

Risk & Regulation
Anti-corruption

Can you control what you can't see?



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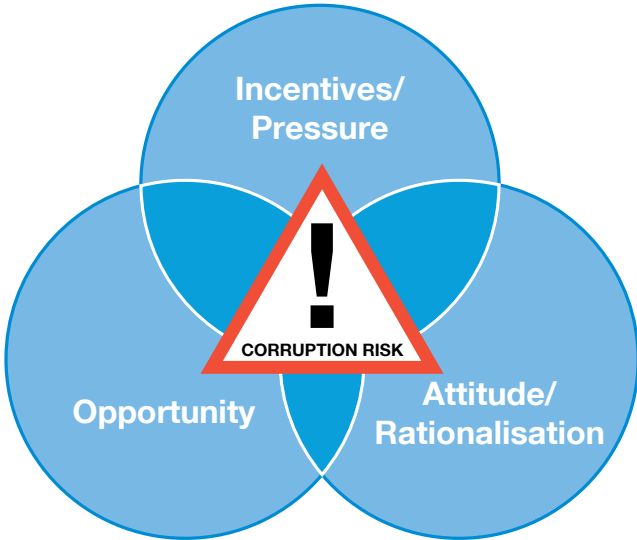
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Corruption in the global economy is a fact. No company is immune from the risk, particularly if it does business outside Western Europe and the US. Ensuring that you only do 'clean business' is not easy and if you have a problem, then the burden is on you to show that you took all the necessary steps to prevent it.

Have you got this covered?



Why this affects you

“One of the most important trends in FCPA enforcement is the increased aggressiveness of Government....US law enforcement authorities are increasingly focusing on foreign corporations.”
(Shearman & Sterling LLP Oct 2008)

Many people will be aware of the Foreign Corrupt Practices Act (FCPA). However, for UK companies the recent publication of the UK Bribery Bill 2009 creates an urgent requirement for anti-bribery compliance. Regulators around the world are targeting corruption and levying increasingly punitive fines. One corrupt act can easily be targeted by several regulators who will each levy separate fines.

The enforcement regime

Significant fines recently brought against businesses by regulators have included:

- Siemens - \$800m (Department of Justice and Securities and Exchange Commission, US) and \$569m (Office of the Prosecutor General, Germany)
- Halliburton - \$559m (Department of Justice and Securities and Exchange Commission, US)
- Mabey & Johnson - Fine TBA (Serious Fraud Office, UK)
- Aon - \$8m (Financial Services Authority, UK)
- Balfour Beatty- £2.25m (Serious Fraud Office, UK).

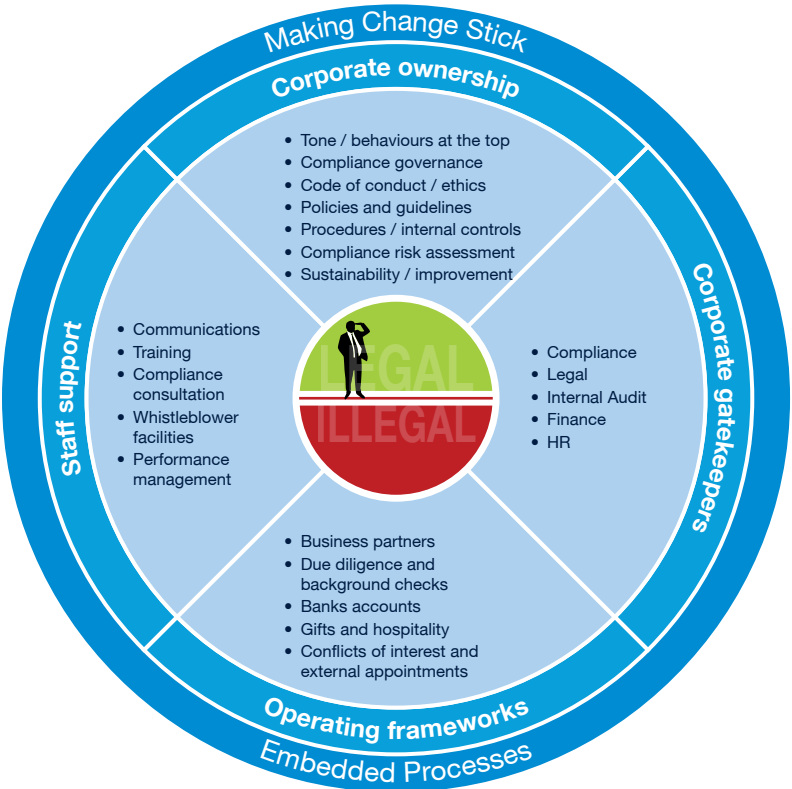
Many other major companies are currently under investigation. In addition to the fines and the disgorgement of profits, must be added the legal investigation and remediation costs, litigation and potential loss of government business. Perhaps even worse is the damage to reputation and the impact this has on customers, staff and potential recruits.

The personal consequences

The most obvious consequence is that a lot of senior people lose their jobs and their reputations. They may also be the subject of litigation by the company. However, the regulators – including the Department of Justice in the US and the Serious Fraud Office in the UK – have made it clear they intend to additionally increase the focus on individual penalties as well as corporate. In fact, the UK Bribery Bill will include unlimited fines and up to 10 years imprisonment. Meanwhile, in March 2009 the first extradition warrants were executed on British citizens for an FCPA violation.

What can you do about it?

Regulators are not content to wait and find out if businesses are behaving corruptly. They are actively targeting industries and businesses practices on a risk based approach. Furthermore, companies will incur additional penalties if they have not taken sufficient preventative measures. You need to have a robust compliance framework in place that addresses all the risks.



Are you risking it all?

You need to be asking yourself some basic questions to make sure you are protected:

Do you operate in high risk areas?

In order to manage risk, you need to know where it exists. Although corruption can happen anywhere, some countries are clearly more risky than others. Based on Transparency International's Corruption Perception Index, 75% of countries in the world could be perceived as highly corrupt.

Does your business model include large projects, tenders or long term contracts?

Large scale or long term projects or contracts can increase corruption risk because the sums involved make corruption more worth while.

Do you use intermediaries to do business?

“Third parties used as intermediaries are one of the most common channels through which bribes are made.”
(Transparency International)

You are liable for the actions of anyone acting on your behalf. Of particular risk are those who act on your behalf in a market facing relationship – or who deal with government agencies as intermediaries i.e. logistics agents.

Do you do business with, or have other interactions with, government officials?

Government officials are considered to be a particular risk because they have the ability to award valuable contracts, or grant favours, and yet are often paid relatively little. The definition of government officials is also broader than you might think, including:

- Ministers and civil servants
- Government employees including doctors, law enforcement and military
- Employees of any enterprise majority owned or controlled by the state
- Tax authorities and local government officials.

Are you acquiring new businesses or entering into joint ventures, particularly in high risk areas?

Businesses will be held liable by regulators for compliance failures in their acquisitions and joint ventures.

Do you provide customers with gifts, hospitality, entertainment or other benefits?

Gifts, hospitality and entertainment that step over the dividing line from relationship building and good manners and into attempts to influence key decision makers, are also the focus of anti-bribery legislation. Established norms are beginning to evolve around what is, and is not, acceptable and it is important to be in line with them.

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How can PricewaterhouseCoopers help?

We have some unique expertise in this area, because we have direct experience of advising clients on some of the biggest and most successful compliance remediation programmes yet undertaken – including that of Siemens and Ahold.

But don't just take our word for this. The US Department of Justice in its report acknowledged PwC's role supporting the Siemens working group devoted to implementing the compliance and remediation programme, and then said, "The reorganisation and remediation efforts of Siemens have been extraordinary and have set a high standard for multinational companies to follow."

We have a set of tools that help us move easily from risk assessment to diagnosis to design, and finally to implementation and testing. These principles can be tailored to any size of company and any size of exposure. Furthermore, once you have an appropriate compliance framework in place, we can help you make it sustainable.

The anti-corruption challenge

To make sure your business is managing corruption risk, these are some of the questions that you need to be asking yourself:

- Is the tone from the top right and do we know if it has the desired impact on our people?
- Do we perform an annual assessment to determine where the exposure to corruption exists?
- Is there an independent challenge when it comes to balancing commercial decisions with anti-corruption requirements?
- Are we comfortable that the typical employee will make the right ethical judgements in difficult situations and will know when and where to get support?
- How many intermediaries do we use, what services do they provide and do we have formal contracts?
- Does staff performance management embed anti-corruption requirements?
- Do we have the right balance between sanctions and support?

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Contacts

Consumer & Industrial Products (CIPS)

Steve Osei-Mensah	+44 (0) 7921 107 180
Chris Buxton	+44 (0) 7720 805 703
Simon Perry	+44 (0) 7740 024 957
Will Kenyon	+44 (0) 7764 235 287

Technology, InfoComms, Entertainment/Media & Energy (TICE)

John Higgins	+44 (0) 7808 731 942
John Tracey	+44 (0) 7764 903 061

Financial Services (FS)

Mark Hunter	+44 (0) 7715 376 798
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