A View from the Private Sector

HOW INSTITUTIONAL TRANSPARENCY HELPS PREVENT CORRUPTION

ANDREA MURTA
ASSOCIATE DIRECTOR, ADRIENNE ARSHT LATIN AMERICA CENTER
ATLANTIC COUNCIL
Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

We can only look forward to a more equal and sustainable world if we have more peaceful and inclusive societies. That means we'll need to reduce crime, violence, and exploitation. The illegal arms and drug trade will have to stop. Public institutions that we all rely on will have to be effective, transparent and accountable.
A Global Anti-Corruption Movement

- A global regulatory movement against corruption has been accelerating in the past couple decades.

- There is an observable convergence of regulations towards standards set by, among others, the FCPA, the OECD Anti-Bribery Convention, the UN Convention Against Corruption.

- The Brazilian Clean Company Act, enacted in February 2014, is a recent example. It holds companies liable for corrupt acts committed by their employees.

- Obviously, there is a big difference between regulation and implementation.
The FCPA—A Global Trigger

- The Foreign Corruption Practice Act (FCPA) is arguably the largest global trigger of anti-corruption efforts in the private sector.

- Enacted in 1977, it prohibits corrupt acts practiced by a company’s officers and agents. It also has provisions about successor liability.

- Importantly, the FCPA leaves open the definition of a public official, greatly enlarging the number of acts which could fall under its jurisdiction.

- The result is a great level of concern about a company’s foreign partners.
Red Flags

Geography

CORRUPTION PERCEPTIONS INDEX 2014: RESULTS

Source: Transparency International
Red Flags

Sector

Extraction: 19%
Construction: 15%
Transportation: 15%
Information/Communication: 10%
Manufacturing: 8%

OECD, December 2014/ CNNMoney
Red Flags

- Business with frequent interaction with government officials: customs brokers, importers, public service providers
- Business whose owners are associates or family members of government officials
- Business with a record of corruption, money laundering, fraud, and similar lawsuits
- Obscure corporate structures
- Officers mentioned in watchlists
- A reputation for any of the above
Methodology

- Beneficial owners and corporate structure – articles of incorporation and public records
- Company history – public records, online presence
- Executives – corporate records, personal records, directorships, shareholdings
- Involvement in legal proceedings – legal records
- Government records
- Media references
Institutional Transparency

1. Corporate records are generally kept by public commercial registries.
   - Are corporate records publicly available?
   - How can they be obtained?
   - How can they be searched?
   - What type of information do they contain?
   - Are beneficial owners listed?

2. Files on directorships and shareholdings vary wildly.
   - Are these searchable on commercial registries for public and private companies alike?
Institutional Transparency

1. Court records are kept by local, state, federal, and superior courts.
   - Are court records publicly available, even for ongoing cases?
   - How can they be obtained?
   - How can they be searched?
   - What type of information do they contain?

2. Government procurement records may or may not be available on public databases.
   - Can we search by recipient?

3. Local media may or may not be available online, and language capabilities are essential.
Institutional Transparency

The answer to these questions are not a matter of accident.

They are the result of institutional choices.

How transparent are governments willing to be?
REPÚBLICA FEDERATIVA DO BRASIL

CADASTRO NACIONAL DA PESSOA JURÍDICA

COMPROVANTE DE INSCRIÇÃO E DE SITUAÇÃO CADASTRAL

DATA DE ABERTURA
03/08/1966

NÚMERO DE INSCRIÇÃO
15.102.288/0001-82

MATRIZ

NOME EMPRESARIAL
CONSTRUTORA NORBERTO ODEBRECHT S A

TÍTULO DO ESTABELECIMENTO (NOME DE FANTASIA)
*******

CÓDIGO E DESCRIPÇÃO DA ATIVIDADE ECONÔMICA PRINCIPAL
42.12-0-00 - Construção de obras de arte especiais

CÓDIGO E DESCRIPÇÃO DAS ATIVIDADES ECONÔMICAS SECUNDÁRIAS
Não informada

CÓDIGO E DESCRIPÇÃO DA NATUREZA JURÍDICA
205-4 - SOCIEDADE ANONIMA FECHADA

LOGRADOURO
OTR PR DE BOTAFOGO

NÚMERO
300

COMPLEMENTO
ANDAR 11

CEP
22.250-040

BAIRRO/DISTRITO
BOTAFOGO

MUNICÍPIO
RIO DE JANEIRO

UF
RJ

ENDERÉCIO ELETRÔNICO

TELEFONE
(21) 2559-3000 / (21) 2559-3244
Brazilian Corporate Records

Consulta Quadro de Sócios e Administradores - QSA

<table>
<thead>
<tr>
<th>CNPJ:</th>
<th>15.102.288/0001-82</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nome Empresarial:</td>
<td>CONSTRUTORA NORBERTO ODEBRECHT S A</td>
</tr>
<tr>
<td>Capital Social:</td>
<td>R$ 2.321.137.736,34 (Dois bilhões, trezentos e vinte e um milhões, cento e trinta e sete mil e setecentos e trinta e seis reais e trinta e quatro centavos)</td>
</tr>
</tbody>
</table>

O Quadro de Sócios e Administradores (QSA) constante da base de dados do Cadastro Nacional da Pessoa Jurídica (CNPJ) é o seguinte:

<table>
<thead>
<tr>
<th>Nome/Nome Empresarial:</th>
<th>BENEDICTO BARBOSA DA SILVA JUNIOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualificação:</td>
<td>10-Diretor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nome/Nome Empresarial:</th>
<th>ANTONIO MARCO CAMPOS RABELLO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualificação:</td>
<td>10-Diretor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nome/Nome Empresarial:</th>
<th>CARLOS HERMANNY FILHO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualificação:</td>
<td>10-Diretor</td>
</tr>
</tbody>
</table>
Brazilian State Corporate Records

There is a wild variation in the amount of publicly available records within the same country

- Jucesp (Sao Paulo Commercial Registry): full records available online to Brazilian citizens

- Jucerj (Rio de Janeiro Commercial Registry): records may be available online, but search is really difficult; physical records may be obtained ($)

- Jucemg (Minas Gerais Commercial Registry): records are only available on site ($).
Corporate records retrieval must be done on-site, the research is difficult, and results take time and are not necessarily comprehensive.

On the other hand, federal direct payments are easy to search and comprehensive.

Mexico: A study in contrast
Colombia: Hiding in Plain Sight
Colombia: Hiding in Plain Sight
And it gets more complicated

- Venezuela
- Most of Central America
- British Virgin Islands
- Caribbean Islands

*Lack of institutional transparency constrains the private sector’s ability to prevent corruption*
Then what?

- It gets expensive
- Methods get more complicated
- It takes longer to find suitable partners

Most of the time, companies don’t dig deep enough.
Contact Information

Andrea Murta

Associate Director, Adrienne Arsht Latin America Center, Atlantic Council

amurta@atlanticcouncil.org