

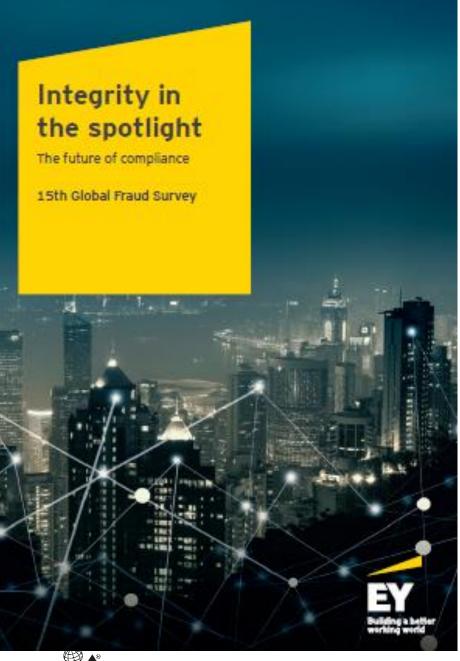
Auditing Anti-bribery programs

Hans Nieuwlands RA CIA CGAP CCSA



Agenda

- Introduction
- Regulations with a global impact
- Essentials of an Anti-bribery program
- Auditing an Anti bribery program



11%

of respondents stated it is common practice to use bribery to win contracts in their sector

38%

of respondents stated bribery/corrupt practices occur widely in business in their country

13%

of respondents would justify cash payments to win/retain business when helping a business survive an economic downturn

Base: 15th Global Fraud Survey (2,550)

Applies (%)



Panasonic hit with \$280m corruption fine



Court for South Africa Corruption Trial









Jacob Zuma Appears in









NAM YN MESS AT NESS WESTER VINE STA

South Korea: former president Park Geun-hye sentenced to 24 years in

jail

Court finds Park colluded with Rasputin' figure Choi Soon-sil to



Corruption Bust

Conduct Biggest Ever

The 'Car Wash' corruption investigation, that has morphed into one of the world's largest, began with the arrest of a single money changer. | Photo:

Dublished 3 May 2018



Prosecutors said they

ave asked a court to

\$2.13 billion in cash

goods from those





Spanish PM Mariano Rajoy ousted in noconfidence vote amid corruption scandal

12:52, UK, Friday 01 June 2018



KPN 🖸 🗖 🔾 🖪

6,2K/s 🔻 🌣 🌀 🧙 📶 81% 📼 19:28

ACCUEIL / ÉCONOMIE

Corruption avec la Libye: Société Générale va payer 500 millions d'euros pour solder ses litiges

© 15h53, le 04 juin 2018, modifié à 17h13, le 04 juin 2018





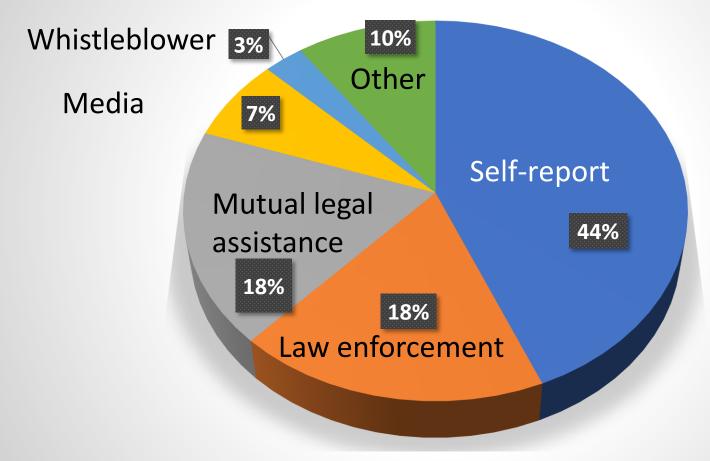
Fiod onderzoekt twee dochterbedrijven SHV om omkoping en oplichting

Twee dochterbedrijven van SHV, het grootste familiebedrijf van Nederland, worden strafrechtelijk onderzocht door de fiscale opsporingsdienst Fiod. Dit bevestigt een woordvoerder van het



OECD Foreign Bribery Report

How bribes were reported

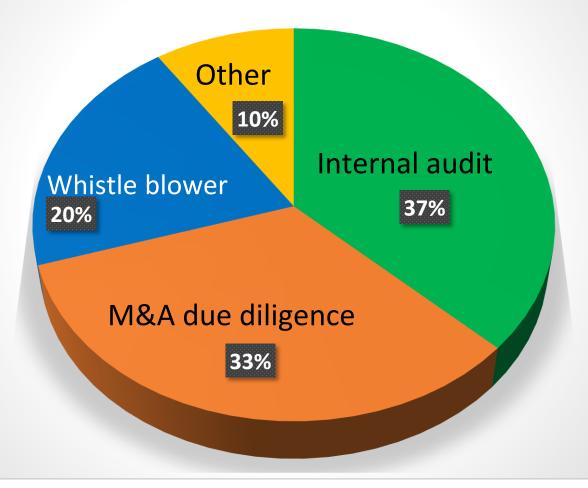






OECD Foreign Bribery Report

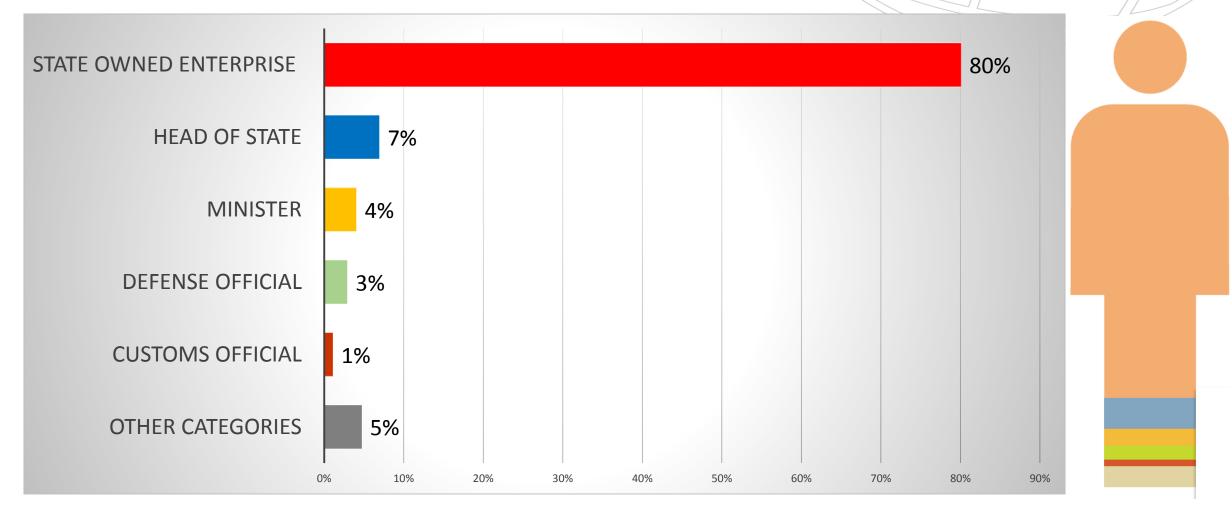
How bribes were discovered







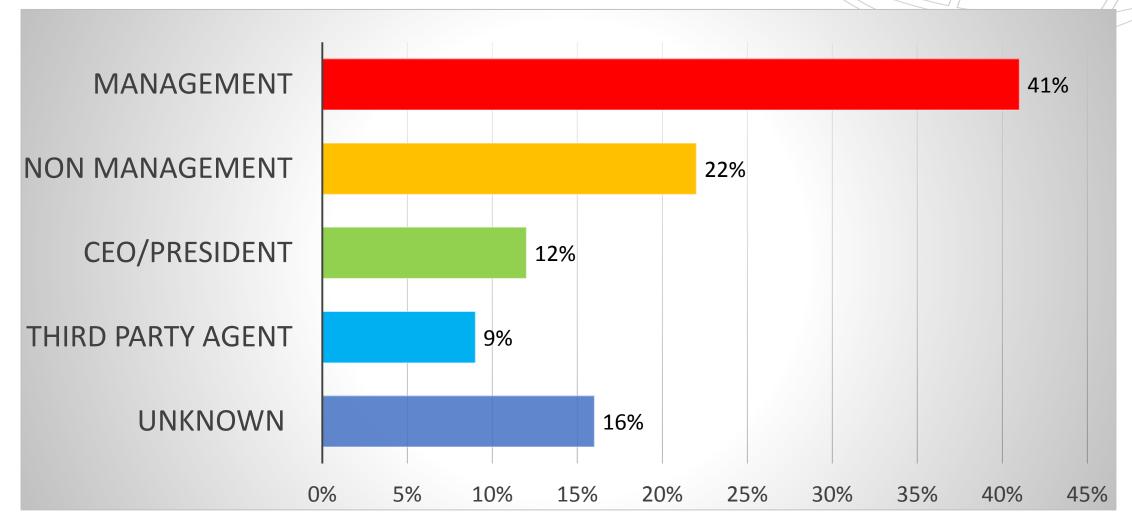
Recipients of bribes







Payments of bribes by staff level







Foreign Bribery Report

Which sector was convicted the most for paying bribes?

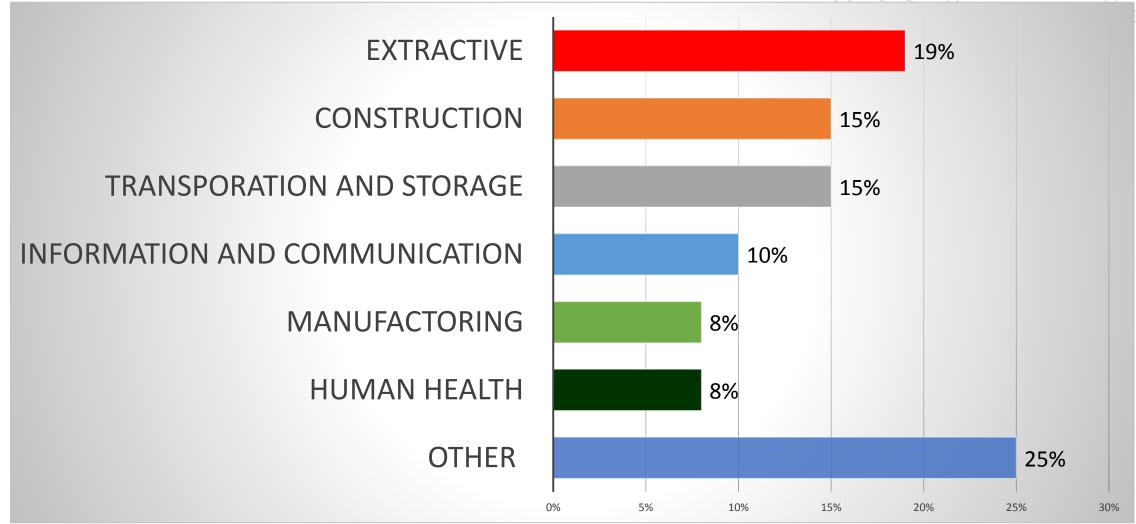
- Construction
- Extractive
- Information/communication
- Transportation/storage







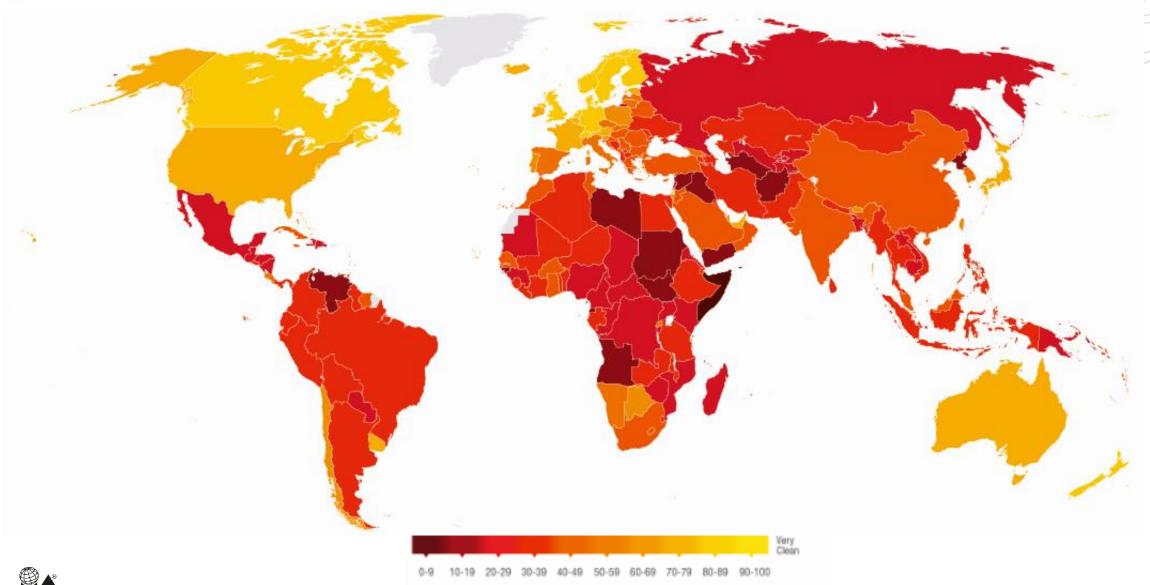
Foreign Bribery Report: Bribery per sector







Corruption Perception Index





Which country scores better on the CPI?

- A. Canada
- B. Luxembourg
- B. Netherlands
- C. United Kingdom







Which country scores better on the CPI?

6	Sweden	84
8	Canada	82
8	Luxembourg	82
8	Netherlands	82
8	United Kingdom	82
12	Germany	81



Laws and regulations with a global impact



Sapin II

The French anti-corruption law addressing transparency, anti-corruption and economic modernization, the Sapin II law, ...



COUNTRY: UNITED KINGDOM

UK Bribery Act 2010

The Bribery Act prohibits facilitation payments but includes 'adequate procedures' that provide companies with full ...



The United Nations Convention against Corruption

The United Nations Convention against Corruption (UNCAC) is the most comprehensive anti-corruption convention, entering ...



European Anti-Corruption Conventions

The European Anti-Corruption Conventions page provides quick overviews of key anti-corruption conventions from the ...



Chinese Anti-Corruption Laws

Chinese anti-corruption laws are largely contained under the Criminal Law of the PRC and the Anti-Unfair Competition ...



US Foreign Corrupt Practices Act (FCPA)

The US Foreign Corrupt Practices Act (FCPA) is the most widely enforced anticorruption law in the world. View its key



AFRICAN UNION

African Union Convention on Preventing and Combating Corruption

The African Union (AU) Convention on Preventing and Combating Corruption, adopted in 2003, addresses corruption in the ...



Inter-American Convention Against Corruption (IACAC)

The Inter-American Convention against Corruption (IACAC), adopted in 1996, aims to promote and strengthen the ...

A Resource Guide to the U.S. Foreign Corrupt Practices Act

By the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission



Highest fines





1. Telia Company AB (Sweden)

2. Siemens (Germany)

3. VimpelCom (Netherlands)

4. Alstom (France)

5. KBR / Halliburton (U.S.)

US\$ 965 million in 2017

US\$ 800 million in 2008

US\$ 795 million in 2016

US\$ 772 million in 2014

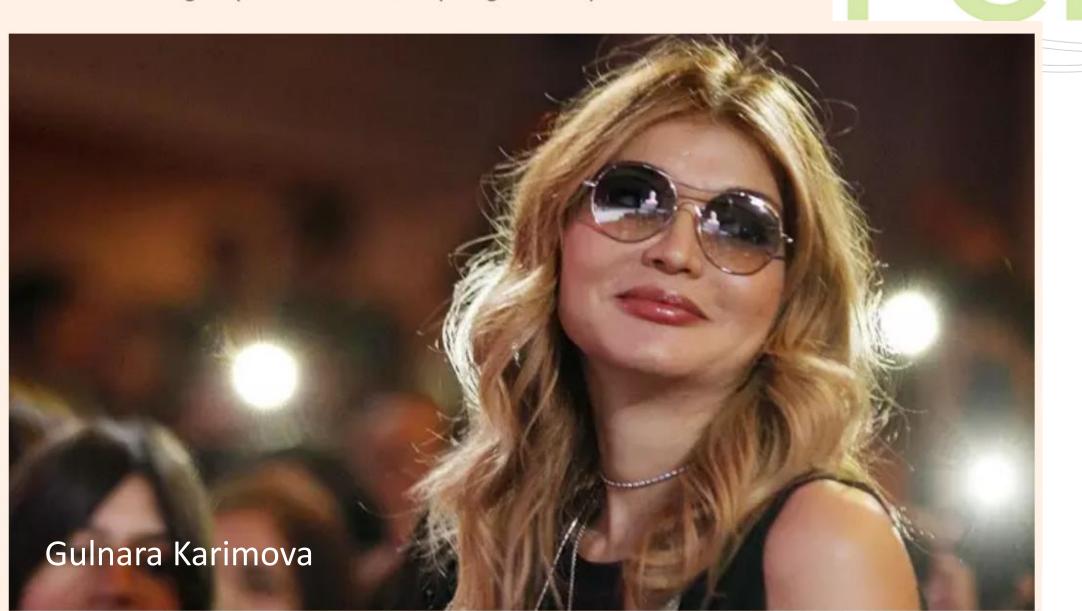
US\$ 579 million in 2009

http://www.fcpablog.com/



VimpelCom fined \$795m in corruption case

Russian mobile group admits to bribery to gain entry into Uzbekistan



IH BRIBE



Rolls-Royce to pay £671m over bribery claims

THE BRIBERY ACT 2010

Voluntary payments will mean UK manufacturing giant avoids being prosecuted by anti-corruption investigators





Essential elements of an Anti-bribery program



Global Anti-Bribery Guidance Best practice for companies in the UK and overseas

Search...

COMMIT	ASSESS	IMPLEMENT & IMPROVE			MONITOR & REVIEW	ENGAGE
1. Culture & Tone from the Top	4. Risk Assessment	Controls & Prevention	High Risk Areas	Organisational Resilience	17. Monitoring & Review	18. External Engagement &
	5. What is Bribery?	7. Financial Controls	10. Political			Reporting
2. Governance &			Engagement	14. Training &		
Commitment	6. Small Bribes	8. Gifts, Hospitality and		Communication		
		Expenses	Charitable Donations,			
3. Enabling Factors			Community	15. Speak Up & Advice		
		9. Conflicts of Interest	Investments and Sponsorships	Channels		
				16. Role of Human		
			12. Managing Third Parties	Resources		
			13. Procurement & Contracting			



https://www.antibriberyguidance.org

Corporate values and tone at the top



Living the Code

Those at Manager level and above **must** lead by example, setting a strong tone from the top, showing they are familiar with the Principles and Code Policies and taking steps to embed a culture of integrity across all operations.

[From: Unilever's Code of Business Principles and Code Policies]



Zero tolerance

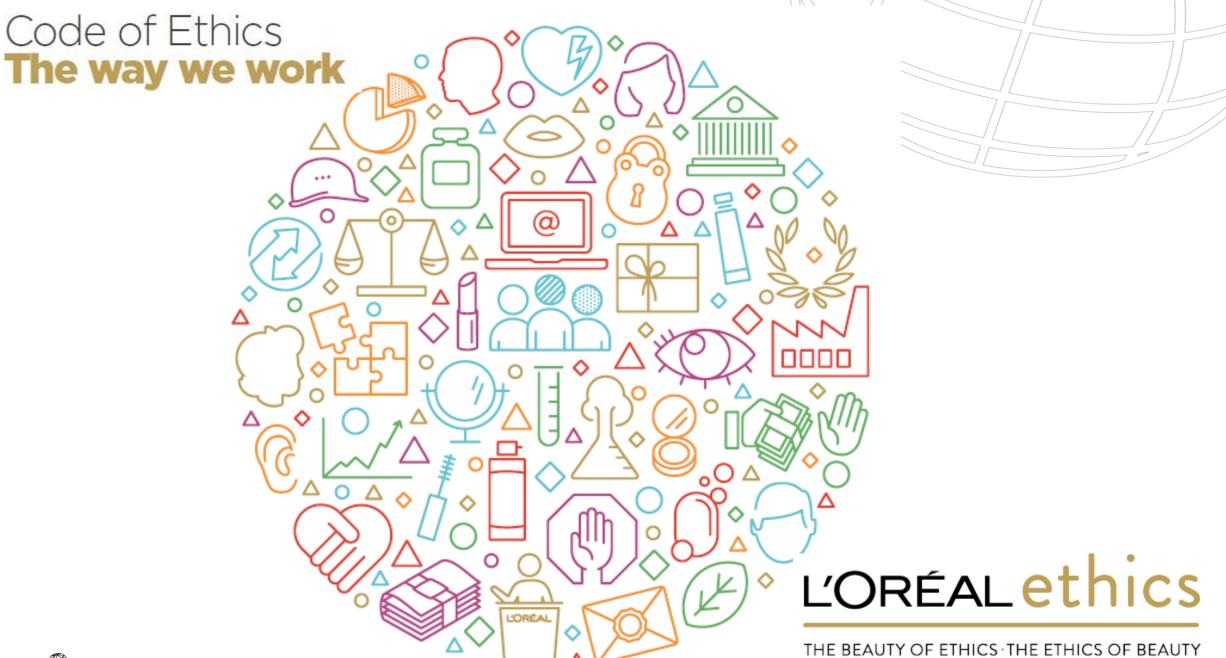


We do not and will not pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we accept bribes or improper inducements or anything that could be perceived as such and expect the same from our clients.

The ING zero tolerance principles to bribery and corruption also apply to <u>third parties</u> with whom ING does business or who are retained by ING to perform services or deliver business for and on behalf of ING.

[From: ING's Orange Code]











& FACILITATION PAYMENTS

We must:

- Ensure that our business partners and intermediaries are informed of our standards and are committed to respecting them specifically when they are representing us in a country where the risk of corruption is high
- Immediately inform our manager and our Country Manager if we become aware of any action that might be contrary to our corruption prevention policy







& FACILITATION PAYMENTS

We must not:

- Offer, promise or give money, including a facilitation payment or anything of value (gifts, entertainment, etc.) to a representative of the public authority, political party or politician, trade union or person involved in trade unions
- Accept or solicit money or anything of value (gifts, entertainment, etc.) that might lead us to breach our duty of loyalty to L'ORÉAL or be perceived as influencing a business relationship



Risk management



Five main categories:

- Country risk
- Sectoral risk
- Transaction risk
- Business opportunity risk
- Business partnership risk



Example of high inherent bribery risks







Interactions with Public Officials



- Policies should state clearly that employees may not offer or provide any payment or other thing of value to a public official to secure an improper advantage
- Policies should clearly describe which payments are bona fide and which not



Interactions with Public Officials

Some safeguards:

- Pay all costs directly to travel and lodging vendors
- Reimburse costs only upon presentation of a receipt
- Do not advance funds or pay for reimbursements in cash
- Ensure that expenses are limited to those that are necessary and reasonable
- Provide no additional compensation, allowances, or spending money beyond what is necessary to pay for actual expenses incurred
- [Source: FCPA Resource Guide]



Charitable donations/community investments



- Donations and community investments often linked to specific contracts, providing support to project-affected communities, resulting in a heightened bribery risk.
- They may be used to bribe of a public official or as a way to hide the trail to the ultimate beneficiary of the bribe.
- They also present opportunities for employees to make inflated donations or sponsorship fees and receive money back from the recipients as kickbacks.



From Pirelli's: Premium Integrity Program



Pirelli's relationships with intermediaries and outsourcers are based on the following principles (selection):

- Pirelli examines and verifies the experience and technical expertise of these intermediaries, and asks that they declare that they have not been subject to investigations or court judgements related to corrupt practices
- During their collaboration, the intermediaries and outsourcers are required to engage in business conduct consistent with Pirelli ethical principles. Violation of those principles may result in immediate termination of the contract.

Joint ventures and consortia



The organization could be held liable for the corrupt behavior of a joint venture or other business partners.

To reduce the risk a due diligence investigation should be done including:

- The reputation of the operator of the joint venture
- The design of the operators management system/compliance program and its effectiveness
- The group's level of influence in the joint venture
- The audits/verifications performed on the joint venture, and
- The corruption risks faced by the joint venture



Agents, lobbyists and other intermediaries



- Appointment only after a due diligence investigation
- Compensation for an intermediary must be justifiable and proportional to the (legitimate) service rendered
- Payments for services rendered may only be made against satisfactory documentation and must be accounted for
- Agreement in writing and sufficiently describing the relationship between the parties
- Agreement to comply with the organization's anti-bribery program



Agents, lobbyists and other intermediaries



- Requirement to keep proper books and records available for inspection by the organization, auditors or investigating authorities
- All agreements with agents, lobbyists or other intermediaries require prior approval of senior management and legal affairs
- Policies and procedures should ensure that no improper payments are channeled through agents, lobbyists or other intermediaries



Third Party Corruption Red Flags

The third party:

- has been subject to criminal enforcement actions
- has a family relationship with a foreign official or government agency
- insists on dealing with government officials without the participation of the company
- lacks experience or a "track record" with the product, service, field, or industry
- is not expected to perform substantial work
- requests an unusual advance or cash payments
- says it needs payments to "take care of things" or "finalize the deal"



[Source: FCPAméricas]

From ABB's: Supplier Code of Conduct



Business ethics

You shall conduct your business in an ethical manner. In particular, you will

- Refrain from any and all forms of corruption, extortion and bribery, and specifically ensure that payments, gifts or other commitments to customers (including ABB employees), government officials and any other party are in compliance with applicable anti-bribery laws;
- Disclose to ABB information regarding potential conflicts of interest relating to your activities as an ABB supplier, including disclosure of any financial interest an ABB employee may hold in your business



Mergers and Acquisitions



M&A lead to an increased bribery risks arising out of contracts, misconduct, regulations, and statutes

- The successor company assumes the predecessor company's liabilities
- Inadequate due diligence may miss existing bribery practices, thus exposing the organization to civil and criminal liability
- Bribery revealed during due diligence should be reported to the local authorities.
- New employees should be trained and new third parties being evaluated under the organization's anti-bribery program



From BT's: Gifts and hospitality policy



You must not:

- Give or receive a gift or hospitality if it is intended to influence you or the person receiving it
- Give or receive lavish or extravagant gifts or hospitality which is, or may be seen to be, <u>inappropriate</u> in the circumstances. Think about whether a competitor or the press would consider it appropriate, reasonable and proportionate
- Give or receive gifts or hospitality if either you or the other person are involved in on-going commercial <u>negotiations</u> or could influence the decision
- Offer any gifts or hospitality where you know it would be wrong for the person to accept



Training



Mandatory training should be developed for:

- all new employees
- management at all levels
- procurement, contracting and marketing personnel
- personnel interacting with Public Officials (e.g. licenses, permits and customs clearance)
- personnel working in geographic areas with a high risk of corruption.



Speaking up and seeking guidance



- Normally employees should talk to their manager first
- Alternatively they can contact the compliance officer or use the 24/7 speak up channel (hotline)
- Anonymous reporting should be available
- No sanctions for employees for making a good-faith report
- All reports of suspected violations should be taken seriously and followed up.
- Outcome of investigations should be communicated internally



From: BHP Billiton's Business Conduct Quick Test





Safety

Could it directly or indirectly endanger someone or cause them injury?



Law

Is it legal and in line with our policies and procedures?



Conscience

Does it fit with my personal values?



Newspaper

If the story appeared in the paper, would I feel comfortable with the decision?



Family

What would I tell my partner, parent or child to do?



Feel

What's my intuition or 'gut feel'? If it feels bad, then it probably is bad.

Feeling discomfort or difficulty when answering any of the questions indicates that you should speak to someone about your concern.



How to audit an Anti-bribery program

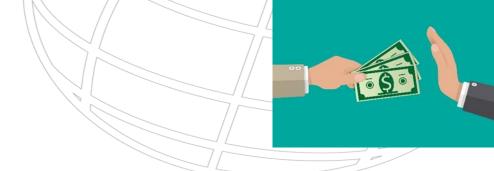
Scoping the audit

Focus on the identified bribery risks

Decide to:

- Audit the anti-bribery program as a whole
- Split it up
- Include it in the scope of every audit





Elements to be audited

- Values and tone at the top
- Code of Conduct
- Structure/completeness of the Anti-bribery program
- Bribery risk assessment
- Policies and procedures
- Internal controls and record keeping
- Monitoring and revision
- Cooperation with authorities
- Independent assurance





Policies and procedures to be audited



- Conflicts of interest
- Interaction with Public Officials
- Small bribes
- Political contributions
- Charitable donations, community investments and sponsorships
- Associated business entities, joint ventures and consortia
- Mergers and acquisitions



Policies and procedures to be audited



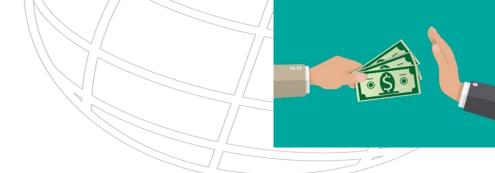
- Agents, lobbyists and other intermediaries
- Suppliers
- Human Resources
- Training
- Whistleblowing and seeking guidance
- Communication



Audit techniques

- Desk research
- Review of (internal) documentation
- Interviews
- Surveys
- Transaction testing
- Analytical Testing
- Data analytics
- Observation
- . . .



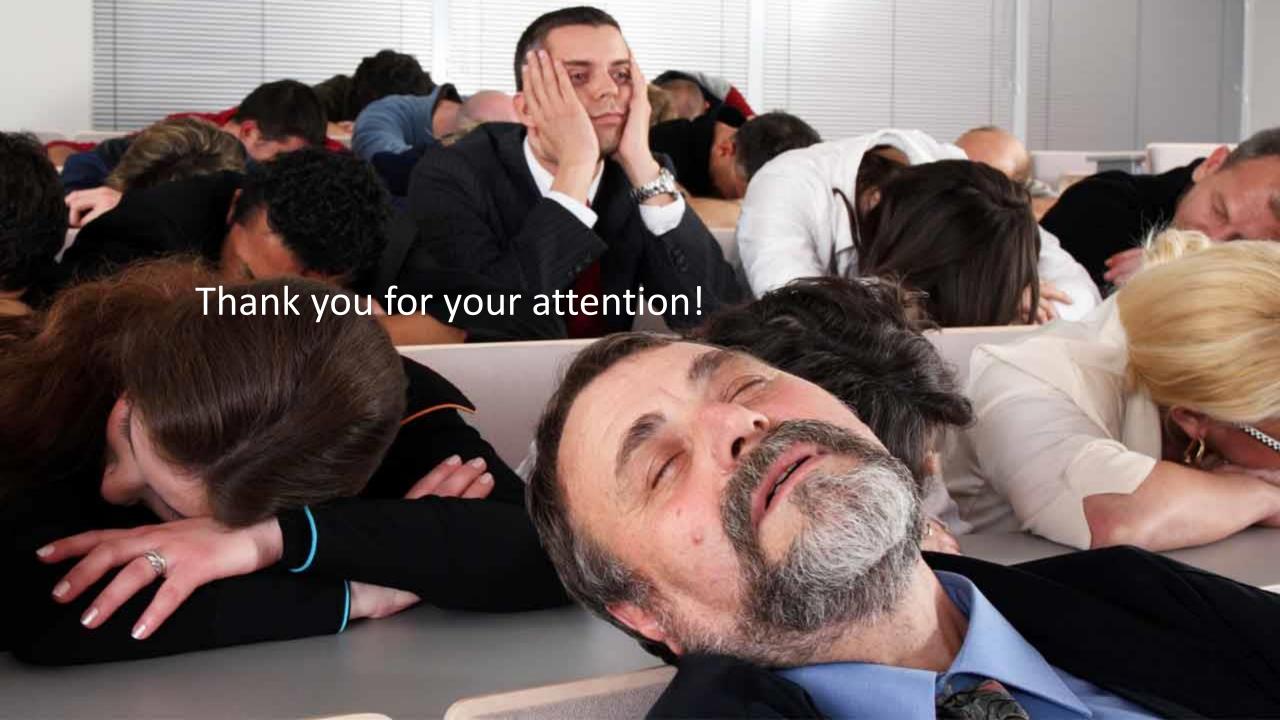


What else can Internal Audit do?

- TO SID
- Help to (re)design the Anti-bribery program
- Get involved in the training program
- Participate in the investigation of reported cases
- Include bribery aspects in every audit
- Use news items on corruption scandals to enhance risk awareness

• ...







Free download http://bit.ly/auditingabp

