide intelligence on specific issues, when clients need to make informed decisions about the viability of a particular project. A small percentage of clients, who are multinationals, and who are not based on this region but who are looking to enter the market, do come to us for compliance reasons - well, I wouldn't actually call it compliance reasons, but when you put it in that context, it could be; it's a bit different in that they are asking: "is there anything about this particular entity or group of individuals that I need to worry about from a compliance point of view or from a regulatory point of view?"

This difference is that they are saying: "is the company or individual that I am speaking to on any list that I need to be aware of?" There is a big difference between the past, the present, and the future. These days, more and more clients are becoming so sophisticated that they don't need people like us, certainly not business intelligence or proper investigators to answer those sorts of questions. They can do that on their own, internally, or they can hire someone, and Kroll does that through the compliance team that we have. There are different

checks at different levels of work that can be done to tell you whether there is anything out there that occurred in the past that you need to be aware of.

We don't really do that as our core business; it's probably .001% of what we do. If you look at most of our due diligence reports, at the end there's half a page that tells a client that we ran X's name against hundreds of databases and nothing came up. Sometimes things do come up, but that's not really where the "juice" is, that's not the work that we do. Our job is to extract or identify information, as much as we can, based on its availability and our ability to navigate the environment. Lots of people don't understand that, as far as the Middle East is concerned, there is no public record: you can't go out and find information about a company, or whether an individual has been involved in litigation that easily; the public records here are not public and in fact the records don't exist. When people refer to "the public records in the Middle East" they don't know what they're talking about, because there is no such thing. It's the people who hold information in the Middle East, not the documents.

So our job is really to tell clients about the track record of third parties or counterparties and about their reputation, so that it's almost a blend of compliance and advisory work. Because of geographic realities, a lot of the companies that are interested in bribery, anti-corruption, money laundering and so on and so forth are not necessarily based in this region and when they come to Kroll Dubai their questions are a lot more elaborate than that. So that's it for the first basket of multinationals looking to come into this region.

When we look at the second basket of multinationals who are looking at other parts of the region or who have problems, it's the same thing: don't forget this office handles a fair amount of due diligence projects and a fair amount of financial fraud investigation projects. Take what I do for example: I do a lot of dispute advisory work and I do a lot of complex business intelligence where I really get to the bottom of certain big gaps that clients need to

fill in order to be able to inform their tactical maneuvering and strategy about dealing with counterparties.

A lot of people in this region, when regulations like the FCPA and the UKBA come up, look at these things as being incredibly US-centric. A lot of these local companies don't get it when an international company starts seeking disclosure from this potential third-party, looking at the financials and the set-up, the relationships, the political connections, whether they are a politically exposed person or not. They don't understand that there are specific requirements. This is particularly true for companies that rely on distribution channels that they have limited control over, or when they enter into distribution agreements with third parties; take the pharmaceutical companies for example, or those who sell household items or any fast-moving distributable good such as tobacco: the way that they ensure market distribution is by appointing third-party agents, and that's where the risk really lies. That's what we really should be talking about in the Middle East: most of the multinationals cannot have a presence in every country, so for example GlaxoSmithKline or Johnson & Johnson, or these big names, rely on agents to make sure that the product reaches the market. Johnson & Johnson or Mondelēz can't set up a Kraft office in every city in the Middle East because it is not viable, neither commercially or politically, nor from a security point of view. So the Middle East sensitive 40s have been set up on the franchise or agency model, that represent international brands, and international brands expect these agents to perform in the same ethical way as those international brands.

If you take a look at all the bribery investigations that have taken place in the Middle East, the reason why the US government has initiated regulatory action - in particular against some of the international brands out there that has led to persecution, enforcement and punishment penalties being imposed - is because of that model being the predominant business model for the majority of the international brands.

That's really what the key focus is, it's really a question of how do you ensure, putting aside everything that I said about multinationals and indigenous clients, market entry and due diligence. First, you've got to identify what the biggest exposure is, what are the biggest gaps in the Middle East; and it's that, it's the appointment of agents.

I: What I'm investigating isn't what checks are required by the law, but rather the checks that the company runs because it has an interest to do so, whether they overlap or not with the ones required by the law. When a foreign company seeks to invest in the Middle East, what does it ask Kroll to check? What are the interests of this company?

Y.D.: They are all different: it depends on what the company wants, on the business model, on the counterparty, on the jurisdiction, on the specific risks that they find as inherent in their business relationship with that third-party, on the skill of operations, on the item or the product or service that they want to sell.

Our work is not a commodity: a client comes to us and doesn't say "can you give me a check list of things I have to do?" My response would be exactly what I just told you, to ask what they want to achieve, then we can talk about the specific areas that need to be investigated. So, there is no "off-the-shelf" answer to your question.

I: How do these interests differ from those of a local company? And how do the local companies seeking to expand abroad approach Western regulations if there is not such culture, as you said?

Y.D.: It depends on the local company: if the local company is publicly listed, then obviously their view of what the risks are, is going to be different. This will be different from the view

of a private company looking to expand, or that of another private company in an industry that is not high risk. So if a financial institution, or an investment bank, or a company that is involved in pharmaceutical or insurance wanted to enter a new market, then obviously they will have two things in mind:

(1) They will want to make sure that whatever they are doing doesn't have any regulatory implications, in relation to where they are from and where they want to do business in. In these days everything is so interconnected; think of a financial institution here and you have a correspondent banking relationship with a US bank: if it considers doing business in sub-Saharan Africa, it will risk being exposed to Libya or Sudan and/or other sanctioned entities; obviously this will influence the kind of checks that they would want to run, to make sure that they are not exposed.

(2) They will take into consideration other areas, for example the reputational and track record, when assessing a particular transaction.

So, again, my response to you is that it depends on what the nature of the company is, and if it is publicly traded or not. There are no lists of questions that are "off-the-shelf" and even if there were, that list will always change from one transaction to another.

I: Are checks related to security issues required at present? And to which purpose are they usually required?

Y.D.: Yes, absolutely. We get these requests a lot, obviously. Of course if an American company wants to set up a factory in Bangladesh, they are going to have concerns about the issue of child labor.

I: Are they going to have concerns? Why, if it is more convenient for a private company to have children working on their t-shirts?

Y.D.: Because it violates are so many different rules and procedures. It violates the company's own corporate rules.

I: So they are coming to you for compliance checks, in a broad sense. Not because avoiding security issues is ethical, but because the law requires it, right?

Y.D.: Everybody has targets, right. I don't think a client comes to us because they are morally obliged to spend \$50,000 on due diligence. The kinds of questions clients ask us are always driven by practical realities; investing in Iraq is not the same thing as investing in Dubai. They are just two different realities.

True they are one region but clients will ask us about Kurdistan particularly if the project in question is to buy equity in an oil and gas block; they'll ask about the pipeline, about Baghdad politics, about Kurdistan politics, about who's in power in Erbil, if the pipeline will ever be operational between Kurdistan and Turkey, what is the role of the Barzani and of the Talabani.

The questions are going to be very different: there's no cheat-sheet that you can pull out of a drawer and say: "these are the questions that we need to ask", because those questions may not be relevant what they want to do. So the questions they ask in Dubai are going to be different. When they come to invest in an oil and gas block in Abu Dhabi they will probably not do anything. If they do, it they will probably do it with a very light touch, because the risks are much lower than in Iraq.

Therefore it is about two things: the level of risk in a particular place and the risk appetite in a particular organization. There are organizations that have such a high risk appetite that when they go to a place where the risk is low, we will never hear from them. They will never come to us; they'll do it on their own. That's just the way it is.

If a company is operating in a high-risk region and their risk appetite is low, particularly publicly traded companies from the US, they will come to us every day! But if you have an international company that is privately owned, where the risk appetite is sort of in the middle, and they are in a region that is of medium to high risk, they'll come to us, but they'll probably spend very little money to get things done. It's more of a tick-the-box sort of exercise.

Now if you want to complicate things even more, let me add a third category, which is the complexity of the transaction. If a company has a low risk-appetite, in a high-risk region, for a very complex transaction it is going to spend a lot of time and money investigating everything. So you could plot that on a graph and it would tell you exactly what clients are doing globally. It's about the appetite internally, it's about the risk in the area where they are and it's about the complexity of the transaction. Nothing else, nothing more.

I: You said things are very different from country to country, and from region to region. In your understanding, does a policy trend exist in the region, separating the Gulf policies from the other Middle Eastern public policies? Do the checks run by the companies have a geographical trend?

Y.D.: You are using a phrase that you should not be using, that is "the checks you run". We don't do checks: we are advisers working with clients who are trying to identify operational

risks. Operational risks are how the company is structured; corporate governance; problems or disputes that we need to know about; financial positions.

As an example, if Boeing wants to appoint someone in Saudi Arabia and that company claims to be providing maintenance services to the Saudi national airline, we might go there and find out that they are only supplying oil to a company that provides maintenance services to the Saudi national airline. Obviously something is wrong: it's all about checking the facts. Clients come to us and tell us what the transaction is, then it's all about intelligence gathering, so that when you go to the next meeting you know exactly what to say. There is no check. There is no compliance.

I: What about the trends? You experienced the 2008 crisis and the public equity crisis: how was before and how has this event impacted?

Y.D.: It revealed a lot of fraud, that's what it did.

I: When?

Y.D.: Right after the financial crisis, in Dubai in particular. Dubai is what made the Gulf - whether you like it or not, whether you believe it or not. Dubai started everything: without Dubai the Gulf would not be where it is right now, because Dubai created momentum for other nations; Qatar and Bahrain looked around and said "we are still living in the 15th century, let's do something about it". If you go to Saudi Arabia, they still believe they are living in the 15th century. People come to the Gulf because of Dubai. Because of that, all of a sudden a lot of businesses started getting set up in Qatar and Bahrain. If you ask any expat, who has the option of living in Dubai or Saudi Arabia or Qatar or Bahrain for a job, they are

going to choose Dubai, it's as simple as that. A lot of expats would not be in the Gulf if it had not been for Dubai.

So Dubai was on a rollercoaster, and it was on cruise control pre-2008. Everyone was making money, everything was great, and a lot of businesses were being set up here. Nobody cared, nobody asked, at all. \$1 million gets lost here, \$5 million get stolen there, and nobody cared. If you have \$20 million in your pocket you won't care if a \$100 falls out. However if that \$20 million becomes \$20 and you lose \$100, you're going to walk up and down the street interrogating everybody that walked behind or who walked the same path, to find out whether they took it.

I: Perhaps if you can elaborate on what the trends were in here in the UAE after the financial crisis, then maybe we could predict what will happen after the European crisis.

Y.D.: They realized that you couldn't do business with anybody without investigating them. That risk-appetite I was telling you about earlier, if it was here (*gesture*) it went all the way up to there (*gesture*), this was regardless of everything else whether they were complex or straightforward transactions, high-risk jurisdiction or low-risk jurisdiction. This is unchanged. Risk rose up and stayed there.

I: What is the relationship with law enforcement bodies and corporate investigations companies here in the UAE?

Y.D.: We don't have a relationship. We are a risk management company that is permitted to provide various investigative services which we provide.

I: But investigative services in many countries in the Middle East are illegal.

Y.D.: They are illegal in the UAE, but we are a free-zone company and everything we do is within the confines of the law. We will not carry out any activities that would be considered illegal. For example, take surveillance: it is something Kroll does in Europe, because, at least in some jurisdictions in Europe, it is permitted. In the Gulf, and the UAE, it is not permitted, so we don't do it.

I: What if you find out about corrupt practices, together with your client. Are you legally obliged to report it in the UAE?

Y.D.: If you witness a crime in the UAE, just as in any other Gulf country, you are legally required to report it to the Authorities. Say, I am working on an investigation: 99.9% of the time I'm talking about business intelligence, so external investigations, not internal investigation. So, 99.9% of the time I don't have a smoking gun. I did not see Antonio pay so-and-so \$50 million to win a contract. However, what I will be hearing is allegations, rumors. Then I can put things in a proper context and I report that to my client, but I did not witness a crime.

I: Do you think it is right, here and in this context that an investigator has to report his findings to the police?

Y.D.: It's not a simple yes or no answer. You have to take the circumstances into account: what did you find? What has been discovered? You also have to understand that you have an obligation to your client. I have to ask myself: "am I doing anything that violates my contract

with my client by reporting it?” The flipside is that, by not reporting it, I might also be violating my own internal rules on procedures and ethical conduct, or I could be also in violation of local rules and laws and regulations. You have to look at it from multiple angles, you can’t say: “I saw a crime in an investigation I’m working on, I must report it”, because that’s the immediate reaction. You have to take a step back and look at it properly and comprehensively.

I: Should a policy change happen at the government level about the involvement of agencies like Kroll in the development of corporate monitoring mechanisms? The public sector often falls behind on the understanding of business behavior, and the its interests collide with those of companies.

Y.D.: That’s not necessarily true, it depends what government you’re talking about: those who fall behind are probably just slow learners, but most governments are not behind. It is not my job to engage in a public policy debate with the government about how they should be improving their regulations, those that put me in a situation where I have to cooperate with them and report things to them. I don’t work for the government, I work for clients. Some of them are government clients but they don’t come to me for policy decisions. So, the answer to your question is “no”.

Annex V - The evolution of corporate investigations

Interview with Michael Olver, Managing Director at Pacific Strategies and Assessments, November 24, 2015

I: What are the services offered by Pacific Strategies and Assessments (PSA)? How have they evolved in the last years, and how has pre-deal intelligence evolved *per se*?

M.O.: We do risk advisory, litigation support, asset tracing and identification; this sort of thing. A lot of our portfolio in Asia and the Middle East is also about international risk management or fiscal risk.

If I understand your question correctly, you'd like to know what kind of innovative things are going on right now: if you are looking for innovation in risk management, you would probably look more towards Asia than the Middle East; it's a much more mature market in Asia. This happened since many former Hong Kong police employees started their own risk management firms; the deal players also made it an interesting place for the US regulators to take an interest in. Obviously China is very strong at the moment, and more and more it is emerging as a kind of dominant regulator with a huge amount of throughput in terms of deals that are being done. This has led to an ever-decreasing cost of services, and huge innovation.

If you are looking at the industry as a whole, around 2000 a company like IntegraScreen – now Thompson Reuters - came up with a new idea. To give that some perspective: the Patriot Act came out in 2001, and there were a lot of FCPA-compliance activities that were being carried out in an ad-hoc way: in-house counsel didn't really know what to do, and the Department of Justice (DOJ) wasn't particularly responsive. Some were

buying a \$50,000 Kroll report claiming they did their due diligence; others were ordering a \$500 credit report and saying the same.

Integrascreen envisaged an intersection of technology with the reality of the FCPA: it pulled out five or six highlights from the law – like political exposure and previous corrupt practices – and built a mixed-technology platform that included source commentary and record recovery; it managed to cover these bases and to sell the information for a much more competitive price.

Also for banks, like for JP Morgan, Integrascreen provided a proprietary database where it pulled in absolutely everything, sending out crawlers and sucking in information from – say - the Indian Bureau of Customs, the Indian enforcement authorities, the FBI's most wanted lists, all of this stuff. As an example, here in Dubai it had somebody going through every newspaper: when you lose your passport here, you have to make a public announcement in the paper declaring the loss and the passport number, as part of the process of filing a case to get a new passport from your embassy; Integrascreen manually pulled all this information and put it into their database; at the end of three years of building it up, they had one of the most incredible self-made databases that you could ever imagine. Checking for hits against this database when closing a deal was some sort of movement towards compliance, to check that one wasn't doing business with Osama Bin Laden or a fraudster.

Once you bought into the database idea, the whole Internet searches, Google, Lexus Nexus, and Factiva came in: they allowed to do much more than what could be done through a bank of analysts sitting around phoning this information through. After building it into a network of sources around the region, that could give a sort of source commentary. While this revolution was happening the media had taken a dip, and there were many business journalists out of work: companies started recruiting them and gaining physical presence in

every country, and the information all came together in a really cheap and robust report that was targeted towards that FCPA.

This process of evolution is still ongoing; companies like Nuri, for example, keep innovating the industry today: they have a person that goes to the court every day and he writes down everything in every court across the Middle East every day, because court records aren't public here, but the schedules are; he then takes this information and inputs it into the database. He pulls any information that's public on the registration of companies, and puts that into the database.

In Integrascreen, they started with just a database, they added a process and then they were sold for over \$40 million; it was made of just two guys and a laptop when they joined up and built that from scratch. What a fantastic trajectory on that! It was all about taking existing technologies and just spinning it slightly, and then integrating it all in one place; building it into a product and selling it.

So they hit every single one of the banks around Dubai, and they got most of those bankers on board. As the owners of World Check bought them, they were able to integrate the database into their records and bring it together; and now it's all Thompson Reuters.

This process goes on further where they have local sources. A contractor who goes around the Syrian markets asking about business information on people, all of a sudden realizes that he can start his own company: over roughly a 15-year trajectory, companies that do local records checks, source commentary and this sort of this have emerged in almost every country in the world; they're usually one or two-man bands that do this, but they're all a part of this global industry.

Anyway it's all about growth and figuring out the markets and how things work: many times a client of Integrascreen did not know what to do, so he would buy one report from Integrascreen and one from the Corporate Research and Investigations Group (CRI), in

order to have to reads on the same deal for less than \$5,000; they could also claim they had been duly diligent. CRI, though, was one of Integrascreeen's initial clients: there was an awkward moment in the IntegraScreen-CRI relationship where CRI just re-bashed IntegraScreen reports and sold them to the same client.

I: Could you expand on what we should expect in the future of this market?

M.O.: Within this trajectory, it's all about accessibility. Now, data aggregators are emerging. We (*PSA, e.n.*) have a global contract driven out of Asia with a US-based data aggregator who is doing a really interesting thing: it has developed software that will do an automated sweep of all public sorts of information and collate it all. While we would never give that automated report directly to a client, it will be of support of our back-office in the Philippines, full of English speakers. The software provides us with some information and we do what we call an analysts' review - the spin is that the solutions are automated. It's just machine time and your cost is for supporting this infrastructure plus our time for a chief analyst in Manila, in order to do risk resolution, meaning the resolution of any sort of identified flags. A flag might come up and it might say that someone is Osama Bin Laden; he is part of the Arkaani network or he funded the junta in Myanmar: our analysts will look at it and they will do additional public source reviews around each of these issues, in order to exclude or confirm that piece of intel for \$150 for the end-client. This service is as cheap as it gets, for a very robust solution.

In 2009, Tom Everett-Heath gave me a very serious tongue lashing for basically moving the bottom from the due diligence market; I think my response at the time was that it was going to happen whether he liked it or not, because JP Morgan will do half a million

deals worldwide a month and they can't afford to carry the cost. Goldman Sachs was spending \$3 million a year with us.

There is always going to be this sort of navigation: a lot of the success of this kind of companies has happened because they started as a technology company. Think of Red Flag: terrible company, they could not find Dubai if they had to, but they developed a due diligence program that loops into the SAP (*Systems Applications and Products, e.n.*) systems for companies, so as a vendor comes on board and into the system, it automatically loops into the due diligence process then loops back out again. This means that HSBC does not need a 40-man compliance team led by Richard who's ex-MI6 anymore; thanks to these systems they can be compliant, with no additional pain or manpower: they are bringing their compliance in house, without adding any human capital.

In the compliance industry a lot of people are working on different ways of speeding up this process, reducing the cost while increasing the actual deliverables: the problem is not how to do the best due diligence in the world, it's how to do thousands of the best due diligences in the world in a 30 day period, with the assets on hand and with the existing technologies. We think we can do 70 to 80% within that sort of best frame and that is the reality. Blue Umbrella, Red Flag, Kroll are in the United States, but about 50% of the really innovative tech-driven companies that are doing this are all in Asia, because so many risk management companies were founded, as I said. The dynamic were of super-Darwinian competitiveness, plus then access to technologies, made it possible.

I: Let's talk about the idea of culture. You said that it's geographically relevant that Asia bloomed a lot quicker. Why do you think that is?

M.O.: Because for \$650 in China one can pull registration records, get court records on 1+5 directors and produce a great analytical document that pulls in everything in the public domain on a company in Chinese and English. If you try to do the same thing in Nigeria, you're out of luck. You are going to have to physically go down to the registry office. Same goes for Mexico: it's not even a federalized system, so you have to send somebody down to Chihuahua to the registry there; they have to go talk to a guy; they have to show they have due authority to receive this information; they get it; it takes ten days. I can do the same thing in three days in China.

The ability to access information at speed and at cost is so much better in Asia than anywhere else. There is an exception to the rule, in terms of Japan and Korea, where personal privacy laws are so extensive that a lot of the information is databased but it's not accessible: one has to use workarounds to make sure to have the proper authority, that the individual POA (*power of attorney, e.n.*) allows to go all the way through the system and the various registries. These are already online, but they're not going to tell you that they are publicly accessible because of the privacy laws. On top of that, the market leader is doing really well and has cornered the market.

I: Do you believe the public sector should capitalize on strengthening the public records' system, or would it be a negative thing?

M.O.: If you look at Bahrain, it was business friendly right up until the time it wasn't. They were one of the first countries in the Middle East to put all of their company ownership records online. This allows the process of due diligence to move faster, and this has a lot of benefits.

Being a closed environment can be very useful depending on your national position: Panama makes its money from being the least accessible registry on the planet. Dubai's choice was to be open and business friendly, and made records available online for a long time; something happened, probably post-2008, where there was a contraction. It used to be that I could take 50 dirhams down to the Chamber of Commerce and I could call up the corporate records for X, Y, and Z. That would tell me who the owners were; now the owners are not public any more.

I: What's better for PSA? Is it better to operate in a market that is full of competitors because business is easy or is it better to be the only guy in Japan?

M.O.: That depends on the deal flow in Japan. There is a firm that buys Myanmar units: they're really smart guys, and they knew from day one that sanctions were going to be dropped; they found partners, set up and started. That deal flow is not common and this allowed them to be very successful. Strategically, as a business they positioned themselves very well with a broad base over several different countries including Myanmar, but the Myanmar unit is probably the Ferrari of Myanmar diligence, and they get one a month. It is not expensive; it's about \$5000. They just haven't really connected in a meaningful way.

I'm trying to remember who did it, but there have been a successive series of businesses that say that if you did a sort of "blind taste-test", hands down, corporations would prefer to deal with stable autocratic regimes than with democracies. In part, that is because of access to information: some may be open, some may not.

Try to do due diligence in Equatorial Guinea and you'll find it difficult, but there's certainly an interest in doing it. If someone came to me and asked if I want to open an office

in Myanmar, I would say “no” and I would just use a contractor there. I don’t have a business argument to sustain an office in Myanmar so I’m going to decline.

I: Under what “label” do you operate in Manila and the rest of Asia/Middle East? Do you describe yourself as an investigative firm, a strategist or an investment risk management firm?

M.O.: Our structures are a little bit strange: in Manila we are the last man standing. CRI is no longer visible there; Colin Hill & Associates are no longer there; most of the multinationals with advisory offices have all closed down. The profit margins were just sinking and it was very hard to make a profitable argument: it all comes down to energy. If I, as a CEO of a multinational investigatory corporation, can spend a day of my week managing stuff that’s going on the Philippines or I can spend a day of my week managing stuff that’s going on in London, I’m going to choose London. That’s because we’re going to make more out of every single investigation of due diligence there than I am in the Philippines. In general there is a rule that the further away you are from where your clients are making decisions, the less money you make off them. For Manila, we do investigations, risk management, crisis management, and we do the actual physical security assessments as well as VIP protection. It’s just because we started in the Philippines in 2000 and we started on the back of a very strong relationship, so that emerged as a viable business opportunity.

In China, given the contraction that happened within the investigation space in 2011, we are solely a due diligence corporate advisory firm. There is no security; it’s all in-house investigations and there’s nothing outside of that box, because from a risk management perspective we have to be very, very careful: it’s a very strong government and they are very actively monitoring diligence companies.

I: Is it always a viable option to label a corporate investigations company as “risk management firm” to shelter it from the legal limitations of certain business sectors? Can you comment on the UAE regulation?

M.O.: We do corporate investigations and risk management. If you look at the business licenses of each of the entities that are active, they all have a line of business investigations. It does get a little tough in this market, because since 2003 it has been illegal to be an investigation firm in the United Arab Emirates. In the business investigation area, Dubai has got to be one of the only places in the Middle East where it is an actual business line.

I: What are the risks when choosing how to position a corporate investigations firm in the market? As an investigative firm you might have an obligation to disclose your client’s criminal offences or corruption. Do you believe that it is the role of a company that does risk management to pass on information, even if there isn’t an obligation?

M.O.: It all goes back to control. Most times, in complex investigations, we are asked to do a thorough third-party investigation into what has happened somewhere, because based on this the client will go to the regulators at home and disclose wrong practices, or we are asked to disclose the information directly. If I just pick up the phone and call the police, at that moment I lose complete control of where this investigation is going to go; what information is going to be uncovered. I want them to look at this, but as in-house counsel I am the last person to know. The police may come in and get distracted by something “shiny” and focus its investigative efforts somewhere else: I have no control anymore; I can’t stop it or turn it off.

So part of the reason why we are engaged as a third party is to go in and do a robust investigation as if we were the regulator. Because I, with my crisis team and in-house counsel, want to be able to spot what the regulators are going to find if they search, so the client can get a legal opinion. It's all part of the bargaining position before you can take that, bundle it all up, find your scapegoat, do all the wonderful things the client has to do, and only then hand it across to make use of the fine reduction scheme. When dealing with the DOJ, the fines are dramatically reduced for early disclosure or any wrongdoing.

Most times clients go to a corporate investigations company because it has all the experience of the police, or of the FBI. This is why the brand "FBI" and the brand "SOCA" sell so well when included in a private company: these former agents are brought in by the client and dealt with as if they were wearing their old hat.

In terms of information sharing, I have only had one significant case in the last ten years where I've had a client who tasked us with taking the information and pass it on to the government Authorities because they saw it as a corporate obligation. We did: we went down for a coffee, for a chat, I gave them my file, and they made their decisions to pursue and prosecute based on the information that they then collected.

As concerns computer forensics, here in the UAE, it was seen with a lot of distrust in the beginning and then it became more accepted. It is possible to run a computer forensics case, from which it is possible to find something illegal; if the client wants to make it criminal he will take the uncorrupted original laptop, a copy of the report which highlights the things that were found, and he will give it to the police who will run its own forensic analysis. What Kroll does, like a lot of other companies, is that it will go to the police and have themselves listed as a court recognized expert; that short-circuits the process a bit. For those cases where you're being brought in to look at something, if you don't have lawyers registered in that particular jurisdiction, your first reaction is usually to position yourself so

that there is attorney-client privilege governing the action: the client will say “please stop talking to me right now; here’s a list, engage these firms and have them engage us and come into the room with us. Copy them on the emails and then we can talk about this, but right now I do want to know about it as I could be subpoenaed; I could be requested to give testimony. I have no privilege that I can offer you.”

In a lot of the conversations that I have with the police here, they are very distrustful: they see that you’re getting paid for something; they know that you are in their office with something; they want to know what your angle is, and why you are trying to bring pain on this guy? Before they open the case, and before they spin your files up to the prosecutor and he spends a lot of time and money - and it is only a very small crew here in Dubai – they want to understand what you are trying to accomplish.

I: There is a sort of special oversight for security matters. For the bribes a company might check twice, but for child labor they might check once and just ask quietly. How present are security-related investigations in your line of work?

M.O.: You need to think where your authority as a firm derives from: in most cases it is derived from the company that is engaging you and who’s checking out their vendor; the client wants to ensure there are good working conditions, basic fire safety and no child labor and they engage you as a third-party in order to this, and they grant you the authority, because in their engagement with the vendor they have a right to audit for this. This, for example, feeds into the debate that is ongoing now about private military contractors. There is a role for the private sector in an indirect manner in enforcing relations, but it’s the adoption and the access to that ability that is the key: that’s why I was talking about moving things in the database and such. It’s when that became accessible, that it became more

effective. Because companies themselves would like to be profit centers: people are in companies and they don't want to lose money. They need an accessible solution to be able to apply the law, which is where an innovative and strong private sector in this area does really well. I think there is certainly room for the private sector to take on an investigative and a support role for this legislation, but it's all about price points and control. It's all about their internal risk management structure coming into play.

I: When does it become convenient for a company to do an enhanced level of checking on a potential partner, or to make a decision to move away from that partner?

M.O.: When that becomes economically accessible: that is, at the nexus of regulation enforcement and the cost of the service. Everybody makes balance of risks judgments all the time. If we are looking at it from a regulatory standpoint, enforcement in Italy is somewhat patchy: those who engage in corrupt business practices usually don't go to jail; there is not sort of sword of Damocles that hangs over them every time they do business elsewhere, which is why there are a certain number of Italian companies that are active in Saudi and in areas where corruption is present, that seem to do very well. I'm not saying there's a causal relationship. However, in the United States for a similar company it's different because they have that sword of Damocles hanging over their head, which is, if we pay a bribe to the Deputy Minister of Oil in order to be allowed onto the contracts' list and we receive this contract and it ever come out, the US DOJ will be in my face so quickly that I will not have a company by Wednesday.

Therefore I look at the potential gain from this, the potential cost of the bribe, the potential gain of the contract. I look at my global operations I look at my reputation, and most people will just intuitively ascribe a dollar value to all of the stuff. They'll take a look at this

risk and they'll say "how many other US companies that pay bribes in Saudi Arabia have been picked up by the DOJ and are under active prosecution? I know these and what they were doing looks a lot like what I'm about to try to do. I can't do it." They make an internal assessment of the risks.

The way it works around here, instead, is that the vendor comes back and says "I understand you're a US company, you can't pay me directly, but my cousin owns a company over here, and if the contract comes through, we would like you to tie us up exclusively. My fencing company will do this fencing contract at a dramatically inflated price, then the company will show that it has been due diligent, because it did an appropriate level of due diligence, as required by US law, on the fencing company.

I guarantee that if the US enforcement agencies began picking on US companies active in Iraq, all of a sudden that threshold of risk would reduce and you would see an increase in the amount of real meaningful due diligence done. Not just a \$750 World Check, it would be your \$35-\$45,000 Kroll report, which is where you really need to be to get good information.

I: So you're telling me yes, it is acceptable for the government to ask for more checks from a company because economically it is acceptable, but how can you incentivize that?

M.O.: You don't; the key comes with enforcement. If the DOJ opened an office in Baghdad and actively investigated things that were happening in Iraq with US companies, all of a sudden most companies in Iraq would close. It is such a corrupt environment it is not possible to carry on. It is not so much the accessibility of the due diligence, it's the enforcement. It is possible to see this within companies that have been the recipients of large fines: the budget moves towards due diligence; that goes up, and it will stay up for a while; then it will be

lessened again as people start looking at budgetary concerns. Finally it will go back to a status of whatever acceptable risk is.

Due diligence could be incentivized in different ways, for example with tax breaks for the due diligence expenditure or the regulatory internal compliance expenditure. However, incentives really come from not being the subject of enforcement; in areas that have weak domestic or external enforcement a lot of people will take that risk.

I: Do you believe that FCPA/UKBA-modeled regulations could work in the Middle East or does this region need something different, particularly in sight of the extremely different political situations?

M.O.: It would be very difficult, and it should be done over time. Most things are personality-driven here: there would be the need for a preliminary notice about the fact that such anti-corruption and bribery policy will be enforced over a five-year period. This would allow the businesses, the transactional environment, to adapt. Dubai has done very well with that in 2008 and 2009: now it is seen as less acceptable to request a bribe or to pay a bribe because there is a potential for enforcement to happen; but certainly for other fraud or other corruption risks, I'd put the UAE in the same basket as the other Gulf States, where they are not perceived as such a negative thing, and the law is unevenly enforced.

There is a culture of corruption. In India, for example, you wouldn't be able to transact without it: many professionals with big MBAs who returned to India, unless they had an uncle or an extended family that could sit them down and explain the system, they got owned. And it is the same thing in Lebanon: I ran a business there for two years and as soon as I started making money you would be amazed how many people came by saying "I

represent this front and this interest or whatever, and I see you are making some money, so who does your protection? It's a dangerous place, Lebanon".

I: Are Middle Eastern companies more concerned with security-related issues for cultural reasons or for practical-economic reasons?

M.O.: If they guys of Horreya in Cairo somehow ended up on the list of financiers for the Muslim Brotherhood, they would not be open tomorrow: they would be going go to jail forever and ever. There is a post-September 11 fear. There was a massive crack down on charities, which means that if you want to give money here now, it has to go to the Emirates Red Crescent office first. It's not so much a cultural desire: there still is a personal interest, in a large group of people, in financing groups that are either outright or near to terrorist groups. I certainly think among the Christian population in Egypt. You are going to find probably one or two Copts in the entire country who are not going to care about funding the Muslim Brotherhood or anybody who is associated with ISIS or organizations like that. Everybody else is scared to death, they don't want their money for personal reasons, but it's not necessarily as widespread as that.

Then, it's also a matter of weighing the ability to do your business or going to jail. Under the Patriot Act, if you fund terrorism, your ability to do transactions in US dollars as a bank drops. The central banks started looking at it and tried to figure out ways to avoid terrorist financing or at least to cut off some of the risk. Standard Chartered shut down its SMEs bracket here two years ago. They shut down 800 businesses; they were bankrupt. HSBC has done the same thing. They didn't wake up one morning and say "we are really good people we're going stop this". Well, maybe they are good people. They stopped because they faced significant fines for terrorist financing and went through remediation. They are

shedding different business lines to make that happen, but largely on the back of the enforcement issue.

It is still about the certainty of the law. What the private sector can do is assist in identifying risks and helping you mitigate them but they can't take a role as either a regulator or an enforcer above this, because they are extra-State. In terms of what the private sector can do is to move that ball forward in a passive context: imagine if the DOJ put out a bid for five local investigations companies to take on one of its cases in exchange for recovery fees and a percentage of everything clawed back. I guarantee you would find four or five companies willing to do that, and then the enforcement side would get dramatically better.