

THE COSTS OF CORRUPTION AND HOW TO FIGHT IT

ASA Annual Conference
Geneva, 1 February 2019

PD Dr. Thomas Werlen LL.M. (Harvard)
Quinn Emanuel Urquhart & Sullivan
University of St.Gallen

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Thomas Werlen



PD Dr. Thomas Werlen is the Managing Partner of the Quinn Emanuel (QE) Zurich office. Qualified in both New York and Switzerland and having worked at the highest levels in New York, London and Switzerland, Thomas Werlen has more than 20 years of experience in both common and civil law.

Thomas's practice at QE focuses on white collar criminal law as well as on complex civil disputes, often involving multiple jurisdictions.

Thomas regularly represents clients in high-stakes white collar matters. For instance, he has been representing FIFA in criminal investigations being pursued in the U.S. and Switzerland, as well as several major Swiss banking and financial institutions in matters adverse to Swiss and U.S. authorities in connection with the U.S. Swiss Tax Program and with the fall-out of the "Panama Papers". Thomas is also advising a number of high-profile clients in connection with the 1MDB, PDVSA and Lava Jato criminal and regulatory investigations, including major financial institutions in Switzerland and a large Swiss-based commodities trading company.

In the civil dispute resolution context, Thomas recently advised the majority shareholder of Sika AG in a multibillion cross-border acquisition dispute, and Swiss private banking group EFG International in a series of complex financial disputes in the U.S., Europe and Asia. Thomas has also been acting as arbitrator and expert in complex financial arbitrations and in pharma and life sciences disputes. Reflecting his extensive financial and capital markets experience, Thomas was appointed as market expert on the Panel of Recognized International Markets Experts in Finance (P.R.I.M.E. Finance) based in The Hague.

Prior to joining Quinn Emanuel in 2012, Thomas served for six years as Group General Counsel and a member of the Executive Committee for Novartis where he oversaw a global team of over 750 people spread across 140 jurisdictions.

Thomas lectures on corporate governance, finance, banking, securities and corporate law at both the University of St. Gallen and the University of Zurich.

Agenda

A.

Introduction

B.

The (hidden) costs of corruption

C.

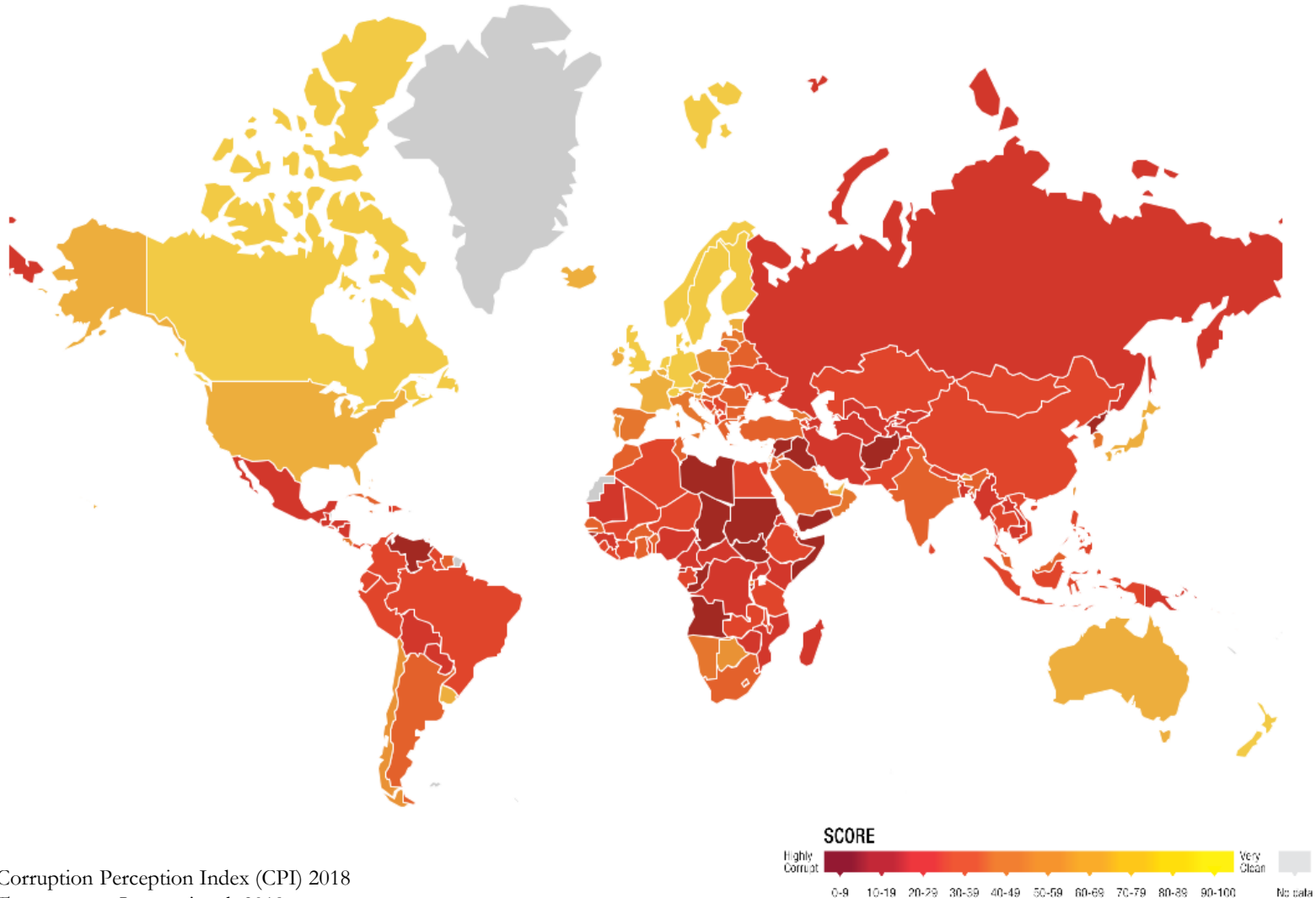
What can be done?

A. Introduction

- Corruption is increasingly looked down upon throughout the world
- Increasing relevance of international standards in the area of corruption (UN; OECD; Council of Europe/Groupe d'Etats contre la corruption GRECO; Transparency International)
 - Eg, in mid 2016, Switzerland made private sector bribery a criminal offense («Lex FIFA»)
- Increased awareness also in private sector, where Codes of Conduct and anti-corruption guidelines are widely adopted
- Empirical evidence shows: prevalent opinion throughout the world that corruption is bad and damaging for business

Yet ...

Available data gives overall impression of pervasive corruption ...



Corruption Perception Index (CPI) 2018
Transparency International, 2019

... especially in emerging markets.

CPI 2017 Americas

Country	CPI Score 2018	Rank 2018	Economist Intelligence Unit Country Ratings
Canada	81	9	90
United States of America	71	22	90
Uruguay	70	23	72
Barbados	68	25	
Chile	67	27	72
Bahamas	65	29	
Saint Vincent and the Grenadines	58	41	
Dominica	57	45	
Costa Rica	56	48	55
Saint Lucia	55	50	
Grenada	52	53	
Cuba	47	61	55
Jamaica	44	70	37
Suriname	43	73	
Trinidad and Tobago	41	78	37
Argentina	40	85	37
Guyana	37	93	
Panama	37	93	37
Colombia	36	99	37
Brazil	35	105	37
El Salvador	35	105	37
Peru	35	105	37
Ecuador	34	114	37
Dominican Republic	30	129	37
Bolivia	29	132	37
Honduras	29	132	20
Paraguay	29	132	37
Mexico	28	138	37
Guatemala	27	144	20
Nicaragua	25	152	20
Haiti	20	161	
Venezuela	18	168	20

CPI 2017 Asia / Pacific

Country	CPI Score 2017	Rank 2017	Economist Intelligence Unit Country Ratings
New Zealand	87	2	90
Singapore	85	3	90
Australia	77	13	72
Hong Kong	76	14	72
Japan	73	18	72
Bhutan	68	25	
Brunei Darussalam	63	31	
Taiwan	63	31	55
Korea, South	57	45	55
Malaysia	47	61	55
Vanuatu	46	64	
Solomon Islands	44	70	
India	41	78	37
China	39	87	37
Indonesia	38	89	37
Sri Lanka	38	89	37
Mongolia	37	93	37
Philippines	36	99	37
Thailand	36	99	37
Timor-Leste	35	105	
Pakistan	33	117	37
Vietnam	33	117	20
Maldives	31	124	
Nepal	31	124	
Laos	29	132	
Myanmar	29	132	20
Papua New Guinea	28	138	20
Bangladesh	26	149	20
Cambodia	20	161	20
Afghanistan	16	172	
Korea, North	14	176	

CPI 2017 African Union

Country	CPI Score 2017	Rank 2017	Economist Intelligence Unit Country Ratings
Seychelles	66	28	72
Botswana	61	34	72
Cabo Verde	57	45	
Rwanda	56	48	
Namibia	53	52	55
Mauritius	51	56	55
Sao Tome and Principe	46	64	
Senegal	45	67	55
Morocco	43	73	37
South Africa	43	73	55
Tunisia	43	73	37
Burkina Faso	41	78	
Ghana	41	78	55
Lesotho	41	78	
Benin	40	85	
(...)			
Cameroon	25	152	20
Madagascar	25	152	
Eritrea	24	157	
Mozambique	23	158	20
Zimbabwe	22	160	37
Democratic Republic of the Congo	20	161	20
Angola	19	165	20
Chad	19	165	
Congo	19	165	20
Burundi	17	170	
Libya	17	170	20
Equatorial Guinea	16	172	20
Guinea Bissau	16	172	
Sudan	16	172	20
South Sudan	13	178	
Somalia	10	180	

Corruption paradox

- Main question
 - Why does corruption remain so pervasive when it is almost universally despised and viewed as not only illegal but generally immoral?

Agenda

A. Introduction

B. **The (hidden) costs of corruption**

C. What can be done?

Working hypothesis – imbalance of benefits and costs

- Paying and receiving bribes is typically perceived to be profitable in the short term (*direct benefits*),
 - while entailing high costs in the longer term:
 - potentially for perpetrators, at least if they are caught (*potential costs*),
 - and, in any event, for society at large, regardless of whether perpetrators are caught (*hidden costs*).
- Potential long term costs are hard to measure and anticipate – and therefore difficult to factor into decision-making in a particular situation.

Siemens case shows massive costs to business (1/2)

Siemens to pay €1bn fines to close bribery scandal

Daniel Schäfer in Frankfurt DECEMBER 15, 2008

Siemens drew a line under its massive bribery scandal on Monday when it said it would pay €1bn (\$1.36bn) in fines to US and German authorities and appointed an independent watchdog to monitor its compliance.

Gerhard Cromme, Siemens chairman, said: "Today we are, in essence, closing one of the unhappiest chapters in our 160-year history."

In the scandal that surfaced two years ago, prosecutors and the company's internal investigation found some €1.3bn of suspected payments by managers to officials around the world to win contracts.



Former Siemens executive pleads guilty in \$100m bribery case

Jessica Dye in New York MARCH 15, 2018

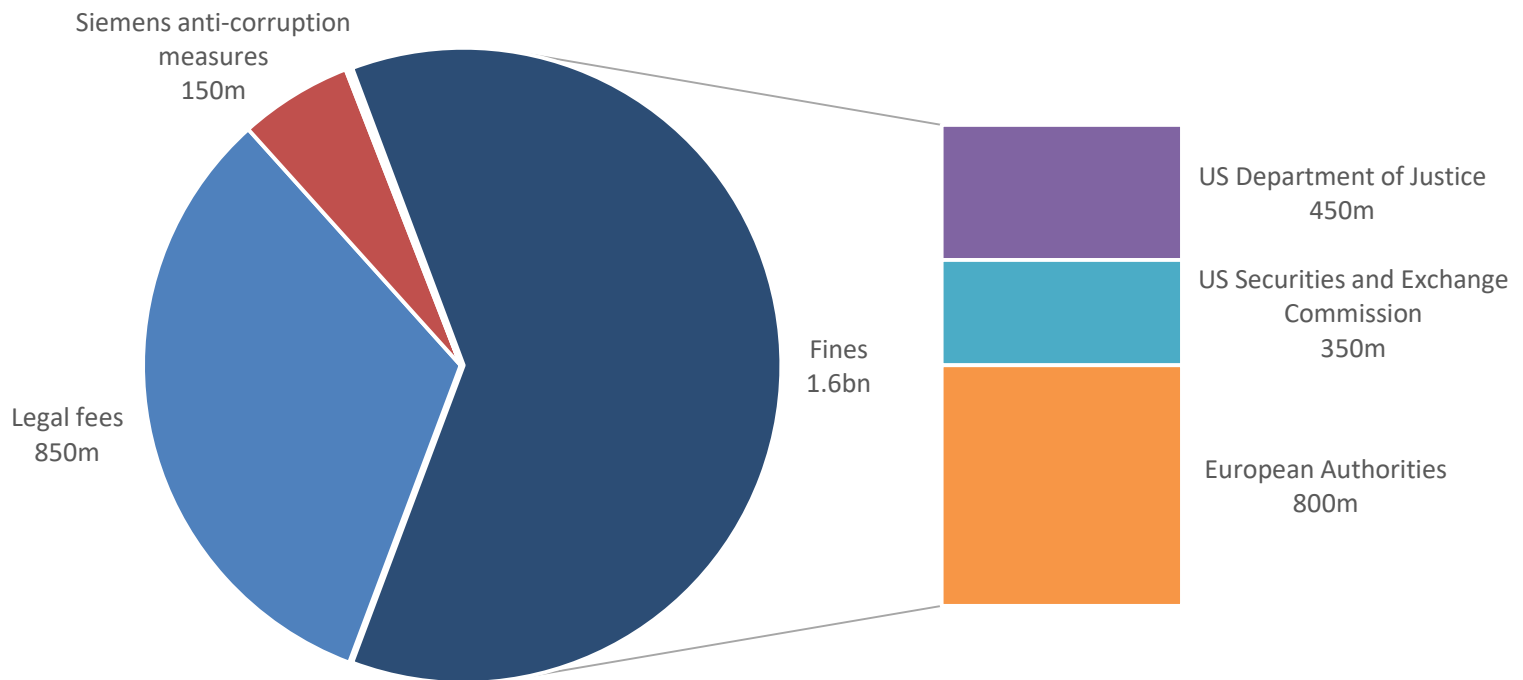
A former Siemens executive has pleaded guilty in connection with a bribery case dating back two decades involving payments to Argentine government officials over a \$1bn contract for national identity cards.

Eberhard Reichert, 78, of Munich, Germany, entered the plea on Thursday in Manhattan federal court. He had been charged with conspiracy to violate US anti-corruption law and to commit wire fraud.

In [connection with the same underlying allegations](#), Siemens pleaded guilty in 2008 and pay \$800m in US criminal and civil penalties and an \$800m fine to Munich prosecutors.

Siemens case shows massive costs to business (2/2) ...

- Short term gains set off by massive long term costs for organization and individuals



... which are expected to rise further following increasingly aggressive law enforcement

Current top ten US Foreign Corrupt Practices Act (FCPA) enforcement actions of all time based on penalties and disgorgement (in USD):

1. Petróleo Brasileiro S.A. – Petrobras (Brazil): 1.78 billion in 2018
2. Telia Company AB (Sweden): 965 million in 2017
3. Siemens (Germany): 800 million in 2008
4. VimpelCom (Holland) 795 million in 2016
5. Alstom (France): 772 million in 2014
6. Société Générale S.A. (France): 585 million in 2018
7. KBR / Halliburton (United States): 579 million in 2009
8. Teva Pharmaceutical (Israel): 519 million in 2016
9. Keppel Offshore & Marine Ltd.(Singapore): 422 million in 2017
10. Och-Ziff (United States): 412 million in 2016

As demonstrated by the example of Brazil, ...

Odebrecht case: Politicians worldwide suspected in bribery scandal

15 December 2017

It is the corruption probe that has left politicians around the world looking over their shoulders.

Prosecutors in a dozen countries are untangling a massive web of corruption that ran across a continent and further afield.

Illegal payments may have sloshed through presidential campaigns, boosted the careers of political top brass in country after country, and oiled the wheels of worldwide construction projects including motorways, gas pipelines and hydroelectric dams.

Operation Car Wash: Is this the biggest corruption scandal in history?

What began as an investigation into money laundering quickly turned into something much greater, uncovering a vast and intricate web of political and corporate racketeering. By [Jonathan Watts](#)

On 14 January 2015, police agent Newton Ishii was waiting in Rio de Janeiro's Galeão airport to meet the midnight flight from London. His mission was simple. A former executive of Brazil's national oil company, Petrobras, was on the plane. Ishii was to arrest him as soon as he set foot in [Brazil](#) and take him for questioning by detectives.

No big deal, the veteran cop thought as he ticked off the hours in the shabby Terminal One lounge. This was just one of many anti-bribery operations he had worked on. Usually they made a few headlines, then faded away, leaving the perpetrators to carry on as if nothing had happened. There was a popular expression for this: *acabou em pizza* (to end up with pizza), which suggested that there was no political row that could not be settled over a meal and a few beers.

...ed Odebrecht, you probably do not live in

...venues for the 2016 Olympics, infrastructure
...em in Caracas, plus dams and airport

FOR IMMEDIATE RELEASE

Wednesday, December 21, 2016

Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History

Odebrecht S.A. (Odebrecht), a global construction conglomerate based in Brazil, and Braskem S.A. (Braskem), a Brazilian petrochemical company, pleaded guilty today and agreed to pay a combined total penalty of at least \$3.5 billion to resolve charges with authorities in the United States, Brazil and Switzerland arising out of their schemes to pay hundreds of millions of dollars in bribes to government officials around the world.

At the Birthplace of a Graft Scandal, Brazil's Crisis Is on Full Display



The Jardim São Luís district of São Paulo, Brazil. Gas prices, taxes and rising inflation have pushed many working-class Brazilians to the brink of poverty. Paulo Whitaker/Reuters

Department of Justice
Office of Public Affairs

... corruption's hidden costs take a heavy toll on society

- Distortion of market mechanisms like fair competition
- Deters domestic and foreign investments, thus stifling growth and future business opportunities for all
 - IMF research indicates that investment in relatively corrupt countries is up to 5% less than in countries that are relatively corruption-free
- Nepotism instead of meritocracy
- Inefficient use of public resources
- Exclusion of poor people from public services; perpetuating poverty
- Corrosion of public trust in state and the rule of law

Agenda

- A. Introduction
- B. The (hidden) costs of corruption
- C. **What can be done?**

Promotive factors seem to be hard-wired into human brain

- Moral overconfidence and loss aversion in high-pressure situations
- Corrupt individuals tend not to view themselves as corrupt.
- Distorted self-perception on ethical issues in high-pressure situations with some inherent ambiguity, and when moral transgressions are incremental
 - Intense business negotiations for multimillion-dollar contracts precisely fall in to that category
- People in high-stakes, high-pressure situations will be prone to self-rationalizing through denial of responsibility, denial of injury, denial of the victim, appeal to higher loyalties

What can be done?

- **Increase transparency?**
 - Corruption – by nature – is difficult to grasp empirically in a meaningful way
 - Lack of data makes it difficult to implement highly effective countermeasures
- **Create the right incentives?**
 - Rethink compensation structures
- **Active enforcement of laws criminalizing bribery**

Thank you for your attention

PD Dr. Thomas Werlen LL.M. (Harvard)

Managing Partner

Quinn Emanuel Urquhart & Sullivan (Schweiz) GmbH

Dufourstrasse 29

8008 Zurich, Switzerland

+41 44 253 8080 Direct

+41 44 253 8000 Main Office Number

+41 44 253 8001 Fax

+41 79 592 74 82 Mobile

thomaswerlen@quinnemanuel.swiss

www.quinnemanuel.swiss