

MARKET BULLETIN

REF: Y4278

Title	Bribery and Corruption
Purpose	To inform on forthcoming legislation and provide guidance on compliance
Type	Event
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Date	13 May 2009
Deadline	N/A – Guidance only
Related links	N/A

For the attention of compliance officers, managing agency and members agency staff involved in financial crime compliance. This bulletin is also being issued to compliance officers of Lloyd's accredited brokers for information purposes.

PURPOSE

The purpose of this bulletin is to make Market practitioners aware of the scope and impact of corruption within the UK, to provide an overview on forthcoming legislation and to advise on best practice guidance. It is recognised that the guidance below pre-empts the new Bribery Act which is likely to become law by 2010 but in anticipation agents should now begin reviewing their systems and controls to ensure compliance.

The Act intends to simplify and clarify existing legislation, allowing for easier enforcement/prosecution and to this end also introduces a new corporate offence of negligently failing by a company (or limited liability partnership) to prevent bribery. This offence will therefore have an impact on managing agents and members agents ("agents") and their senior management and will require consideration of its legal/criminal bearing

upon their business and whether their systems and controls are robust or require implementation to minimise exposure to not only the legal but also regulatory and reputational risk. For this reason, the bulletin includes a section on risk management that agents may find when reviewing their systems and controls.

Consultation has been held with the Market in putting together this guidance. The key points of the bulletin have been summarised below and further details are set out in Appendix 1.

SUMMARY OF KEY GUIDANCE POINTS

- Corruption is defined as “bribery” i.e. the payment in money or in kind that is given or taken in a corrupt relationship. It can also involve “the abuse of entrusted power for private gain”, “an inducement to show favour”, “the perversion or destruction of integrity in the discharge of public duties by bribery of favour” and “the use or existence of corrupt practices especially in a state or public corporation.”
- Current legislation in the UK is considered to be unclear and difficult to enforce and therefore in need of reform. The Law Commission has undertaken a review of bribery and corruption with a view of reforming the law. Their recommendations are likely to become law by 2010. The new offences which will also apply to acts conducted overseas if it would amount to an offence in the UK and be applicable to foreign nationals working and residing in the UK, will be:
 - two general offences of bribery – 1) Offering or giving a bribe to induce someone to behave, or to reward someone for behaving, improperly and 2) requesting or accepting a bribe either in exchange for acting improperly, or where the request or acceptance is itself improper;
 - the offence of bribing a foreign public official, where the intention is to influence that official in his or her capacity as a foreign public official, in the obtaining or retaining of business advantages;
 - a new corporate offence of negligently failing by a company or limited liability partnership to prevent bribery being given or offered by an employee or agent on behalf of that organisation.
 - for both public and private sectors and the penalties upon conviction will be a sentence of up to ten years’ imprisonment following conviction on indictment
- Certain UK entities are also subject to the US Foreign and Corrupt Practices Act of 1977 (“USFCPA”) which prohibits bribery of foreign government/political officials. The Act makes it illegal for:
 - any issuer, domestic concern or anyone acting within the jurisdiction of the United States to with “corrupt intent”, directly or indirectly offer, pay, promise to pay or authorise payment of “anything of value”, to a “foreign official” (e.g. foreign government, worker, employee/government department, state-owned enterprises) for the purpose of obtaining or retaining business or securing any improper business advantage.
- USFCPA impacts on US persons such as issuers (i.e of securities on US exchanges), US citizens, nationals or residents, companies, partnerships, associations with principal place of business in the US or which are organised under

the laws of the US. Furthermore, it also has extra-territorial reach to include foreign individuals/companies if any act is, directly or through agents, in furtherance of a corrupt payment to take place in the US and extends jurisdiction to US parent corporations for the acts of foreign subsidiaries.

- If US systems such as the mail or banking system are used to perpetrate/collude in corruption, the perpetrator can fall foul of the USFCPA even if not a US person.
- Sound risk management and controls by agents to identify suspected corrupt payments/practices are imperative and necessary to not only avoid breaches of legislation/prosecution but also to meet the requirement of FSA principle 3 and subsequent regulatory action. These may include:
 - identifying high risk jurisdictions and business sectors;
 - an anti-corruption policy for staff/enforceable Code of Conduct;
 - disciplinary sanctions for policy breaches;
 - procedures for staff to take if a bribe is offered or they are asked to make one such as advising that their company operates a strict anti-bribery policy and they are liable to prosecution if a bribe is accepted;
 - prohibition of any offers, giving or acceptance of bribes, gifts, hospitality or expenses by employees or other parties involved that could influence the outcome of a transaction;
 - controls regarding donations to charities/political parties to ensure they cannot be misconstrued to obtain a business advantage;
 - reporting any evidence of a foreign rival company acting corruptly to appropriate authorities;
 - maintaining accurate records of business transactions to show transparency and compliance.
 - Dual signatories for payments;
 - central monitoring of payments;
 - legal sign off for all contracts;
 - audits of subsidiaries;
 - due diligence on joint venture partners to ensure compliance to the same standards;
 - anti-corruption procedures relating to contracts, gifts, hospitality and entertainment embedded across the company in all relevant departments.
- There are no clear estimates on the scale of corruption but it is said to be the fastest growing economic crime in the UK
- Some sectors are more vulnerable than others such as public works contracts/construction, real estate and property development, oil and gas, heavy manufacturing and mining.
- There appears to be a lack of awareness in the UK as to the type of transactions that can be recognised as corrupt and companies may need to ensure staff are better trained to recognise instances of bribery within its organisation.

- Bribery offences can overlap with money laundering offences in that the proceeds of corruption may be laundered. The City of London Police and the Metropolitan Police have set up dedicated units to investigate instances of overseas bribery.
- The Aon case is an indicator of the FSA's appetite and powers to enforce regulatory action against companies who have weak anti-bribery controls;
- There is increasing evidence of domestic and international regulators/prosecutors working together and where a domestic authority decides against enforcement, it does not necessarily mean that an international authority will follow suit. For example, whilst the SFO dropped its investigation of the BAE case, the US DOJ is currently investigating it.
- The SFO has undertaken its first civil recovery order and is developing its use of asset recovery and plea bargaining in investigating corruption cases.
- If a problem is identified, early self-reporting, remedial action and full co-operation with regulators/prosecutors is imperative.
- Underwriting agents should also disclose such matters to Lloyd's International Regulatory Affairs, reporting to Andy Wragg (see below) or to mlro@lloyds.com

This bulletin has been sent to all managing agents, approved run-off companies and members' agents and is provided to Lloyd's accredited brokers for information.

If you have any questions on this bulletin please contact either Andy Wragg on 020 7327 6387 / andy.wragg@lloyds.com or Rachael Connor on 020 7327 6380 / rachael.connor@lloyds.com or Steve Payne on 020 7327 6538 / stephen.payne@lloyds.com

APPENDIX 1

INTRODUCTION

The aim of this paper is to make Market practitioners aware of the scope and impact of corruption within UK business and the applicable legislation (both domestic and overseas). In so doing, practitioners attention should be focused on the need to review their current systems and controls regarding bribery and corruption. It also focuses on the imminent reforms to UK bribery legislation which will be implemented by a new Act in 2009/10 and which amongst other offences, introduces a new corporate offence of negligent failure by a company or limited liability partnership to prevent bribery being given or offered by an employee or agent on its behalf. Highlighted in this paper is the fact that FSA regulatory action, civil recovery procedures by the SFO and increased policing using the Proceeds of Crime Act are additional weapons alongside the proposed criminal offences and signifies a more proactive approach by regulators and prosecutors in combating corruption in the UK. Historically, the UK's anti-corruption legislation has been seen as outdated, cumbersome and difficult to enforce and the proposed reforms look to alleviate this and to reflect increased international pressure from The Organisation for the Economic Co-operation and Development ("OECD") and UN to bring the UK into line with its international partners. Furthermore, adequate systems and controls to help identify, detect and prevent risk of corruption are very much the focus of enforcers and this will be discussed in more detail further in the paper.

However, it is first important to define what corruption is and how it may manifest itself.

CORRUPTION DEFINED

Defining corruption is notoriously difficult but common definitions are "the abuse of entrusted power for private gain", "an inducement to show favour", "the perversion of destruction of integrity in the discharge of public duties by bribery of favour" and "the use or existence of corrupt practices especially in a state or public corporation." In the UK, corruption is commonly regarded as "bribery" i.e. the payment in money or in kind that is given or taken in a corrupt relationship. Therefore for the purposes of this guidance, this will be the applicable definition.

THE MANIFESTATION OF CORRUPTION

Corruption can occur in both the private and public sectors and range from a single corrupt act by an individual to the involvement of a range of intermediaries, international borders or simply be part of an inherent phenomenon within the social, economic and political system of a country and can be seen as more prevalent in certain jurisdictions and business sectors.

Its essence can be defined in terms of "grand or political corruption" i.e. where laws/regulations are ignored by the authorities or tailored to their interests or "petty or bureaucratic corruption" where a public official demands payment (also known as a facilitation payment) to expedite carrying out an act he/she is officially required to do. Three commonly seen examples of corruption, namely "bribery of high-ranking politicians or political parties", "bribery of low-level public officials to 'speed things up'" and "the use of personal or familiar relationships to win public contracts" were highlighted by Transparency

International¹ in its 2008 Bribe Payers Survey and measured against the likelihood of foreign firms engaging in them abroad. The results show that the UK has been ranked fifth out of twenty two countries.

Transparency International also noted that certain industry sectors, for example public works contracts/construction, real estate and property development, oil and gas, and heavy manufacturing and mining are perceived as more vulnerable sectors to corruption within the public sector whereas the cleanest sectors, in terms of bribery of public officials, were identified as information technology, fisheries, and banking and finance.

Transparency International also ranked sectors according to the likelihood of companies engaging in “state capture”. This is where corruption is used to assert undue influence on government rules and regulations by making private payments to public officials. The Bribe Payers Survey found that the sectors of public works contracts and construction; oil and gas; mining; and real estate and property development were perceived most likely to use legal or illegal payments to influence the state.

The World Bank state that the developmental costs of bribery are approximately US\$1 trillion and PricewaterhouseCoopers, in its 2007 Economic Crime Survey, consider it to be the fastest growing economic crime, however it is difficult to obtain detailed statistical information about corruption, its scale and cost for a specific country.

A 2007 survey by the Association of Chartered Certified Accountants (“ACCA”) on the impact of corruption on UK SMEs² identified that although there are no clear estimates on the scale/impact on UK business specifically, 41% of respondents surveyed said that they had been offered a bribe at least once and 51% thought that corruption is common in UK SMEs. The data also demonstrated that 70% thought that corruption could exist in any type of transaction, with 66% specifying that it could exist in private sector contracts, 63% considering that it could occur in cross border trading, 64% thought it could result from supply chain pressures and 44% that if it did occur within the UK it would more likely manifest itself in bribery of public officials.

However in reality, many UK businesses have little knowledge of corruption and as demonstrated by the ACCA Survey there appears to be a lack of understanding as to what corruption actually means at a transactional level. For example, half of respondents were not able to distinguish between corruption and corporate hospitality, contract related consultancy fees/facilitation, business related gifts/unsolicited payments or recognise “the suggestion of preferential treatment by regulatory officials” as potential corruption. It is therefore possible that firms are engaging in corrupt practices without being aware that they are doing so. Nevertheless ignorance is not a defence in law, i.e. against illegally engaging in corruption and raising awareness of what constitutes corruption is imperative.

As will be discussed later, it is therefore important that agents have clear policies with identified examples of acceptable and unacceptable practices and limits, for example, as to

¹ Transparency International, a global anti-corruption non-governmental organisation, is a coalition of more than 90 autonomous national chapters who are committed to fighting corruption using transparency as a major tool. TI is dedicated to combating corruption at the national and international levels through constructive partnerships with governments, the private sector, civil society and international organisations.

² Small Medium Enterprises

the values of gifts that can be received/given and appropriate corporate hospitality and that these policies are communicated to staff and external parties where applicable.

THE CAUSES AND IMPACT OF CORRUPTION

Bribery may occur for reasons such as to gain a competitive advantage, feeling compelled to do so to compete with rival companies, being forced to do so e.g. police demanding bribes, or not realising that it is criminal but merely part of normal business practice. Whatever the reason, lack of transparency, control and differing standards encourage its proliferation.

It is recognised that there is a close link between corruption and poverty. Corruption can divert resources for public services, often leaving the already poverty stricken without access or in the position where they must pay bribes or other illegal payments to obtain health care, education and sanitation. Research also shows a strong correlation between low human development rankings and corruption, for example corrupt environments discourage outside investment which in turn contribute to under-development.

CORRUPTION IN THE CONTEXT OF FINANCIAL CRIME

Corruption can stand alone as an economic crime, however there is overlap between it and money laundering and fraud and therefore offences under the Proceeds of Crime Act (2002) and/or the Fraud Act (2006) may also be applicable where an act is deemed corrupt.

Money laundering offences may be present in a corrupt act in order to conceal the proceeds of financial gain. London, as host to the World's largest financial centre, has the potential to move large sums without notice, and therefore its ability to prevent money laundering will have an impact on preventing and detecting international corruption. Some progress in this respect has been seen in the recently formed Proceeds of Corruption Unit in the Metropolitan Police which successfully used money laundering legislation in 2007 to convict Joyce Oyebanjo who was sentenced to three years in jail in the UK for laundering £1.4 million in public funds stolen by a Nigerian state governor (Reuters, 2007).

There is also some overlap between fraud and bribery offences, however a differing element between the two is that a bribery offence can be committed if the benefit is non-financial such as excessive corporate hospitality or sexual favours, whereas the loss/gain set out in a fraud offence relates to a financial or proprietary loss only. Further, where public officials are concerned and payments are accepted for actions they are already bound to do, a bribery offence must demonstrate that improper conduct such as breach of duty to impartiality or acting in someone's best interests is related to the acceptance of the payment. In contrast, the fraud offence may be the acceptance of payment itself.

LEGISLATION AND REFORM

UK LEGISLATION

The UK's current legislative framework around bribery and corruption is complex. Corruption offences are found in common law offences and in several statutes, the main ones being the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906 as supplemented by the Prevention of Corruption Act 1916. In addition there are a number of specific statutory offences including the Honours (Prevention of Abuses) Act 1925. The Anti-terrorism, Crime and Security Act 2001 ("ATCSA") extended jurisdiction to

overseas corruption and it is illegal now for any UK national/company to bribe foreign public/private officials or office holders even if the act was carried out overseas. However this does not extend to non-UK nationals resident in the UK or non-UK subsidiaries of UK entities.

The current legislation is seen as cumbersome, inadequate and not easily enforceable and during the last decade there has been much consultation to reach a consensus on a new bribery law. This is also important as the UK needs to ensure that it is fulfilling its international obligations to combat corruption under initiatives such as the OECD Convention on combating bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption (UNCAC) with the OECD stating that “reforms are urgently needed and should be dealt with as a matter of political priority.” (OECD Phase 2bis report, 2008). Therefore, the Law Commission published its final report in November 2008 on the proposals for a draft bill which was published on 25 March 2009 and is likely to become law later in 2009/early in 2010.

The main recommendations are as follows:

- Replacement of existing law with two general offences of bribery, one concerned with taking bribes (the recipient), and the other with giving them (the provider) i.e. 1) requesting or agreeing to receive or accepting a bribe either in exchange for acting improperly or with the intention to act improperly, or where the request or acceptance is itself improper and 2) offering or giving a bribe to induce someone to, or to reward someone for, behaving improperly (not in good faith, impartially or abusing a position of trust);
- There is also a specific offence of bribing a foreign public official or someone at his/her request, where the intention is to influence that official in his or her capacity as a foreign public official, in the obtaining or retaining of business advantages. This can be committed directly, through a third party or via a connected third party.
- There will also be a new corporate offence of negligent failure by a company or limited liability partnership to prevent bribery being given or offered by an employee or agent on behalf of that organisation. The penalty for this is an unlimited fine.

Facilitation payments are not specifically addressed but it is considered that the terminology captures them.

Additionally, the general offences will apply to acts conducted outside of UK jurisdiction if it would amount to an offence within the UK and not only to a UK national but also to foreign nationals residing and conducting business in the UK.

The current law distinguishes offences between the public and private sectors however the proposal is that the general offences will deal with both sectors. The penalties upon conviction will be an unlimited fine and a sentence of up to ten years' imprisonment following conviction on indictment and on summary conviction, a £5,000 fine or 12 months' imprisonment.

US LEGISLATION

The US Foreign and Corrupt Practices Act of 1977 (“USFCPA”) prohibits bribery of foreign governments/political officials. It is a far reaching piece of legislation and makes it unlawful for any issuer (of securities on US exchanges), domestic concern or anyone acting within the jurisdiction of the United States to with “corrupt intent”, directly or indirectly offer, pay,

promise to pay or authorise payment of “anything of value”, to a “foreign official” (e.g. foreign government, worker, employee/government department, state-owned enterprises) for the purpose of obtaining or retaining business or securing any improper business advantage.

Anything of value can be interpreted to mean money (including discounts), gifts, entertainment or travel and property or investments. As well as direct payments, any payments made through a third party are covered. Even modest payments can trigger an offence.

For US persons such as issuers, domestic concerns, US citizens, nationals or residents, companies, partnerships, associations with principal place of business in the US or which are organised under the laws of the US, if using an agent or distributor in a foreign jurisdiction, it is imperative that they carry out due diligence such as requesting certification from the agent that it is not related to a government official and that they will not pass any documents to a government official. It is important to ensure that the work being carried out is documented by a contract and is evidenced as a “real service” and legitimate business.

There is also a Books and Records provision under the USFCPA, which requires Securities and Exchange Commission (“SEC”) registered or reporting issuers to make and maintain accurate books and records and to implement adequate internal accounting controls. The (SEC) regulates the accounting and records provisions and can take civil proceedings against parties, whereas the Department of Justice (DOJ) investigates and prosecutes offenders.

Since 1988 the USFCPA also has extra-territorial reach to include foreign individuals/companies if any act is, directly or through agents, in furtherance of a corrupt payment to take place in the US and it also extends jurisdiction to US parent corporations for the acts of foreign subsidiaries. Furthermore, if US systems such as the mail or banking system are used to perpetrate/collude in corruption, the perpetrator can be subject to the USFCPA even if not a US person.

One of the differences between the proposed UK and US legislation is that UK Companies can use a defence that they have systems in place but in the US the corporate criminal liability is wider and controls and systems cannot be used as a defence.

Facilitation payments are excluded under the USFCPA but this is a narrow exclusion and only allows their use if absolutely necessary, a modest amount, customary, sporadic and legal in the jurisdiction itself. Most countries do not permit facilitation payments.

The penalties for USFCPA are a \$100,000 fine and 5 years imprisonment for individuals; for corporates, a \$2m fine or twice the gain i.e “disgorgement” and where government contractors are concerned, debarment.

ENFORCEMENT TRENDS /CASE STUDIES

AON

FSA regulated firms are at risk of breaching their regulatory obligations if they do not have proper systems and controls in place to prevent bribery and are liable to regulatory action as well as to criminal penalties. On 8 January 2009, the FSA announced that it had fined

Aon Limited, £5.25 million, its largest financial crime related fine. The fine was discounted by 30% due to Aon agreeing to an early settlement.

The FSA's action resulted from Aon, between January 2005 and September 2007, "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 firms and individuals" who assisted Aon in winning business from overseas clients particularly in high risk jurisdictions. (FSA press release 2009).

The FSA findings stated that suspicious payments had been made by Aon of approximately \$7million to overseas companies and individuals as a result of poor controls. The findings did not consider that Aon had been purposefully remiss but that it should have recognised that these types of transactions could involve potential bribery or not have a valid commercial purpose behind them.

The fine was awarded for Aon's breach of Principle 3 of the FSA's principles for business which all regulated companies must comply with to ensure reasonable care is taken to have effective systems and controls for proper risk management.

The FSA report highlighted a number of failings in Aon's controls such as:

- Failure to properly assess, review and change systems and controls regarding payment to overseas third parties;
- Inadequate due diligence, authorisation and payment procedures;
- Failure to monitor ongoing relationships with overseas third parties;
- Inadequate training of staff, particularly lower level staff;
- Lack of oversight by management.

Aon reported the payments to the authorities, once it became aware and took a number of remedial actions to enhance its controls, also employing the services of forensic accountants/external lawyers. It also implemented a global anti-corruption policy, limiting the instruction of third parties and the circumstances in which payments can be made to overseas third parties, especially in countries considered high risk. It has also established a working group at senior management level, continues to employ external lawyers to train staff how to operate a risk based approach towards the management of overseas payments particularly to third parties and provides an on-line training system. Furthermore staff are assessed to evaluate their compliance with its anti-corruption policies, with disciplinary action to support any non-compliance.

This case signals a message by the FSA that it has the tools and appetite to take enforcement action against regulated firms and that "it is completely unacceptable for firms to conduct business overseas without having in place appropriate anti-bribery and corruption systems and controls."

Another aspect highlighted by the AON case is that there is a growing trend seen in cases for international regulatory co-operation. Whilst overseas enforcement agencies such as the SEC and the DOJ made initial enquiries into the AON case it seems they have on this occasion, deferred to the FSA. This may not always be the case and enforcement action could still be pursued by an overseas authority (as in the BAE case) even if the domestic regulator/prosecutor has decided not to pursue the matter.

The USA is very active in enforcing its legislation globally and has a high volume of investigations on its books. Between 2001 and 2004 it resolved or charged 17 cases whereas between 2005- 2008 it resolved 42 cases, i.e. a 200% increase in 4 years. Some examples of US intervention include:

- In December 2008, Siemens were fined \$800 million by the SEC and the DOJ on charges of bribery to win lucrative overseas contracts and falsifying corporate books. The DOJ reportedly stated that it was the biggest case in “scope and magnitude” it had ever seen, the severity of which is reflected in the level of the fine imposed. In turn this demonstrates the authorities willingness to impose fines/punishment which they consider reflects the severity of the case.
- In 2007 Baker Hughes was penalised \$44 million for FCPA breaches in connection with \$44.1 million payments to an Isle of Man consulting firm when they knew that portions of the payments were intended as a bribe of an official of the Kazakhstan state oil company.
- The DOJ has opened an investigation into the BAE-Saudi arms contract, which was dropped as a case by the Serious Fraud Office because BAE undertook business in the US.
- Christian Sapsizian, a non-US citizen, employed by a non-US company was sentenced in September 2008 to 30 months in prison for engaging in an elaborate bribery scheme to obtain a mobile telephone contract from the state-owned telecommunications authority in Costa Rica by making more than \$2.5 million in corrupt payments to Costa Rican officials. The use of the US banking system to pay bribes violated the USFCPA,

PREVENTION AND ENFORCEMENT

It is anticipated that the legislative reforms will assist the prevention efforts currently in place. Internationally, as well as the OECD and UN, organisations such as the World Bank, TI, the Corner House³ and TRACE⁴ bring together governments, companies, civil society groups, investors and international organizations to educate and ensure global standards are in place to improve governance, transparency and accountability.

On a national scale, policing of corruption has recently been re-prioritised with the SFO appointing a new head of Anti-Corruption, employing more investigators and enhancing its investigation practices and intelligence sourcing to expedite cases. Additionally it is focussing on alternative measures (aside from prosecution) e.g. monitoring, training and restitution for firms accused of corruption.

³ The Corner House is a not-for-profit company limited by guarantee under UK law and its aim is to support democratic and community movements for environmental and social justice.

⁴ TRACE International, Inc. (TRACE) is a non-profit membership association that pools resources to provide practical and cost-effective anti-bribery compliance solutions for multinational companies and their commercial intermediaries (sales agents and representatives, consultants, distributors, suppliers, etc.).

The SFO is also developing its use of asset recovery and plea bargaining in the process of investigating and prosecuting a case and has been consistently stating the importance of firms self-reporting to the SFO when corruption is discovered together with the implementation of sound controls and systems to help mitigate. (SFO press release, 18 November 2008). For example, in October 2008 the SFO announced that it had undertaken its first civil recovery order involving a major plc, in this case Balfour Beatty plc. This was in response to new powers granted to the SFO under the Proceeds of Crime Act 2002 which enables it to recover property obtained by unlawful conduct. These provisions do not require a specific offence to be charged but merely the need to demonstrate that the property is further to the proceeds of a crime.

In Balfour Beatty's case the allegations centred on bribery and it accepted that one of its subsidiaries had been involved in unlawful conduct relating to payment irregularities. It agreed to a £2.25 million settlement with a contribution to the cost of proceedings, to implement enhanced compliance systems and to submit to an external monitor for a certain time period. The SFO stated that it "welcomed" the stance that Balfour Beatty had taken in investigating and self-reporting the matter and implementing enhanced controls. (SFO Press Release, 6 October 2008)

In addition the Overseas Anti-Corruption Unit ("OACU") and the previously mentioned Proceeds of Corruption Unit operated by the City of London and Metropolitan Police respectively were established in 2006 to investigate international corruption, focussing on money laundering in the UK by corrupt politicians from developing countries and bribery by UK businesses overseas. In September 2008, the OACU had its first success when a Ugandan government official, Ananias Tumukunde, who received £83,000 in bribes from a UK company director, Niels Tobiasen, was sentenced to a year's imprisonment with Mr Tobiasen receiving a 5 month suspended sentence. (*The Guardian* 23/09/08 and 25/09/08)

Further to the enforcement action against Aon Ltd, the FSA intends to carry out a thematic review of commercial insurance brokers. The results will be published on the FSA's website once completed so that insurance intermediaries and other parties can use the results to assess their compliance.

The report will cover:

- firms' governance of bribery and corruption risk;
- policies, procedures and codes of conduct,
- training and awareness;
- risk assessment;
- staff recruitment and vetting;
- the use and due diligence of third parties involved in obtaining or retaining business;
- controls over payments to third parties and accounts payable;
- remuneration of staff and third parties;
- whistle-blowing procedures/incident reporting and management;
- suspicious activity reports "SARs" made by firms.

EFFECTIVE RISK MANAGEMENT

As mentioned earlier, failure to implement and manage adequate anti-bribery controls exposes firms to significant risk to corruption and may also increase the likelihood of criminal and/or regulatory sanctions being taken against a firm. The benefits to an agent of

an appropriate risk management system are clear from the FSA's response to the Aon investigation discussed earlier.

DETERMINING RISK

Other risks arising from being involved in, or associated with, corruption need to be highlighted:

- Legal exposure on a domestic, international, civil and criminal front is an obvious key risk. Corrupt practices erode the confidence and trust in a company and the reputational damage suffered can lead to a drop in a company's share price.
- The UN Global Compact estimate that the cost of working in a corrupt environment can add at least 10% to doing business and up to 25% for the cost of public procurement and further financial costs may result from litigation, regulatory action, investigations, disgorgement of profits, back taxes, interest payments and exclusion from bidding for certain type of business.
- Companies engaging in bribery may expose their staff to repeat approaches to pay bribes and blackmail (i.e being seen as a soft target). Further, if a company engages in corruption it will be labelled as unethical, increasing its chances of becoming a target for insider fraud etc.

RISK AVOIDANCE

Communication and training of an agent's policies on anti-corruption to staff (as well as communication to third parties) is vital to ensure that clear and consistent messages are cascaded. Organisations such as TI advocate a zero tolerance approach, even to facilitation payments, so that any uncertainty around them and local business practices are removed.

Some further suggested examples of controls for an agent to minimise risk include:

- identifying high risk jurisdictions and business sectors;
- an anti-corruption policy/enforceable Code of Conduct for staff including the prohibition of any offers, giving or acceptance of bribes, gifts, hospitality or expenses by employees or other parties involved that could influence the outcome of a transaction;
- anti-corruption procedures relating to contracts, charitable giving, gifts, hospitality and entertainment embedded across the company in all relevant departments (defining examples of good/bad practice where appropriate);
- procedures for staff to take if a bribe is offered or they are asked to make one, such as advising that their company operates a strict anti-bribery policy and individuals are liable to prosecution if a bribe is accepted;
- controls regarding donations to charities/political parties to ensure they cannot be misconstrued to obtain a business advantage;
- disciplinary sanctions for policy breaches;
- reporting any evidence of a foreign rival company acting corruptly to appropriate authorities;
- maintaining accurate records of business transactions to show transparency and compliance;

- audits of compliance for effectiveness;
- embedding of USFCPA into overall compliance plan if appropriate.
- dual signatories for payments;
- central monitoring of payments;
- legal sign off for all contracts;
- audits of subsidiaries;
- due diligence on joint venture partners/mergers and acquisitions to ensure compliance to the same standards;
- policies for agents, distributors, brokers and consultants;
- annual compliance certification from agents etc;
- zero tolerance on facilitation payments

This list is not exhaustive and agents should ensure that once an assessment of the impact and probability to exposure is carried out, that appropriate risk management systems are in place to respond to any residual risks. .

Finally, if a problem is identified, as demonstrated by the Aon and Balfour Beatty case, early self reporting and effective remedial action by a firm may lessen any fines and or penalties imposed.

Any disclosures by an underwriting agent should also be reported to Lloyd's (to Andy Wragg on 020 7327 6387 / andy.wragg@lloyds.com, Stephen Payne on 020 7327 6538 / stephen.payne@lloyds.com, Rachael Connor on 020 7327 6380 / rachael.connor@lloyds.com or to mlro@lloyds.com).

INFORMATION SOURCES

There are a number of different organisations and web sites offering information about anti-bribery and corruption practices. A number are listed on Appendix 2.

APPENDIX 2

SOURCES OF INFORMATION

Gow, D. (2008). 'Record US fine ends Siemens bribery scandal.'

<http://www.guardian.co.uk/business/2008/dec/16/regulation-siemens-scandal-bribery>

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