



# The Realities of the New UK Bribery Act

*The act is designed to prevent corruption and encourage a culture of honesty. But many managers still will break the law to cinch a deal.*

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**A** recent study by FTI Consulting showed that too many managers continue to be unaware of the act; compliance with guidelines lags; and a substantial number of executives still will break the law to cinch a deal. The UK Bribery Act in July 2011 put in place the world's strongest laws that prohibit accepting or offering bribes, both inside and outside the UK. The legislation also holds companies responsible if their employees commit these acts. More stringent than the U.S. Foreign Corrupt Practices Act (FCPA), the UK act criminalizes bribery of private citizens and companies in addition to bribery of foreign public officials.

In July 2012, one year after the Bribery Act was passed, FTI Consulting surveyed 571 senior and middle managers about their attitudes towards the new law and how their companies were addressing it. What they told us was jarring.

About 43% of our respondents say they know little or nothing about the new law,

including – shockingly – 9% of those who say they are responsible for compliance in their own companies. A significant number of respondents, 20%, say they are confident that they could break the law without getting caught.

Despite laws that protect whistle-blowers, 57% of respondents worry to some degree that blowing the whistle

could ruin their careers. And about a quarter of our respondents say they'd be willing to blow the whistle on a former employer or competitor.

We also saw that many companies still have not fully adopted the recommended guidelines for ethical business transactions, and are focusing on external rather than internal corruption. Respondents also fret about the effect of the new law on business in other parts of the world, where what we call bribes are often seen as necessary business courtesies.

Does all of this mean that UK Bribery Act won't have an impact? Not necessarily. But our research tells us that companies are watching closely to see who gets caught and prosecuted, and weighing those risks against the risks of losing business in a bruising marketplace. While only one small case has been prosecuted to date, those who are ignorant of the new law or flout it jeopardize their companies when the hammer does come down.

## Anti-Bribery Laws: The Backdrop

Companies today are caught between recent legislation that demands ethical conduct — and a public that expects it — and an increasingly competitive marketplace that includes countries where bribes are commonplace. Expansion into these markets puts companies at increased risk of running afoul of these latest laws.

The UK's new law generally is broader and more stringent than the FCPA in the

United States. The UK law covers four areas: bribing another person; accepting a bribe; bribing a foreign public official; and failing to prevent bribery by a commercial organization. More than merely increasing the number of convictions, the law seeks to bring about a corporate cultural change — “to create a public and business culture where corruption is not tolerated.”

Yet the law's first year has been quiet, with only one prosecution — involving an individual who was bribed to alter a motoring offenses database. Prosecution has been slow, in part, because the Bribery Act applies only to crimes that occur after it became law in July of 2011.

Another reason is that the Serious Fraud Office (SFO) needs about 18 months to investigate and prosecute a suspected violation.

With no high-profile heads on a stake yet, many companies that are on the cusp of compliance may be starting to waver. Twenty-seven percent of respondents believe the UK government will not actively pursue cases because it does not want to harm UK growth; 34 percent believe the UK government will ignore international breaches to avoid an international incident.

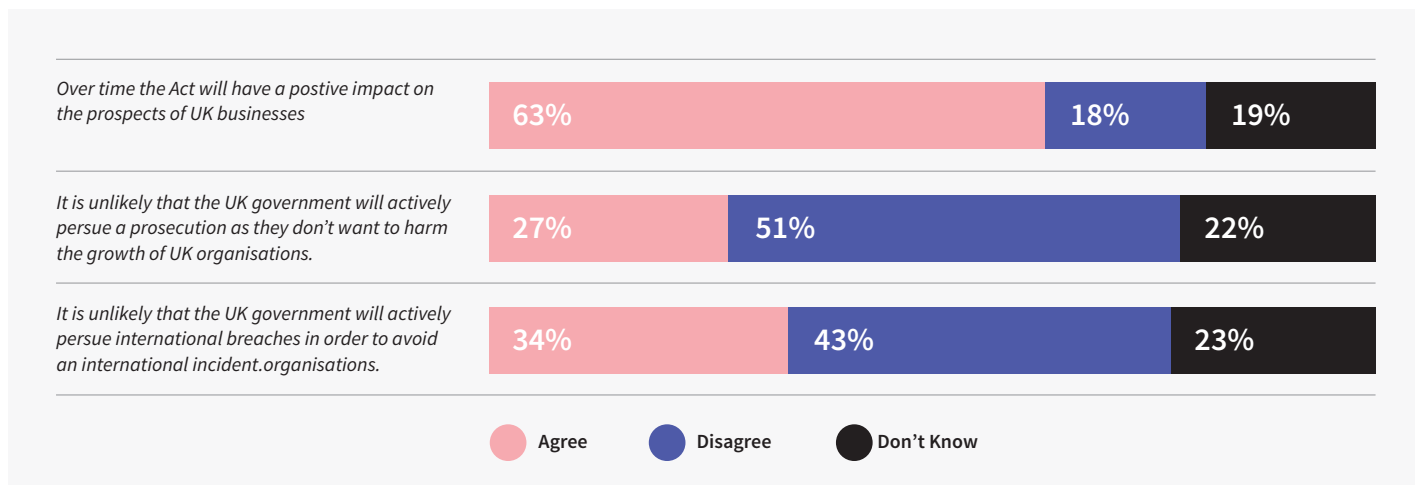


Figure 1: Impact of the Bribery Act

## Ignorance and Risk

Our research revealed that many respondents don't know much about the Bribery Act or don't think it will affect their business practices.

A series of questions allowed us to separate them into three categories based on their receptiveness to the new act:

- 24%** Are **not knowledgeable** about the UK Bribery Act. Mostly middle managers, they are less likely to be involved in their company's anti-bribery and corruption compliance but are dangerously unaware of the training their employer offers or don't understand how a breach would affect their organization.
- 47%** Are **informed adopters**, familiar with the new law and ahead of the curve implementing anti-corruption procedures. They are more likely to come from industries such as mining, construction and energy, where bribery and corruption are widespread.
- 29%** Are **risk takers** who are willing to breach the law to win new business despite the fact that 80 percent of them have received training on it.

## Do companies have adequate procedures?

Individual cases ultimately will determine whether companies are adopting the Ministry of Justice’s recommended guidelines to prevent and deal with bribery. While our research showed that companies are making some progress, we saw that even high-profile firms are lagging in some areas.

These companies must take action. Regulators inevitably will take a dim view of companies that lag behind their peers in adopting ethical practices, especially since the law now is more than a year old.

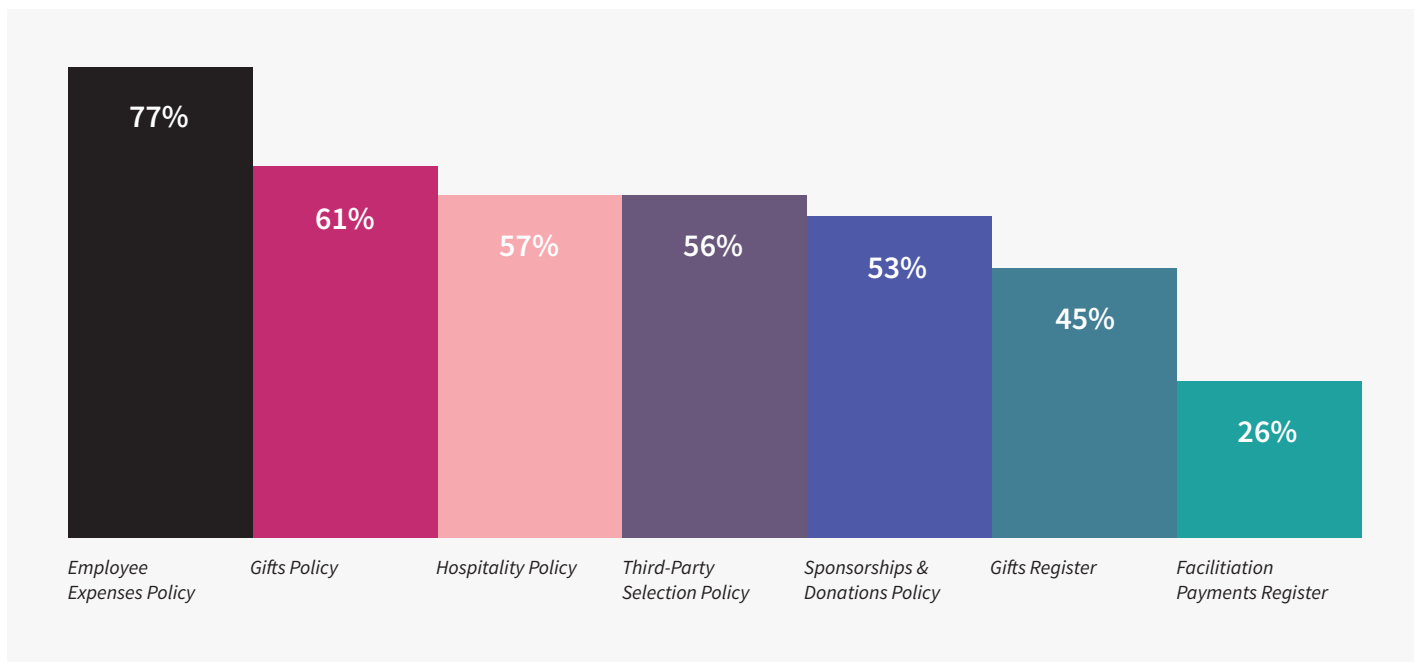


Figure 2: Proportions of companies with relevant policies

### Whistle-blowing

Our survey showed that companies need to do more to encourage whistleblowing and advocate a culture of transparency to educate workers about proper reporting procedures and to reassure them that blowing the whistle will not taint their career opportunities.

While the law protects whistleblowers, a significant number of our respondents (16 percent) say they are very concerned that reporting a breach might hurt their career. Another 41 percent say they are slightly concerned.

Research has shown that having a fraud hotline increases reporting and internal detection. While 86 percent of our survey

respondents say they would report potential breaches of the Bribery Act, 44 percent of them say they are unsure of the company’s procedures for doing so. More than half (58 percent) say their employer has no system for reporting anonymous tips. But roughly a quarter say they would report a former employer or competitor to external enforcement agencies. Consider that the UK’s Serious Fraud Office, which set up its own whistleblower hotline in November 2011 to allow anyone to report concerns, receives as many as 500 tip-offs per month.

### Top-Level Commitment

The MoJ guidance on adequate procedures suggests that “top-level managers of a commercial organization

(be it a board of directors, the owners, or any other equivalent body or person) are committed to preventing bribery by persons associated with it. Managers foster a culture within the organization in which bribery is never acceptable.”

However, our survey shows that many executives are willing to risk breaking the law and that this attitude often flows from the top. We found that 18 percent of all respondents say they would breach the act to win business, including 25 percent of board-level respondents. Within the risk takers group, 60 percent think the Bribery Act will have little immediate impact, as firms will find a way around the legislation.

**Risk Assessment**

The MoJ has provided guidelines that help companies formally assess risks. Our survey showed that many companies are doing a good job looking at external risks — by country, sector, transaction, business opportunity, etc. — but are less diligent about internal risk.

Below are some excerpts of the MoJ guidelines followed by a discussion on how our respondents are addressing these issues:

“The commercial organization applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for, or on behalf of, the organization in order to mitigate identified bribery risks.”

We found that 33 percent of respondents do not have a policy on selecting

suppliers, and 22 percent are unlikely to implement one. This is a major risk for companies, as suppliers, agents and distributors — especially those in emerging markets — typically are key players in the corruption investigations we conduct and are a major part of an effective anti-corruption program.

“Training provides the knowledge and skills needed to employ the organization’s procedures and to deal with any bribery-related problems or issues that may arise.”

The high percentage of respondents who say they are unaware of the recent legislation inadvertently may be creating trouble for their employer. Based on our own experience with clients, inadequate training results in dangerously uninformed employees. For example, some “off the shelf” training deals specifically and solely with the U.S. FCPA

yet is used worldwide. This gives short shrift to local laws and can alienate some non-U.S. employees. Other problems ensue when even the best training programs are not well-managed; when new hires, recently promoted executives and other key employees miss out on the training; when attendance is not enforced; and when key senior managers set a bad example by skipping training.

“The commercial organization monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.”

We surveyed incidents of bribery and compliance with policies and procedures in each respondent’s organization. Every one of the following incidents could be considered a bribe and could trigger a full review of all the company’s procedures by regulators:

- 4%** *of respondents know that facilitation payments have been made*
- 3%** *know that facilitation payments were concealed by recording them as something else*
- 6%** *know that gifts have been given that exceed policy limits*
- 5%** *know that gifts have not been properly recorded*
- 2%** *know that customs officials were paid small amounts to ensure clearance was provided*
- 3%** *know that hospitality was given in the expectation of receiving a customer’s business*
- !** *many more respondents said they suspected the above incidents have happened in their organization.*

This suggests that while companies spend a lot of time and money to roll out processes to effect compliance, there is no follow-up to ensure employees are adhering to the policies and procedures

established. Problems can arise when companies do only the minimum to comply rather than undergo cultural change to engrain ethical practices into the corporate mindset. Without

this cultural change, smart senior staff members will find ways around even the best monitoring systems.



## Bribery Prevention: Bad for Business in BRICs?

Managers in the UK disagree over whether the new law will help or hinder efforts to keep and build business in other parts of the world. We speculate the real divide will be between those executives who buy into doing business ethically and those who don't. Firms that play fast and loose with the rules will do business with one another; the more ethical firms will stick together.

Our respondents say they are most concerned about the BRIC growth markets (Brazil, Russia, India and China), where the UK sometimes struggles to have an impact.

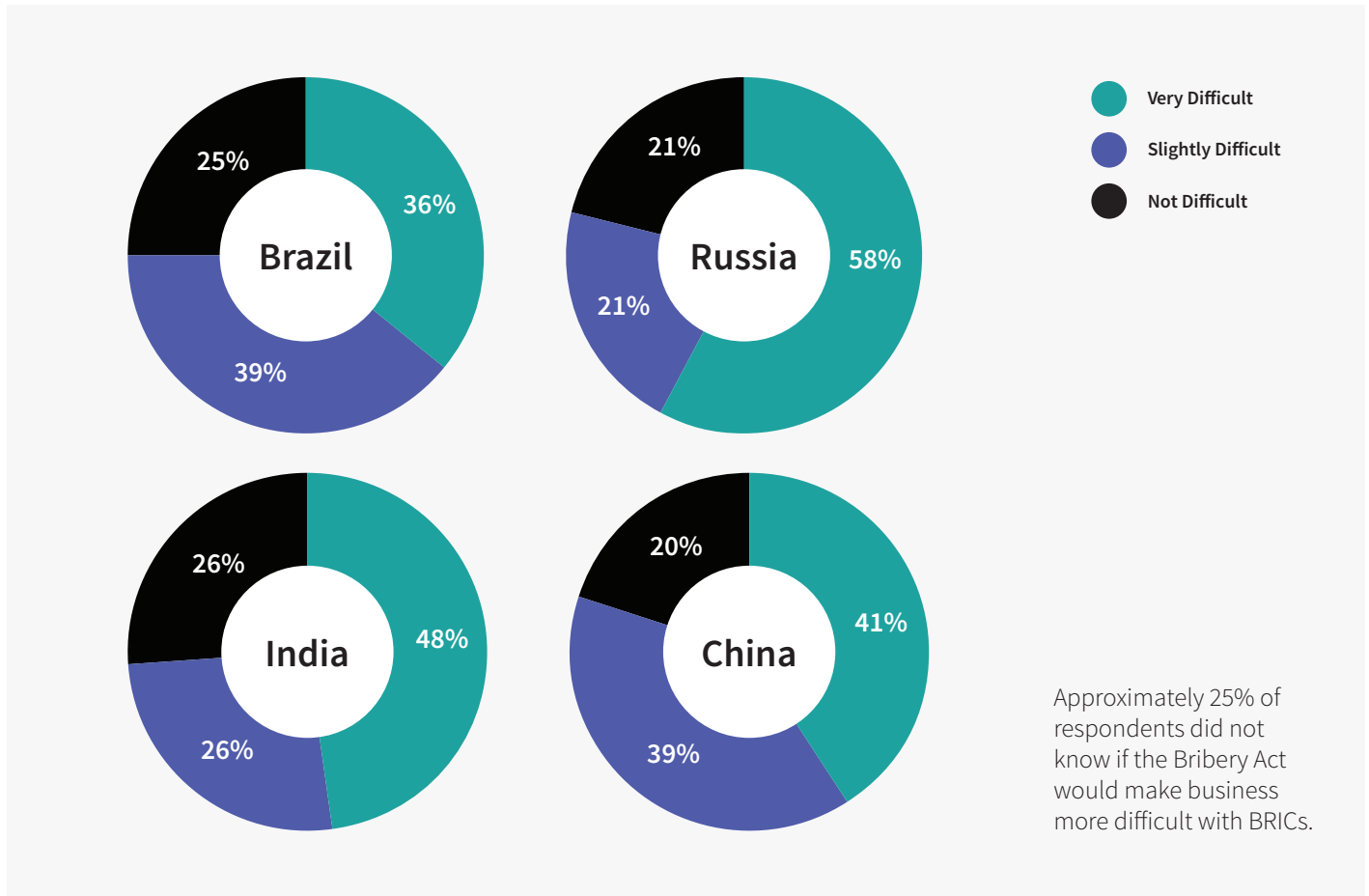


Figure 3: Where the UK Bribery Act is expected to make business more difficult

## Enforcement Expected to Increase

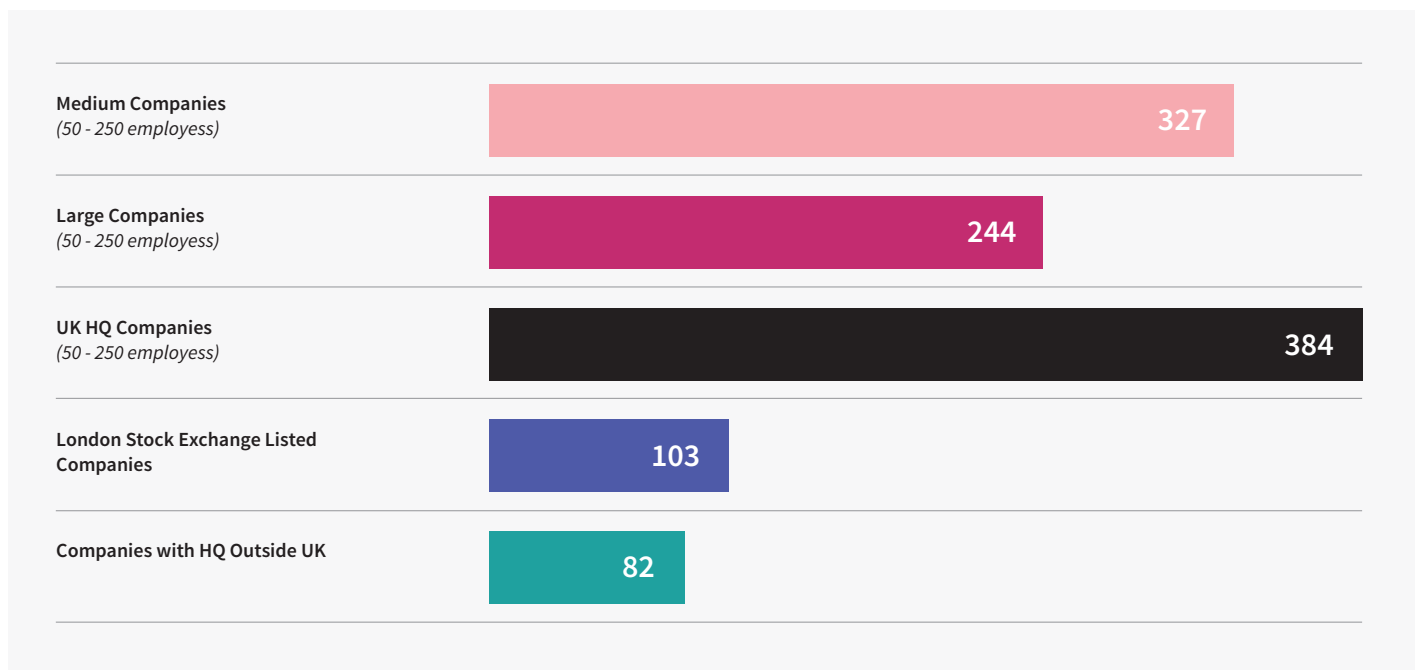
While no high-profile companies have been prosecuted yet, all signs suggest that UK companies convicted of bribery could expect tough sanctions. David Green QC, the new head of the SFO, has said he wants to prosecute more cases to create a stronger deterrent to potential offenders. Lord Justice Thomas, the second-most senior criminal judge, said corruption is “much more serious” than price fixing, which attracts fines of £10 million.

The likely introduction of the Deferred Prosecution Agreement (DPA) will give the SFO another powerful tool in corruption cases. DPAs will let the Serious Fraud Office settle cases and impose penalties without presenting evidence in a criminal trial while still appealing to companies as less damaging than a criminal conviction. Officials estimate that future fines could average between £3 million and £60 million — far higher than existing fines.

## Conclusions

The publicity surrounding the introduction of the UK Bribery Act has had a tangible effect but is nowhere near what presumably was intended. Although many companies have thought long and hard about compliance, many still have not. And until the act is more vigorously enforced, a greater number of informed adopters will take risks, especially if they feel their competitors are winning business in emerging markets.

The key questions for boards and chief compliance officers must be: How many risk takers and how many of the dangerously ignorant do you employ? And how many potential whistleblowers exist? A small number of any of these groups can present a huge risk for a company. ■



**Figure 4:** Where our respondents originated

### About The Research

Research was conducted online by the Strategy Consulting and Research team at FTI Consulting from July 13 to July 17, 2012 with 571 executives in UK businesses in board-level, senior management and middle management positions.

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