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Global Corruption &
Anti-Bribery

It's simply too important to ignore...

Preparing for compliance with evermore punitive bribery and anti-corruption legislation brings with it added business benefits

 WORDS
Michael Dempsey



There has never been a time when compliance with ethical standards and recognised anti-corruption practices enjoyed such a high profile. Shareholder activism has seen corporate governance moving up the agenda on both sides of the Atlantic. And in the UK the arrival of the Bribery Act has served to focus attention on these questions in businesses of all sizes.

Given this context, there is no debate about the need to ensure that each business has policies and procedures to deter malpractice. The discussion starts when a company has to decide how to go about meeting these external pressures.

In the initial rush to stay on the right side of the UK Bribery Act many companies saw a simple training exercise as the easiest option. But the nature of anti-corruption practices means that, unless they are embedded in a company's DNA, they will fail to make a lasting impression. Ensuring compliance with the very best practice is not a box-ticking exercise; it cannot be visited once and then forgotten.

Randy Stephens, vice president of advisory services at ethics and compliance experts NAVEX Global, is very positive about the practical benefits of getting things right.

"Everyone should prepare for compliance, but they shouldn't just look at it in terms of regulations," he says. "There are huge collateral benefits for the company and its shareholders. You don't set up an ethics and compliance programme to dazzle the regulator, but to have your employees doing what you expect them to do."

NAVEX Global offers a comprehensive menu of services and tools that can guide a business through the maze of complying with best practice in a global marketplace. But Mr Stephens is adamant that each and every business represents a unique case. "You must start with a risk assessment that addresses where your own company is

vulnerable. There is no simple template for compliance," he says.

While some critics of the Bribery Act have noted that compliance programmes can be costly affairs, there is no need for this to be the case, says Mr Stephens. "People sometimes pour resources into compliance, but that's not the way to do it. At NAVEX Global our role is to craft a programme that is appropriate to the risk that each business faces."

It's a big mistake to assume that compliance with best practice is a luxury that can only be afforded by corporate giants. The secret of smart compliance is to have a proportionate response, matching the company plan to its size, market presence and, above all, its risk profile. This does not have to be an expensive exercise, but it is not something that can be deferred.

In an era of new legislation and intense public interest, the price of ignoring anti-corruption measures is simply too high to be ignored. A calm and reasoned approach, in partnership with an experienced adviser, should provide the right level of assurance. And staff who are working to the best practices, in terms of ethical conduct, are probably doing a good job for the business in every other respect. ●

..... “
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Pulling Europe back from brink of corruption crisis

The European Commission and UK Government are getting tough on corruption with a crackdown that more than matches efforts by US authorities

WORDS
John O'Brien

“One thing is very clear,” says Cecilia Malmström. “There is no corruption-free zone in Europe.” In fact, she says, corruption costs the EU a staggering €120 billion (£100 billion) every year.

Under Ms Malmström, the EU Commissioner for Home Affairs, the commission has just published its first report on corruption across the union. “We are simply not doing enough,” she says. “Existing laws and policies are not enforced enough, and a firm political commitment to root out corruption still seems to be missing. In order to pull Europe from the brink of the crisis, we need to attack corruption effectively.”

Corruption is often seen as a disease for the developing, rather than the developed, world. But as the commission’s report makes clear, even in the EU, and even within the wealthiest nations inside the bloc, corruption has not been eradicated. “Corruption undermines citizens’ confidence in democratic institutions and the rule of law, it hurts the European economy and deprives states from much-needed tax revenue,” Ms Malmström says bluntly. “The price of not acting is simply too high.”

The commission’s *EU Anti-Corruption Report* found that corruption affects nearly half of all companies in the union, with almost all businesses in Italy, Spain and Greece believing that corruption is widespread. Bulgaria,

Romania and Greece are the most corrupt nations, the report says, with the Nordic states the cleanest.

The construction industry is the most corrupt sector, especially when it comes to tenders for public contracts. A third of construction companies blame corruption for stopping them from winning a contract.

“Companies should focus their efforts effectively on high-risk areas and ensure compliance policies are communicated effectively throughout the company, and properly enforced”

Transparency International, the anti-corruption pressure group, says Europe’s problems stem from “the ties between the political class and industry.”

But efforts by Western companies to stamp out corruption have risen to the top of the global political agenda of late. Through the

weight of anti-corruption law and increased activity by enforcement authorities, companies have been encouraged to adopt a culture of compliance to protect themselves from allegations that they are turning a blind eye to wrongdoing by their employees.

Over the last decade, the Department of Justice and the Securities and Exchange Commission in the United States have upped the ante by enforcing the provisions of the US Foreign Corrupt Practices Act (FCPA). The Act carries heavy penalties for individuals who bribe foreign officials or act in a corrupt manner while doing business overseas. Though intended for American companies, the Act also captures non-American companies if their corrupt act takes place on American soil.

Helpfully, the Department of Justice has published guidance on how companies can build effective compliance programmes, providing useful bedrock for companies looking to implement compliance programmes. “If designed carefully, implemented earnestly and enforced fairly, a company’s compliance programme – no matter how large or small the organisation – will allow the company generally to prevent violations, detect those that do occur, and remediate them promptly and appropriately,” it says.

The US guidance recommends that companies should assign responsibility for any compliance programme to a senior official in the business who has adequate autonomy



Members of the European Parliament, in Strasbourg, France



from management, but nonetheless, access to the board. Companies should focus their efforts effectively on high-risk areas, the guidance says, and ensure compliance policies are communicated effectively throughout the company, and properly enforced.

It recommends that companies should carefully check their relationships with third-party suppliers – they “are commonly used to conceal the payment of bribes” – and that staff should be able to blow the whistle on suspected malpractice in absolute confidence. It warns that programmes which employ a tick-box approach might be ineffective, and recommends compliance programmes should constantly evolve to keep up with changes to the business and the environment in which it operates.

Randy Stephens, vice president of advisory services at ethics and compliance experts NAVEX Global, says: “The elements of a good compliance programme are pretty much universal.

“You do need to focus on the local laws wherever you do business, but within the broad categories of risk assessment, policies and procedures, and keeping criminal activities out, these elements translate pretty well whether you’re looking at the US Foreign Corrupt Practices Act, the UK Bribery Act or the OECD [Organisation for Economic Co-operation and Development] anti-corruption principles.

“This is why NAVEX Global can operate successfully outside the United States – everyone is heading in the same direction, to the same place.”

Looking ahead, Barry Vitou, head of corporate crime at law firm Pinsent Masons, says that China is looming largest on the corruption agenda. “It’s a massive market for everybody and is undergoing significant political change,” he says.

GlaxoSmithKline, the British drugs maker, was accused by China last year of paying millions of pounds in bribes to Chinese doctors and healthcare officials. Dozens of GlaxoSmithKline employees were arrested.

“It is really ramping up its anti-corruption efforts,” says Mr Vitou. “Local law enforcement, once benign, is becoming aggressive. At the same time, thousands of Chinese officials have been dinged for their involvement in corruption.”

He suggests that while the FCPA is powerful, the UK Bribery Act could have a more influential effect on catching corruption overseas. “People shouldn’t kid themselves that the Bribery Act is a damp squib,” he says. ●

UK on the trail of bribery at home and abroad

The UK Bribery Act has been described as the most draconian legislation of its kind in the world – and its reach is truly global

WORDS
Peter Archer

It seems a long way from corporate headquarters and the regulation of business life. Your overseas agent is keen to secure a lucrative contract and pocket his commission. He calculates that a cash gift, showing his goodwill, will seal the deal. After all, it's the way things are done in this far-off part of the world – to compete, you have to pay bribes.

This scenario is not one of the alleged corruption cases currently being investigated by the UK's Serious Fraud Office, armed with the still largely untested Bribery Act

2010. But it could be.

For, although the supposed bribery was taking place on another continent and by a business associate, the company involved was UK based and the corruption, committed overseas, would nevertheless come under the jurisdiction of the UK courts and stringent anti-bribery legislation.

Furthermore, the Act covers businesses incorporated abroad, but which do business in the UK. Wherever in the world a business is based, if it trades

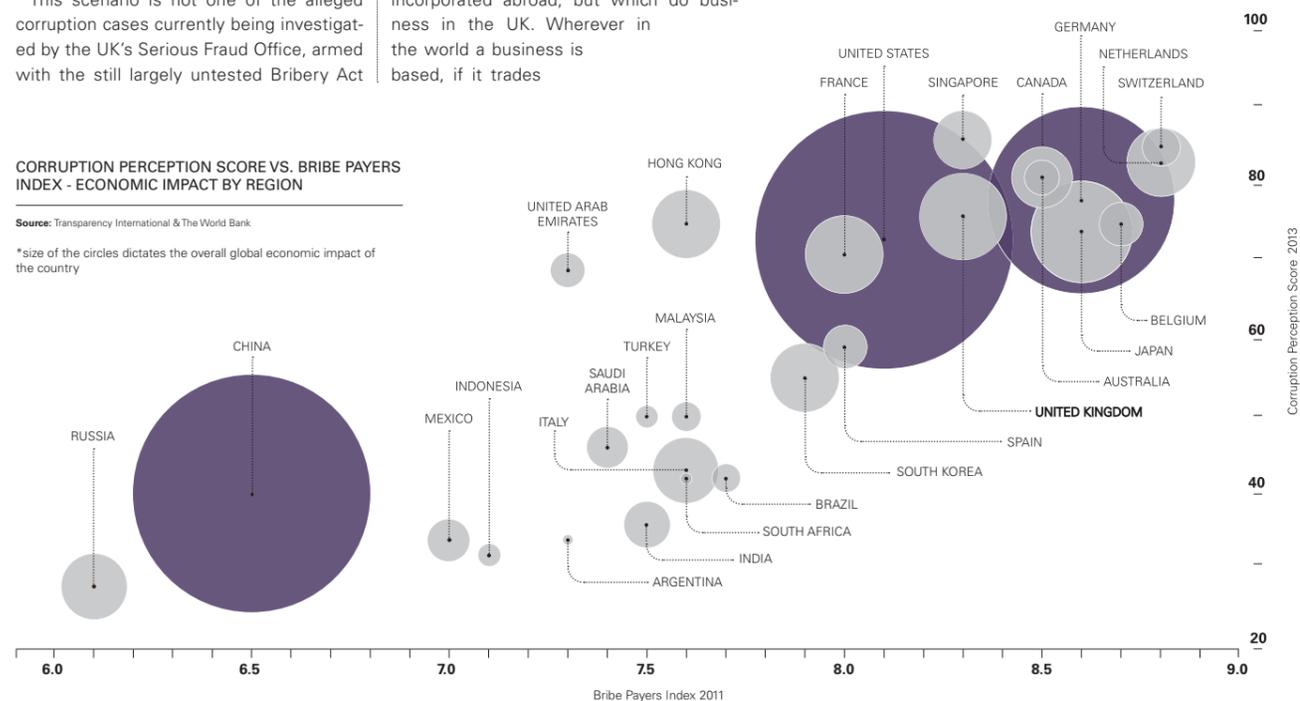
in the UK and is involved in bribery, then the UK courts have jurisdiction.

There has been much confusion – and fear – around the provisions of the UK Bribery Act, but one thing is clear – facilitation payments are bribes. And a third party acting on your behalf, even outside the UK, can incriminate you and your business.

CORRUPTION PERCEPTION SCORE VS. BRIBE PAYERS INDEX - ECONOMIC IMPACT BY REGION

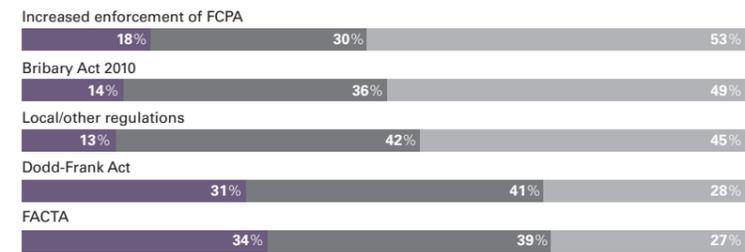
Source: Transparency International & The World Bank

*size of the circles dictates the overall global economic impact of the country

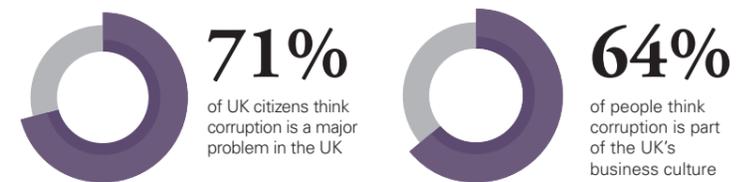


IMPACT OF ANTI-CORRUPTION REGULATIONS ON COMPANY POLICIES & PROCEDURES

● No impact ● Minor impact ● Major impact



Source: State of Anti-Corruption compliance survey, Dow Jones, 2013



Source: The European Commission, 2012. Special Eurobarometer 371: Corruption

The potential impact of such a third party acting illegally is wide ranging and could cause serious damage to reputation, not to mention the financial costs and penalties.

According to the letter of the law, your organisation may be liable for failing to prevent a person performing services for you in business from bribing on your behalf or accepting a bribe. However, it is very unlikely, therefore, that you would be liable for the actions of someone who simply supplies goods to you.

“ There is a full defence if you can show you had ‘adequate’ procedures in place to prevent bribery ”

The objective of the Act is not to criminalise well-run commercial organisations that experience an isolated incident of bribery on their behalf. So in order to achieve an appropriate balance, it provides a full defence. This recognises that no bribery prevention regime will be capable of preventing bribery at all times. However, the defence is also included to encourage organisations to put procedures in place to prevent bribery by third parties associated with them.

Guidance on the Bribery Act, issued by

the Ministry of Justice, points out that there is a full defence if you can show you had “adequate” procedures in place to prevent bribery. So how do you defend yourself and your business by putting the right procedures in place?

Government lawyers offer six principles to consider when assessing your risk and deciding what, if any, measures you need to put in place.

1 Proportionality – means the action you take should be proportionate to the risks you face and to the size of your business. You might need to do more to prevent bribery if you represent a big organisation or if you are operating in an overseas market where bribery is known to be commonplace.

2 Top-level commitment – means the boss should set a top-down example that bribery is not tolerated. Those at the top of an organisation are in the best position to guard against and prevent bribery by making sure executives, middle managers and the key people who do business with you – and for you – understand that bribery is outlawed.

3 Risk assessment – means you may wish to do some research into the markets you operate in and the people you deal with, especially if you are entering into new business arrangements or new markets abroad. UK diplomatic posts and UK Trade & Investment could be of help. In addition, there is a government-sponsored Business Anti-Corruption Portal online

aimed at small and medium-sized businesses involved in overseas trade.

4 Due diligence – means knowing exactly who you are dealing with as this can help protect your organisation from taking on people who might be less than trustworthy. Crucial to third-party risk, you may wish to ask questions and make checks before engaging others to represent you in business dealings, and continue to monitor your third parties to identify any changes in risk.

5 Communication – means communicating your policies and procedures to staff and third parties as this enhances awareness and helps to deter bribery by making clear the basis on which you do business.

6 Monitor and review – means keeping an eye on the anti-bribery steps you have taken because the risks you face and the effectiveness of your procedures may change over time, for example if you enter new markets.

Randy Stephens, vice president of advisory services at ethics and compliance experts NAVEX Global, says: “The UK Bribery Act has given people an opportunity to address anti-corruption in a fresh way. And the Act is positive because it covers commercial bribery offences as well as the corruption of government officials.”

Perhaps because of the long gestation period of the Bribery Act – it has been a long time coming and subject to delays – the UK government is now clearly attempting to allay the fears of those who take precautions and have nothing to hide.

But have no doubt, the Act contains some of the most stringent provisions and penalties of such legislation anywhere in the world.

It provides robust offences and enhanced sentencing powers for the courts, including unlimited fines and raising the maximum sentence for bribery committed by an individual from seven to ten years’ jail.

A specific offence relating to bribery of a foreign public official to obtain or retain business or an advantage in the conduct of business is created, along with a new form of corporate liability for failing to prevent bribery on behalf of a commercial organisation.

So-called facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes.

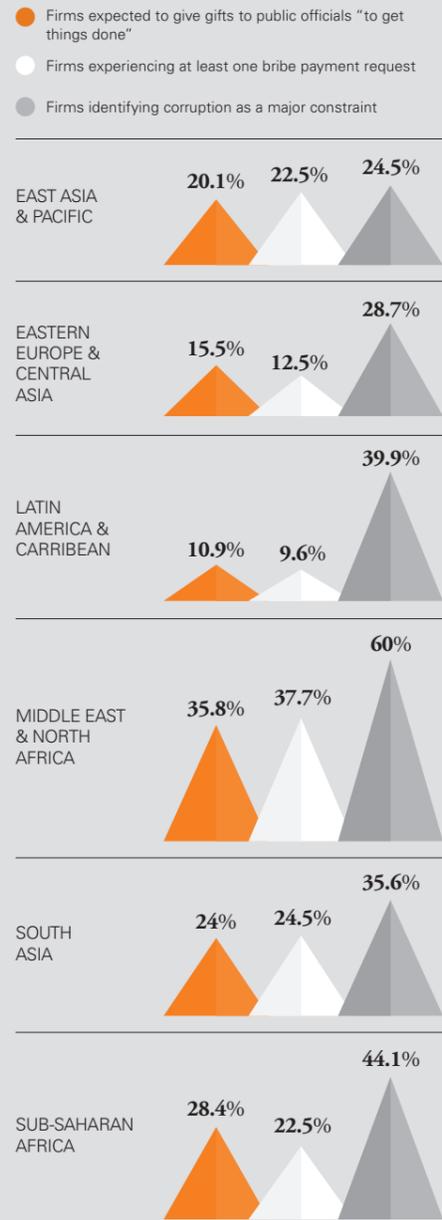
Genuine hospitality or similar reasonable and proportionate business or promotional expenditure is not deemed illegal by the Act. So you can continue to provide tickets for sporting events, take clients to dinner, offer gifts to clients as a reflection of your good relations, or pay for reasonable travel expenses in order to demonstrate your goods or services to clients. ●



MAPPING GLOBAL FRAUD & CORRUPTION

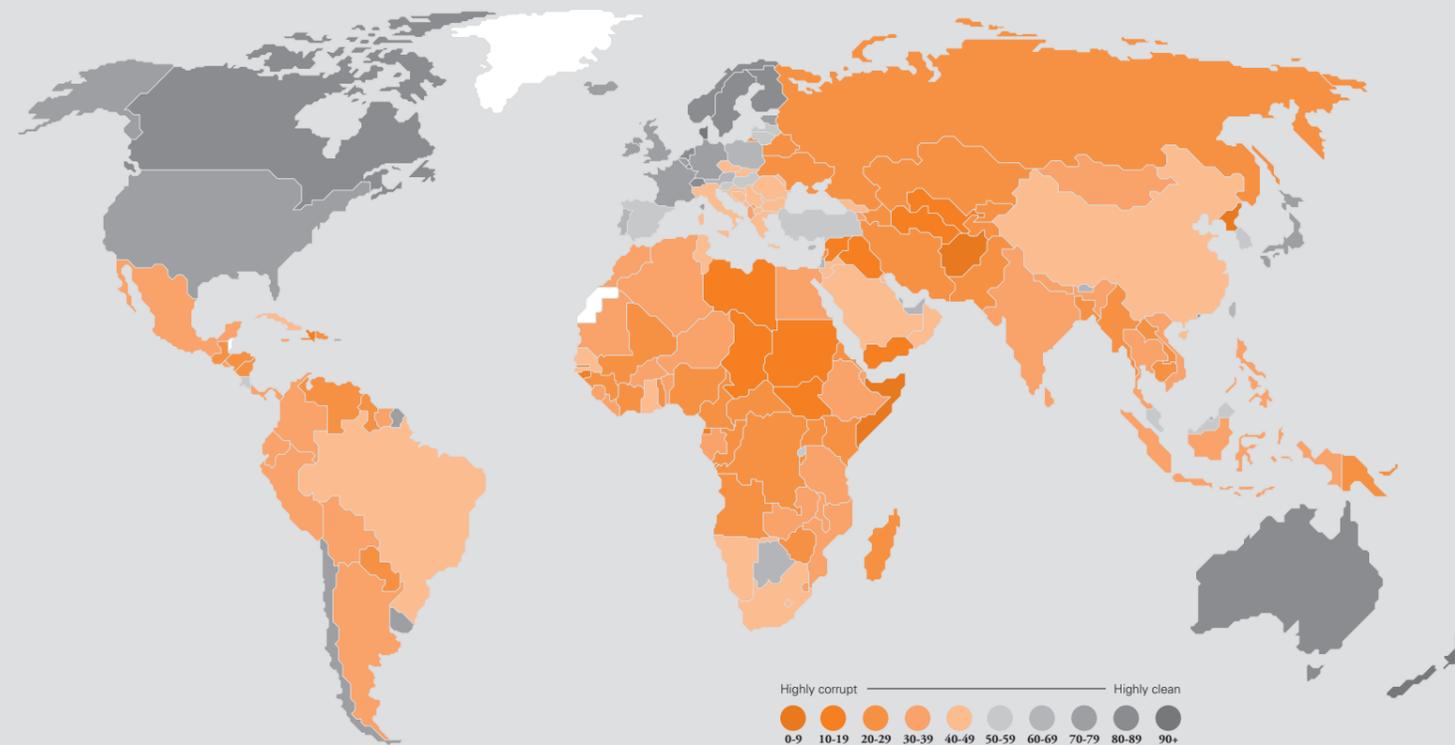
BRIBERY & CORRUPTION BY REGION

Source: Enterprise surveys, The World Bank, 2013



GLOBAL CORRUPTION PERCEPTION INDEX (CPI) SCORE 2013

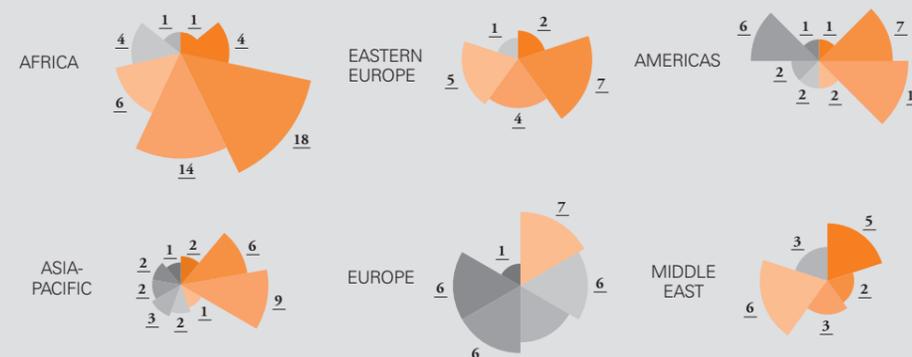
Source: Transparency International, 2013



GLOBAL CPI SCORE 2013 BY REGION

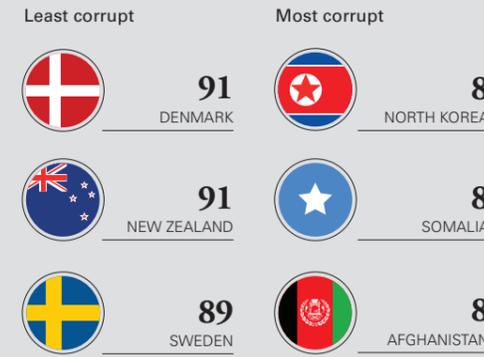
*number of countries in each CPI score group

Source: Transparency International, 2013



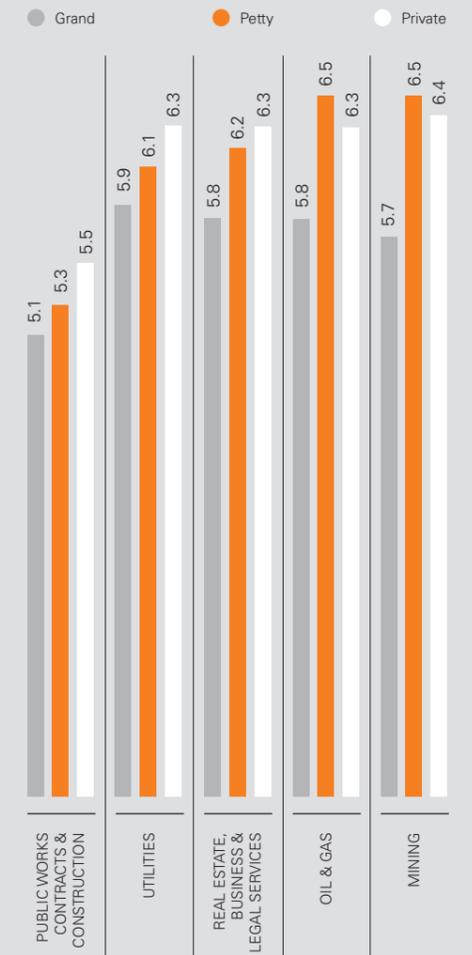
CPI SCORE 2013 - TOP 3

Source: Transparency International, 2013



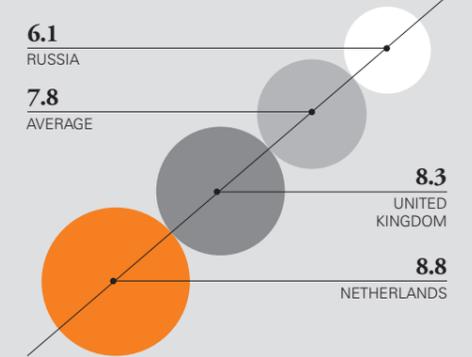
BRIBE PAYERS INDEX (BPI): SECTOR BY BRIBERY TYPE

Source: Transparency International, 2011



BRIBE PAYERS INDEX 2011

Source: Transparency International, 2011



How to create compliance culture

Pressure is mounting on businesses and governments to strengthen professional integrity, build trust and fight corruption

WORDS
Geoff Nairn

Ask any board director whether their firm has a compliance culture and the answer is likely to be a resounding yes.

Delve deeper and ask what concrete steps have been taken to create the compliance culture and you may struggle to get a convincing reply.

It is understandably difficult for corporate leaders to embrace the need to actively promote a culture that encourages compliance. After all, no one wants to believe their employees are dishonest.

But most unethical activity is done by otherwise honest employees who, due to circumstances or peer pressure, are compelled to act unethically. If they get away with it once, there's a great temptation to do it again.

That's the case if the activity benefits them

financially, as with fraud. But it's also true in cases of bribery, which perpetrators often see as rule-bending that benefits the company rather than as a criminal act.

This disconnect between personal integrity and business practices is obviously greater in regions where corruption is more widespread.

A good example is US fashion retailer Ralph Lauren Corporation, which in 2010 discovered that its Argentinean subsidiary had systematically paid bribes to customs officials from 2005 to 2009.

The bribes were only uncovered when the company introduced a more effective anti-corruption programme. Ralph Lauren immediately reported the bribes to the US Securities and Exchange Commission (SEC) and provided full assistance in its investigations.

The SEC was so impressed with the level of co-operation received that it entered into a non-prosecution agreement (NPA) with the retailer, the first time such agreement has been reached with a US company charged with violations of the Foreign Corrupt Practices Act (FCPA).

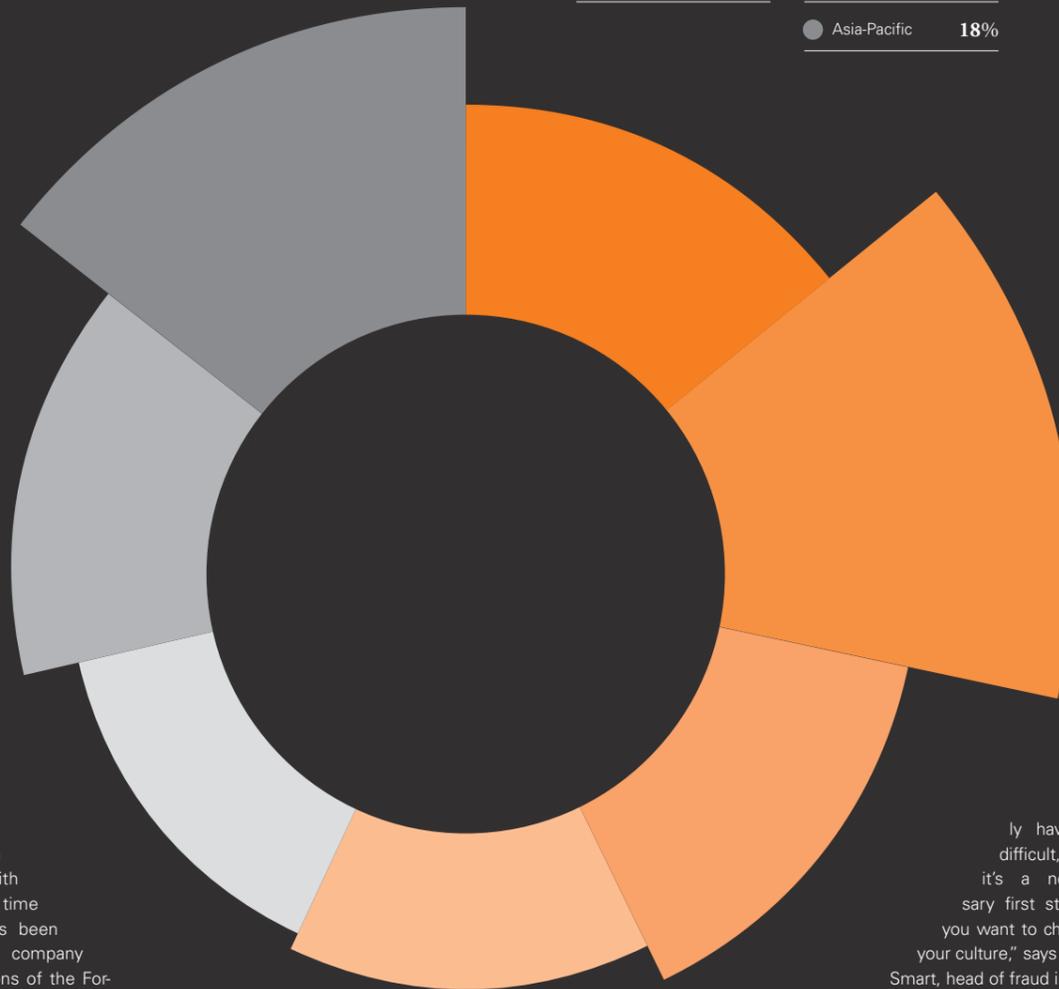
"This NPA shows the benefit of implementing an effective compliance programme," says Kara Brockmeyer, the SEC's FCPA Unit chief. Once the problem was discovered, Ralph Lauren put in place a battery of measures designed to change the culture to one that would sustain and reward compliance.

Prevention is better than cure, so what can businesses do to create a compliance culture without having to wait for law enforcement officials to come knocking at the door? "Understanding the culture you current-

Bribery and corruption in the past 12 months by region

Source: Kroll/Economist Intelligence Unit (EIU) 2012

All respondents	11%	Africa	21%
Middle East	10%	Latin America	7%
North America	6%	Europe	10%
		Asia-Pacific	18%



ly have is difficult, but it's a necessary first step if you want to change your culture," says John Smart, head of fraud investigation at EY, the accountancy and professional services firm.

To create a sustainable culture of compliance, business leaders need to find out what motivates employees and managers to comply.

If they comply mainly because of fear of getting caught, then the business needs to put in place rigorous procedures and controls. It also has to make examples of people who are caught engaging in unethical behaviour. "But most companies are too embarrassed and don't do this," says Mr Smart.

Employees are more likely to comply with compliance policies if the leadership models consistently put out the message that doing things the "right" way is how the company expects its employees to behave and is the best way to meet corporate goals

A much better option is to lead from the top and practise by example. Employees are more likely to comply with compliance policies if the leadership models consistently put out the message that doing things the "right" way is how the company expects its employees to behave and is the best way to meet corporate goals.

This could be in the form of a statement from the chief executive or board of directors on the company's values and principles. It could include ethical guidelines, with examples of ethical and unethical behaviour, and specific rules of conduct as well as details of subsequent staff performance evaluation.

Once a compliance programme has been established, regular and thorough assessments of specific risk and enforcement areas should be conducted.

Senior management should give full backing to training, led by compliance managers, which is relevant and interactive, and backed

up with appropriate online information.

Training material could feature practical examples and a question-and-answer format with separate guidance for specific functions and issues.

Testing levels of compliance is important and companies should monitor staff awareness of compliance requirements through preparing checklists and protocol for official, regulatory investigations.

Random internal investigations and audits should be carried out on subsidiaries and functions to test the practical application of company procedures.

Employees should be given the opportunity to report non-compliance by the company setting up a telephone hotline. Claims by whistleblowers should be properly investigated using the appropriate internal or external inquiry teams.

Introducing internal amnesty programmes in high risk areas, such as fraud and competition breaches, should also be considered. ●

4 STEPS TO A COMPLIANCE CULTURE



Designate a compliance owner

This person should be a well-qualified member of senior management with direct access to the governing body and with reporting responsibility.



Develop open lines of communication

Create a culture of openness that encourages employees to report potential problems, and set up a hotline for whistleblowers.



Implement written standards and procedures

To ensure that every employee is aware of the company's compliance culture, the policies and procedures relevant to each function need to be communicated in a manner that is easy to digest, relatable and measurable for the organisation.



Conduct appropriate training and awareness

Train your employees to recognise potentially risky situations or suspect behaviour by other employees, knowing ahead of time what their options are to raise questions and how to react appropriately.



The cost of failing to manage third-party corruption risk

Bribery and corruption are not only an assault on the rule of law, they are also an attack on company profits and ethical business behaviour

WORDS
Peter Archer

Damaging allegations, probing investigations and costly uncertainty – the headlines scream bad news for one of Britain’s biggest international businesses. The defence and aerospace giant Rolls-Royce is in the media spotlight for all the wrong reasons.

Hot on the heels of a UK Serious Fraud Office criminal investigation into allegations of bribery and corruption in China and Indonesia, Indian authorities have also launched inquiries into alleged bribes paid by the world’s second biggest manufacturer of aircraft engines.

The company has now cut the number of middlemen it uses as it steps up efforts to prevent bribery and corruption, and has re-

launched a 24-hour ethics telephone hotline for staff as well as creating a new role of head of risk training.

Rolls-Royce is a high-profile example of the corporate world ensnared in allegations of bribery and corruption, but there are others which have been equally damaging.

Construction giant Balfour Beatty, for example, agreed to pay £2.25 million plus a proportion of costs for a civil recovery order – made under the UK’s Proceeds of Crime Act 2002 – concerning its joint-venture contract to build the Bibliotheca Alexandrina in Egypt.

The UK’s Financial Conduct Authority (FCA) fined insurance broker Besso £315,000 for its failure to take reasonable care to establish and maintain effective systems designed to prevent and detect bribery and corruption risks. By agreeing to a settlement at an early stage of the FCA’s investigation, Besso qualified for a 30 per cent discount.

According to the FCA, the company maintained weak controls that “gave rise to an unacceptable risk that payments made by Besso to third parties could be used for corrupt practices, including paying bribes to persons connected with the insured or public officials”.

And the law just got tougher with the enactment in the UK of the long-awaited Bribery Act 2010 which comprises some of the most stringent anti-corruption legislation in the world.

As former Director of Public Prosecutions in England and Wales Lord Macdonald points out, the problem is particularly acute for companies with UK offices doing business in parts of the world where bribery is endemic.

“Everyone knows, for example, that in Africa and the Far East, cargo ships won’t be assigned berths until so-called facilitation payments have been made to harbour staff,” he says. “Indeed, the practice is so widespread that US legislation offers a carve out and these cash handovers are tolerated as part of doing business internationally.”

But under the UK Bribery Act, such a facilitation payment, as opposed to a legally required administrative fee or fast-track services, is a bribe and a criminal act.

Often the places where bribery is rife are emerging markets offering the greatest potential for new business. Doing business through third-party representatives in emerging markets is a common practice when international companies move into a new territory for the first time and this can

pose particularly high risks.

Randy Stephens, vice president of advisory services at ethics and compliance experts NAVEX Global, says: “Due to globalisation we are using more and more third parties and naturally there’s a need to get them involved in a compliance programme.”

“It is hard to control people who are out of your sphere of influence, but that’s where our due diligence software comes in. We can search for publicly available data to find out about the risk associated with third parties and our software means you can perform due diligence in a consistent manner.”

A PwC executive-level private-sector study – *Confronting corruption: The business case for an effective anti-corruption programme* – found that payments through third-party agents were the most prevalent form of corruption.

The study concluded there is a strong business case for having an anti-corruption strategy that goes beyond avoiding potential enforcement penalties as corruption is costing businesses in lost opportunities. PwC found that 45 per cent of executives say they have not entered a particular market or pursued a particular opportunity because of corruption risks; 39 per cent say their company has lost a bid because of corrupt officials; and 42 per cent say their competitors pay bribes.

If corruption is discovered, 55 per cent say the most severe impact would be to corporate reputation. This is greater than the combined total of those who say legal, financial and regulatory impacts would be the most severe.

More than 70 per cent believe a better understanding of corruption will help them compete more effectively, make better decisions, improve corporate social responsibility and enter new markets. Only 22 per cent were confident their current company controls identify and mitigate corruption. Having a publicised anti-corruption programme in place is seen as valuable or very valuable to a company’s brand by 86 per cent of respondents.

EY’s *2013 EMEIA Fraud Survey* of 3,000 board members, executives, managers and their teams across 36 countries in Europe, the Middle East, India and Africa found that multinational companies thought the financial performance of overseas subsidiaries might be distorted. For example, 54 per cent of respondents thought financial performance is often exaggerated in India, 61 per cent in

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Doing business through third-party representatives in emerging markets can pose particularly high risks
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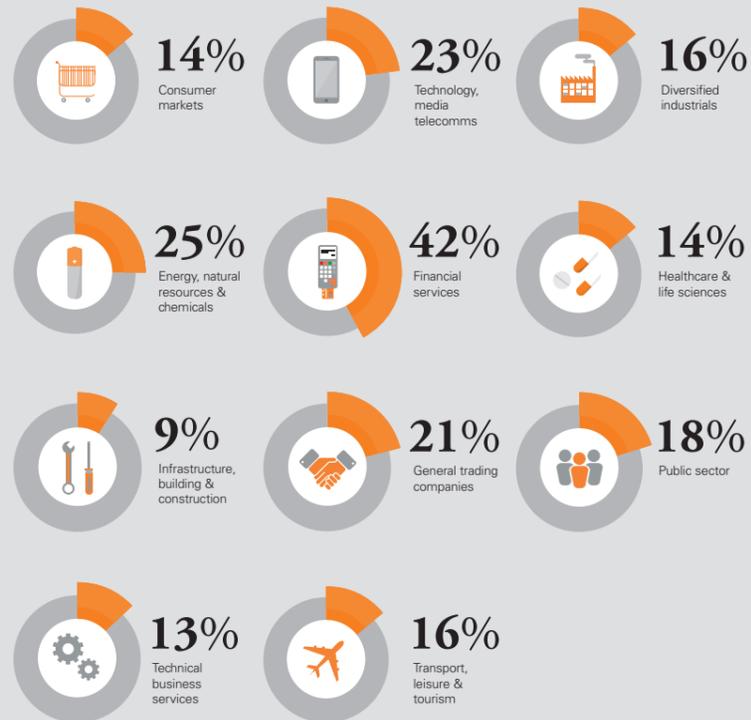
THE IMPACT OF CORRUPTION



ANALYSIS OF THIRD-PARTY RISK BY SECTOR

Source: Astrus Insights, 2013

* significant integrity risk identified with the subject(s) of the report



Russia and 68 per cent in Nigeria.

The Dow Jones *State of Anti-Corruption Compliance Survey 2013* of compliance professionals from more than 350 companies worldwide found that 71 per cent had stopped or delayed working with a business partner due to concerns about breaking anti-corruption regulations, an increase of nearly 20 per cent from four years ago.

Some 54 per cent called off projects due to confusion around anti-corruption regulations; more than 55 per cent say they stopped or delayed a push into emerging markets for the same reason; and 45 per cent have lost revenue due to unethical competition.

But ethical behaviour is not all about avoiding fines and extra costs. Increasingly, doing the right thing is being recognised as benefiting the bottom line in other ways. Good ethics and corporate social responsibility may attract customers to a company's products or services, boosting sales and profits.

Doing the ethical thing in business may

COMPANIES WITH FRAUD CONTROLS IN PLACE FOR PARTIES, CLIENTS & VENDORS



companies that lost more than 4% of revenues to fraud



all other companies

Source: Kroll/EIU

retain staff, reducing labour turnover and therefore increasing productivity. It may attract more people wanting to work for an ethical employer, thus reducing recruitment costs and enabling the company to hire the most talented employees.

It may attract investors, keeping the com-

pany's share price high, thereby protecting the business from takeover. On the other hand, unethical behaviour or a lack of corporate social responsibility may damage a company's reputation and make it less appealing to stakeholders; profits could fall as a result. ●

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