Jon Moulton's Diary

The demise of the US corrupt practices act might have some unintended consequences

Veteran financier Jon Moulton has been involved in buyouts, turnarounds and venture capital since 1979 with firms such as CVC, Permira, Apax, Alchemy and, most recently, Better Capital, where he has been the chair since 2009

This is the introduction to one of US President Donald Trump's executive orders signed earlier in the year.

"Section 1. Purpose and Policy. Since its enactment in 1977, the Foreign Corrupt Practices Act (FCPA) has been systematically, and to a steadily increasing degree, stretched beyond proper bounds and abused in a manner that harms the interests of the United States. Current FCPA enforcement impedes the United States' foreign policy objectives and therefore implicates the President's Article II authority over foreign affairs."

In simple terms, the order requires the Justice Department to not enforce the provisions of the FCPA from February this year. Effectively, it has now allowed the bribing of overseas politicians and businesses, in order to further American business.

Actions that were previously illegal are now legal.

Since the passing of the FCPA, the US has put pressure on other jurisdictions to follow these rules in order to "level the playing field". And many countries have enacted similar legislation — notably the thickly gold-plated UK Bribery Act.

Of course, initially in 1977 — the year the FCPA was enacted — other countries and their companies could compete for major contracts, especially defence contracts, with subtle marketing techniques such as "Never mind the price – how much do you personally want paid quietly into your bank account?"

Now the US has changed the game, so — hypothetically — a North American aerospace company could offer bribes whereas British Aerospace could not.

Money laundering

For those of you not engaged in overseas contracts in defence, natural resources or infrastructure you may wonder what this has to do with you.

The FCPA generated a need for effective enforcement and one of the tools was anti money-laundering legislation. So, one of the causes for the mindless, cost-ineffective and exceedingly tedious anti money-laundering laws and their bureaucracy (people selected for dullness it often seems) has gone away.

Money laundering is apparently conducted by persons whose important "virtue" is an excess of patience, going by some of the inquiries.

I have worked 45 years in private equity. I have been asked questions such as "What is the source or your wealth?" or "The name of every company of which you have been a director?" Let alone, "Has any company you were a director of ever been the subject of regulatory investigation?" (How would I know?).

One bank offered to send a manager to my home to answer the first of these questions. It can take weeks to respond fully to some of these processes.

The cost effectiveness of this stuff is very dubious – time to rewind I think. Perhaps Mr Trump's actions may provide some relief.

The economy needs all the help it can if growth is to reappear.

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Work fewer Fridays

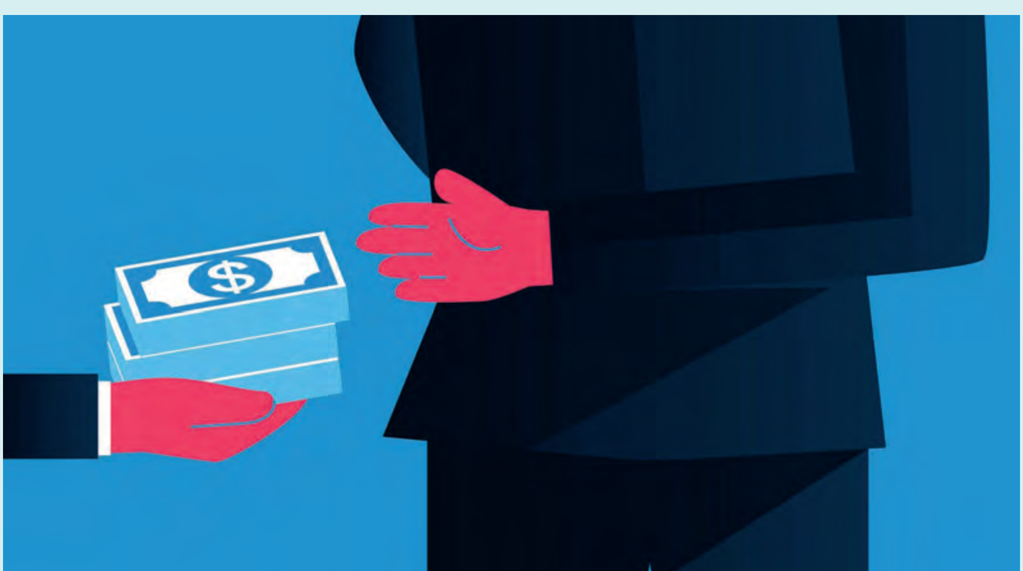
It has become evident to me that many of the professionals around private equity are working a four-day week.

Meetings are only rarely timed for Fridays. I am running at about half the rate for meetings on Friday as compared to the rest of the week. Inward e-mail traffic is also biased towards non-Fridays. This all started in Covid and has persisted.

I was called last year by a partner at a Big Four accountant to scold me for calling one of his managers on his mobile on a Friday afternoon. The thrust was that he had posted on his e-mail an "out of office" which I should have respected. (Actually, I had not looked – clearly my fault).

I come from an early career in US private equity where I worked six straight months without a day off. I'm not recommending that anyone sensible emulates this, but given the considerable rewards in private equity it seems you could reasonably expect five full days.

And perhaps more.



The FCPA's demise leaves US companies unregulated but other nations' companies subject to FCPA-like laws

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