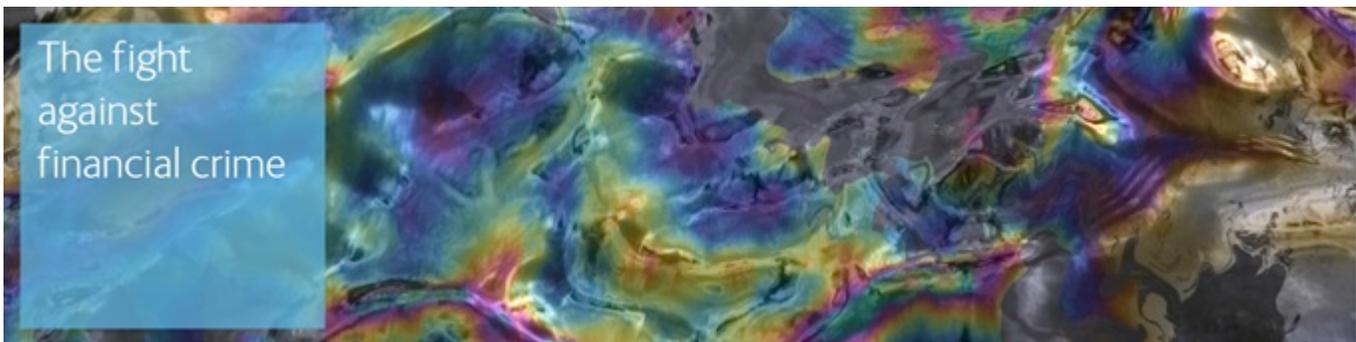


The fight against financial crime: bribery

The rate of change in the law and its enforcement in financial crime has been dramatic and global in the past few years, resulting in a regulatory minefield for many businesses.

In this series of articles, we focus on different areas of financial crime, taking an incisive look at current regulation and what we can expect over the course of 2018. In this third edition we take a look at bribery, including the increasing level of enforcement activity across the globe and what companies should consider when implementing systems and controls.

Submitted	9 May 2018
Applicable Law	UK (England & Wales) , France
Topic	Crime, Fraud & Investigations > Bribery & corruption
Sector Focus	Financial Institutions
Contact	Matthew Worby , Stephen Moses



The current position

Following recent developments, it is clear that the issue of bribery has risen back up the agenda for both companies and enforcement agencies:

- Companies are still regularly experiencing bribery or corruption, and not just in “high risk” jurisdictions. In PWC’s Global Economic Crime and Fraud Survey for 2018: UK Findings it was revealed that in France, 20% of employees believe that corrupt practices are still widespread in their sector. 11% of French respondents said that they have experienced significant fraud over the past two years and that bribery remains a common practice for winning contracts in their sector. Meanwhile 24% of UK respondents had been asked to pay a bribe in 2017 - up from 5% in 2016.
- Globally, enforcement agencies and prosecutors are still focused on the issue. Recently in the UK a smaller

company, Skansen Interiors Limited, was convicted of failing to prevent bribery (for more on this see [here](#)), and it has been reported that the FCA is investigating three companies for inadequate systems and controls to prevent bribery.

- Following years of criticism of France for a lack of anti-corruption enforcement, the Sapin II law, adopted in December 2016, ushered in a new era of anti-corruption enforcement. Changes required to comply with the new law have already begun in 2017, but 2018 will see important developments both within the French State and within companies operating in France, thanks to new anti-bribery compliance requirements.
- In China, we have seen an increase of 32% in prosecution of corruption cases over the past five years; and Hong Kong has recently witnessed the city's largest corruption crackdown in a decade, brought together by different regulators joining forces and leveraging off their respective investigation powers. Conviction rates by its anti-corruption watchdog also rose by 7% compared to last year.
- Collaboration between international corruption authorities and the triggering of enforcement action across multiple jurisdictions is also a theme, highlighting the importance of approaching anti-bribery and corruption from a global perspective. This is evident from recent enforcement activity in Asia Pacific. The Singaporean company, Keppel Offshore & Marine, reached a high profile settlement with the United States, Brazil and Singapore in the context of a cross-border corruption investigation involving a former agent in Brazil - US\$422 million split between the three jurisdictions.
- Indonesia's corruption agency, the KPK, is investigating the procurement of aircraft by its national airline Garuda from Airbus and Rolls-Royce, following on from the action taken by international agencies last year. Anti-corruption laws are also being bolstered in the region, for example through the introduction of a new Penal Code in Vietnam which now includes private sector bribery offences and, in Australia, the proposed introduction of a failure to prevent foreign bribery corporate offence (similar to section 7 of the UKBA) in response to OECD criticism.

Multi-national firms need to continually review their policies to ensure they meet the requirements of a growing number of revised national laws and enforcement regimes. Smaller businesses, including asset managers, who may have thought that they were too small to attract the attention of enforcement agencies, also need to consider their risk profile and compliance systems. Indeed, in PWC's report, half of the respondent companies had not undertaken a specific risk assessment concerning their anti-bribery and corruption controls.

Key issues to think about

Every company needs to consider what bribery risks it faces, and how well its current systems and controls protect it against them. Financial Institutions should (at a minimum):

- have undertaken a risk assessment within the last three years
- consider how this risk assessment would be reviewed by a prosecutorial agency and whether it would withstand enhanced scrutiny
- design or enhance anti-bribery controls to mitigate those risks (and keep them updated)
- ensure senior management has sufficient focus on oversight
- conduct due diligence and monitoring on higher risk relationships and situations, and
- take steps to monitor the effectiveness of its controls.

Some jurisdictions are more prescriptive than others as to what compliance measures are required. Companies headquartered in France with more than 500 employees and an annual turnover of over €100m euros are now obliged

to put in place a corporate compliance program to prevent and detect corruption in France and abroad, with specific requirements. These include risk-mapping, a code of conduct, an internal whistleblowing procedure, training for relevant employees and an internal disciplinary penalty system (for more, see [here](#)). Spanish companies' compliance programmes are also subject to minimum requirements if they are to be relied upon as a defence to criminal liability for economic crimes, including bribery. See here for [more](#).

For some who implemented controls when the UK Bribery Act came into force in 2011, there may be a need to check how well those controls are working. With the passing of time and changes of staff, have levels of awareness diminished and are policies being complied with? Regular auditing of systems and controls is vital to maintain their effectiveness.

What's next?

We do not foresee any fall-off in enforcement activity across the globe. In a speech in March 2018, Camilla de Silva, Joint Head of Bribery and Corruption at the UK's SFO, said that the agency would not "move on" from the financial services sector to focus on other industries, but would continue to use the knowledge it had built up to identify further misconduct.

In France, all eyes are on the new national anti-corruption agency (AFA), headed and represented by a judge appointed for a six year term. The AFA is tasked with assisting companies to implement compliance programs, but will also oversee the quality of these and impose penalties on non-compliant individuals and companies.

The AFA has started to conduct audits on companies to check that they have implemented compliance programs in accordance with the new legal requirements. Half a dozen companies are said to be in the process of being audited. The results of these audits will of course provide useful hints as to what the AFA expects from companies and where it is focusing its attention. We expect to see more audits throughout 2018, with the real possibility of enforcement action where companies are found wanting.

In the UK, we expect that the FCA will announce enforcement action against, or findings into, the companies reportedly under investigation for poor anti-bribery systems and controls. Such cases may provide a useful insight into what authorities deem to be adequate systems and controls, supplementing the information that can be gleaned from the judgments, and statements of facts published as part of DPAs, in recent corruption cases.

This document (and any information accessed through links in this document) is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.