



Investigation Case Study: Maduro Brothers

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Forum

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- Maduro Brothers (“Maduro”) is an engineering company founded by the Maduro family in Mexico in the 1970s. The company has expanded internationally and has a footprint covering Latin American, Europe, the Middle East, and North America. International expansion took off during the early 2000s, fueled by record energy prices.
- Maduro is a £900m turnover business listed in the US and Mexico with 2,100 staff members, including contractors and secondees. The company’s clients include private and state-owned oil exploration and oilfield services companies.
- Maduro’s expansion strategy has been via entering joint ventures and by partnering with local, country-specific, engineering specialists. One of its most successful operations has been in Spain, which was set up as a joint venture with a local thirty percent state-owned entity.



- Six months ago, you were appointed as the first Chief Compliance Officer of Maduro.
- Your team now includes two compliance professionals and you, plus the budget to recruit an additional person this year.
- You report to, and have been working closely with, the General Counsel.
- The General Counsel is also a board member of Maduro, although you are not.



So far you have:

- rolled out a new anti-corruption policy and have updated Maduro's code of conduct;
- rolled out e-learning general awareness training relating to the UK Bribery Act, the FCPA and the new corruption legislation in France to all of Maduro's 1,200 full-time employees; and
- appointed a virtual network of ABC champions to help strengthen the escalation of corruption issues.

Your next objective is to revise Maduro's approach to due diligence on prospective joint venture partners. Currently, only limited checks are done and these are focused primarily on commercial and credit risk issues.



- Monday morning, 9am UK time, you receive a call from your 'ABC champion' in Spain. The 'ABC champion,' whose full-time role is as an auditor in Spain, explains that during a routine statutory financial audit of Maduro's joint venture in Spain, the team has discovered an unusual set of payment records. The recent ABC training you delivered helped the team spot something that, previously, they had overlooked, perhaps for two years.
- The auditor found that the Head of Business Development, representing Maduro's Spanish JV partner, has authorised three advance payments totaling €90,000 over a twelve-month period to a local agent about securing essential land access rights for a new project from the local mayor's office.
- The team has found no written agreement with the agent and no due diligence records relating to the agent have been found on file. There also seems to be no receipts for two of the payments.



- From experience in Spain, the auditor believes that these permits and all the associated costs are less than €5,000. However, he also says that the application process is incredibly laborious and time-consuming and, now that he thinks about it more, he is aware of a number of other instances in which the business has paid amounts over €50,000 for land licenses, although some of these pre-dated the JV formation.
- The auditor wants to know what to do next and insists on a full response within two days so that he can meet his statutory audit timeline.



- **What is your first response and what are your first investigative steps?**



- **Day one of the investigation: information gathered suggests that the corporate counsel of Maduro's JV in Spain may have been involved in authorising the payments....**



- **A week into the investigation, the Head of Business Development, under suspicion in Spain, quits. He immediately takes a position in another rival company. Emails between the Head of Business Development and the local agent reveal that the Head of BD instructed the agent to make two of the payments to a Spanish government official's company that provides "administrative services".**
- **The government official is the deputy head of the office that grants the land license applied for the by the JV. The agent received one of the three payments for his services.**
- **In addition, your boss, the GC is intimately involved with a JV negotiation where the reputation of Maduro for having strong systems and controls in place has been a central feature in moving swiftly toward closure.**



- **Interviews are commenced in Spain and the agent who received the payments refuses to co-operate. The JV partner who retained the agent says that due diligence was not performed on the agent.**
- **The reason given is that the agent is well-known in the community and rules were not understood or applied. Furthermore, the primary subjects of the investigation (the ex-Head of BD and the agent) have both already threatened management by stating their willingness to “take others down.”**



- **Your investigation is reaching a conclusion.**
 - You identify that there have been serious breaches of controls; and
 - Although it is not certain that bribes were paid (given gaps in records and lack of co-operation by interviewees), it is more likely than not based on available information, including a lack of evidence to support bona fide services having been received for sums paid to the government official's company for "administrative services".

Expert view: the lessons from the Rolls Royce case

Rob Wilson and Lisa Osofsky, Exiger, Directors, London, 24 February 2017



Almost five years on from the enactment of the Bribery Act in the United Kingdom, one of the great expectations of the compliance community has come to fruition. In Rolls Royce, British anti-bribery and corruption enforcers now have their first significant corporate scalp. Exiger director Rob Wilson and EMEA chair Lisa Osofsky make some observations on Rolls' culture of compliance.

Rolls Royce has the ignominious title as record-holder for the largest ever British corporate fine for economic crime. It agreed to pay this in return for a deferred-prosecution arrangement (DPA) with the English courts, alongside similar deferred-prosecution penalties in the US and Brazil.

However, the other expectation, vociferously anticipated in 2010/11 and repeated after Rolls Royce's capitulation by the *Bribery Act's* detractors on all sides of British business, has thankfully not come to pass. Neither the enactment of the Act nor its enforcement have led to mass job-losses and no British businesses have lost contracts to competitors elsewhere on the globe. Rolls may yet end up employing more staff (or at least reconfiguring the jobs of its employees) to clean up its internal processes while continuing to win contracts all over the world, fulfil orders and create wealth and employment.

A handful of senior managers at Rolls might have moved on from their posts since the Serious Fraud Office opened its investigations a couple of years ago, but the financial markets at least have already viewed the fine and settlements as a success. Rolls settled for a total of £671m (of which nearly £497m is payable to

HM Treasury alone) as part of its DPA with the Serious Fraud Office and the rest to the US Department of Justice and Brazilian enforcement agencies. Shares in the aerospace and defence specialist parts maker, meanwhile, are still up around 12% weeks on from the settlement, adding around £1½ billion to its market value. The figures point to an £800-million overall victory for Rolls and prove that it has managed to put the criminal investigations behind it.

As part of the principle of agreeing a DPA with the High Court in London and the scale of the fine, judges considered the effect on the company and its ability to continue to trade, invest and remain in business. The court tried to balance the competing needs of punishment and deterrence, expressing a desire to encourage reform and rehabilitation from within the Rolls Royce corporate culture.

The main motivation for Rolls Royce to honour its DPA does not simply derive from the size of the fine; the terms themselves call for a root-and-branch cultural change. If the company can rehabilitate itself from the inside, it can make the necessary changes stick. To its credit, Rolls Royce's executive leadership alerted the Serious Fraud Office to suspected malpractices and co-operated fully with SFO investigators before coming to a settlement. That alone showed that its leadership took corruption seriously and its relatively new CEO deserves some praise.

The test of a good DPA, in the SFO's terms, is whether it sets the kind of example that inspires firms to put compliance with the appropriate criminal and regulatory regimes back at the heart of decisions to do with commercial and financial risk. In essence, it concerns cultural change, which ultimately should be in the best interests of customers, staff and shareholders alike.

Certainly Rolls Royce should not fear that it is competing on anything but a level playing field with its rivals in other leading European economies and in America. Germany and France (the two other European venues for gigantic aerospace and defence firms) have introduced anti-bribery legislation that is similar to the UK's. The US *Foreign and Corrupt Practices Act* has, meanwhile, been in place since 1977 and (though some may argue that the US typically targets foreign companies) it has not cramped American firms' competitive edge. The long arm of the US court system continues to impose the anti-bribery duties and obligations this Act requires wherever any company with US activities conducts business. British firms such as Rolls Royce (which have many US operations) have been bound by the FCPA for years, so the arrival of the *Bribery Act* should not change matters. The only real difference between today's situation and that of five years ago is that the SFO has been given the resources to pursue its investigations more vigorously.