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Avoiding Corruption Risks in the City: The Bribery Act 2010



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Avoiding Corruption Risks in the City: The Bribery Act 2010 is published by the City of London. The author of this report is Liz David-Barrett of Oxford University; Chandrashekhhar Krishnan and Robert Barrington of Transparency International coordinated the report.

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Abbreviations

BPI	Bribe Payers Index
CoLP	City of London Police
CPI	Corruption Perceptions Index
DfID	Department for International Development
EBRD	European Bank for Reconstruction and Development
FATF	Financial Action Task Force on Money Laundering
FCPA	Foreign Corrupt Practices Act
FSA	Financial Services Authority
MLR	Money Laundering Regulations 2007
OECD	Organisation for Economic Cooperation and Development
OACU	Overseas Anti-Corruption Unit of CoLP
OFT	Office of Fair Trading
PEP	Politically Exposed Person
POCA	Proceeds of Crime Act 2002
SFO	Serious Fraud Office
SOCA	Serious Organised Crime Agency
TI	Transparency International
UNCAC	United Nations Convention Against Corruption

Executive Summary

A new Bribery Act received Royal Assent in April 2010. Many City businesses are unprepared for the impact this will have on their businesses, in particular the provisions for corporate liability and personal liability of directors. Companies need to put in place robust anti-corruption procedures as a matter of urgency to mitigate these risks.

This report provides an overview of corruption risk for City businesses, focusing on the issues raised by the Bribery Act. It describes the Act and seeks to minimise uncertainty for City businesses about how it will be interpreted and enforced once it comes into effect. It also highlights the types of business activity which put City businesses at greatest risk in relation to bribery and prosecution.

The Bribery Act is expected to reinforce the UK's international reputation for setting high standards in the regulation of economic activity and as a country that takes corruption seriously. A comparison with other leading international financial centres (see Table 3, page 41) indicates that UK regulation and enforcement are already among the best in the world, and around half of our survey respondents thought that London was less corrupt than other leading financial centres, while only 3% thought that it was more corrupt.

However, the research conducted for this report also suggests that many City businesses engage in activities or operate in environments that expose them to risk of corruption, such as:

- Operating in countries where corruption is perceived to be high.
- Interacting with public officials.
- Providing services to high-risk sectors such as construction.
- Using agents, relying on subsidiaries, or entering into joint ventures.

The drive to win new business can create pressures to cut corners, for example to skimp on due diligence or use local fixers about whom little is known. Businesses may also face strong pressures to pay facilitation payments to avoid delays in transactions. However, the new Bribery Act imposes strict penalties on individuals as well as companies if they bow to these pressures. Moreover, it puts the onus on companies to prevent bribery and corruption from occurring.

The results of the survey, which was carried out immediately prior to the passing of the Bribery Act, suggest a relatively high degree of complacency about bribery and corruption risks among City businesses. It is important to be aware of bribery and corruption risks, however, particularly in light of the new Act, because:

- Some common activities not previously seen as corrupt could be interpreted as such under the new Bribery Act. Providing extravagant hospitality to clients is one such area.
- Some parts of the City engage in core business activities where there is a higher risk of corruption. But many businesses in sectors that are generally low-risk also engage in high-risk activities occasionally.

Table 1: The Effect of the Bribery Act on Business Practices

Example business practices: Are they affected by the Bribery Act?	
Taking clients on trips that combine business with golf, skiing or shooting	YES
Making facilitation payments to achieve or speed up routine procedures when doing business overseas	YES
Using local fixers or consultants to advise on tenders	YES
Allowing subsidiaries to arrange business on behalf of a UK parent company	YES

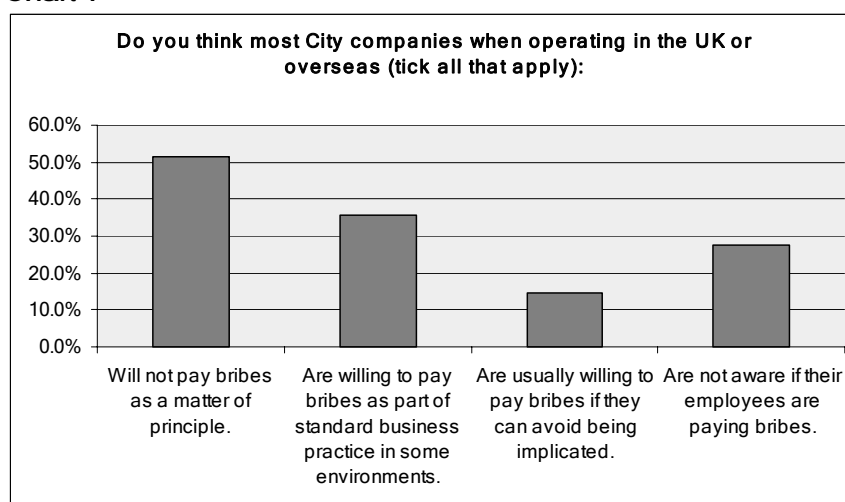
According to our survey:

Many City businesses are inadequately prepared for the new UK bribery law...

Only one in four respondents considered themselves well informed about the Bribery Act, while a recent survey by law firm Eversheds found that one in five businesses had no policy in place to address corrupt practices.

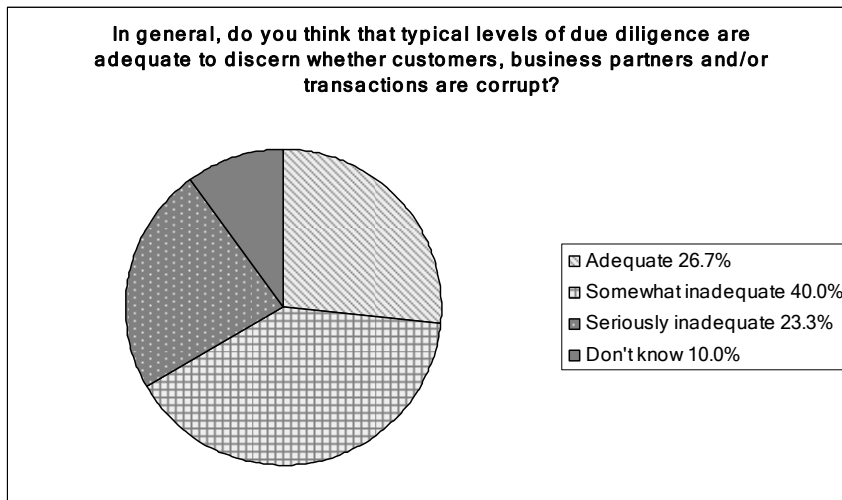
...but City businesses may well be at risk While 51% of respondents thought that City businesses would not pay bribes as a matter of principle it is significant that nearly half thought that City businesses would pay bribes in some circumstances. One-third of respondents to our survey thought that City businesses are willing to pay bribes as standard practice in some environments.

Chart 1



...and there is little faith in internal procedures to catch corruption... In our survey, only one in ten respondents thought that current efforts by internal auditors and compliance departments to identify corruption were 'very successful'. One in five respondents thought typical levels of due diligence were seriously inadequate to discern whether customers, business partners and/or transactions are corrupt.

Chart 2



Bribery has in the past sometimes been seen as simply a cost of doing business, but the new law changes the equation... The Bribery Act significantly strengthens UK law on bribery and will be much easier to enforce. Meanwhile, the Serious Fraud Office, Financial Services Authority and City of London Police are all taking a tougher stance towards bribery and corruption.

Prevent and Disclose... The regulatory approach contains two main messages. First, companies should introduce robust procedures to prevent corruption from occurring. Second, they should also be ready to quickly and fully disclose any contentious, risky or evidently corrupt conduct. Ultimately, they should be prepared to pass up business opportunities where the risk of corruption is high.

Companies should be aware that:

- They can face *unlimited fines*, while directors can be *imprisoned for up to ten years* for failing to have 'adequate procedures' to prevent bribery.
- Hospitality, publicity, insider information, and donations to charity could all be considered as bribes in certain circumstances.
- An individual can be liable for accepting an advantage even if he/she did not know that the other party intended to induce improper conduct.
- Companies can be liable for bribes paid by subsidiaries, agents or partners in joint ventures.

Little or no adverse impact on City competitiveness... Our research also suggested that the Bribery Act is unlikely to have a significant negative impact on the City of London's global competitiveness. Few companies are likely to be deterred from doing business in such a large and important market and the positive impact on the City's reputation in terms of maintaining high standards and reputation is likely to be far more important for most businesses.

Recommendations

Recommendations for companies

- Companies should assess their vulnerability to corruption risk in all areas of business and their potential exposure and liabilities under the new Bribery Act.
- Companies should design and implement robust procedures to prevent bribery and corruption occurring.

Recommendations for professional associations

- Professional associations should advise their members on how to deal with sector-specific corruption risks.

Recommendations for regulators

- Regulators should assist with educating companies about the new law and the framework for enforcement, including advice on specific areas such as facilitation payments.
- UK enforcement agencies should develop a consistent and transparent approach to settlements and plea bargains.
- The UK government and regulatory bodies should encourage the OECD Working Group on Bribery to work for a ban on facilitation payments under the OECD Convention, in order to ensure a level playing field.

1. Introduction

This report provides an overview of corruption risk for City businesses, focusing on the issues raised by the Bribery Act. It describes the Act and seeks to minimise uncertainty for City businesses about how it will be interpreted and enforced once it comes into effect. It also highlights the types of business activity which put City businesses at greatest risk in relation to bribery and prosecution.

The Bribery Act is expected to reinforce the UK's international reputation for setting high standards in the regulation of economic activity and as a country that takes corruption seriously. A comparison with other leading international financial centres (see Table 3, page 41) indicates that UK regulation and enforcement are already among the best in the world.

Previous research has suggested that financial services, the sector which dominates the City of London, is not typically seen as a high-risk sector, unlike, for example, the defence, construction or natural resources sectors. The Transparency International Bribe Payers' Index (BPI) 2008 found banking and finance to be perceived as one of the cleanest sectors in terms of bribery of public officials.

However, the City of London* and the UK financial services sector are under close scrutiny at the moment as explanations are sought for the current financial crisis. There are pressures to tighten regulation and to enforce current laws and regulations more strictly. The Serious Fraud Office (SFO), Financial Services Authority (FSA) and City of London Police (CoLP) are all increasingly active in investigating corruption and corruption risk in the City.

The Bribery Act, which was enacted in April 2010, is not a product of the current mood. It is rather the culmination of several attempts to reform UK laws on corruption over many years. However, the current mood will shape the environment in which the Act comes into effect, the way its provisions are interpreted and the manner in which it is enforced.

Our research suggests that few City businesses are aware of the implications of the Act, and that even among those who have heard of it, there is often a perception that it is not relevant to the City. Bribery is seen as a blight that affects other sectors, or at worst a few niche areas of the City.

By contrast, the research reveals that many City businesses face legal, financial and reputational risks from corruption in a number of areas of their work. In the light of the Bribery Act, many businesses are likely to need to review their anti-corruption procedures or put new systems in place.

* We define the 'City of London' and the 'City' broadly, to include all companies physically based in the Square Mile as well as financial services companies located in London but outside the Square Mile and other companies whose primary business is with companies based in the Square Mile. The 'City' is also used to refer to the wider financial services sector throughout the UK.

Methodology

This report delivers the findings of primary research.

We have conducted 20 in-depth interviews with senior executives from a broad range of City businesses. These have allowed us to collect rich information about the risks in particular sectors and the experiences of individuals in real transactions. The scenarios described in this report, although all hypothetical, have been constructed on the basis of these discussions.

On the all-important issue of how the Bribery Act will be interpreted and enforced, we have had the benefit of insights from two high-level focus groups - City lawyers and City regulators. The government is expected to issue guidance on the new law during 2010, and it is anticipated that the formal commencement date of the Bribery Act will be no later than December 2010. Thus, we have drawn upon the expertise of these lawyers and regulators to make forward-looking assessments of how the Bribery Act will impact on businesses.

We have also collected the views of a wider group of professionals in the City through an anonymous online survey, which was completed by 74 respondents across a wide range of sub-sectors. This measures experience and perceptions of corruption in the City as well as views about the legislative and regulatory environment. It goes beyond many surveys of corruption to ask respondents what exactly they regard as corrupt. Although the response rate was low and we cannot claim that the sample is statistically representative, the results provide a snapshot of opinion among City professionals in mid-level and senior positions across a range of sub-sectors.

The findings (and indeed the relatively low response rate and sample size) are consistent with other business surveys on bribery and corruption, although our survey focuses on the City exclusively. It is also possible that there was some selection bias in our sample, with individuals who were more aware of the wider context of bribery or had perhaps had personal experience of the negative impacts being more inclined to fill out the survey. Finally, it should be noted that in corruption research people usually regard (or report) others as more corrupt than themselves.

The research has been overseen by an Advisory Group comprising senior City figures with expertise in this field, who have helped to inform the approach and review the material.

2. The Bribery Act

[see Appendix A for extracts]

A new law on bribery received Royal Assent in April 2010. The Bribery Act's key provisions are expected to come into effect during 2010. There is currently uncertainty over the precise commencement date as it will be announced by the new government after the forthcoming general election. However, the commencement date is almost certain to be between 1st October 2010 and 6th April 2011. This report assesses, among other aspects of corruption risk, what the new law means for the City of London and the UK financial services sector.

Background to the Act

The UK has had laws against bribery for more than 100 years... The UK already has laws against bribery, but they date back to the nineteenth and early twentieth centuries and were intended to deal with the problems of the time. In any case, the laws were rarely enforced and it was difficult to get convictions.

...and many failed attempts to reform them. Both the 1976 Royal Commission on Standards in Public Life chaired by Lord Salmon and the 1995 Nolan Committee recommended reform of corruption laws. Then in 1998, the Law Commission, an independent body set up by parliament to keep the law under review and recommend reform where necessary, turned its attention to the issue. The Commission's report argued that existing corruption laws were inconsistent and lacked a sound definition of corrupt conduct. This led to an attempt to introduce a Corruption Bill in 2003 but the bill was heavily criticised by the Joint Committee that examined it.

Pressure from the OECD created momentum for change... The Law Commission's response solved many of the technical issues which had created opposition to the 2003 bill. However, the Working Group on Bribery, that oversees the 1997 Organisation for Economic Cooperation and Development (OECD) *Convention on combating bribery of foreign public officials* (OECD Convention), was crucial in generating momentum for change. The OECD Convention was notionally implemented in the UK in 2001, as part of the Anti-Terrorism, Crime and Security Act. Under this law, UK companies and nationals could be prosecuted in the UK for an act of bribery committed wholly overseas. But in its monitoring reports, the OECD came down hard on the UK for the weakness of its anti-bribery laws and consequent deficiencies in the enforcement of the OECD Convention.

...as did the BAE Systems case. Other European countries were also slow to clamp down on bribery, despite signing up to the OECD Anti-Bribery Convention. Yet the UK came under the spotlight because of the BAE Systems case and the Government's decision in December 2006 to terminate the SFO investigation of major bribery allegations in relation to a UK-Saudi defence contract. Other EU countries have faced high-profile bribery cases, not least Germany with a major case against Siemens under the Foreign Corrupt Practices Act (FCPA) settled in 2008 and a more recent FCPA case

involving Daimler. However, the UK Government's response to the BAE Systems case apparently revealed a complacency towards corruption which belied the UK's reputation for clean and transparent business, and discredited the government's new anti-corruption strategy that had been announced in November 2006.

The BAE Systems case considerably damaged the UK's reputation. In the 2009 Corruption Perceptions Index (CPI), which ranks 180 countries according to perceived levels of public sector corruption (see Appendix B), the UK slipped down the table to an all-time low of 17th place (level with Japan and just ahead of the US). The government realised that it needed to address the UK's declining reputation and the increasing criticism from the OECD's Working Group on Bribery. It was clear that a lingering reputation for not living up to its international anti-corruption commitments would be highly damaging for the UK and its businesses, and indeed for the standing of the City of London as a global financial centre with the highest standards.

And the new Bribery Act is a robust and far-reaching response... Following a public consultation on bribery law reform by the Home Office, the Law Commission was asked to undertake another study. In its report published in 2008, it proposed an approach to bribery that will be much easier to enforce and much more difficult for businesses to circumvent. This approach is embodied in the new Act.

The new Bribery Act

The new law represents a shift in approach from its predecessors. Although giving and receiving bribes was already forbidden, the old laws were formulated according to a principal/agent relationship. The new model instead formulates the offences as an intention to induce improper conduct. The Act also creates a discrete offence of bribing a foreign public official and a new offence of failure of corporates to prevent bribery. The latter represents an initial effort to address the issue of strict corporate liability for bribery. The Law Commission is currently engaged in a comprehensive study on corporate liability, likely to be completed in the next one to two years.

The Offences

The Bribery Act sets out four offences:

- Clause 1: ***Offering*** a bribe to another person and intending the advantage to induce a person to perform a relevant activity improperly or offering a bribe and knowing or believing that acceptance would itself constitute improper performance of a relevant function.
- Clause 2: ***Accepting*** a bribe and intending that, in consequence, a relevant function or activity will be performed improperly.
- Clause 6: Bribery of a ***foreign public official*** and intending to influence that individual in his/her capacity as a foreign public official in order to obtain or retain business or an advantage in the conduct of business.
- Clause 7: ***Failure*** of a commercial organisation ***to prevent*** bribery. A commercial organisation is guilty of this offence if an employee or

other person associated with it bribes another person intending to obtain or retain business or a business advantage for the company. It is a defence for a company to prove that it had in place ***adequate procedures*** designed to prevent persons associated with it from undertaking such conduct.

The Penalties

- Individuals guilty of the Clause 1, 2 or 6 offences could be imprisoned for up to ten years, or face an unlimited fine, or both.
- Company directors could be liable to prosecution for failure to maintain 'adequate procedures' and face up to ten years' imprisonment.
- Companies guilty of the corporate offence of failing to prevent bribery could face unlimited fines, although the size of the fine will be related to ability to pay, size of bribe and advantage obtained, among other considerations.
- Companies might also be banned from bidding for public contracts for a number of years, in line with the 2004 European Union (EU) Procurement Directive (Article 45), that provides for mandatory debarment of companies convicted of bribery or fraud.

Uncertainty about interpretation

With any new piece of legislation, there are uncertainties about how it will be interpreted and enforced. There are several areas which might be contentious in the new law.

Gifts, hospitality and donations could all be seen as bribes... The law defines a bribe as a 'financial or other advantage'. This has a much broader reach than the handing over of packages of cash in brown envelopes. Many types of advantage are commonly given or received in City business, including gifts, hospitality, political or charity donations and publicity. The provision of other advantages already known to be contentious, such as insider information or jobs awarded to relatives of business partners, could also be prosecuted under the Act.

...even if given after a service is provided... The law is also flexible as to the timing of the bribe and the improper conduct: a bribe is still a bribe if it is paid as a reward after the event. With gifts, it might be more difficult to link the 'advantage' to the 'bribe service', but arguing that gifts do not affect business decisions is not likely to be an easy defence. In our focus groups with lawyers and regulators, there was consensus that any of these advantages could be seen as bribes under the law. Hospitality and entertainment in particular emerged as a grey area, to be discussed in the next section.

...and individuals can be liable even for unwittingly giving or receiving. It is not necessary for the bribe to be paid or the improper function executed for the law to apply. It is enough if a bribe is offered or promised with the *intention* of inducing improper conduct, for the Clause 1 offence to apply. Similarly, it is sufficient if an individual agrees to receive or accepts an

advantage *intending* to act improperly as a result, for the Clause 2 offence to apply. In other words, it is possible that a company would pay a bribe, fail to receive the promised advantage, and still find that it had broken the law.

Not just UK-incorporated companies... The Clause 7 offence – failure to prevent bribery – applies to any company or partnership that carries on a business, or part of a business in the UK. The law can thus apply to foreign companies that are registered, incorporated, listed or carrying out their main business outside the UK, if they carry out part of their business in the UK. And the Act applies to conduct that takes place outside the UK. Thus, to take an example, a German company that carries out business in the UK could be liable for the Clause 7 offence in relation to a bribe that it paid in, say, Indonesia.

Exposure through subsidiaries... The Clause 7 offence applies to relevant commercial organisations, that is, companies that are incorporated in the UK or incorporated outside the UK but carrying on business or part of a business in the UK. This raises the possibility that non-UK businesses with some operations in the UK could be prosecuted through their UK subsidiaries.

Scenario I: Liability for a Parent Company's Actions Elsewhere

A company based in Japan has a wholly-owned UK subsidiary. The Japanese parent company pays a bribe whilst conducting business in China. Could the Japanese company be liable under UK law?

In this scenario, it is possible that the UK subsidiary could be liable for the Clause 7 offence in respect of the bribe paid by the Japanese parent company in China, although *only if* it could be established by the prosecution that the parent company was at the time performing service for or on behalf of the subsidiary and the bribe was to obtain or retain business for the subsidiary.

A parent company's liability for a subsidiary is one of the issues due to be considered by the Law Commission's general review of corporate criminal liability in the future. The Commission's conclusions are likely to inform enforcement in this area.

The Bribery Act should be taken as seriously as the FCPA... Companies which are listed in the US or do business in the US may be more concerned about the FCPA. As of February 2010, the US Department of Justice was investigating nine British companies for alleged bribery incidents overseas, and some heavy fines have been imposed in the past. However, the Bribery Act should not be considered as weaker than the FCPA. While the FCPA focuses on bribery of foreign government officials, the UK Act makes bribery of private citizens illegal too. The FCPA partially excludes facilitation payments whereas the UK Bribery Act does not. In terms of penalties, whereas the FCPA sets a maximum penalty of five years' imprisonment per offence, the Bribery Act has penalties of up to ten years per offence. Companies which feel they have protected themselves adequately for the

FCPA cannot be complacent about the Bribery Act due to these essential differences.

Companies can be prosecuted for the actions of agents as well as employees... Companies may be liable to prosecution for failing to prevent bribery even if the advantage is offered, promised or given through a third party. Thus, it is not possible for a parent company to avoid responsibility for bribery by using a subsidiary, agent, or joint venture partner (however small the stake) to execute a bribe. They need to show that they have adequate procedures in place to prevent subsidiaries or partner companies in joint ventures (as well as their own employees) from engaging in bribery. It is not enough to plead ignorance. The Clause 7 offence does not automatically make a parent company liable for failing to prevent bribery by a subsidiary, but liability can arise if the subsidiary was performing services on behalf of the parent company. Whether this is the case can only be determined by reference to all the relevant circumstances including but not restricted to the nature of the relationship between the subsidiary and parent company.

Example: Balfour Beatty's Egyptian joint venture

In 2005, Balfour Beatty found evidence of improper payments in the accounts of an Egyptian partner with which it had been in a joint venture to build a grand library in Alexandria in 2001. It conducted an internal investigation and self-reported to the SFO. By self-reporting, Balfour Beatty helped to ensure lenient treatment. The SFO decided to use the civil route rather than launching criminal proceedings and thus, although Balfour Beatty had to make a payment of £2.25 million as well as contributing to the cost of the proceedings, the company avoided being banned from public works contracts.

Cultural differences are not a defence... The desired outcome of the bribe or 'bribe service' is defined in the Act as a relevant function or activity performed improperly. The Act regards an act as being performed improperly if it is performed in breach of a relevant expectation or if there is a failure to perform a function or activity and that failure is itself a breach of a relevant expectation. Clause 5 of the Bribery Act spells out an 'expectation test' to help with defining a relevant expectation. The expectation is defined as what a reasonable person in the UK would expect in relation to the performance of type of function or activity concerned. It is not permissible to take into account local customs or practices unless they are permitted or required by the written law of the country or territory concerned.

Facilitation payments are bribes under the Bribery Act... Facilitation payments – small payments to facilitate or speed up bureaucratic transactions – are regarded as bribes under the Bribery Act. This represents a key difference with the FCPA in the US, where a special defence for facilitation payments in effect means they are not prohibited. Facilitation payments are not an offence under the OECD Convention because they are not used to *obtain or retain* business. However, many EU countries have banned facilitation payments, and in December 2009 OECD Secretary-General Angela Gurría launched a bid to ban them globally. In the UK, the

SFO clearly argues that facilitation payments could be seen as enabling a company to retain business and that repeated payments could certainly be seen as bribes. Thus, facilitation payments do represent an absolute offence, although the SFO will nevertheless leave the issue to prosecutorial discretion.

...and the SFO is determined to reduce demand for them. The SFO has a two-pronged strategy for reducing the demand for facilitation payments. First, it will encourage companies to report all demands for facilitation payments, so that it can gain a better understanding of the extent and nature of the practice. The SFO would then use this information to present cases to the UK Department for International Development (DfID) which would help it to develop strategies (in collaboration with other donors) to encourage anti-corruption reforms that would reduce demand for such payments. Second, the SFO will urge countries to obviate the need for facilitation payments by creating official fast-tracking procedures for certain bureaucratic tasks. This would enable businesses to pay for faster services in a transparent way, but would ensure that the proceeds went to the state.

Enforcement expectations

Enforcement is an unknown quantity with any new law. Patterns of enforcement can also change over time, as with the FCPA, where very few cases were prosecuted in the law's first 20 years but enforcement has been much more active since the law was amended to bring it into line with the OECD Anti-Bribery Convention in 1998.

The government is expected to issue guidance in July... The key provisions of the Act are expected to come into force on 1 October 2010. The Ministry of Justice expects to publish guidance at least three months before the Act comes into force, i.e. by 1 July 2010. This will provide the first indications of enforcement strategies and will help companies to ensure that they have 'adequate procedures' in place. Effective enforcement of the Bribery Act is a central element of a new UK Foreign Bribery Strategy presented to Parliament by the Secretary of State for Justice in January 2010. The objectives of the Strategy are: strengthening the law; supporting ethical business; enforcing the law; and international cooperation and capacity building.

There are several enforcers with extensive powers... In the UK, several agencies are involved in enforcing the law and preventing bribery. The SFO is the lead agency on overseas corruption, but the CoLP also has a dedicated Overseas Anti-Corruption Unit to investigate such cases. The FSA also plays an important regulatory role. The Serious Organised Crime Agency (SOCA) may become involved in investigations where there is a serious or organised crime element. The Revenue & Customs Prosecutions Office, the Crown Prosecution Service, and the Department for Business Innovation and Skills could also become involved. These bodies have powers to execute search warrants, seek documents and statements from employees and to seize computers and other evidence.

The FSA is tightening enforcement... The FSA has indicated that it will use the criminal powers contained in the Financial Services & Markets Act 2000 more widely than it has in the past. In March 2010, it clamped down on City professionals alleged to be involved in a major insider dealing ring. Previously, the FSA demonstrated a tough approach towards bribery in the Aon case.

Example: Aon case - Agents and hospitality

The FSA fined Aon Ltd £5.35 million in January 2009 for failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption associated with making payments to overseas businesses and individuals. Aon was found to be in breach of Principle 3 of the Financial Services and Markets Act 2000. Aon engaged in two problematic policies:

- (i) It used third parties in connection with overseas business, making payments to introducers, consultants and co-brokers in Asia and the Middle East.
- (ii) It provided lavish travel and entertainment linked to training for foreign public officials who were clients, mainly from Latin America and the Middle East.

The FSA investigations did not find that Aon Ltd had made corrupt payments, but rather that the company had failed to adequately protect itself from the risk of such payments being made.

The SFO will look kindly on companies that self-report... The SFO will encourage companies to self report when they have evidence of or suspect misconduct by their own employees. While prosecution of bribery should be the norm, the SFO has signalled that it aims to approach with leniency those cases where companies report evidence of bribery as soon as they discover it. The SFO, which published guidelines on self-reporting in July 2009, will also look more favourably on companies if they work with the authorities to reveal the extent of any corruption and reform internal policies appropriately. In particular, the SFO would aim to bring a civil rather than criminal law case, which has the advantage for offending companies that they are not debarred from bidding for future public works contracts.

...but does not guarantee lenient treatment. The first UK prosecution against a company for overseas corruption, concluded in September 2009, involved a company [Mabey & Johnson – see box] which self-reported but where the SFO regarded the offence as too serious to be handled through merely civil proceedings. In an important ruling on the Innospec case in March 2010, Lord Justice Thomas commented that criminal prosecution is appropriate in bribery cases, as are large fines, comparable to those imposed in the US.

Example: SFO prosecution of Mabey & Johnson

The Mabey & Johnson Ltd case concerned a supplier of steel bridges. The company made a voluntary disclosure to the SFO of evidence indicating that the company had bribed decision-makers in public contracts in Jamaica and Ghana between 1993 and 2001. The new management of Mabey & Johnson's holding company took the decision to disclose the offences to the SFO in February 2008 and an investigation was immediately opened. The company pleaded guilty to charges of corruption and breaching UN sanctions (in relation to contracts under the Iraq 'Oil-for-food' programme). Mabey & Johnson was fined £3.5 million, and had to pay a confiscation order of £1.1 million and reparations of £1.4 million. In addition, the company paid £350,000 in costs to the SFO and must undergo monitoring at its own expense for several years.

The SFO has also successfully undertaken its first criminal prosecution of an executive of a UK firm for overseas corruption. Robert Dougall, former vice-president of DePuy International, a Leeds-based subsidiary of Johnson & Johnson, was found guilty of making payments to Greek healthcare officials to induce them to buy products from his company. The SFO's move to initiate this case under existing law, before the passage of the Bribery Act, underlines the new tough approach to enforcement. The new Act would make it easier to prosecute such cases.

The City of London Police (CoLP) also investigates corruption overseas... The CoLP set up an Overseas Anti-Corruption Unit in 2007. Working closely with the SFO, the Unit investigates allegations of overseas corruption as well as encouraging self-reporting and offering guidance to companies operating in countries perceived to be at high risk of corruption.

Example: City Police prosecution over Uganda contract

In September 2008, the CoLP's Overseas Anti-Corruption Unit successfully prosecuted a Ugandan government official who had received payments of £52,800 from a UK government contractor. The payments were purportedly made as part of an agency agreement, but were found to be inducements to assist in the awarding of contracts. The Ugandan official was sentenced to 12 months' imprisonment.

Yet the authorities still need greater resources... The UK authorities thus have a range of tools with which to tackle allegations of bribery. UK companies, that have found themselves at a disadvantage because their UK or non-UK competitors have paid bribes, also have the option to report competitors to the SFO in order to initiate an investigation and thus level the playing field. Our research suggested that a very small number of prosecutions of this sort would increase risk awareness and help to deter companies from putting themselves at risk of corruption.

In relation to the Bribery Act, companies should be aware that...

- They need to be careful in framing their policies in relation to hospitality, procurement of services, use of information, and donations to charity or political parties.
- An individual can be liable under the law for accepting an advantage even if he/she did not know that the other party intended to induce improper conduct.
- They can be liable for bribes paid by their subsidiaries, agents, or partners in joint ventures.
- Company directors can be imprisoned for up to ten years if their company violates the law.
- Claiming that payment of a bribe is an inevitable part of doing business in a certain country will not be regarded as a valid defence.
- Facilitation payments are regarded as bribes.
- They need to have robust anti-bribery systems in place.

Although some uncertainty remains about how the Bribery Act will be interpreted and enforced, there is no doubt that it significantly increases the legal liability of City businesses, especially those operating in high-risk environments. Yet our research suggests that City businesses appear to be largely unaware of the implications of the Act for their own operations.

3. Corruption Risk in the City

Businesses in the City of London and the UK financial services sector should not be complacent about the risks of bribery and corruption, particularly in light of the new Bribery Act, because:

- The results of our survey, which was conducted immediately prior to the passing of the Bribery Act, suggest a relatively high degree of complacency about bribery and corruption risks among City businesses.
- Some common activities not previously seen as corrupt could be interpreted as such under the new Bribery Act. Providing extravagant hospitality to clients is one such area.
- Some parts of the City face high risk of corruption by virtue of their core business activities. But many businesses in sectors that are generally low-risk also engage in high-risk activities occasionally.

These issues are elaborated below.

The City's perceptions of bribery

Financial services not seen as corrupt relative to other sectors... Financial services, the sector which dominates the City of London, is not typically seen as a high-risk sector, unlike, for example, the defence, construction or natural resources sectors. The relatively tight regulation of financial services is regarded as leaving less scope for misconduct than in other industries. The Transparency International Bribe Payers' Index (BPI) 2008 also found banking and finance to be one of the cleanest sectors in terms of bribery of public officials. On the same Index, the UK was ranked level with Germany and Japan, and above Singapore and the US, suggesting that UK companies were perceived to be relatively less willing to pay bribes overseas compared to others.

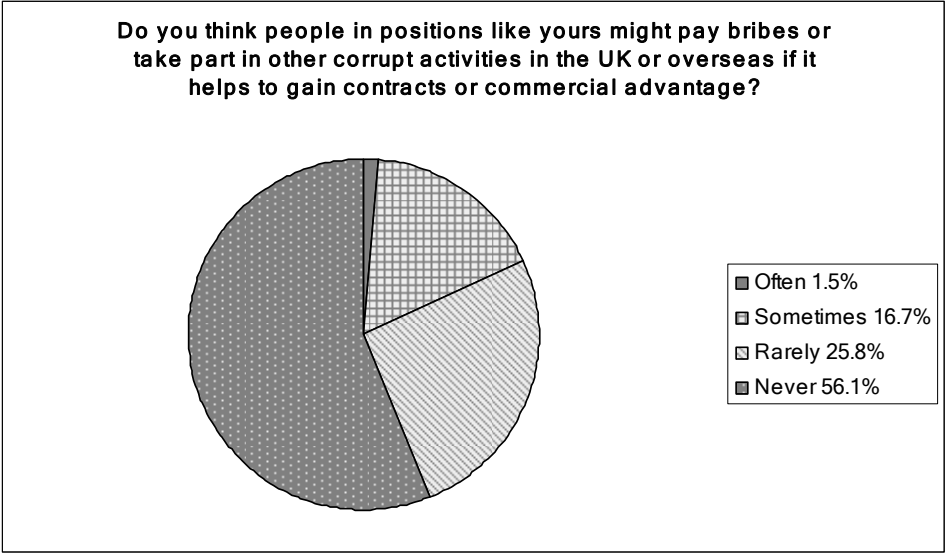
...but some bribery cases have surfaced... Relatively few prosecutions of bribery and corruption have concerned financial services, even in the US, where the FCPA has been in force since 1977. In the UK, however, one of the few cases relating to bribery that has come to light in recent years did concern a financial services company – the FSA decision on Aon (described in section 2).

...and more are likely as enforcement becomes tougher. Although tight regulation of financial services might mean that instances of misconduct are less likely to arise, it also means that there are more bodies monitoring conduct in the sector and able to enforce the regulatory and legal frameworks. Companies are thus well advised to pay close attention to changes in those frameworks, such as the new Bribery Act.

Survey results show a mixed picture... Our own survey, albeit based on a small sample, revealed a strong perception among City professionals that the City of London is not at high risk of corruption while only 6% of respondents reported experience of being asked to pay a bribe. More than half of the respondents to our survey thought that people in 'positions like theirs' would

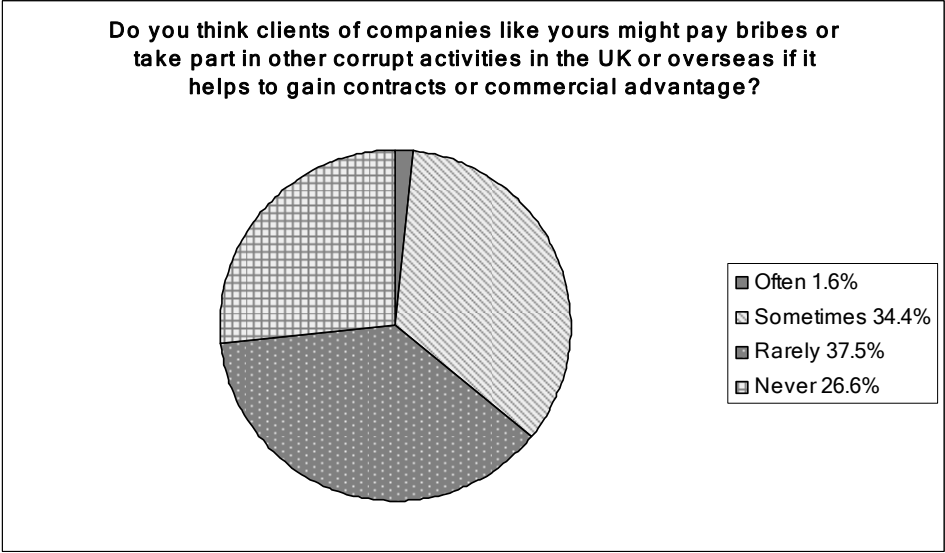
never pay bribes or take part in other corrupt activities to gain contracts or commercial advantage, either in the UK or overseas. Of those who thought it a possibility, only a tiny proportion thought this might happen 'often' (1.5% of the whole sample), as illustrated in Chart 3.

Chart 3



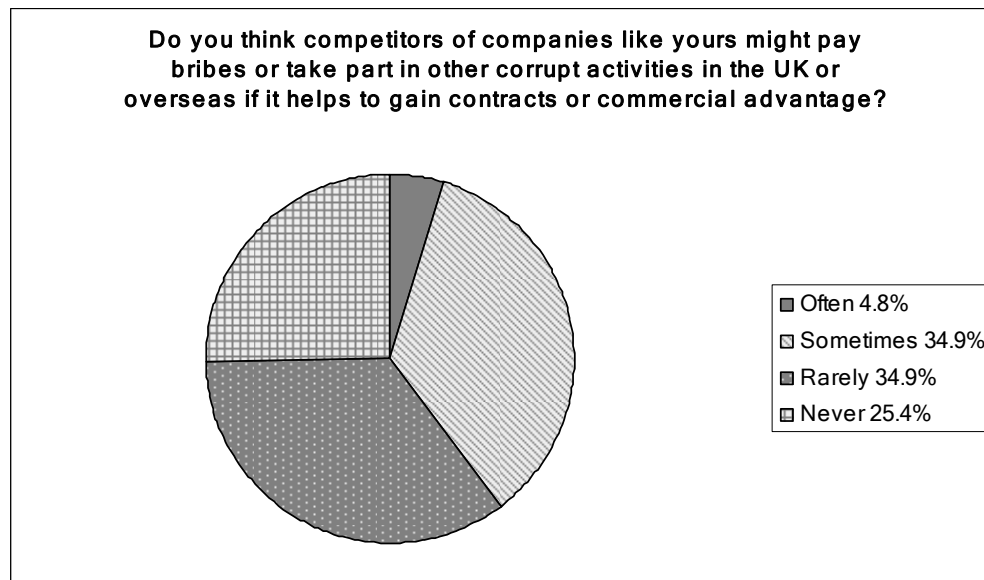
However, 34% of respondents thought that their *clients might* sometimes pay bribes...

Chart 4



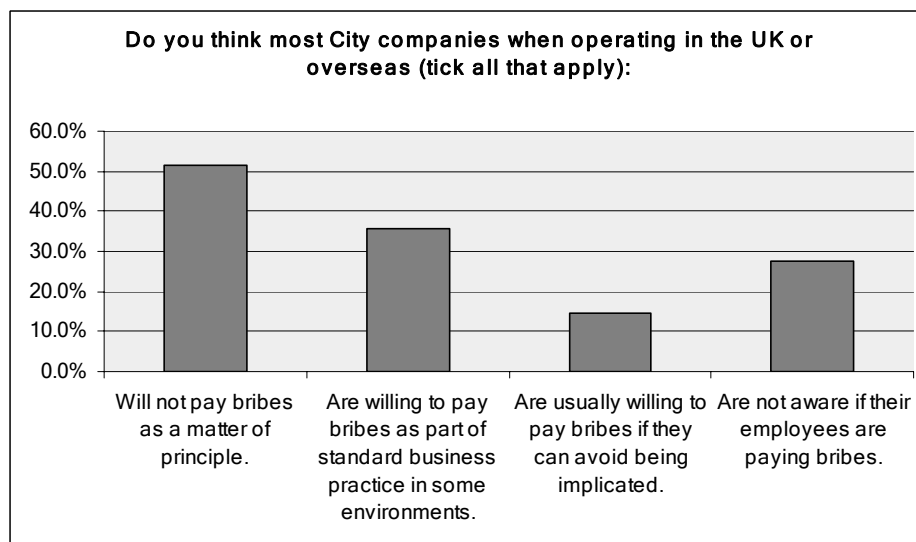
...and around 35% thought that their *competitors might* sometimes pay bribes...

Chart 5



...suggesting a perception that corruption is not so rare for some companies... Strikingly, 47% of respondents thought that City businesses would pay bribes under some circumstances.

Chart 6



...reinforcing impressions from other surveys. This fits with the results of the Ernst & Young European Fraud Survey 2009, which found that 47% of respondents – from the entire European business community – thought that one or more types of unethical behaviour was acceptable to help a business get through the downturn. Similarly, 25% of their respondents thought it was acceptable to make cash payments to win new business, while 13% of senior managers and board members thought that mis-stating financial performance was justifiable in today's economic climate.

High-risk factors for City business

Corruption arises when opportunities are great and accountability weak...

Theory suggests that corruption arises where there are *opportunities* to be corrupt and *weak accountability* to prevent corruption risks, that is, a lack of capacity to monitor or police conduct (Klitgaard 1988).

...which translates into four high-risk factors for City businesses. The four factors that put City businesses at greatest risk of corruption are:

1. ***Operating in corrupt environments.*** 'Opportunities' or 'demands' for bribery tend to be more prevalent in some countries because business cultures differ and regulation may be weaker. Moreover, authoritarian regimes and/or fragile democratic systems in some countries can mean that political leaders and bureaucrats are more likely to abuse state power for personal gain. The Transparency International Corruption Perceptions Index (CPI) is included in Appendix B as a guide to which environments are deemed most corrupt. The KPMG Overseas Bribery and Corruption Survey 2009 found that two-thirds of respondents believed there were places in the world where they could not do business without engaging in bribery and corruption, although more than half of respondents had not taken the decision to withdraw from those countries. Several City activities are exposed to this type of risk – including commodities trading, investment banks, wholesale insurance brokers and retail banks also face risks. Although anti-money laundering laws already require companies to do extensive due diligence on transactions that might be related to Politically Exposed Persons (PEPs), the Bribery Act requires companies to take this risk even more seriously. As well as those with an obvious exposure, such as investment banks through IPOs or project finance, all companies need to recognise that liability for corruption of foreign public officials is relevant even if they are only indirectly or infrequently involved in operating overseas.
2. ***Interacting with public officials.*** Much of the global anti-bribery regulation, including the OECD Anti-Bribery Convention and the FCPA, focuses on public officials. For example, bribes are sometimes paid to officials to gain approvals, certification and permits. Almost all City businesses are exposed to such corruption risks in some areas, although companies with extensive operations in emerging markets may face these issues most frequently. Corruption risks of a greater magnitude arise in relation to bidding in public tenders for contracts, or in doing business with PEPs. These might, for example, affect investment banks and retail banks.
3. ***Providing services to high-risk sectors.*** The defence, construction and natural resources sectors have often been identified as being high risk for corruption – for example, in the BPI. City businesses interact with these sectors when they finance or advise on projects, or provide insurance, auditing services or legal advice. If their clients are

engaged in bribery and corruption, this presents both legal and reputational risks to the companies which service them.

4. ***Using agents, counter-parties, relying on subsidiaries, or entering into joint ventures.*** The conduct of individuals in subsidiaries is difficult to control, while joint ventures are often set up without proper due diligence to get business deals off the ground, especially in emerging markets where cooperation with local businesses is a condition of market entry and majority control often not allowed. Agents often face incentive structures which make corruption a temptation, being paid on a commission basis for example. Insurance brokers are a typical example of businesses facing this problem, but it could apply to any firm relying on local agents. In many cases when dealing with third parties, agents or counter-parties, especially in short time-frames, a City firm may never have met the individual or company with which they are dealing.

Many City businesses are vulnerable on at least one factor... Sectors in the City can be regarded as highly exposed to corruption if their business is characterised by all or most of the factors. Moreover, companies in sectors which are not normally considered to be at high risk of corruption should consider which aspects of their business can involve these elements, and pay due attention to ensuring that high standards are maintained. In our survey, we asked respondents to label sub-sectors and activities of City business as low, medium or high risk for corruption. This revealed some clear patterns of perceived corruption risk.

...but some companies could be exposed on all four. Maritime and shipping was seen as high-risk by 38% of respondents, while less than one in five saw this area as low-risk. Commodities trading was also perceived as a risky business, as were real estate, project finance, and hedge funds. Investment banking, a category which covers many areas which seems to explain its ranking as medium risk, has areas of activity that are exposed to all four high-risk factors.

Table 2 summarises perceptions about a range of sub-sectors.

Table 2: 'Perceived Corruption Risk' in City Sub-Sectors

Ranking	Activity
High	Property and Real Estate
High	Maritime and Shipping
High	Commodities Trading
High	Hedge Funds
High	Project Finance
Medium	Private Equity
Medium	Investment Banks
Medium	Insurance
Medium	Accounting & Auditing
Medium	Correspondent banking
Low	Asset Management
Low	Law Firms
Low	Retail Banking

Source: City of London Corporation/Transparency International Survey on Corruption Risk and the City.

Commodities companies may be highly exposed... Companies in the commodities business may be forced to deal with at least three of the high-risk factors: operating in corrupt environments, interaction with public officials (to obtain certificates, negotiate customs procedures etc) and reliance on agents. Commodities traders are also highly exposed to PEPs. Dictators in emerging markets in the past used agents to negotiate false contracts where commodities were invoiced at overpriced rates, but the (sometimes substantial) overpayment was channelled back to their own accounts. The commodities company thus facilitated the dictator's efforts to steal from his own state, a 'service' provided in return for securing the business. Indeed, 20 to 30 years ago, corruption was rife in this sector, with our research having revealed tales of deals facilitated with gifts of diamond jewellery and use of suspense accounts to open hedges on behalf of clients, with winning positions allocated to favoured clients at the close of play.

...and must ensure that employees and agents embrace anti-corruption policies. The commodities business has become more tightly regulated in recent years and much cleaner, while futures trading has in some ways made the market more transparent, at least in casting suspicion on any invoicing anomalies. Yet it remains extremely difficult in corrupt environments to adequately inculcate agents in high ethical standards. Often both producers and consumers are located in these high-risk markets, and imposing the costs and inflexibility of ethical standards can mean falling profits and loss of business. In extremely unstable markets, certain local agents may offer tempting possibilities to reduce the uncertainty of doing business.

Scenario II: The Local Police Chief and His Daughter

You work for a UK company trading in metals. One copper mine from which you source is located in a country which is perceived to be highly corrupt on the CPI. Output from the mine is somewhat unpredictable, partly because of frequent strikes by the labour force, and partly because the local police periodically conduct 'raids' on the mine, on the grounds of monitoring standards. Both strikes and raids move the market price. The local police chief offers to provide you with information about the timing of both strikes and raids, enabling you to trade on the resulting price movements. In return, he would like you to arrange a job for his daughter in your company.

This scenario is straightforward from the legal point of view. If the deal is struck, the local police chief acts improperly and the company induces him to do so by offering not explicit payment, but paid employment for his daughter.

The hiring of the daughter could be prosecuted as bribery under previous UK law and under the new law, there would be a clear section 6 offence. This case also includes insider trading and hence could also be prosecuted on that basis providing evidence could be secured.

Shipping companies need policies to deal with frequent demands for bribes...

Given that operating in corrupt environments is a key risk factor, it is not surprising that the sectors of **maritime and shipping** and **commodities** are perceived as high risk. Risks in maritime and shipping largely relate to demands for facilitation payments to cross borders quickly or reduce tariff payments.

...while monitoring of smaller shipping companies could be improved.

Moreover, smaller shipping companies based in the City often act as intermediaries, chartering ships for specific jobs, financing trade, or buying and selling small amounts of commodities. There is considerable scope for inducements and commission payments that could be interpreted as bribes. Such companies may be especially prone to take a flexible approach to business ethics if they are not FSA-registered.

Real estate companies should be aware of money-laundering risk... Judging by our research, the perception of **real estate and property** as high-risk – with 52.5% of respondents labelling it as such – probably reflects two characteristics of this sector. First, real estate is at risk of being used for money laundering as wealthy corrupt tycoons from overseas bring their money to London. Second, there is often a need to gain permits or licences to use or adapt real estate.

...but any City company could face permit or licensing issues connected to real estate. Obtaining planning permission is vulnerable to corruption in many countries, including the UK and other countries in Western Europe.

Scenario III: The Planning Officer and the Music Festival

You are the European head of a UK-based bank. You open a new branch in a West European city, in a historic building. However, you soon realise that you need to adapt the building to make it more secure. You consult the Planning Office of the Municipality, which sends out an officer to inspect the site. He tells you at length how difficult it will be to obtain a permit to alter such a historic building, but nonetheless indicates that it can be done. In the same breath, he relates how the Municipality is having trouble attracting funding for its annual music festival. He signals that if you make a donation to the festival, you will obtain your permit quickly.

In this scenario, the planning officer does not openly demand a bribe. Nor is it clear that he personally benefits from the donation, although it is possible that his sister is running the music festival or that his brother's company provides services that make the festival possible.

However, under the new Bribery Act, it is possible that the donation would be seen as provision of an advantage intended to induce improper conduct. If the Planning Officer is induced to act improperly, the bank head could be liable under the new law.

Investment banks should be cautious about extending lavish hospitality...

Seen as medium-risk by most of our survey respondents, **investment banks** are more exposed through some activities than others. The interface between securities brokers and their clients is one vulnerable point for bribery.

Scenario IV: The Formula One Trip

You work in a UK-regulated investment bank selling emerging market securities to clients. You arrange a three-day trip for 20 of your team's top clients to the capital city of one of your markets. The programme includes a seminar about the local capital market, a wine-tasting evening in the countryside, tickets to the Formula One, and fine dining. After the trip, you call the clients offering them deals on which the margins you would earn are well above market rates.

There is an evident risk of liability under the new bribery laws in this case, since the prosecution could argue that the trip was a bribe to obtain or retain business. Liability is by no means certain.

It might be difficult to prove intent to induce improper conduct, to establish the link between the trip and the favourable deal, or to show that the client had acted improperly by accepting a deal that was not the best deal for his own customers. However, investment banks cannot be confident that the excuse of a research seminar can be used to justify extravagant hospitality.

Insider dealing could be seen as a bribe... Concerns were expressed about various forms of insider dealing, for example 'front running', where fund managers have to liquidate big equity positions and are able to inform friends and family prior to their deals, or take advantage themselves. Analysts may

also provide valuable information to securities brokers in banks. Yet the provision and receipt of insider information could be viewed as a bribe under the new law.

...and may thus be easier to prosecute. Although illegal, insider dealing is difficult to control or police, since it is difficult to prove that information has been provided by one person to another. However, the FSA arrested three City professionals in March 2010 on suspicion of involvement in a sophisticated and long-running insider dealing ring, after an investigation lasting more than two years. Just two weeks previously, the FSA obtained its first criminal conviction of a City professional for insider dealing.

Local consultants should not be engaged without thorough due diligence... Investment banks may face risks of overseas corruption when they bid to advise on privatisations or IPOs, as the following scenario demonstrates.

Scenario V: The Local Fixer

You are a UK investment bank bidding in a tender to become the financial adviser to a government as it privatises a major bank. One of your main competitors has won the tenders to advise on three of the past four major privatisations. You mention this to the minister responsible for the privatisation agency. He recommends that you use Consultancy Company X to advise you on the tender process. You duly appoint Company X to advise you, and subsequently win the tender. It later emerges that Company X is owned by the minister's brother.

In this case the bank has not performed adequate due diligence about the consultancy company before hiring it. If the bank had performed due diligence it might have become aware of the link to the PEP and would then have been best advised to avoid using the company.

Project finance is exposed on several factors... Project finance brings investment banks into a relationship with construction, a sector known for its susceptibility to corruption, on projects to build huge infrastructure facilities such as motorways, large state buildings like hospitals, or social housing. Risk may also derive from the interface with the public sector, where large sums of money might be spent without adequate controls or where control over the processes for winning the business or overseeing the project may be managed by corrupt officials. Both risks are amplified where the projects being financed are in countries where corruption is prevalent.

...and remains risky despite improved regulation Project finance in the UK was associated with some tender irregularities and apparent collusion among bidders in the early years of Private Finance Initiatives and Public-Private Partnerships. However, deals in the UK now tend to be carried out with more rigorous attention to procedure. The main risk areas – the tenders to win business or act as financial advisers, the appointment of subcontractors to carry out the work, and the temptation to scrimp on materials – are now better regulated.

Banks are warned not to cut corners under pressure... The main risks in UK project finance now arise from rushed implementation. Where there is pressure to complete a project by a certain deadline, procedures for appointing contractors may become sloppy. There is also some concern that framework agreements can lead to reduced scrutiny, because once a firm has secured such a contract, controls on future work within its remit are less tight.

...and to exercise extreme caution about taking advice on tenders... Banks and consultants that act as financial advisers to consortia bidding for infrastructure tenders in countries perceived to be at high risk of corruption are much more exposed.

Scenario VI: The Helpful Insider

A bank is bidding to be the financial adviser to the consortium that has won the tender to build an infrastructure project in a corrupt environment. An official in the relevant ministry provides information to the bank about how the criteria have been designed, hoping to be rewarded.

In this scenario, the bank has been offered an advantage by a foreign public official. The advantage is not monetary, but rather comprises valuable insider information which could improve the bank's chances of winning the contract.

This information could be regarded as a bribe under the Bribery Act. Indeed, the bank could be liable for accepting a bribe even if it did not know that the ministry official hoped to be rewarded and even if it did not provide a reward.

...and could face considerable risk from corruption elsewhere in the chain. Financial advisers on overseas infrastructure projects also face risks arising from corruption within the construction process, even if it they are not directly involved. Such risks have been reduced through structured draw-down financing schedules, where contractors can only access the next tranche of finance if they have fulfilled the terms set out at the time of the previous draw-down. Yet this process can also be prone to corruption in corrupt environments. On large construction projects, it is not too difficult to stop digging the foundations a couple of centimetres short of the agreed depth, thereby saving huge sums on concrete costs. Companies simply need to 'persuade' local inspectors to overlook the misconduct and ensure that fake invoices for the agreed amount of concrete are produced.

Scenario VII: Risk by Association

A financial adviser wins a contract to advise a company that is building social housing. The tender process by which it wins the contract appears to be clean. However, the construction company does not control the process of appointing subcontractors, and local staff take kickbacks for providing the business to their friends. The scandal becomes public when the timetable for the project slips and the work is revealed to be shoddy.

The financial adviser is unlikely to be liable under the Bribery Act for bribes paid by its client, unless the subcontractor that received the bribe was performing services on its behalf. However, it could nonetheless suffer from damage to its reputation as well as financial risk because of the failure to complete the deal and thus potential failure to realise the expected fees.

There are persuasive reasons for doing thorough due diligence before taking on such business as well as making it clear to the construction company that bribes are not tolerated and that it should do its own due diligence on subcontractors.

Banks should not rely on the due diligence of others... Many infrastructure projects in developing or transition countries are supported by the World Bank and the European Bank for Reconstruction and Development (EBRD). Opinions differed among those consulted for this research as to the extent to which this improves the credibility of a project. Some of those interviewed thought that the World Bank and EBRD's commitment significantly reduced the risk for other funders. Others were sceptical about the rigour of these organisations' due diligence procedures. Indeed, one World Bank employee has been prosecuted in the US under the FCPA, while the CoLP arrested an EBRD employee in connection with a corruption inquiry in March 2010. It seems likely that, even if procedures are robust, the World Bank and EBRD face the same difficulties as multinational companies in monitoring their own personnel.

Retail banks are a key target for fraud and corruption in corrupt environments... Although seen to be clean in the UK, **retail banks** face risks in their operations overseas. Many of these risks relate to money laundering and fraud, but banks may also come up against demands for bribes. PEPs may wish to open accounts with the banks, in which case banks are required to take precautions to avoid facilitating money laundering. Banks making acquisitions overseas may need to do extensive investigations to trace and assess the liabilities which they have taken on.

Retail banks are also a target for extortion in corrupt environments... Retail banks operating in corrupt environments overseas often face aggressive demands for bribes from agencies of the state or state-owned companies.

Scenario VIII: The Tax Inspection

You are the manager of an overseas branch of an international bank with UK connections. One day, the tax authorities send a representative to your office unannounced. She informs you that she plans to carry out an in-depth investigation of the bank's activities and accounts. She threatens to move in to your office for six months and to disrupt business by demanding answers and documents from different parts of the bank on a daily basis. Alternatively, if you pay her €100,000, she will leave now and not bother you again.

The bank manager faces a stark dilemma here. There is a clear business case for paying the bribe: to save the bank the cost of having business disrupted (although bribes do not always achieve the intended goals, and there is a major risk that paying would open the door to future demands).

Under the new Bribery Act, however, he would be liable under the Clause 1 or Clause 6 offence if he paid, while his bank could be liable under Clause 7 if it could be shown that it did not have adequate procedures in place to prevent him from paying the bribe. (NB given the threat that business would be disrupted if the bribe was not paid, it could be argued that the bribe *was* paid to retain business).

Our research revealed other examples which are arguably even closer to outright extortion. One banker described receiving a visit from the electricity company threatening to cut off the power unless he made a cash payment. Another banker had been told that police protection for the branch would take three months to arrange, unless he paid an under-the-table fee.

...and staff should be trained to deal with such situations. These examples demonstrate the real difficulties faced by individuals operating in high-risk environments. When companies design their compliance policies and deliver training, they need to equip staff to handle such dilemmas, particularly in the face of business pressures or aggressive behaviour.

Insurance brokers need to guard against incentives to be corrupt... Corruption risk in the **insurance** sector arises largely in the broking part of the business where the use of agents and payment of commissions are common practice. There are concerns that brokers are influenced by differential rates of commission on different products, an issue which is addressed to an extent by the FSA Retail Distribution Review.

...and need a better understanding of risks from operating in corrupt environments. The FSA has recently devoted increased attention to the risks faced by the wholesale insurance market – the underwriters and brokers that make up the Lloyd's and London Market. Many insurance brokers who work in the London insurance market have clients in countries and sectors that are at high risk of corruption, while the insurance of complex deals particularly in corrupt environments can expose underwriters to risk, since it is difficult for them to collect information about the parties involved in the transaction. Jon Pain, Managing Director of Supervision at the FSA, recently warned about

“the risks of venturing into initially attractive areas of new business without the necessary knowledge or control infrastructure”.

Auditors have a responsibility to help uncover corruption... Auditors and accountants have the potential to play an important role in uncovering bribery and corruption, but this also means that they are potentially exposed to risk. Although auditing is generally seen to have become much more professional and strictly regulated over recent years, there is also growing concern about the independence of auditors and the incentives they may face not to search for possible evidence of corruption because of the need to retain business.

...but often face conflicting incentives... There is concern that the long-term relationship between auditor and client can easily become symbiotic. Rather than auditors examining clients and asking them to explain irregularities, some clients tend to seek auditors' advice about how to perform acts of questionable ethical standards without breaking the law. In March 2010 the Wall Street Journal reported that Matthew Lee, a former vice-president of Lehman Brothers, had been let go in 2008 after raising concerns with the firm's auditor, Ernst & Young, about accounting practices. Auditors face considerable reputational risk through appearing to be complicit in or merely associated with corruption.

...and could be more forceful in recommending full systems audits or forensic audits. Auditors also operate with cost restraints, and might not have the resources to thoroughly investigate payments that seem valid at face value, while company directors may try to shrug off their questions.

Scenario IX: False Invoices

You are auditing the accounts of a UK-based investment bank. There is an unusually large invoice for a consultancy fee. The fee was apparently paid for services to prepare a bid on a tender to be the financial adviser of the IPO of a state bank in a country deemed moderately corrupt on the CPI. You know that your client won the tender.

It is possible that the invoice for the consultancy fee masks a bribe paid to secure a contract. The consultancy company might have been operated by the brother of the prime minister of the country concerned, and it might not have performed any substantive service. Then again, it might be an entirely legitimate transaction. In such a scenario, corruption is more likely to be uncovered if the company were to commission, or the auditor were to recommend, that a full systems audit or forensic audit is carried out.

Law firms can easily become implicated through their clients... Although law firms might not face much corruption risk in the substance of their work, they are often implicated in corruption cases through having facilitated corrupt transactions. Law firms may become associated with money laundering, for example, through abuse of client accounts. This came to light in the case against former president of Zambia Dr Frederick Jacob Titus Chiluba.

...and should monitor use of client accounts. While Chiluba and several of his colleagues were charged with 168 counts of theft totalling more than \$40 million, Chiluba's lawyer, Iqbal Meer, was implicated through having handled \$10 million of the stolen money. Mr Meer successfully appealed the judgement against him by arguing that he had not known or suspected the dishonesty of his clients. However, the case demonstrated the risks facing lawyers. Lawyers need to do careful due diligence on their own customers if they are to avoid facilitating corrupt transactions.

Asset management companies face risks where agents are used... Most City-based asset management companies make the vast majority of their sales in markets at low risk of corruption. Some exposure may occur through sales in high-risk emerging markets, however, particularly when entering new markets where it is necessary to rely on local sales agents. Where intermediaries are involved, there is also a risk of their being influenced by commission rates, leading to mis-selling. However, the FSA's Retail Distribution Review is set to lead to a shift away from commission rates towards upfront fees. Other risks are associated with entertainment and hospitality.

Hedge funds need to adopt systems and controls in line with the scale and nature of their business... The fact that a large number of hedge funds are registered in jurisdictions with a weaker regulatory and enforcement framework may give rise to risks of association with corrupt clients and difficulties over monitoring clients. Hedge funds, in common with most City businesses, are also liable to risk through their hospitality and entertainment activities.

Hospitality may be important to doing business in the City... Many of the people we consulted for this research took the view that entertainment and hospitality were critical facets of doing business in the City, relevant to all sub-sectors. One interviewee said,

"eating and drinking with business partners is an essential part of Know Your Customer"

...but the potential for this to slide into bribery is widely acknowledged... It was typically thought that a line needed to be drawn, but there was little consensus about where or how a distinction could be drawn between acceptable and unacceptable levels of hospitality and entertainment. Whereas 85% of respondents to our survey thought that buying a client a meal costing £50 per head was 'definitely not corrupt', when the price of the meal was increased to £500 per head, only 10% thought it was definitely not corrupt while 30% thought it was 'definitely corrupt'. The value of the meal appears to be regarded as relevant, although people drew little distinction between a £1,000 sports ticket and a £3,000 shooting day.

...and even the appearance of bribery represents a risk. As one of the survey respondents said,

“There is a lot of wining and dining in this sector and that probably has a hard to measure effect on business decisions, such as with whom asset managers decide to execute trades.”

Increasingly, companies are finding that they need not only to be clean but also to look clean, if they want to avoid reputational risk.

Lawyers agree that this is a grey area under the new law... Among the lawyers we consulted, there was consensus only that hospitality is a grey area. It certainly could be seen as an advantage, although it might be difficult to link specific instances of entertainment with specific business advantages, and thus difficult to prove intent to induce improper conduct.

...and companies need more sophisticated policies on how and when hospitality can be provided. The regulators with whom we consulted took the view that hospitality and entertainment were unlikely to be a focus of their investigations once the Bribery Act is in force. Nevertheless, they warned that certain types or patterns of entertainment could be problematic. For example, if a company invites a client and her husband on a skiing holiday whilst bidding on an open tender for business from that client, the trip could be seen as an attempt to influence the tender outcome. Nor can companies hope to get around the bribery law by giving small but frequent gifts; repeated small advantages may be regarded as representing a suspicious pattern. In conjunction with other circumstances, such as evidence of a company winning a tender despite putting in an uncompetitive bid, or a client accepting a deal on which the provider makes an unusually large profit, this could be presented as evidence relevant to a bribery case.

Example business practices: Are they affected by the Bribery Act?

Taking clients on trips that combine business with golf, skiing or shooting	YES
Making facilitation payments to achieve or speed up routine procedures when doing business overseas	YES
Using local fixers or consultants to advise on tenders	YES
Allowing subsidiaries to arrange business on behalf of a UK parent company	YES

4. Other Corruption Risks

Although this report focuses on bribery and the impact of the Bribery Act, other types of corruption risk relevant to the City of London and the UK financial services sector are outlined below. Some of these are also linked to bribery. For example, the payment of bribes is often linked to money laundering, while cartels and other forms of collusion often rely on ad hoc bribes to conceal their activity or ensure that regulators overlook it. Companies and individuals therefore need to understand the ways in which different forms of corruption may be related to one another in order to protect themselves against bribery. At a broader level, corruption may affect the City in two ways. First, in an environment that depends on a high degree of trust, it has the potential to cause reputational damage to London as a financial market. Second, it may be that there are levels of risk inherent in the system that individually may not be of concern to regulators but collectively may create undesirable levels of systemic risk.

Conflict of interest. A conflict of interest occurs when an individual or organisation is involved in activities related to more than one interest, where involvement in one could negatively impact upon the motivation to carry out the other. Although conflict of interest is most acutely problematic for politicians and public servants, it can also apply in a number of business situations. For example, where intermediaries sell investment products to clients and receive commission payments from the issuers of those products, they arguably face a conflict of interest.

In the City, conflict of interest is, for instance, inherent in the job of investment bank analysts or researchers. Analysts issue reports about companies with which their bank does business. Companies are likely to give the banks more business if the reports about them are favourable, and analysts are paid bonuses dependent on how well their bank performs. The analyst thus faces a strong incentive to write favourable reports about companies regardless of the true nature of their performance. Although there are strict Chinese walls in the City between analyst units and main banking operations, in practice these have not eliminated the problem.

Ratings agencies face similar incentive structures. Issuers of certain financial market products rely heavily on ratings agencies to rate their products highly, in order to facilitate sales. Ratings agencies are paid by the issuers and hence are also motivated to provide positive ratings. There is thus a danger that the rating provided by the agency will not match the underlying risk. The consequence is that neither analysts nor ratings agencies may provide reliable assessments of the risk associated with certain financial products. These issues are being tackled by current efforts at regulatory reform, but it may be difficult to eliminate vulnerabilities in this area.

Other areas of conflict of interest are regularly coming to light within the financial services sector as a result of the additional scrutiny after the banking crisis. This in turn has provoked further action from regulators. For example, the FSA has recently highlighted the poor record of banks in dealing with

customer complaints, in cases where employees handling complaints have incentives to resolve them in a manner that is unfair to the customer.

Collusion, cartels and market abuse. Market abuse is the manipulation of markets to achieve a benefit for a person or company, often involving the use of insider information. It can include dishonest price fixing, bid rigging, or the limiting of the supply or production or market share of particular goods or services. Collusion is an agreement between two or more parties to limit competition in a market through deceit or fraud of others; cartels are one example of collusion. Project finance is one area prone to such risk, for example, by association with construction companies that collude during the bidding process over the prices they offer. This can be motivated by companies preferring not to take on a particular project but wishing at the same time to avoid being removed from a list of potential contractors – which might happen if they were to officially withdraw. This ‘cover pricing’ is illegal, but can be difficult to prove. The Enterprise Act 2002 criminalised cartel activity in the UK and the Office of Fair Trading (OFT) has taken a tough stance towards such behaviour. In 2008, the OFT brought the first prosecution under the Enterprise Act when three former Dunlop Oil and Marine executives received lengthy jail terms for their involvement in a sophisticated cartel that defrauded the Ministry of Defence and others. In 2009, the OFT fined around 100 building businesses over £100 million for operating illegal cover pricing arrangements. Several of those involved claimed they had no idea they were doing anything illegal.

Money laundering. Money laundering occurs, according to UK law, when any action is taken with money or other property which is either wholly or in part the proceeds of a crime that disguises the fact that the property is the proceeds of a crime or obscures its ownership. The UK has improved its anti-money laundering regime, which is enshrined in the Proceeds of Crime Act 2002 (POCA) and the 2007 Money Laundering Regulations (MLR). However, there is scope for further improvement, particularly in relation to due diligence on PEPs (see Transparency International, *Combating Money Laundering and Recovering Looted Gains*, June 2009). It is the responsibility of businesses to ensure their own compliance, also with regard to joint ventures, acquisitions and the signing off of accounts. Any breaches, whether negligent or deliberate, can result in serious criminal penalties including imprisonment.

Systemic corruption. Corruption is seen to be systemic when it arises from activities which are an important and routine part of a system, and/or when corrupt officials dominate the workings of the state. Several characteristics of the business culture in the City raise systemic corruption risks. The fast-paced and highly complex nature of some City transactions inhibits transparency, for example, creating opportunities for misconduct. The sophistication of financial engineering has produced a series of complex financial instruments which often tend to be highly non-transparent, as well as difficult to value. This has particularly been the case with securitised products. The lack of transparency and difficulty of valuation opens up opportunities for deals that may fall under the wider definition of corruption. Financial services companies also become involved in advising clients on how to evade tax by depositing wealth in jurisdictions with financial secrecy laws. Some

commentators also argue that the bonus culture may tempt individuals to prioritise short-term gains over long-term interests. Chairman of the Financial Services Authority (FSA) Lord Turner is among those to have warned of such dangers. Individuals might also be tempted to mis-report company results.

Trading in influence. Trading in influence occurs where a politician or public official offers to use his real or supposed power to effect influence to the benefit of another person, in exchange for receipt of some advantage. Trading in influence typically involves bribery. Many City businesses lobby politicians to change legislation in ways that would benefit their companies, while City businesses also sometimes provide donations to political parties. There are clear rules about such activities which companies need to be careful to respect, but beyond this there is also considerable reputational risk.

A tick-box compliance system may ignore wider corruption risks... Each of the areas cited above deserves fuller research in its own right. For the purposes of this report, it should be noted by companies that several of the activities outlined could be linked to bribery, and therefore create liabilities under the Bribery Act, or other related legislation. Tick-box compliance approaches will find it hard to capture and manage these wider risks: a company's anti-corruption procedures need to be sufficiently sophisticated to understand, identify and manage the risks that these broader areas of corruption may pose.

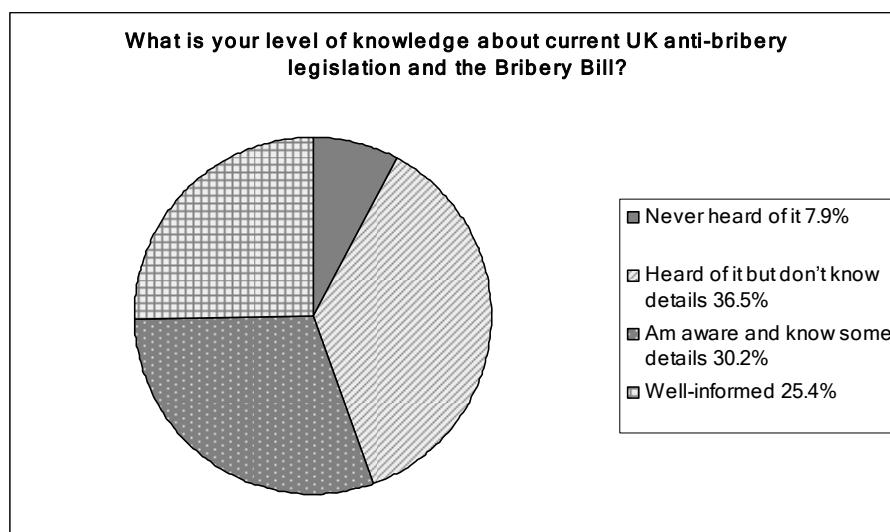
...and wider risks create scope for further legislation It is also possible that some of these areas will catch the attention of legislators, particularly if they are thought to create systemic risk that could pose a risk to economic stability. For example, rating agencies are under investigation by both a US Senate sub-committee and the European Commission.

5. Managing Risk: Going Beyond Compliance

The starting point: inadequate preparation

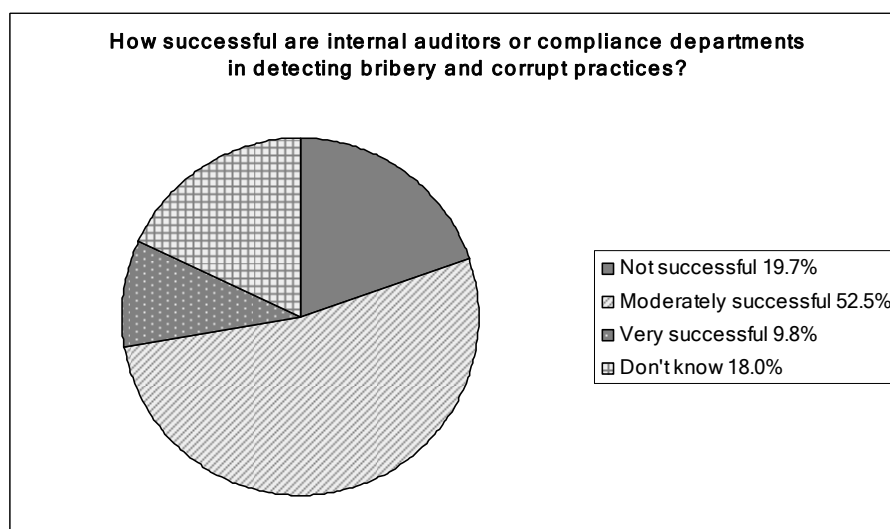
Many City businesses appear to be inadequately prepared for the new UK bribery laws. Our survey found that only one in four respondents considered themselves well-informed, while a recent survey by law firm Eversheds found that one in five businesses had no policy in place to address corrupt practices. The KPMG Overseas Bribery and Corruption Survey 2009 – a survey of individuals responsible for compliance in 109 FTSE Allshare companies – found that 43% of respondents said their organisation did not have an anti-bribery and corruption compliance programme.

Chart 7



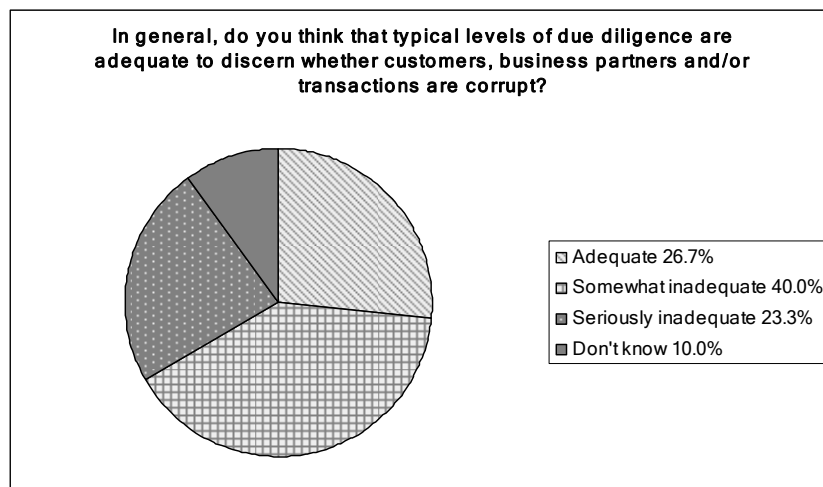
In our survey, only one in ten respondents thought that current efforts by internal auditors and compliance departments were 'very successful'.

Chart 8



There were also concerns about the effectiveness of typical levels of due diligence. One in five respondents thought it seriously inadequate while two in five thought it somewhat inadequate.

Chart 9



However, it is likely that the recent high-profile anti-corruption investigations by the SFO and FSA have raised awareness of corruption; and the KPMG Overseas Bribery and Corruption Survey suggests a growing willingness to investigate alleged misconduct. In the 2009 KPMG Survey, 39% of respondents said that their organisations had conducted anti-bribery and corruption investigations in the past two to three years; this compares with 27% in KPMG's 2007 Survey.

Adequate procedures and robust systems

Companies should pay careful attention to official guidance... Companies should consult the guidance on adequate procedures that the Ministry of Justice is expected to issue by July, as well as the guidance on self-reporting that was issued by the SFO in July 2009.

...assess the areas in which they are at risk... Companies would also be well advised to conduct a thorough assessment of the risk areas in their particular business activities. For those concerned about operating in particular overseas environments, extensive advice is also offered by the CoLP Overseas Anti-Corruption Unit.

...and develop policies that define what the company deems improper conduct. Once they have a good understanding of their risk profile, companies should design compliance strategies that work for them. There are no off-the-peg solutions, but there are many sources of advice.

Due diligence on third parties is a priority... Setting out procedures for handling relations with agents and business partners is critical to establishing robust procedures. Any such third-party relationship should be based on a written contract documenting expectations which sets out the company's

policy on bribery and corruption and provides for monitoring throughout the relationship.

...and should include continuous monitoring. In the KPMG Overseas Bribery and Corruption Survey, only 42% of respondents which had anti-bribery and corruption compliance programmes said that these programmes included the execution of third-party audits. Due diligence is also very important for companies involved in mergers and acquisitions (M&A), since the successor company takes on liability for any transgressions by the acquired entity. Yet evidence suggests that due diligence is often overlooked in fast-paced and secretive M&A deals.

Case Study: Aon Ltd £5.5 million FSA fine

Aon Ltd provides an interesting case study because it did have risk prevention and anti-corruption systems in place throughout the period in which it engaged in the behaviour that led to a £5.5 million FSA fine. However, the FSA found that these systems were inconsistently implemented and inadequately monitored. Notably, the FSA did not establish that illegal payments had been made and Aon did not admit to paying bribes. Aon was rather found to have breached Principle 3 of the FSA's Principles for Businesses by failing to take reasonable care to organise and control its affairs responsibly and effectively or have in place adequate risk management systems.

Aon has since worked closely with the FSA to reform its anti-corruption systems:

Staff. Aon hired a new Global FCPA Compliance Director and a support team.

Policies. The company enhanced its Anti-Corruption Policy and Code of Conduct, including a stricter client entertainment policy, new due diligence protocols, the inclusion of anti-corruption compliance in employee appraisals and a very comprehensive new risk-based policy on use of third parties. Aon emphasises that it now 'bakes' these policies into other systems and processes.

Training. Providing online training in eight languages for all employees worldwide, including scenarios customised for the insurance industry. Supplementing this with one-on-one training for personnel in high-risk areas.

Aon's experience also shows that the cost of building a robust anti-corruption framework is small compared to the financial and reputational cost of investigations for alleged corruption.

What is a robust anti-corruption system?

An increasing number of consultants and professional services businesses are offering advice on what may constitute 'adequate procedures' as mentioned in the Bribery Act. Appendix D contains a 20-point checklist

drawn up by Transparency International in conjunction with a group of multinational companies and other stakeholders. Most advice in this area coalesces around a set of core principles:

- **Tone from the top:** a zero-tolerance culture should be established from the top, with clear direction and responsibility from the board of directors.
- **Risk assessment:** comprehensive and regular evaluations of the nature and extent of risk exposure.
- **Policies and procedures:** clear, practical and accessible policies and procedures that apply to all employees and subsidiaries.
- **Effective implementation:** proper implementation and embedding of policies and procedures throughout the organisation.
- **Relationships with Business Partners:** risk-based due diligence of all business relationships, including the supply chain, agents and intermediaries and all forms of joint ventures; and clear communication of the company's zero-tolerance approach to bribery.
- **Monitoring and Review:** regular monitoring and continuous improvement, potentially using external reviewers or assurers.

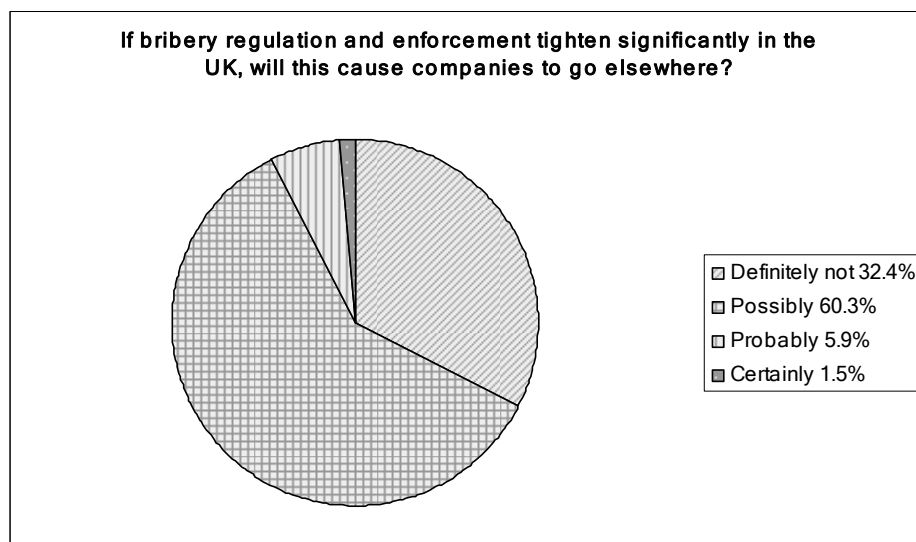
6. The Global Competitiveness of the City

The Bribery Act is expected to reinforce the UK's international reputation for setting high standards in the regulation of economic activity and as a country that takes corruption seriously.

Companies are unlikely to leave London because of the Bribery Act...

Concerns are sometimes raised that tighter regulation might deter companies from doing business in the City or listing on the London Stock Exchange. Our research suggests that this risk is negligible. One in three respondents in our survey was confident that companies would not leave London as a result of tightened bribery regulation. Although three out of five respondents thought this was a risk, only one in twenty thought that companies would 'probably' be deterred by this development.

Chart 10



Indeed, there is no evidence that tightened anti-money laundering regulations since 2002 have deterred companies from operating in the City (although by contrast there is some evidence that the Sarbanes-Oxley Act deterred companies from operating in the US).

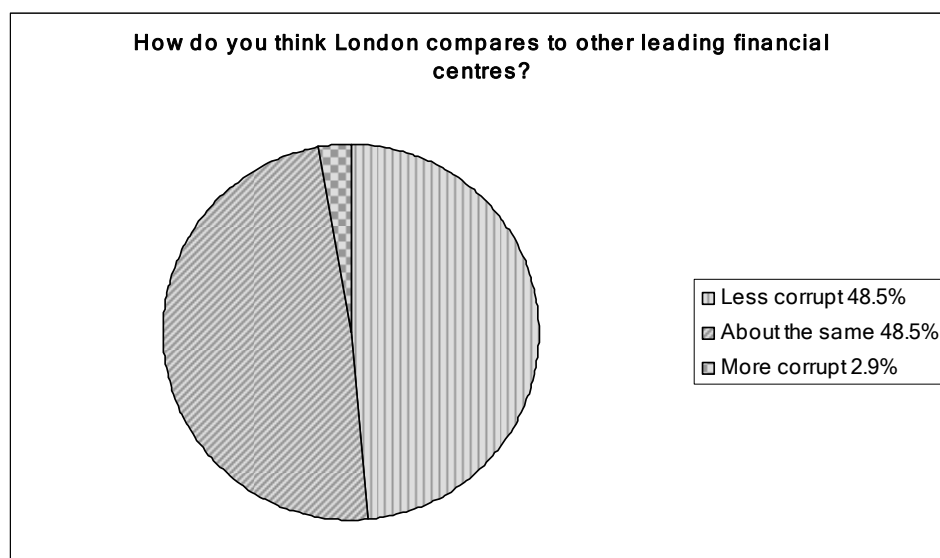
Companies might be deterred at the margin. Overseas companies might perhaps decide against setting up a small subsidiary in London on the grounds that this could make them liable for prosecution for bribery in other jurisdictions. However, for reputable businesses, tightened bribery legislation might even be regarded as a positive feature, enhancing the signal about a company's reputation that it already gains from listing in such a prestigious financial centre.

...and bribery laws are also tightening elsewhere. London is not the only place where regulation, legislation and enforcement against bribery are tightening. Table 3 shows that other significant financial centres are broadly in line with London in terms of regulation against bribery and money laundering, although London is generally ahead of its competitors in terms of

compliance with the Financial Action Task Force on Money Laundering's Recommendations.

London compares well with other financial centres... Nor is the City of London seen as corrupt relative to its competitors. Almost 50% of respondents to our survey thought that London was less corrupt than other leading financial centres, while only 3% thought it was more corrupt.

Chart 11



In summary, the Bribery Act is unlikely to have a significant adverse impact on the City's global competitiveness. Few companies are likely to be deterred from doing business in such a large and important market.

The positive impact on the City's reputation in terms of maintaining high standards and reputation is likely to be far more important for most companies.

Table 3: The Regulatory Regime Concerning Bribery in Other Global Financial Centres¹

Market	Country Corruption Perceptions Index score	OECD Anti- Bribery Convention signatory	OECD enforcement ranking	UN Convention Against Corruption (UNCAC) signed and ratified	Degree of compliance with the 49 FATF Anti- Money Laundering Recommendations and Special Recommendations
London/UK	17	Yes	Moderate	Yes	Compliant: 24 Largely compliant:12
New York/US	19	Yes	Active	Yes	Compliant:15 Largely compliant:28
Paris/France	24	Yes	Moderate	Yes	No evaluation undertaken
Frankfurt/ Germany	14	Yes	Active	No	Compliant:5 Largely compliant:24
Zurich/ Switzerland	5	Yes	Active	Yes	Compliant: 11 Largely compliant:21
Tokyo/Japan	17	Yes	Moderate	No	Compliant:4 Largely compliant:19
Toronto/ Canada	8	Yes	Little or none	Yes	Compliant: 7 Largely compliant:23
Hong Kong/China	12 (Hong Kong) 79 (China)	No	n/a	Yes	Hong Kong Compliant:10 Largely compliant:20
Singapore	3	No	n/a	Yes	Compliant:11 Largely compliant:32
Dubai/UAE	30	No	n/a	No	Compliant: 5 Largely compliant:15

¹ Sources:

CPI: Corruption Perceptions Index 2009, Transparency International, Berlin,
http://transparency.org/policy_research/surveys_indices/cpi/2009

OECD enforcement: OECD Anti-Bribery Convention Progress Report 2009, Transparency
 International, Berlin,

http://transparency.org/publications/publications/conventions/oecd_report_2009

UNCAC and foreign bribery laws: 'Anti-Corruption Regulation Worldwide 2009', Getting the
 Deal Through, London, <http://www.gettingthedealthrough.com/books/2/anti-corruption-regulation/>

Money laundering rating: OECD Financial Action Task Force Mutual Evaluations 2005-2010
[http://www.fatf-](http://www.fatf-gafi.org/document/32/0,3343,en_32250379_32236982_35128416_1_1_1_1,00.html)

[gafi.org/document/32/0,3343,en_32250379_32236982_35128416_1_1_1_1,00.html](http://www.fatf-gafi.org/document/32/0,3343,en_32250379_32236982_35128416_1_1_1_1,00.html)

7. Conclusions

This report provides an overview of corruption risk for City businesses, focusing on the issues raised by the Bribery Act. It describes the Act and seeks to minimise uncertainty for City businesses about how it will be interpreted and enforced once it comes into effect. It also highlights the types of business activity which put City businesses at greatest risk in relation to bribery and prosecution.

The Bribery Act is expected to reinforce the UK's international reputation for setting high standards in the regulation of economic activity and as a country that takes corruption seriously. A comparison with other leading international financial centres indicates that UK regulation and enforcement are already among the best in the world, and around half of survey respondents thought that London was less corrupt than other leading financial centres, while only 3% thought that it was more corrupt.

The research conducted for this project suggests that many City businesses operate in contexts that make them vulnerable to corruption, such as doing business in high-risk countries, relying heavily on agents or subsidiaries, interface with public officials, or advising on or providing finance for projects in the construction, defence or natural resources sectors. The drive to win new business can, for example, create pressures to skimp on due diligence or use local fixers about which little is known. Companies may also face major incentives to pay facilitation payments to avoid delays in transactions. However, the new Act imposes strict penalties on individuals as well as companies if they bow to these pressures. Moreover, it puts the onus on companies to prevent bribery and corruption from occurring, not least by advising individual employees on how to handle these issues on the ground.

Other corruption risks in the City are deeply rooted in activities that may be seen as commonplace business practices, such as taking clients out for dinner, organising trips to exclusive sporting events, and providing all-expenses-paid holidays. Yet extravagant forms of hospitality could now be seen as bribes to win new business or maintain existing contracts. More broadly, many transactions are executed under intensive time pressure, involve clients that are complete strangers, or are carried out on the telephone and hence very difficult to monitor. All of these factors put pressures on careful adherence to ethical standards.

There are also structural problems in the way that some aspects of business are organised, leading to potential conflicts of interest, and the increasingly sophisticated nature of the financial products that are traded hinders the transparency of these transactions. While not the focus of this report, these issues also give rise to corruption risk and would merit further research.

In the light of the new Bribery Act, companies in the City of London and the UK's financial services sector need to reassess their exposure to corruption risk and take steps to change policies and procedures where necessary. Guidance and advice are available from a number of sources, but

companies also need to make sure that everyone in the organisation understands and acts in accordance with the internal policies.

In the light of the increasing worldwide anti-bribery legislative framework and greater efforts at global enforcement, it is possible that one response could simply be more sophisticated forms of corruption. From this perspective, companies will need to be constantly alert to the changing risks to ensure that their anti-corruption procedures are fit for purpose. Fundamentally, the most effective response for a company faced with high risks is a change in culture so that there is a zero-tolerance approach to bribery which is clearly understood throughout the company.

That is not necessarily hard to achieve. Although there can be powerful business, social and personal pressures that make it difficult to say no to corruption, especially when operating in different business cultures, there are many examples of businesses with a good record in this area. If those pressures can be diminished, or more companies perceive that the balance of risk has changed and genuinely seek to eliminate bribery, mid-level and senior managers will feel supported in their own efforts to act ethically and in line with the law. The Bribery Act will help by making it easier to quote the law when saying 'No' to corruption. US companies have found that prominent FCPA cases have facilitated their efforts to reject demands for bribes when operating overseas.

Nevertheless, companies must be prepared to suffer the cost of losing business or withdrawing from a market when they refuse to pay bribes. These are real costs, but they are increasingly likely to be outweighed by the legal, reputational and financial risk of acting corruptly. And these costs fall heavily not just on companies but also on individuals.

Recommendations

Recommendations for companies

- Companies should assess their vulnerability to corruption risk in all areas of business and their potential exposure and liabilities under the new Bribery Act.
- Companies should design and implement robust procedures to prevent bribery and corruption occurring.

Recommendations for professional associations

- Professional associations should advise their members on how to deal with sector-specific corruption risks.

Recommendations for regulators

- Regulators should assist with educating companies about the new law and the framework for enforcement, including advice on specific areas such as facilitation payments.
- UK enforcement agencies should develop a consistent and transparent approach to settlements and plea bargains.
- The UK government and regulatory bodies should encourage the OECD Working Group on Bribery to work for a ban on facilitation

payments under the OECD Convention, in order to ensure a level playing field.

Further research would be valuable in the following areas:

- Corruption risks other than bribery in the City, and the extent to which there may be undesirable levels of systemic risk in a 'business as usual' scenario. Allied to this would be an analysis of whether corruption in any form played a role in the recent financial crisis.
- A periodic collation of statistics and secondary material relating to corruption. As a result of increased enforcement and the Bribery Act, surveys and commentaries about corruption risk are being undertaken more frequently. A collation of these statistics and analysis of trends would provide a useful overview.
- Periodic reviews of enforcement of the Bribery Act and an assessment of how companies have responded.

Acknowledgements

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The research has been coordinated at Transparency International UK by Chandrashekhar Krishnan and Robert Barrington, and has been overseen by an Advisory Group comprising:

Peter Berry, CMG
Andrew Buxton, CMG
John Drysdale
Christopher Haines
Karina Litvack

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Appendix A: Bribery Act – Extracts

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http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1

General bribery offences

1 Offences of bribing another person

- (1) A person ("P") is guilty of an offence if either of the following cases applies.
- (2) Case 1 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P intends the advantage—
 - (i) to induce a person to perform improperly a relevant function or activity, or
 - (ii) to reward a person for the improper performance of such a function or activity.
- (3) Case 2 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.
- (4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.
- (5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

2 Offences relating to being bribed

- (1) A person ("R") is guilty of an offence if any of the following cases applies.
- (2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).
- (3) Case 4 is where—
 - (a) R requests, agrees to receive or accepts a financial or other advantage, and
 - (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.
- (4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.
- (5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—
 - (a) by R, or
 - (b) by another person at R's request or with R's assent or acquiescence.
- (6) In cases 3 to 6 it does not matter—
 - (a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,
 - (b) whether the advantage is (or is to be) for the benefit of R or another person.
- (7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.
- (8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

3 Function or activity to which bribe relates

(1) For the purposes of this Act a function or activity is a relevant function or activity if—

- (a) it falls within subsection (2), and
- (b) meets one or more of conditions A to C.

(2) The following functions and activities fall within this subsection—

- (a) any function of a public nature,
- (b) any activity connected with a business,
- (c) any activity performed in the course of a person's employment,
- (d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporate).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it—

- (a) has no connection with the United Kingdom, and
- (b) is performed in a country or territory outside the United Kingdom.

(7) In this section "business" includes trade or profession.

4 Improper performance to which bribe relates

(1) For the purposes of this Act a relevant function or activity—

- (a) is performed improperly if it is performed in breach of a relevant expectation, and
- (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

(2) In subsection (1) "relevant expectation"—

- (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and
- (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.

(3) Anything that a person does (or omits to do) arising from or in connection with that person's past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

5 Expectation test

(1) For the purposes of sections 3 and 4, the test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of the United Kingdom, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.

(3) In subsection (2) "written law" means law contained in—

- (a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
- (b) any judicial decision which is so applicable and is evidenced in published written sources.

Bribery of foreign public officials

6 Bribery of foreign public officials

- (1) A person ("P") who bribes a foreign public official ("F") is guilty of an offence if P's intention is to influence F in F's capacity as a foreign public official.
- (2) P must also intend to obtain or retain—
 - (a) business, or
 - (b) an advantage in the conduct of business.
- (3) P bribes F if, and only if—
 - (a) directly or through a third party, P offers, promises or gives any financial or other advantage—
 - (i) to F, or
 - (ii) to another person at F's request or with F's assent or acquiescence, and
 - (b) F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the offer, promise or gift.
- (4) References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which includes—
 - (a) any omission to exercise those functions, and
 - (b) any use of F's position as such an official, even if not within F's authority.
- (5) "Foreign public official" means an individual who—
 - (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),
 - (b) exercises a public function—
 - (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision), or
 - (c) is an official or agent of a public international organisation.
- (6) "Public international organisation" means an organisation whose members are any of the following—
 - (a) countries or territories,
 - (b) governments of countries or territories,
 - (c) other public international organisations,
 - (d) a mixture of any of the above.
- (7) For the purposes of subsection (3)(b), the written law applicable to F is—
 - (a) where the performance of the functions of F which P intends to influence would be subject to the law of any part of the United Kingdom, the law of that part of the United Kingdom,
 - (b) where paragraph (a) does not apply and F is an official or agent of a public international organisation, the applicable written rules of that organisation,
 - (c) where paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in—
 - (i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
 - (ii) any judicial decision which is so applicable and is evidenced in published written sources.
- (8) For the purposes of this section, a trade or profession is a business.

Failure of commercial organisations to prevent bribery

7 Failure of commercial organisations to prevent bribery

(1) A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending—

- (a) to obtain or retain business for C, or
- (b) to obtain or retain an advantage in the conduct of business for C.

(2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if, A—

- (a) is, or would be, guilty of an offence under section 1 or 6 (whether or not A has been prosecuted for such an offence), or
- (b) would be guilty of such an offence if section 12(2)(c) and (4) were omitted.

(4) See section 8 for the meaning of a person associated with C and see section 9 for a duty on the Secretary of State to publish guidance.

(5) In this section—

"partnership" means—

- (a) a partnership within the Partnership Act 1890, or
- (b) a limited partnership registered under the Limited Partnerships Act 1907, or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,

"relevant commercial organisation" means—

- (a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
- (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,
- (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or
- (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,

and, for the purposes of this section, a trade or profession is a business.

8 Meaning of associated person

(1) For the purposes of section 7, a person ("A") is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C does not matter.

(3) Accordingly A may (for example) be C's employee, agent or subsidiary.

(4) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.

(5) But if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

9 Guidance about commercial organisations preventing bribery

(1) The Secretary of State must publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 7(1).

(2) The Secretary of State may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) The Secretary of State must consult the Scottish Ministers before publishing anything under this section.

(4) Publication under this section is to be in such manner as the Secretary of State considers appropriate.

(5) Expressions used in this section have the same meaning as in section 7.

Prosecution and penalties

10 Consent to prosecution

- (1) No proceedings for an offence under this Act may be instituted in England and Wales except by or with the consent of—
- (a) the Director of Public Prosecutions,
 - (b) the Director of the Serious Fraud Office, or
 - (c) the Director of Revenue and Customs Prosecutions.
- (2) No proceedings for an offence under this Act may be instituted in Northern Ireland except by or with the consent of—
- (a) the Director of Public Prosecutions for Northern Ireland, or
 - (b) the Director of the Serious Fraud Office.
- (3) No proceedings for an offence under this Act may be instituted in England and Wales or Northern Ireland by a person—
- (a) who is acting—
 - (i) under the direction or instruction of the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions, or
 - (ii) on behalf of such a Director, or
 - (b) to whom such a function has been assigned by such a Director, except with the consent of the Director concerned to the institution of the proceedings.
- (4) The Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions must exercise personally any function under subsection (1), (2) or (3) of giving consent.
- (5) The only exception is if—
- (a) the Director concerned is unavailable, and
 - (b) there is another person who is designated in writing by the Director acting personally as the person who is authorised to exercise any such function when the Director is unavailable.
- (6) In that case, the other person may exercise the function but must do so personally.
- (7) Subsections (4) to (6) apply instead of any other provisions which would otherwise have enabled any function of the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions under subsection (1), (2) or (3) of giving consent to be exercised by a person other than the Director concerned.
- (8) No proceedings for an offence under this Act may be instituted in Northern Ireland by virtue of section 36 of the Justice (Northern Ireland) Act 2002 (delegation of the functions of the Director of Public Prosecutions for Northern Ireland to persons other than the Deputy Director) except with the consent of the Director of Public Prosecutions for Northern Ireland to the institution of the proceedings.
- (9) The Director of Public Prosecutions for Northern Ireland must exercise personally any function under subsection (2) or (8) of giving consent unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of the Act of 2002 (powers of Deputy Director to exercise functions of Director).
- (10) Subsection (9) applies instead of section 36 of the Act of 2002 in relation to the functions of the Director of Public Prosecutions for Northern Ireland and the Deputy Director of Public Prosecutions for Northern Ireland under, or (as the case may be) by virtue of, subsections (2) and (8) above of giving consent.

11 Penalties

- (1) An individual guilty of an offence under section 1, 2 or 6 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both,

- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.
- (2) Any other person guilty of an offence under section 1, 2 or 6 is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (3) A person guilty of an offence under section 7 is liable on conviction on indictment to a fine.
- (4) The reference in subsection (1)(a) to 12 months is to be read—
 - (a) in its application to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, and
 - (b) in its application to Northern Ireland, as a reference to 6 months.

Other provisions about offences

12 Offences under this Act: territorial application

- (1) An offence is committed under section 1, 2 or 6 in England and Wales, Scotland or Northern Ireland if any act or omission which forms part of the offence takes place in that part of the United Kingdom.
- (2) Subsection (3) applies if—
 - (a) no act or omission which forms part of an offence under section 1, 2 or 6 takes place in the United Kingdom,
 - (b) a person's acts or omissions done or made outside the United Kingdom would form part of such an offence if done or made in the United Kingdom, and
 - (c) that person has a close connection with the United Kingdom.
- (3) In such a case—
 - (a) the acts or omissions form part of the offence referred to in subsection (2)(a), and
 - (b) proceedings for the offence may be taken at any place in the United Kingdom.
- (4) For the purposes of subsection (2)(c) a person has a close connection with the United Kingdom if, and only if, the person was one of the following at the time the acts or omissions concerned were done or made—
 - (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British National (Overseas),
 - (d) a British Overseas citizen,
 - (e) a person who under the British Nationality Act 1981 was a British subject,
 - (f) a British protected person within the meaning of that Act,
 - (g) an individual ordinarily resident in the United Kingdom,
 - (h) a body incorporated under the law of any part of the United Kingdom,
 - (i) a Scottish partnership.
- (5) An offence is committed under section 7 irrespective of whether the acts or omissions which form part of the offence take place in the United Kingdom or elsewhere.
- (6) Where no act or omission which forms part of an offence under section 7 takes place in the United Kingdom, proceedings for the offence may be taken at any place in the United Kingdom.
- (7) Subsection (8) applies if, by virtue of this section, proceedings for an offence are to be taken in Scotland against a person.

- (8) Such proceedings may be taken—
- (a) in any sheriff court district in which the person is apprehended or in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine.
- (9) In subsection (8) “sheriff court district” is to be read in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995.

Appendix B: Transparency International Corruption Perceptions Index 2009

This report has argued that doing business in “corrupt environments” can make companies vulnerable to corruption and bribery. However, assessing the corruption risk in a particular environment is not straightforward. Each year, Transparency International produces a Corruption Perceptions Index (CPI), which shows perceived levels of public-sector corruption in most of the countries and territories of the world. This can be used as a guide to corruption levels in a particular environment.

- The Corruption Perceptions Index (CPI) table shows a country's ranking and score, the number of surveys used to determine the score, and the confidence range of the scoring.
- The rank shows how one country compares to others included in the index. The CPI score indicates the perceived level of public sector corruption in a country/territory.
- The CPI is based on 13 independent surveys. However, not all surveys include all countries. The surveys used column indicates how many surveys were relied upon to determine the score for that country.
- The confidence range indicates the reliability of the CPI scores and tells us that allowing for a margin of error, we can be 90% confident that the true score for this country lies within this range.

Rank	Country/Territory	CPI 2009 Score	Surveys Used	Confidence Range
1	New Zealand	9.4	6	9.1 - 9.5
2	Denmark	9.3	6	9.1 - 9.5
3	Singapore	9.2	9	9.0 - 9.4
3	Sweden	9.2	6	9.0 - 9.3
5	Switzerland	9.0	6	8.9 - 9.1
6	Finland	8.9	6	8.4 - 9.4
6	Netherlands	8.9	6	8.7 - 9.0
8	Australia	8.7	8	8.3 - 9.0
8	Canada	8.7	6	8.5 - 9.0
8	Iceland	8.7	4	7.5 - 9.4
11	Norway	8.6	6	8.2 - 9.1
12	Hong Kong	8.2	8	7.9 - 8.5
12	Luxembourg	8.2	6	7.6 - 8.8
14	Germany	8.0	6	7.7 - 8.3
14	Ireland	8.0	6	7.8 - 8.4
16	Austria	7.9	6	7.4 - 8.3
17	Japan	7.7	8	7.4 - 8.0
17	United Kingdom	7.7	6	7.3 - 8.2
19	United States	7.5	8	6.9 - 8.0
20	Barbados	7.4	4	6.6 - 8.2
21	Belgium	7.1	6	6.9 - 7.3

22	Qatar	7.0	6	5.8 - 8.1
22	Saint Lucia	7.0	3	6.7 - 7.5
24	France	6.9	6	6.5 - 7.3
25	Chile	6.7	7	6.5 - 6.9
25	Uruguay	6.7	5	6.4 - 7.1
27	Cyprus	6.6	4	6.1 - 7.1
27	Estonia	6.6	8	6.1 - 6.9
27	Slovenia	6.6	8	6.3 - 6.9
30	United Arab Emirates	6.5	5	5.5 - 7.5
31	Saint Vincent and the Grenadines	6.4	3	4.9 - 7.5
32	Israel	6.1	6	5.4 - 6.7
32	Spain	6.1	6	5.5 - 6.6
34	Dominica	5.9	3	4.9 - 6.7
35	Portugal	5.8	6	5.5 - 6.2
35	Puerto Rico	5.8	4	5.2 - 6.3
37	Botswana	5.6	6	5.1 - 6.3
37	Taiwan	5.6	9	5.4 - 5.9
39	Brunei Darussalam	5.5	4	4.7 - 6.4
39	Oman	5.5	5	4.4 - 6.5
39	Korea (South)	5.5	9	5.3 - 5.7
42	Mauritius	5.4	6	5.0 - 5.9
43	Costa Rica	5.3	5	4.7 - 5.9
43	Macau	5.3	3	3.3 - 6.9
45	Malta	5.2	4	4.0 - 6.2
46	Bahrain	5.1	5	4.2 - 5.8
46	Cape Verde	5.1	3	3.3 - 7.0
46	Hungary	5.1	8	4.6 - 5.7
49	Bhutan	5.0	4	4.3 - 5.6
49	Jordan	5.0	7	3.9 - 6.1
49	Poland	5.0	8	4.5 - 5.5
52	Czech Republic	4.9	8	4.3 - 5.6
52	Lithuania	4.9	8	4.4 - 5.4
54	Seychelles	4.8	3	3.0 - 6.7
55	South Africa	4.7	8	4.3 - 4.9
56	Latvia	4.5	6	4.1 - 4.9
56	Malaysia	4.5	9	4.0 - 5.1
56	Namibia	4.5	6	3.9 - 5.1
56	Samoa	4.5	3	3.3 - 5.3
56	Slovakia	4.5	8	4.1 - 4.9
61	Cuba	4.4	3	3.5 - 5.1
61	Turkey	4.4	7	3.9 - 4.9
63	Italy	4.3	6	3.8 - 4.9
63	Saudi Arabia	4.3	5	3.1 - 5.3
65	Tunisia	4.2	6	3.0 - 5.5
66	Croatia	4.1	8	3.7 - 4.5

66	Georgia	4.1	7	3.4 - 4.7
66	Kuwait	4.1	5	3.2 - 5.1
69	Ghana	3.9	7	3.2 - 4.6
69	Montenegro	3.9	5	3.5 - 4.4
71	Bulgaria	3.8	8	3.2 - 4.5
71	FYR Macedonia	3.8	6	3.4 - 4.2
71	Greece	3.8	6	3.2 - 4.3
71	Romania	3.8	8	3.2 - 4.3
75	Brazil	3.7	7	3.3 - 4.3
75	Colombia	3.7	7	3.1 - 4.3
75	Peru	3.7	7	3.4 - 4.1
75	Suriname	3.7	3	3.0 - 4.7
79	Burkina Faso	3.6	7	2.8 - 4.4
79	China	3.6	9	3.0 - 4.2
79	Swaziland	3.6	3	3.0 - 4.7
79	Trinidad and Tobago	3.6	4	3.0 - 4.3
83	Serbia	3.5	6	3.3 - 3.9
84	El Salvador	3.4	5	3.0 - 3.8
84	Guatemala	3.4	5	3.0 - 3.9
84	India	3.4	10	3.2 - 3.6
84	Panama	3.4	5	3.1 - 3.7
84	Thailand	3.4	9	3.0 - 3.8
89	Lesotho	3.3	6	2.8 - 3.8
89	Malawi	3.3	7	2.7 - 3.9
89	Mexico	3.3	7	3.2 - 3.5
89	Moldova	3.3	6	2.7 - 4.0
89	Morocco	3.3	6	2.8 - 3.9
89	Rwanda	3.3	4	2.9 - 3.7
95	Albania	3.2	6	3.0 - 3.3
95	Vanuatu	3.2	3	2.3 - 4.7
97	Liberia	3.1	3	1.9 - 3.8
97	Sri Lanka	3.1	7	2.8 - 3.4
99	Bosnia and Herzegovina	3.0	7	2.6 - 3.4
99	Dominican Republic	3.0	5	2.9 - 3.2
99	Jamaica	3.0	5	2.8 - 3.3
99	Madagascar	3.0	7	2.8 - 3.2
99	Senegal	3.0	7	2.5 - 3.6
99	Tonga	3.0	3	2.6 - 3.3
99	Zambia	3.0	7	2.8 - 3.2
106	Argentina	2.9	7	2.6 - 3.1
106	Benin	2.9	6	2.3 - 3.4
106	Gabon	2.9	3	2.6 - 3.1
106	Gambia	2.9	5	1.6 - 4.0
106	Niger	2.9	5	2.7 - 3.0
111	Algeria	2.8	6	2.5 - 3.1
111	Djibouti	2.8	4	2.3 - 3.2

111	Egypt	2.8	6	2.6 - 3.1
111	Indonesia	2.8	9	2.4 - 3.2
111	Kiribati	2.8	3	2.3 - 3.3
111	Mali	2.8	6	2.4 - 3.2
111	Sao Tome and Principe	2.8	3	2.4 - 3.3
111	Solomon Islands	2.8	3	2.3 - 3.3
111	Togo	2.8	5	1.9 - 3.9
120	Armenia	2.7	7	2.6 - 2.8
120	Bolivia	2.7	6	2.4 - 3.1
120	Ethiopia	2.7	7	2.4 - 2.9
120	Kazakhstan	2.7	7	2.1 - 3.3
120	Mongolia	2.7	7	2.4 - 3.0
120	Vietnam	2.7	9	2.4 - 3.1
126	Eritrea	2.6	4	1.6 - 3.8
126	Guyana	2.6	4	2.5 - 2.7
126	Syria	2.6	5	2.2 - 2.9
126	Tanzania	2.6	7	2.4 - 2.9
130	Honduras	2.5	6	2.2 - 2.8
130	Lebanon	2.5	3	1.9 - 3.1
130	Libya	2.5	6	2.2 - 2.8
130	Maldives	2.5	4	1.8 - 3.2
130	Mauritania	2.5	7	2.0 - 3.3
130	Mozambique	2.5	7	2.3 - 2.8
130	Nicaragua	2.5	6	2.3 - 2.7
130	Nigeria	2.5	7	2.2 - 2.7
130	Uganda	2.5	7	2.1 - 2.8
139	Bangladesh	2.4	7	2.0 - 2.8
139	Belarus	2.4	4	2.0 - 2.8
139	Pakistan	2.4	7	2.1 - 2.7
139	Philippines	2.4	9	2.1 - 2.7
143	Azerbaijan	2.3	7	2.0 - 2.6
143	Comoros	2.3	3	1.6 - 3.3
143	Nepal	2.3	6	2.0 - 2.6
146	Cameroon	2.2	7	1.9 - 2.6
146	Ecuador	2.2	5	2.0 - 2.5
146	Kenya	2.2	7	1.9 - 2.5
146	Russia	2.2	8	1.9 - 2.4
146	Sierra Leone	2.2	5	1.9 - 2.4
146	Timor-Leste	2.2	5	1.8 - 2.6
146	Ukraine	2.2	8	2.0 - 2.6
146	Zimbabwe	2.2	7	1.7 - 2.8
154	Côte d'Ivoire	2.1	7	1.8 - 2.4
154	Papua New Guinea	2.1	5	1.7 - 2.5
154	Paraguay	2.1	5	1.7 - 2.5
154	Yemen	2.1	4	1.6 - 2.5
158	Cambodia	2.0	8	1.8 - 2.2

158	Central African Republic	2.0	4	1.9 - 2.2
158	Laos	2.0	4	1.6 - 2.6
158	Tajikistan	2.0	8	1.6 - 2.5
162	Angola	1.9	5	1.8 - 1.9
162	Congo Brazzaville	1.9	5	1.6 - 2.1
162	Democratic Republic of Congo	1.9	5	1.7 - 2.1
162	Guinea-Bissau	1.9	3	1.8 - 2.0
162	Kyrgyzstan	1.9	7	1.8 - 2.1
162	Venezuela	1.9	7	1.8 - 2.0
168	Burundi	1.8	6	1.6 - 2.0
168	Equatorial Guinea	1.8	3	1.6 - 1.9
168	Guinea	1.8	5	1.7 - 1.8
168	Haiti	1.8	3	1.4 - 2.3
168	Iran	1.8	3	1.7 - 1.9
168	Turkmenistan	1.8	4	1.7 - 1.9
174	Uzbekistan	1.7	6	1.5 - 1.8
175	Chad	1.6	6	1.5 - 1.7
176	Iraq	1.5	3	1.2 - 1.8
176	Sudan	1.5	5	1.4 - 1.7
178	Myanmar	1.4	3	0.9 - 1.8
179	Afghanistan	1.3	4	1.0 - 1.5
180	Somalia	1.1	3	0.9 - 1.4

Appendix C: Transparency International Bribe Payers' Index 2008

The Bribe Payers' Index (BPI) ranks the likelihood of businesses from 22 top exporting countries to bribe abroad. These 22 countries account for approximately 75% of total foreign direct investment outflows and export goods worldwide. The Index is based on interviews with almost 3,000 senior business executives working in 26 countries. The 2008 BPI also includes supplementary information on perceptions of corruption across 19 business sectors.

Rank	Country/ Territory	BPI 2008 Score	Respondents	Standard Deviation	Confidence Interval 95%	
					Lower Bound	Upper Bound
1	Belgium	8.8	252	2.00	8.5	9.0
1	Canada	8.8	264	1.80	8.5	9.0
3	Netherlands	8.7	255	1.98	8.4	8.9
3	Switzerland	8.7	256	1.98	8.4	8.9
5	Germany	8.6	513	2.14	8.4	8.8
5	Japan	8.6	316	2.11	8.3	8.8
5	United Kingdom	8.6	506	2.10	8.4	8.7
8	Australia	8.5	240	2.23	8.2	8.7
9	France	8.1	462	2.48	7.9	8.3
9	Singapore	8.1	243	2.60	7.8	8.4
9	United States	8.1	718	2.43	7.9	8.3
12	Spain	7.9	355	2.49	7.6	8.1
13	Hong Kong	7.6	288	2.67	7.3	7.9
14	South Africa	7.5	177	2.78	7.1	8.0
14	South Korea	7.5	231	2.79	7.1	7.8
14	Taiwan	7.5	287	2.76	7.1	7.8
17	Brazil	7.4	225	2.78	7.0	7.7
17	Italy	7.4	421	2.89	7.1	7.7
19	India	6.8	257	3.31	6.4	7.3
20	Mexico	6.6	123	2.97	6.1	7.2
21	China	6.5	634	3.35	6.2	6.8
22	Russia	5.9	114	3.66	5.2	6.6

This table shows the 2008 BPI results along with additional statistical information that indicates the level of agreement among respondents about the country's performance, and the precision of the results.

Scores range from 0 to 10, indicating the likelihood of businesses headquartered in these countries to bribe when operating abroad. The higher the score for the country, the lower the likelihood of companies from this country to engage in bribery when doing business abroad.

The standard deviation is provided to give an indication of the degree of agreement among respondents in relation to each country: the smaller the standard deviation, the broader the consensus among respondents. The confidence intervals show the range of minimum and maximum values where with 95% of confidence the true value of the index lies.

Appendix D Anti-Bribery 20-Point Checklist

Aligned to the Business Principles for Countering Bribery
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How do you feel your company stands on countering bribery?

POLICY

- 1** Is there a formal up-to-date published policy of zero tolerance of bribery?
- 2** Is there a public commitment to be consistent with all relevant anti-bribery laws in all the jurisdictions in which your company operates?
- 3** Have you made a commitment to implement an anti-bribery Programme¹?

IMPLEMENTATION

- 4** Do you carry out regular risk assessment to determine the risks of bribery and tailor the Programme to mitigate these risks?
- 5** Does your Programme have detailed policies, procedures and controls for:
 - gifts, hospitality and travel expenses?
 - political contributions?
 - charitable donations and sponsorships?
 - facilitation payments?
- 6** Does your leadership² show active commitment to the Programme and act as an example for transparency and integrity?
- 7** Does your leadership assign unambiguous responsibility and authority to managers for carrying out the Programme?
- 8** Is the Programme implemented in all business entities over which your company has effective control?
- 9** Do you encourage an equivalent Programme in business entities in which your company has a significant investment or with which it has significant business relationships?
- 10** Is the Programme communicated to:
 - all employees?
 - business partners?
 - other stakeholders?
- 11** Do your human resources practices³ reflect your company's commitment to the Programme?
- 12** Is tailored training provided to:
 - all Directors, managers, employees and agents?
 - key high risk third parties including other intermediaries, contractors and suppliers?
- 13** Does your company provide secure and accessible channels through which employees and others can obtain advice or raise concerns ('whistleblowing') without risk of reprisal?
- 14** Are there internal controls to counter bribery comprising financial and organisational checks over accounting and record keeping practices and related business processes?

MONITORING AND REVIEW

- 15** Are the internal control systems, in particular the accounting and record keeping practices, subjected to regular review and audit?
- 16** Do you have procedures in place to deal with any incidents of bribery?

- 17** Do your senior management periodically review the Programme's suitability and effectiveness and implement improvements?
- 18** Does the Audit Committee, Board or equivalent body make a regular independent assessment of the adequacy of the Programme?
- 19** Does your company publicly disclose information about its programme and its implementation?
- 20** Do you carry out external assurance of the Programme and is the opinion statement published publicly?

The Business Principles for Countering Bribery can be found at www.transparency.org. For further information please contact: businessprinciples@transparency.org

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- 1 The whole of an enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.
- 2 Owner, Board or equivalent body, chair and/or chief executive
- 3 Including those for recruitment, training, performance evaluation, remuneration, recognition and promotion

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