In a case that continues to reverberate across borders, Wal-Mart Stores, the world’s largest retailer, announced recently that it has started its own probe into allegations that executives at its Mexican operations made hundreds of illegal payments -- worth more than $24 million -- to help expedite the opening of new stores. According to a report in The New York Times, Wal-Mart officials in the U.S. learned about the bribery allegations in 2005, but failed to alert U.S. or Mexican officials at the time.

The charges have cast a dark cloud over Wal-Mart, which is also the largest retailer in Mexico and the country’s top private-sector employer. According to news reports, Wal-Mart’s own probe of possible bribery could force the firing of some of the firm’s executives, and bring serious fines from the U.S. government if investigations reveal that the company’s senior managers knew about the illicit payments but did not take sufficient action. The day after the allegations were made public, Wal-Mart shares fell nearly 5%.

That may be only the beginning of Wal-Mart’s troubles: In other repercussions, leaders of New York City’s pension funds said they would vote their shares against the five Wal-Mart directors standing for re-election at the company’s shareholder meeting in June. Also, the California State Teachers' Retirement System, which holds more than 5.3 million Wal-Mart shares, has filed a lawsuit alleging that the firm's senior officials engaged in massive opportunistic sales of the company’s stock before news of the Mexico allegations broke in late April.

According to legal and ethics experts at Wharton and elsewhere, the Wal-Mart case raises broader questions about how multinational companies conduct business in foreign countries. Is Wal-Mart’s alleged bribery in Mexico an anomaly, or is it more typical of multinational behavior than many corporate executives would like to admit? Is the practice of bribing public officials ever justifiable from an economic or ethical point of view? And apart from collapsing share prices and shareholder lawsuits, what are some of the other possible consequences of bribing foreign officials?

Mind the Rules

Despite the hoopla surrounding the Wal-Mart case, corporate bribery of public officials remains an all too common practice in many countries around the world, according to the most recent annual report by Transparency International (TI), a Berlin, Germany-based nonprofit with more than 100 chapters around the world. The organization’s Corruption Perceptions Index 2011 charges that many governments in Asia, Latin America and the Middle East still fail to protect their citizens from the abuse of public resources, bribery and secretive decision-making. Among them, Mexico is hardly the worst offender on the list. The 10 countries where bribery and other forms of corruption were most frequent last year include Somalia, North Korea, Burma (Myanmar), Afghanistan, Uzbekistan, Turkmenistan, Sudan, Iraq, Haiti and Venezuela. Mexico ranked 100th among 183 nations surveyed by TI, exactly the same ranking earned by far less-developed countries such as Benin, Burkina Faso and Malawi.

For all the dissatisfaction expressed in that report, corruption experts generally agree that multinational executives in the U.S. and other countries are taking anti-corruption statutes more seriously than in the past. One reason is the U.S. Foreign Corrupt Practices Act (FCPA) of 1977, which imposes serious penalties on U.S. companies that bribe foreign officials. In addition, a growing number of executives recognize that bribery is not only ethically wrong, but economically counter-productive.
In an article published in the most recent edition of *American Business Law Journal*, titled “The Business Case for Complying with Bribery Laws,” [Philip M. Nichols](https://knowledge.wharton.upenn.edu/article.cfm?articleid=2999), a professor of legal studies and business ethics at Wharton, writes that several scholars have “convincingly marshaled together research that demonstrates the impediment to economic growth, degradation of social and political institutions, misallocation of resources and skills, impoverishment and numerous other societal ills that corruption inflicts on polities and economies.” He adds that although there is a shortage of “firm-level empirical data on the consequences of paying bribes,” the existing research, combined with theoretical discussions and the realities of the regulatory environment, makes “a very strong business case ... for complying with the rules regarding bribery.”

Shaun Donnelly, vice president of investment and financial services at the United States Council for International Business, a New York City-based nonprofit, says that “the trend is in the positive direction.... The public sentiment is that bribery is not an acceptable way to do business,” and global companies are becoming more scrupulous about compliance with the law. In the years following the FCPA of 1977, “U.S. companies were constrained to do the right thing, but other countries’ companies were not,” Donnelly notes. However, since the 1990s, international institutions have enacted their own similar anti-corruption conventions, including those endorsed by the Organization of American States (1997), the Council of Europe (1999), the African Union (2003) and, most significantly, the Anti-Bribery Convention of the Paris-based Organisation for Economic Co-operation and Development (1999). “A lot of big companies take this seriously, and have training programs, annual reviews and reminders,” he adds.

Nichols argues that growing global economic integration has also helped to encourage many companies to shun bribery and other acts of corruption that might have seemed commonplace in the past. “Governments recognize that controlling the local damage done by bribery requires coordination [with other governments],” he says. "Any actor who engages in [what seems to be] a local activity exposes himself to global coordination” in this newly integrated economy. Globalization “has made more people aware of corruption and of its negative impact. What was thought of as 'other people's problem' now becomes 'our problem,'” he notes. Likewise, businesses no longer view themselves as single companies, but rather as a regional or global network of suppliers, employees and distributors.

According to [Felipe Monteiro](https://knowledge.wharton.upenn.edu/article.cfm?articleid=2999), a Wharton management professor, multinationals should gladly accept today’s more stringent legal requirements as the premium paid for the numerous benefits that they derive from operating on an unprecedented scale. For example, huge firms like Wal-Mart have power over their suppliers, and can implement some best practices not accessible to small firms. The Wal-Marts of the world “have lots of advantages,” including access to global sourcing, he points out. “Being less flexible on issues of corruption [than some of their local competitors] is a cost they have to pay.”

More broadly, Monteiro notes that global managers must make a series of trade-offs between those business practices that they may need to adapt to local ways and those practices they must maintain as core procedures everywhere around the world. The more stringent the international requirements for transparency, disclosure and documentation become, “the more difficult it is for multinationals to have different practices [in different countries] without getting into trouble.”

**A Dose of Skepticism**

[William S. Laufer](https://knowledge.wharton.upenn.edu/article.cfm?articleid=2999), a Wharton professor of legal studies and business ethics, takes a more skeptical view of current trends. “It is true that Foreign Corrupt Practices Act enforcement is increasing ... and that having a robust FCPA compliance program is seen as part of a larger firm-level risk mitigation practice," he says. "It is unclear, however, whether the step-up in extraterritorial enforcement along with renewed FCPA compliance efforts have any significant impact on rates of corruption and bribery. Not surprisingly, these data are lacking. Evidence-based research on the effectiveness of different anti-corruption compliance programs and overall strategy is also sorely lacking.... [Confidence] that any of this makes a difference is premature and likely imprudent.”

Until recently, there has been “no systemic study” of the topic, Nichols notes, in part because corrupt activity takes place under the table, and many people are reluctant to talk openly about what they are doing, with whom and how often. TI’s Corruption Perceptions Index, for example, has been criticized for relying on third-party survey data. Critics also note that TI data about specific countries varies widely
depending on the public perception of the nation, the completeness of the surveys and the methodology used.

**What Went Wrong at Wal-Mart?**

Given the growing consensus that anti-corruption requirements must be taken seriously, the allegations against Wal-Mart are somewhat surprising, experts note. After all, for Wal-Mart, opening new stores in Mexico and other foreign locations is "a fundamental part of its business model," says Nien-he Hsieh, a professor of legal studies and business ethics at Wharton. Either Wal-Mart’s senior management didn’t know what was going on, or it knew what was happening but did not particularly care about clamping down on such illegal behavior, he suggests.

If companies understand the risks of non-compliance, why would they make payoffs? One possible reason, says Nichols, is that some people “get a cowboy thrill from making a bribe.” This may be particularly true among unsophisticated companies that don’t want to invest the time and effort to do things right. More commonly, perhaps, this pattern of behavior may derive from a perception that bribery is simply "business as usual" in developing countries. “It is a lazy person’s solution instead of really selling your solutions,” says Donnelly, a former U.S. ambassador to Sri Lanka. “Some people think [incorrectly] that ‘this is a poor country, so everyone is corrupt. This is just the way things are done.’”

When senior managers engage in this behavior, it has a negative impact throughout the organization, according to Nichols. “There is a tendency, when top managers engage in undisciplined or self-motivated behavior, for the managers below them to engage in the same behavior.” Such behavior becomes part of the corporate culture, fueling a vicious cycle of low ethical expectations.

“In the U.S., you can clearly distinguish between a gift and a bribe,” Nichols adds. That’s because a bribe involves a specific quid pro quo in return for the payment. But in emerging nations, it may be more difficult to make such a distinction. In some countries, executives are instructed that the giving of lavish gifts is an essential component of the local culture, not something to be scorned as improper. Shunning such a practice may even sour key personal relationships.

To avoid any possibility of impropriety, however, Nichols says that some companies wisely “draw the line very low” -- excluding even small gifts, such as free lunches, from what is considered acceptable. Adhering to the "when in Rome, do as the Romans do" rule ascribes to others an “inflexibility that we won’t ascribe to ourselves. The idea that my rules are slightly different from yours, and there is an unbridgeable gap, is an argument that has no reality; it is presumptuous,” warns Nichols. People will realize that you are not insulting them if you politely refrain from any kind of gift exchange, even when a specific quid pro quo is not spelled out, he suggests.

Hsieh agrees, noting that some companies may “tend to underestimate the extent to which they can engage in certain practices” -- such as firmly refusing any kind of improper payments. “We shouldn’t assume that everyone is corrupt in [a given] country. We have to make it clear” that payoffs are not acceptable, he adds. The aim should be to nip corruption in the bud at the outset.

At the same time, companies from developed nations should bear in mind that corrupt practices like bribery are not limited to the developing world; they often just take more subtle form in tightly regulated countries. “One of the unfortunate artifacts of narrowly thinking about corruption as an impediment to development is an unbecoming sense of self-righteousness,” Laufer points out. "To be sure, there should be indignation about the impact of corruption on poverty, the unlevel playing field at the base of the economic pyramid and the exploitation by multinational corporations of lax enforcement of laws in countries where the rule of law is compromised.” However, "there should be some measured humility in how the ‘developed’ world prescribes anti-corruption strategies.

"Put aside all of the forms of corruption for which federal, state and local laws apply, and consider something [such as] corporate-political influence," Laufer adds. "Late last fall, the CPA-Zicklin Index of Corporate Political Accountability and Disclosure was unveiled at Wharton.... This annual index tracks the extent to which companies disclose their political spending -- spending that is designed quite simply to buy influence. Is this corruption?”