



**IAIS**

---

INTERNATIONAL ASSOCIATION OF  
INSURANCE SUPERVISORS

**ISSUES PAPER ON  
COMBATING BRIBERY AND CORRUPTION**

**OCTOBER 2014**

## **About the IAIS**

The International Association of Insurance Supervisors (IAIS) is a voluntary membership organisation of insurance supervisors and regulators from more than 200 jurisdictions in nearly 140 countries. The mission of the IAIS is to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders and to contribute to global financial stability.

Established in 1994, the IAIS is the international standard setting body responsible for developing principles, standards and other supporting material for the supervision of the insurance sector and assisting in their implementation. The IAIS also provides a forum for Members to share their experiences and understanding of insurance supervision and insurance markets. In addition to active participation of its Members, the IAIS benefits from input in select IAIS activities from Observers representing international institutions, professional associations and insurance and reinsurance companies, as well as consultants and other professionals.

The IAIS coordinates its work with other international financial policymakers and associations of supervisors or regulators, and assists in shaping financial systems globally. In particular, the IAIS is a member of the Financial Stability Board (FSB), founding member and co-parent of the Joint Forum, along with the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO), member of the Standards Advisory Council of the International Accounting Standards Board (IASB), and partner in the Access to Insurance Initiative (A2ii). In recognition of its collective expertise, the IAIS also is routinely called upon by the G20 leaders and other international standard setting bodies for input on insurance issues as well as on issues related to the regulation and supervision of the global financial sector.

## **About IAIS Issues Papers**

Issues Papers provide background on particular topics, describe current practices, actual examples or case studies pertaining to a particular topic and identify related regulatory and supervisory issues and challenges. Issues Papers are primarily descriptive and not meant to create expectations on how supervisors should implement supervisory material. Issues Papers often form part of the preparatory work for developing standards and may contain recommendations for future work by the IAIS.

This paper was prepared by the Financial Crime Task Force in consultation with IAIS Members and Observers.

The publication is available free of charge on the IAIS website ([www.iaisweb.org](http://www.iaisweb.org)).

© *International Association of Insurance Supervisors [2014]. All rights reserved. Brief excerpts may be reproduced or translated provided the source is stated.*

## Contents

1.	Introduction .....	4
2.	Corruption issues and the insurance sector .....	6
3.	Relationship to AML/CFT frameworks .....	7
4.	Insurance supervision in combating bribery and corruption .....	9
4.1	IAIS Survey .....	9
4.2	The insurance supervisor's role .....	9
4.3	Insurance Core Principles .....	10
5.	Approaches that supervisors use in combating bribery and corruption .....	16
5.1	Supervisory review .....	16
5.2	Risk-based approach .....	16
5.3	Approaches to risk management and internal controls .....	17
5.4	Third party risks .....	18
5.5	Organisational measures .....	19
5.6	Training .....	19
5.7	Taking supervisory action .....	20
6.	Conclusions .....	21
Annex I	Case studies	
Annex II	International developments in combating bribery and corruption	
Annex III	Acronyms	

## 1. Introduction

1. Bribery and corruption are challenges all over the world, and phenomena that cost economies huge amounts of money. They are areas of financial crime to which the financial sector, including insurance, is exposed. Indeed, the insurance sector has been the subject of some high-profile regulatory enforcement proceedings, which are discussed further in the paper (including annex I). In recent years bribery and corruption have received a great deal of attention from the international community, primarily because of concern as to their effect on developing countries. However, the risk of bribery and corruption also exists in developed markets, as evidenced by some of the examples provided in annex I to this paper.<sup>1</sup> Bribery and corruption offences usually involve dishonestly obtained proceeds or other benefits. Bribery and corruption can undermine the delivery of basic government services, such as healthcare and education, which are heavily relied on by the most impoverished sections of society. However, whilst bribery and corruption are usually referred to in the context of public office, this is not always the case. For example, a bribe may be paid to an employee of a commercial enterprise in order to secure preferential treatment in a tender process. This can have a distorting effect on competition, with adverse consequences for the viability of a local economy.<sup>2</sup>

2. The insurance sector is at risk to bribery and corruption in two ways. Firstly, policies could be funded from the proceeds of bribery and corruption. The risks of this are greater in life insurance and other investment-related insurance. Second, Board members, Senior Management and staff or other representatives of the insurer or insurance intermediary could be involved with bribery and corruption on their own behalf, on behalf of the firm or on behalf of third parties. Where insurers' and insurance intermediaries' employees and sales staff engage in activities (such as making payments or otherwise exerting undue influence) to win clients and business, there is a risk that such activity could cross the line legally or ethically, and potentially constitute bribery or corruption. Where insurers deal with public authorities or insure public institutions, the relevant laws on combating bribery and corruption – or “anti-bribery and corruption” (ABC) – can sometimes set particularly high standards in respect of dealing with such authorities. It should therefore be of concern to insurance supervisors that appropriate anti-bribery and anti-corruption measures are taken by the sector.

3. Given an increasing international focus on bribery and corruption, and in view of the risks they pose to the insurance sector, the Financial Crime Working Group considered it timely to explore how this activity affects insurers and insurance intermediaries as well as how insurance supervision can help to ensure that insurers and insurance intermediaries manage such risks effectively.

### *Structure of the paper*

4. Section 2 of this paper considers the relevance of bribery and corruption to the insurance sector and highlights a number of high-profile cases to date involving the insurance sector.

5. Section 3 considers the relationship between measures to combat bribery and corruption and frameworks for anti-money laundering/countering the financing of terrorism (AML/CFT).

6. Section 4 considers the insurance supervisor's role in combating bribery and corruption. This includes references to the Insurance Core Principles (ICPs) that are most

---

1 Also highlighted in a Report from the Commission to the Council and the European Parliament (“EU Anti-corruption report”), February 2014

2 An EU Anti-Corruption report shows the challenges of corruption, which costs the European economy around 120 billion euros per year: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm).

relevant to combating bribery and corruption, and highlights relevant supervisory requirements of the ICPs. It also draws upon the results of a survey of IAIS members, which the Financial Crime Working Group conducted in 2013.

7. Section 5 highlights approaches that some supervisors use in combating bribery and corruption, also drawing upon the results of the survey.

8. Annex I provides examples of bribery and corruption involving the insurance sector, including additional details of the cases described in Section 2. Annex II provides an outline of major international developments in the area of bribery and corruption. These developments are not specific to insurance but are included as general background information because they affect the insurance sector in the same way as other areas of business. Annex III provides a list of acronyms used in this paper.

## **2. Corruption issues and the insurance sector**

9. Measures to combat corruption generally apply to the insurance industry in the same way as to any other area of activity. To date the insurance sector has not been involved in any significant prosecutions but it has been the subject of some high-profile regulatory enforcement proceedings. The following are summaries of some of these enforcement proceedings; additional detail is provided in Annex I.

10. In 2009 the United Kingdom's Financial Services Authority (FSA) brought regulatory enforcement proceedings against a UK subsidiary of insurance brokerage firm AON for failing to establish and maintain effective systems and controls to counter the risks of bribery and corruption. These proceedings resulted in the imposition of a £5.25 million penalty. In December 2011, the criminal enforcement authorities in the United States settled charges under the Foreign Corrupt Practices Act (FCPA) with AON. The US Department of Justice (DOJ) cited the prior financial penalty paid by the UK subsidiary to the FSA and the FSA's "close and continuous supervisory oversight" of the subsidiary as factors in its decision to enter into a non-prosecution agreement and to impose a monetary penalty of \$1.76 million, which the DOJ described as substantially reduced.

11. In 2011 the FSA took action against another insurance brokerage firm, Willis Ltd, in respect of failings in the actions it had taken to counter the risks of bribery and corruption resulting in a £6,895,000 penalty.

12. In both cases the risks arose from making payments to non-FSA authorised overseas third parties who assisted in winning business from overseas clients, particularly in jurisdictions which had been deemed as high risk.<sup>3</sup> Also common to both cases was the fact that the companies concerned had agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 30% discount under the FSA's executive settlement procedures. Otherwise the penalties would have been £7.5 million for AON and £9.85 million for Willis Ltd.

13. A more recent insurance-related case in the US involved Allianz, a German-based insurance and asset management company, which was charged by the US Securities and Exchange Commission (SEC) with FCPA violations based on allegations that its Indonesian subsidiary paid bribes to secure sales of its insurance products. In December 2012 Allianz settled the case on payment of a \$12.3 million fine.

14. It is significant that the FSA enforcement actions were based on breaches of existing regulatory requirements which were not specific to bribery and corruption. These requirements were for businesses to take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems, and also to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that they might be used to further financial crime. This suggests that supervisory authorities are able to take significant enforcement action under their general regulatory standards in respect of failings related to bribery and corruption issues, even if the jurisdictions in which they are operating have not implemented legislation to criminalise those failings.

---

<sup>3</sup> These included Bahrain, Bangladesh, Bulgaria, Burma, Indonesia and Vietnam in the case of AON and Russia, Liberia, Argentina and Egypt in the case of Willis Ltd.

### **3. Relationship to AML/CFT frameworks**

15. The 2003 and 2012 Financial Action Task Force (FATF) Recommendations on combating money laundering and terrorist financing require jurisdictions to have AML/CFT frameworks in place; measures to combat bribery and corruption offences overlap to a considerable degree with these frameworks. This is particularly so in respect of politically exposed persons (PEPs) and asset recovery.

16. At a general level, both the 2003 and the 2012 FATF Recommendations require jurisdictions to treat bribery and corruption as predicate offences for money laundering. This means that bribery and corruption issues fall within the entirety of a jurisdiction's criminal justice and regulatory frameworks as required by the FATF.

17. More specifically, both the 2003 and the 2012 FATF Recommendations contain a requirement for financial services businesses to carry out enhanced due diligence measures in respect of business relationships with PEPs and their family members or close associates. PEPs are defined for the purposes of the 2003 Recommendations as individuals "who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials."

18. These requirements remain in force under the 2012 Recommendations. However, in addition, financial institutions now have to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP (using a definition based on that for foreign PEPs) or a person who is or has been entrusted with a prominent function by an international organisation. Higher risk business relationships with any such persons must be subject to enhanced due diligence measures.

19. These measures are underpinned by the FATF's June 2013 guidance on PEPs, and its June 2013 typologies paper providing assistance to reporting institutions on specific risk factors in the laundering of proceeds of corruption.

20. The FATF Recommendations also contain transparency requirements in respect of legal persons and legal arrangements which are aimed at the identification of underlying beneficial owners in order to facilitate asset tracing. While these measures are not confined to corruption issues, they are increasingly coming to be seen as key to the international fight against corruption.

21. Despite these areas of overlap, it is important to be aware that compliance with the FATF standards with regard to bribery and corruption does not necessarily equate to compliance with all aspects of the different international instruments set out in Annex II. The FATF Recommendations do not define bribery and corruption, and expressly provide that jurisdictions may decide how to define predicate offences for money laundering.

22. There are a number of differences in the way that jurisdictions define bribery and corruption. For example, the extra-territorial reach of the offences is much wider in some jurisdictions than in others. In addition, some jurisdictions make a distinction between active bribery (the offence committed by the person who offers, promises or gives a bribe) and passive bribery (the offence committed by the recipient), and do not criminalise the latter. In some jurisdictions, knowledge that an agent or third party is making a bribery payment on behalf of the person or company is also deemed to constitute bribery. Some jurisdictions also distinguish between "according to rule" corruption, where a bribe is a facilitation payment, or "grease payment", made to speed up the provision of a service which the recipient is required to carry out by law (e.g. processing paperwork), and "against the rule" corruption, where a bribe is paid to obtain a service that the recipient of the bribe is prohibited from providing (e.g. suppressing evidence of criminal activity). In some jurisdictions only the latter is illegal.

23. As a result of differences such as these, not all jurisdictions that comply with the FATF standards also meet the entire range of requirements in the various international initiatives. The need to bring AML/CFT measures and anti-corruption measures closer together was addressed in a guidance document issued by the FATF in October 2013, entitled *Best Practices Paper: The Use of the FATF Recommendations to Combat Corruption*, which followed on from earlier work in this area.

24. There is also a degree of overlap between AML/CFT measures and economic sanctions in relation to corruption. Historically, sanctions have not been used for the purposes of fighting corruption, but in 2011, in the wake of the Arab spring, the European Union enacted corruption-related restrictive measures against persons in Egypt and Tunisia. This was on the basis that they or their associates were suspected of misappropriation of State funds from their respective countries, and were therefore depriving their citizens of the benefits of sustainable development of their economy and society and undermining the development of democracy in the country. In early 2014 restrictive measures were enacted against former officials and their associates in the Ukraine on similar grounds. These restrictive measures include an asset freeze and a prohibition on making funds or other economic resources available to listed persons. As the proceeds of suspected corruption, the relevant assets and funds come within the AML/CFT frameworks outlined above, as well as being caught by restrictive sanctions measures. These measures are prima facie applicable to all movements of money, so would prevent payments being made or received by an insurer if the insured were a listed person. There are, however, some derogations under the global sanctions framework that may be applicable, whereby competent authorities may license the release of frozen funds or the making of payments if, for example, this is necessary to meet basic needs (usually defined as including the payment of insurance premiums) or to discharge pre-existing contractual obligations (which could include obligations under a contract of insurance).

## **4. Insurance supervision in combating bribery and corruption**

### **4.1 IAIS Survey**

25. In 2013, the IAIS conducted a survey of its Members on combating bribery and corruption. The purpose of the survey was to learn more about how bribery and corruption is dealt with in Member jurisdictions, and in particular the insurance supervisor's involvement in implementing, monitoring and enforcing anti-bribery and anti-corruption measures. Parts of this section and section 5 are based on the responses to the survey.

### **4.2 The insurance supervisor's role**

26. Each jurisdiction establishes its own framework to combat bribery and corruption. Survey responses indicated that some jurisdictions have dedicated anti-corruption bodies to investigate corruption offences. These may be separate authorities or may exist within existing law enforcement bodies. Other jurisdictions take a multi-agency approach, which includes separate bodies for policy making and legislation, and for investigation and prosecution of corruption cases. Decisions to adopt a particular model flow from individual jurisdictional criteria, that are a result of factors such as :

- features of the domestic financial system
- the powers and resources of existing agencies
- priorities in combating bribery and corruption.

27. The large majority of survey respondents indicated that the insurance supervisor is not directly responsible for combating bribery and corruption, but rather such matters fall within the competence of judicial authorities, notably the police, criminal prosecutor and criminal courts. The criminal prosecutor and the police generally have responsibility for legal prosecution. Based on the survey responses, most supervisors ensure that insurers comply with fit and proper provisions (during the licensing process) and that they have appropriate risk management and internal controls to identify and manage potential risks including AML/CFT and corruption and/or bribery risks. Two respondents indicated that they are the competent authority to monitor and take action to combat bribery and corruption whenever necessary (in cooperation with dedicated agencies).

28. Cooperation between insurance supervisors and the relevant criminal authorities responsible is important in combating bribery and corruption. This involves the supervisor and the prosecution authorities being able to provide each other with mutual and administrative assistance in accordance with the relevant acts, and coordinate their investigations, as far as is practicable and/or required. Where the supervisor obtains knowledge of findings of corruption, bribery or general offences against financial markets, it is able to notify the competent prosecution authorities. In some jurisdictions the supervisor becomes involved in the legal proceedings.

29. In view of the importance of information exchange in combating bribery and corruption, it is essential that the supervisor has the legal power and authority to exchange information with the prosecution authorities.<sup>4</sup>

30. Regarding cross-border cases of bribery and corruption, the involved jurisdictions' authorities cooperate with each other, sometimes on the basis of international agreements (memorandums of understanding) or on the basis of specific requests for information (letters rogatory<sup>5</sup>). The degree of involvement of the supervisor and method of cooperation will depend on the applicable confidentiality regime, the jurisdiction involved and the case being investigated. The survey responses indicated that insurance supervisors do cooperate with

---

<sup>4</sup> See ICP 3 (including ICP 3.2.1 which specifically refers to law enforcement agencies).

<sup>5</sup> A formal request from a court to a foreign court for some type of judicial assistance.

agencies or judicial (criminal) authorities in charge of combating bribery and corruption and that they notify the competent authorities of relevant findings. Most insurance supervisors are empowered to exchange information with judicial (criminal) authorities, and some stated that when they encounter situations that might justify criminal prosecution during their supervisory work, they inform the prosecutor. Thus, it is clear that cooperation between the relevant authorities, agencies, and supervisors is essential whatever approach is used at both the jurisdictional and international levels.

31. The survey responses also indicated that most supervisors require insurers to comply with fit and proper standards, and with AML/CFT regulations. Most supervisors also require insurers to have appropriate internal controls to ensure that they become aware of potential bribery and corruption issues. Most supervisory authorities supervise these through off-site monitoring and on-site inspections, and are able to take action when necessary and appropriate.

### **4.3 Insurance Core Principles**

32. As discussed above, insurance supervisors are generally not the principal competent authorities for anti-bribery and anti-corruption matters; their involvement in these matters arises mainly from their objective of ensuring that insurers and insurance intermediaries comply with the legal and regulatory requirements applicable to their activities. These requirements are likely to concern licensing, risk management and internal controls, countering fraud, and countering money laundering and terrorist financing (in particular when they are the competent authority in this matter).

33. As noted by the FATF, efforts to combat money laundering and anti-corruption measures are closely linked. There are cases where particularly rigorous customer identification and verification procedures are required. High-risk business relationships, in particular with PEPs and those from jurisdictions where corruption is widespread, may expose the insurance sector to significant reputational and/or legal risks.

34. Consequently, ICP 22 (Anti-money Laundering and Combating the Financing of Terrorism) and the related *Application Paper on combating money laundering and terrorist financing* are particularly relevant to insurance supervisors in combating bribery and corruption, as well as relevant documents published by the FATF.

35. Other ICPs place various requirements upon insurance supervisors that are relevant to combating bribery and corruption, in particular:

- ICP 4 (Licensing)
- ICP 5 (Suitability of Persons)
- ICP 7 (Corporate Governance)
- ICP 8 (Risk Management and Internal Controls)
- ICP 18 (Intermediaries)
- ICP 19 (Conduct of Business)
- ICP 21 (Countering Fraud in Insurance)

The following section considers how the requirements of these ICPs contribute towards combating bribery and corruption.

#### **4.3.1 Licensing**

36. The supervisor's role includes seeking to ensure that insurers are able to fulfill their obligations on an ongoing basis. In this regard the licensing procedure, as set out in ICP 4, is the first step in achieving this objective. The supervisor assesses whether the applicant meets the licensing requirements, which include:

- the suitability of the applicant's Board Members, Senior Management (both individually and collectively), Significant Owners and Key Persons in Control Functions<sup>6</sup>
- the soundness of the corporate or group structure and governance framework. The related internal control system and procedures would be expected to include the prevention and detection of money laundering, and extend to the offences of bribery and corruption.

Indications of offences of bribery and corruption would be relevant to a suitability review; a governance framework needs to take into account the prevention and detection of bribery and corruption.

#### **4.3.2 Suitability and integrity requirements**

37. Suitability is defined in ICP 5 as “having the competence and integrity to fulfil their roles” (in respect of Board Members, Senior Management and Key Persons in Control Functions), and as “having the financial soundness and integrity to fulfil their roles” (in respect of Significant Owners). Most relevant to combating bribery and corruption is the quality of “integrity”, demonstrated through evidence regarding character and in personal behaviour and business conduct. ICP 5 guidance gives a number of indicators to assess suitability, which includes criminal indicators. A criminal indicator would include conviction for a criminal offence, such as money laundering, terrorist financing, dishonesty or fraud; the supervisor should recognise criminal convictions or past misconduct as relevant in assessing suitability.<sup>7</sup> A conviction or pending proceedings for bribery or corruption would clearly be relevant in assessing suitability.

38. An assessment of suitability should be done both prior to licensing (see ICP 4) and on an ongoing basis.<sup>8</sup> Where suitability requirements are no longer met, the supervisor should take action.<sup>9</sup> For instance, the supervisor can suspend, dismiss or disqualify an individual in a position of member of the Board, member of Senior Management or a Key Person in a Control Function.

39. In a similar vein, ICP 7 requires that individual Board Members act in good faith, honestly and reasonably, and in the best interests of the insurer and policyholders, putting the interests of the insurer and policyholders ahead of his/her own interests.<sup>10</sup> Clearly, if a Board Member engages in bribery and corruption this would be contrary to these requirements.

40. In light of the suitability and integrity requirements, senior management is expected to set the right tone at the top – that bribery and corruption are not accepted in the insurer's organisation.

#### **4.3.3 Requirements on risk management and internal controls**

41. In accordance with ICP 7, supervisors require insurers to have appropriate policies and procedures that include promoting a culture of compliance. Such policies and procedures cover, inter alia, standards of conduct and codes of ethics, which includes procedures for dealing with conflicts of interest.<sup>11</sup> It would be important that the code of

---

6 See ICP 4.3 and 4.4.

7 See ICP 5.2.3 and 5.2.4.

8 See ICP 5.3.3.

9 See ICP 5.5.

10 See ICP 7.4.

11 See ICP7 and 7.9.1.

conduct and policies that deal with such conflicts (e.g. those that cover travel and expenses) are explicit on prohibiting payments or practices that may border on being improper or illegal from an anti-bribery and anti-corruption standpoint.

42. It is the Board's responsibility to ensure that the insurer has appropriate systems and functions for risk management and overall internal controls (that include anti-bribery and anti-corruption), and to provide oversight to ensure that these systems and the functions that oversee them are operating effectively and as intended.

43. The supervisor requires the insurer's Board to have appropriate policies and procedures to ensure that Senior Management promotes a culture of sound risk management and compliance;<sup>12</sup> such systems and controls should encompass procedures to deal effectively with bribery and corruption.

44. This is reinforced in ICP 8, which requires insurers to have effective systems of risk management and internal controls including both an effective compliance function that promotes a corporate culture of compliance and integrity,<sup>13</sup> and an internal audit function whose remit includes reporting to the Board on fraud prevention measures.<sup>14</sup> Appropriate written policies may include a definition and categorisation of reasonably foreseeable and relevant material risks to which the insurer is exposed; this would include bribery and corruption risks. Where the insurer is part of a financial group, the supervisor would seek evidence that the risk management system is established on a group-wide basis, including bribery and corruption risks.

45. Bribery and corruption usually involve dishonestly obtained proceeds or other benefits, which could be accomplished through fraud. In accordance with ICP 21, supervisors require insurers and insurance intermediaries to take effective measures to combat fraud. Policies and procedures that combat fraud in insurance can also contribute towards combating bribery and corruption.

#### **4.3.4 Compliance function**

46. ICP 8 highlights the role of the compliance function. The compliance function would typically be led by a Chief Compliance Officer or similar, at least in the case of larger or more complex organisations. Since the Board has overall responsibility for compliance, the compliance function would be expected to report regularly to it. This would include reporting on, amongst other things, the insurer's preparedness against bribery and corruption risks, and on performance against ABC standards and goals, including any incidents of material non-compliance.

47. The compliance function would be responsible for establishing, implementing and maintaining appropriate mechanisms and activities, for purposes that include promoting and sustaining an ethical corporate culture that values responsible conduct and compliance with internal and external obligations.<sup>15</sup> This would include compliance with anti-bribery and anti-corruption legislation and the confidential reporting of (suspicions of) non-compliance. These mechanisms would also include addressing compliance shortcomings.

48. ICP 8 also identifies the compliance function as responsible for holding training on an appropriate code of conduct as well as on key legal and regulatory obligations; bribery and corruption would be relevant to both.

---

<sup>12</sup> See ICP 7.9.

<sup>13</sup> See ICP 8.4.

<sup>14</sup> See ICP 8.6 and 8.6.2.

<sup>15</sup> See ICP 8.4.5.

### 4.3.5 Internal Audit

49. In addition, the internal audit function can play an important role in providing independent assurance over the design and effectiveness of the internal control system and the extent of compliance with established policies, processes and controls, as well as the extent of compliance with applicable laws, regulations, rules and directives.<sup>16</sup>

### 4.3.6 Money laundering and terrorist financing

50. As noted in section 3 the FATF recognises the link between corruption and money laundering. While the focus of the FATF Recommendations is on combating money laundering and terrorist financing, they include specific measures which recognise corruption risks, for example, requiring countries to make corruption and bribery predicate offences for money laundering, and insurers to take action to mitigate the risks posed by politically exposed persons (PEPs). The IAIS survey clearly showed that various jurisdictions use AML/CFT measures to help combat corruption.

51. ICP 22 requires supervisors to understand the ML/FT risks to which insurers and insurance intermediaries are exposed, and to have effective measures in place that enable them to cooperate with other authorities in combating ML/FT.<sup>17</sup> Where the insurance supervisor is the competent authority for AML/CFT, these requirements go further – inter alia the supervisor should:

- issue enforceable rules on AML/CFT compliance (consistent with FATF Recommendations)
- have an effective supervisory framework to monitor and enforce AML/CFT compliance
- review the effectiveness of AML/CFT measures being taken.<sup>18</sup>

52. Key AML/CFT requirements of the FATF that enhance the fight against bribery and corruption in this regard include enhanced due diligence for high risk relationships, and the filing of suspicious transaction reports.

#### *Enhanced due diligence measures<sup>19</sup>*

53. The FATF requires enhanced due diligence measures to be taken by insurers and insurance intermediaries in respect of PEPs, as many PEPs are in positions which can be subject to abuse for the purpose of committing money laundering and related predicate offences, including bribery and corruption. Such measures require insurers and insurance intermediaries to have appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner of a customer is a foreign PEP. Insurers and insurance intermediaries should obtain senior management approval for establishing (or, in the case of existing customers, maintaining) such business relationships; they should take reasonable measures to establish the source of wealth and source of funds of customers and beneficial owners identified as PEPs, and conduct enhanced ongoing monitoring of the business relationship. They should also take reasonable measures to determine whether a customer is a domestic PEP or a person who is, or has been, entrusted with a prominent function by an international organisation. In cases of a higher risk business relationship with a domestic PEP, insurers and insurance intermediaries must apply the measures mentioned above. Measures for PEPs increase the possibility of detecting instances where public officials and other persons who are (or have been) entrusted with

---

<sup>16</sup> See ICP 8.6 and related guidance.

<sup>17</sup> See ICP 22.6 and 22.7

<sup>18</sup> See ICPs 22.2, 22.3 and 22.4

<sup>19</sup> See FATF Recommendations and Interpretive Notes, including recommendations 1, 3, 10 and 19.

prominent public functions are abusing their positions for private gain. The supervisor should ensure effective implementation of these measures by insurers and insurance intermediaries.

#### *Suspicious transaction reports*

54. If an insurer or insurance intermediary suspects, or has reasonable grounds to suspect, that funds are the proceeds of a criminal activity (including corruption), or are related to terrorist financing, the FATF Recommendations require that it reports its suspicions promptly to the financial intelligence unit by means of a suspicious transaction report (STR). Analysis of STRs can provide a valuable source of financial information in both the identification and tracing of the proceeds of corruption.

#### **4.3.7 Intermediaries**

55. ICP 18 focuses specifically on intermediaries. It requires them to be licensed and subject to ongoing supervisory review.

#### *Professional integrity*

56. In accordance with ICP 18 the supervisor should require insurance intermediaries to be licensed, to possess appropriate levels of professional knowledge and experience, integrity and competence.<sup>20</sup> The supervisor also expects them to act with integrity, including high ethical standards. The guidance provides examples of these qualities, which include not taking unfair advantage and not accepting or offering gifts where this might imply an improper obligation.<sup>21</sup>

57. Insurance intermediaries therefore need to meet certain personal requirements, evidenced for example by there being no penal judgements on account of actions which are incompatible with the high ethical conduct expected of an insurance intermediary or there being no outstanding certificates of unpaid debts against them. An insurance intermediary's involvement in a criminal tribunal procedure may already give cause for supervisory concern in serious cases.

58. The supervisor may wish to ensure that individuals acting as intermediaries are subject either to internal policies and procedures, or to the ethical standards of professional bodies, that require integrity.<sup>22</sup> The supervisor may also wish to lay down its own expectations through a code of conduct with which insurance intermediaries should comply.<sup>23</sup>

59. The IAIS survey shows that various jurisdictions have established a code of conduct and/or code of ethics that deals with bribery and corruption risks and sets out supervisory expectations regarding principles of acting honestly and with integrity.

60. Intermediary firms themselves should operate procedures to assess the integrity of those acting as intermediaries on their behalf.<sup>24</sup>

#### *Corporate governance*

61. In accordance with ICP 18.4 the supervisor requires that insurance intermediaries apply appropriate corporate governance. In respect of governance-related matters, the supervisor may set out expectations in ensuring an appropriate level of internal controls of

---

20 See ICP 18.1 and 18.3

21 See ICP 18.3 and 18.3.6

22 See ICP 18.3.7

23 See ICP 18.3.8

the business and compliance with all relevant domestic and foreign legislation, including non-insurance legislation and would include anti-bribery and corruption legislation.

#### *Client monies*

62. The supervisor requires an insurance intermediary who handles client monies to have sufficient safeguards in place to protect these funds.<sup>25</sup> Insurance intermediaries' vulnerability to bribery and corruption risks may be higher if they handle client monies (for example where the insurance intermediary receives funds from a client for the payment of premiums to an insurer, or receives claims proceeds or refunded premiums from an insurer for onward payment to a client).

63. To mitigate bribery and corruption risk it is crucial that insurance intermediaries have clear client money policies and procedures in place. Such policies are there to ensure that adequate financial systems and controls are maintained that cover, amongst other things, the authorisation of payments from the account, the maintenance of adequate books and records that are subject to audit, and the use of separate client accounts that are clearly distinguishable from the intermediary's own bank accounts.<sup>26</sup>

64. The insurance intermediary's senior management's awareness, involvement and responsibility are vital in ensuring adequate anti-bribery and corruption systems and controls are in place and that appropriate resources are allocated to mitigate identified risks.

#### *Conflicts of interest*

65. As noted above, in accordance with ICP 19, the supervisor requires both insurers and intermediaries to manage potential conflicts of interest; soliciting or accepting inducements (including cash, cash equivalents, commission, goods and hospitality) is specifically cited as having the potential to create conflicts of interest.<sup>27</sup> Soliciting or accepting inducements could also be seen as taking bribes.

66. ICP 19 also notes that an insurance intermediary is more likely to than an insurer to encounter such conflicts of interest, as the intermediary interacts with both the customer and the insurer. Appropriate policies and procedures are needed to identify and manage such conflicts.

---

25 See ICP 18.6.

26 See ICP 18.6.5

27 See ICP 19.7 and 19.7.1-2

## **5. Approaches that supervisors use in combating bribery and corruption**

### **5.1 Supervisory review**

67. The supervisor can use both off-site monitoring and on-site inspections to examine the business of each insurer<sup>28</sup> and be expected to take into account bribery and corruption risks within its risk-based approach.

68. In its approach to bribery and corruption risks, the supervisor could take into account the interlinkage between AML/CFT and ABC in its supervision of bribery and corruption risks. For example, if suspicious transactions are being reported to satisfy AML/CFT requirements, then more intensive supervision of bribery and corruption may be appropriate.

69. Approaches to the supervisor's evaluation of the effectiveness of the corporate governance framework, including its risk management and internal control systems, are discussed further in ICP 9.<sup>29</sup>

70. The supervisor may review involvement of risk management in areas that are exposed to bribery and corruption risks, for example in assessing the business case for new business in emerging markets from a risk management point of view.

71. The supervisor can check whether, and to what extent, bribery and corruption risks are covered by internal audit. If necessary, the supervisor may ask an insurer or insurance intermediary to enhance its internal audit coverage of bribery and corruption risks. The supervisor may also follow up on relevant audit findings – either from an internal or from the external audit.

72. Thematic reviews that cover both AML/CFT and ABC could enable the supervisor to assess an insurer's capability and effectiveness to interrelate the two subjects in order to deal with them in a comprehensive way.

### **5.2 Risk-based approach**

73. In combating bribery and corruption the supervisor should follow a risk-based approach. Following a risk-based approach involves paying more attention to areas of higher risk, and this would take into account insurers' and insurance intermediaries' business models and their activity abroad. For example, if target markets are under pressure, competition may be stiff and margins may tighten, leading to a higher risk of bribery and corruption. The risk of bribery and corruption might also be higher if the business environment in a jurisdiction (including the legal and political situation) offers fewer protections against it.

74. The Corruption Perceptions Index,<sup>30</sup> issued annually by Transparency International, provides valuable data for analysing the situation in the various jurisdictions, and is consulted by a number of supervisors as part of their approach to risk-based supervision.

75. Red flags that may highlight potential risks and trigger intensified supervision of insurers and insurance intermediaries might include:<sup>31</sup>

- inadequate administrative and compliance resources

---

28 See ICP 9.

29 See ICP 9.7.7 guidance and corresponding annex.

30 Corruption Perceptions Index 2013: <http://www.transparency.org/cpi2013/results>.

31 Source: "Preventing corruption – Information for Swiss business operating abroad": A brochure by the State Secretariat for Economic Affairs (SECO), in collaboration with: The Federal Office of Justice, The Federal Department of Foreign Affairs: economiesuisse, and Transparency International Switzerland.

- ill-defined competencies and responsibilities
- irregularities or substantial delays in operational reports
- significant and unsubstantiated deviations from operational plans
- deficiencies in procurement processes
- non-transparent, poorly managed bookkeeping and irregularities in financial and audit reports
- an excessively high budget in relation to planned activities and unjustified changes in the budget or invoicing
- unusual short- or long-term expenditures
- excessive commissions
- a disregard of internal instructions
- inappropriate salaries or commissions
- employees' lavish lifestyle and personal property and assets inconsistent with their income levels
- employees' personal dependencies, and favouritism.

76. The supervisor may require the insurer or insurance intermediary to make use of knowledge it gains in the process of combating money laundering, terrorist financing, and other related threats to the integrity of the financial system in its evaluation of bribery and corruption risks. Where the FATF identifies a jurisdiction as high-risk and non-cooperative (i.e. having strategic deficiencies) in its Public Statements,<sup>32</sup> it either

- calls on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial ML/FT risks emanating from the jurisdictions, or
- calls on its members to consider the risks arising from the deficiencies associated with each jurisdiction (in situations where a jurisdiction has made insufficient progress in addressing the deficiencies).

77. Where insurance business is conducted in such jurisdictions, this is likely to impact the level of supervisory intensity in respect of such business, particularly where the insurance supervisor is the competent authority for AML/CFT.

### **5.3 Approaches to risk management and internal controls**

78. The supervisor expects insurers' risk management systems to be designed and operated to manage all reasonably foreseeable material risks, and to report on them in a timely manner. Insurers' risk appetite frameworks should include risks of money laundering and unethical practices.<sup>33</sup>

79. Consistent with ICP 8 the supervisor should gain assurance that risks related to bribery and corruption are an integrated part of the insurer's risk management and internal control system. This should include not only whether processes to mitigate bribery and

---

32 FATF Public Statement - 14 February 2014 / High-risk and non-cooperative jurisdictions: <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-feb-2014.html>.

33 See FSB Principles on effective risk appetite frameworks at: [https://www.financialstabilityboard.org/publications/r\\_131118.htm](https://www.financialstabilityboard.org/publications/r_131118.htm). Whilst these principles aim to enhance the supervision of SIFIs, supervisors and financial institutions may apply them proportionately to non-SIFIs so that the risk appetite framework is appropriate to the nature, scope and complexity of the activities of the financial institution.

corruption risks have been followed but also regarding the effectiveness of the processes themselves, including the reporting of bribery and corruption.

80. Risk management can help to avoid or mitigate bribery and corruption. For example, the supervisor could make sure that the insurer:

- identifies the risks related to bribery and corruption<sup>34</sup> and assesses how these risks can affect their business
- takes appropriate precautions by putting adequate procedures and measures in place to mitigate the risks
- monitors and analyses bribery and corruption risks periodically to determine gaps and improvement opportunities
- routinely performs compliance and/or internal audit checks of high risk areas (e.g. third party payments).

#### **5.4 Third party risks**

81. Issues with bribery and corruption can spread to insurers and insurance intermediaries via third party agreements: an insurer or insurance intermediary bears the risk of enforcement and damage to its reputation for bribery and corruption committed by third parties acting on its behalf. The case studies in Annex I illustrate some of the risks related to third party agreements.

82. Accordingly, it is important for the supervisor to check whether the insurer has implemented appropriate systems and controls to mitigate the risk that third parties acting on its behalf may engage in bribery and corruption. For example, the supervisor may want to check whether the insurer:

- has well established and documented policies with a clear definition of “third party” in place
- has procedures to identify and risk-assess the use of third parties, which might include the use of internal audit
- has sufficiently robust due diligence processes on third parties and reviews third party relationships on a regular basis
- includes appropriate clauses in third party contractual agreements in relation to bribery and corruption, or a “right to audit clause”
- checks third party payments prior to approval, to ensure that they are supported by a valid business case for that account.<sup>35</sup>

83. The supervisor could include review of the insurer’s or insurance intermediary’s material third-party agreements as part of the supervisory process. Initially, the supervisor may check whether there is an adequate commercial rationale and whether adequate due diligence has been performed. On a regular basis, the supervisor may review the operational effectiveness of the insurer’s/insurance intermediary’s material third-party relationships, including whether these achieve the business objectives for which they have been established.

---

34 See Allianz Risk Barometer on Business Risks 2014: Corruption together with theft and fraud ranks eighth out of the ten top business risks: <http://www.agcs.allianz.com/about-us/news/press-riskbarometer2014/>.

35 See Publication FSA: “Anti-bribery and corruption in commercial insurance broking: Reducing the risk of illicit payments or inducements to third parties”, May 2010.

## **5.5 Organisational measures**

84. The supervisor expects insurers and insurance intermediaries to adopt policies and procedures that promote an ethical culture, including a code of conduct and/or code of ethics that deals with bribery and corruption risks. The supervisor can also set out its own expectations regarding principles of acting honestly and with integrity.

85. The supervisor could also set requirements for insurers and insurance intermediaries to take appropriate organisational measures such as:

- having transparent business processes, documents and keeping adequate records
- pre-employment and in-employment screening of staff on bribery and corruption risks
- clearly specifying employees' competence requirements in job descriptions
- keeping a record of additional functions fulfilled by their staff or even in prohibiting staff to take up certain functions
- including integrity clauses in employment contracts
- applying appropriate internal controls that include a principle of requiring dual authorisation in respect of significant commitments
- implementing control functions within the organisation – or outsourcing these to external entities – that are responsible for assessing potential conflict of interest and applying particular due diligence in the selection and assignments of local agents
- applying appropriate controls in establishing and managing relationships with third parties (eg agents, clients, and suppliers)
- including ABC within the supervisory requirements regarding anti-fraud initiatives that aim to prevent, detect, and prosecute fraudulent activities
- including ABC in the code of conduct – to be complied with by all employees and third party contractors
- reflecting compliance with ABC standards and processes in remuneration schemes to include malus or clawback provisions in the case of breaches of ABC requirements
- defining sales targets and incentives in a way that deters corruption or bribery
- establishing whistleblowing procedures that include protection of, and encouragement to, people willing to take the risk of speaking out on corruption.

86. In general, policy and procedures can be expected on gifts, hospitality and entertainment, including specific guidelines regarding an acceptable value threshold (including cumulative value), and reporting, record-keeping and pre-approval requirements. As mentioned in 5.4, third party arrangements may also require special attention in policies and procedures. Other areas include donations, charity and sponsoring. Setting criteria beforehand and applying risk-based due diligence on the receiving party can reduce the risks on bribery.

## **5.6 Training**

87. Regular training of an insurer's or insurance intermediary's staff, combined with the monitoring of business practices may be a protective barrier against bribery and corruption. It can enable staff to understand the risk they face, react adequately in a way the firm expects and avoid breaching company policy, regulatory requirements or the law.

88. The survey results showed that in many jurisdictions there is no explicit supervisory requirement for ABC training of an insurer's Board Members and Senior Management. However, various jurisdictions promote the idea of ABC training, and such training is often organised (independently of supervisory requirements) by insurers for their staff, or integrated within their overall compliance and integrity training.

89. Elements that could be considered include:

- providing basic ABC training for all staff and additional training for staff in high risk positions
- ensuring the training covers practical examples of risk and how to comply with policies
- testing that staff understood the training
- maintaining records of who attended the training and when.

90. Effective supervision of bribery and corruption risks similarly requires the supervisor's staff to have appropriate training and expertise.

## **5.7 Taking supervisory action**

91. In many jurisdictions the criminal code or other legislation applies to bribery and corruption. Individuals as well as insurers and insurance intermediaries can be subject to legislation.

92. If an insurer or insurance intermediary is convicted of bribery or corruption, it would be important for the supervisor to investigate circumstances, including relevant individuals' responsibilities. In the case of a conviction of the firm or an executive officer, the supervisor would expect the firm to disclose the incident to it immediately. The supervisor could then take appropriate action. If necessary, the supervisor could order the dismissal of an executive who is considered not to fulfil suitability requirements.

93. The survey responses indicated that the conviction of a Board Member, Senior Manager, Significant Owner or Key Person in a Control Function would pose a question as to their suitability for such a function within an insurer.<sup>36</sup> They would no longer meet the licensing and suitability requirements<sup>37</sup> set out for such positions. The timeframe for suspension of an individual from acting in such a capacity varies among jurisdictions.

94. When an insurer or insurance intermediary, or a third party acting on the insurer's or intermediary's behalf, fails to implement adequate mechanisms and procedures to combat bribery and corruption, the supervisor may impose a disciplinary sanction on, or demand restorative measures by, the supervised entity.

95. Depending on the circumstances, the supervisor can also consider revoking the licence or imposing licensing conditions.

---

36 See ICP 5.

37 See ICP 4.

## 6. Conclusions

96. The insurance sector is vulnerable to bribery and corruption, as illustrated by cases highlighted in this paper. Falsifying books and records as well as using “off-the-books” accounts can be used to facilitate improper payments. Insurance contracts on large government projects may be particularly at risk of bribery and corruption. Oversea third-party agreements can bear high bribery and corruption risks. Setting up new businesses in foreign countries can involve bribery and corruption risks that need to be addressed by all relevant parties, including insurers, insurance intermediaries and supervisors.

97. Although insurance supervisory authorities are not usually directly responsible for combating bribery and corruption, the supervisor has an interest in requiring insurers and insurance intermediaries to take measures to combat bribery and corruption. That means, amongst other things, that insurers’ and insurance intermediaries’ risk management and internal control systems need to be effective in preventing and detecting bribery and corruption risks.

98. Insurers’ and insurance intermediaries’ AML/CFT frameworks can be useful in the fight against bribery and corruption. Measures taken in applying enhanced due diligence to higher risks relationships, and the filing of suspicious transaction reports may help to detect risks. Thus supervisors could encourage insurers and insurance intermediaries to take a comprehensive approach that incorporates AML/CFT requirements and techniques in combating bribery and corruption. This can draw upon synergies in the approaches and techniques in combating both forms of financial crime that can work to the mutual benefit of both.

99. The awareness, involvement and responsibility of the Board and Senior Management are vital in ensuring that these are in place, and that appropriate resources are allocated to mitigate identified risks. It is crucial that the management is seen to take the risks seriously.

100. High standards of integrity help protect the insurance sector against bribery and corruption. Integrity should be ingrained throughout insurers’ and insurance intermediaries’ organisations and be part of their culture, and this will enhance protection not only against bribery and corruption but also against other forms of financial crime.

101. Regular training by insurers and insurance intermediaries of their staff, combined with the monitoring of business conduct, should help to strengthen the application of ABC systems and controls. It can enable staff to understand the risks that their organisation and the sector face, react adequately in a way the firm expects and avoid breaching company policy, regulatory requirements or the law. Training can thus contribute to a company culture that promotes integrity and recognises bribery and corruption risks.

102. The supervisor can contribute to combating bribery and corruption in the insurance sector by requiring insurers and insurance intermediaries to have appropriate systems and controls in place that involve management’s positive engagement, in taking action in the case of non-compliance with the requirements, and in cooperating with law enforcement authorities when an incident occurs. The supervisor could also be active in promoting awareness of bribery and corruption risks to insurers and insurance intermediaries operating in their jurisdiction, to encourage risk mitigation efforts.

103. Although the IAIS does not have a core principle or other supervisory material that deals specifically with bribery and corruption risks, this paper demonstrates that the application of relevant governance and other requirements of the ICPs, as highlighted in section 4, can contribute significantly towards mitigating bribery and corruption risks.

## Case studies

### Allianz

#### Facts<sup>38</sup>

The US Securities and Exchange Commission on Dec. 17, 2012 charged Germany-based insurance and asset management company Allianz SE with violating the books and records and internal controls provisions of the Foreign Corrupt Practices Act (FCPA) for improper payments to government officials in Indonesia during a seven-year period.

The SEC's investigation uncovered 295 insurance contracts on large government projects that were obtained or retained by improper payments of \$650,626 by Allianz's subsidiary in Indonesia to employees of state-owned entities, by creating an 'off-the-books' account that served as a slush fund for bribe payments to foreign officials to win insurance contracts worth several million dollars. Allianz made more than \$5.3 million in profits as a result of the improper payments.

Allianz, which is headquartered in Munich, agreed to pay more than \$12.3 million to settle the SEC's charges.

According to the SEC's order instituting settled administrative proceedings against Allianz, the misconduct occurred from 2001 to 2008 while the company's shares and bonds were registered with the SEC and traded on the New York Stock Exchange. Two complaints brought the misconduct to Allianz's attention. The first complaint submitted in 2005 reported unsupported payments to agents, and a subsequent audit of accounting records at Allianz's subsidiary in Indonesia uncovered that managers were using "special purpose accounts" to make illegal payments to government officials in order to secure business in Indonesia. The misconduct continued in spite of that audit.

According to the SEC's order, the second complaint was made to Allianz's external auditor in 2009. Allianz failed to properly account for certain payments in their books and records. The improper payments were disguised in invoices as an "overriding commission" for an agent that was not associated with the government insurance contract. In other instances, the improper payments were structured as an overpayment by the government insurance contract holder, who was later "reimbursed" for the overpayment. Excess funds were then paid to foreign officials who were responsible for procuring the government insurance contracts. Allianz lacked sufficient internal controls to detect and prevent the wrongful payments and improper accounting.

#### Comment: Lessons learned

Falsifying books and records as well as using "off-the-books" accounts are ways to carry out improper payments. Insurance contracts on large government projects are prey to bribery and corruption. The case shows the importance of the effectiveness of internal controls. Even once detected, bribery and corruption may continue in different manners, if not firmly combatted.

<sup>38</sup> Source: U.S. Securities and Exchange Commission, Press Release, Homepage <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171486902>.

## **AON Limited**

### Facts<sup>39</sup>

The Financial Services Authority (FSA) fined Aon Limited (Aon Ltd) £5.25 million on the 8 January 2009 for 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 on the 8 January 2009..

Between 14 January 2005 and 30 September 2007, Aon Ltd failed to properly assess the risks involved in its dealings with overseas firms and individuals who helped it win business and failed to implement effective controls to mitigate those risks. As a result of Aon Ltd's weak control environment, the firm made various suspicious payments, amounting to approximately US\$7 million, to a number of overseas firms and individuals.

Aon Ltd cooperated fully with the FSA and agreed to settle at an early stage of the FSA's investigation. The firm qualified for a 30% discount under the FSA's settlement discount scheme. Without the discount the fine would have been £7.5 million.

Since the discovery of its failings in 2007, Aon Ltd and its current senior management have demonstrated that they treat this matter with the utmost seriousness. The FSA considers that the pro-active determination of Aon Ltd's current senior management to identify past issues and improve the firm's systems and controls in this area is a model of best practice that other firms may wish to adopt.

### Comment: Lessons learned

It is crucial that the senior management properly assesses ABC risks and implements effective risk management and internal controls to address such risks.

## **Willis Limited**

### Facts<sup>40</sup>

The Financial Services Authority (FSA) fined Willis Limited £6.895 million for failings in its anti-bribery and corruption systems and controls on 21 July 2011.

These failings created an unacceptable risk that payments made by Willis Limited to overseas third parties could be used for corrupt purposes.

Between January 2005 and December 2009, Willis Limited made payments to overseas third parties who assisted it in winning and retaining business from overseas clients, particularly in high risk jurisdictions. These payments totalled £27 million. The FSA investigation found that, up until August 2008, Willis Limited failed to:

- ensure that it established and recorded an adequate commercial rationale to support its payments to overseas third parties;
- ensure that adequate due diligence was carried out on overseas third parties to evaluate the risk involved in doing business with them; and
- adequately review its relationships on a regular basis to confirm whether it was still necessary and appropriate for Willis Limited to continue with the relationship.

These failures contributed to a weak control environment surrounding payments to overseas third parties and gave rise to an unacceptable risk that these payments could be used for corrupt purposes, including paying bribes.

In addition, between January 2005 and May 2009, Willis Limited failed adequately to monitor its staff to ensure that each time it engaged an overseas third party, an adequate commercial rationale had been recorded and that

<sup>39</sup> See Homepage former FSA, Press release:  
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml>.

<sup>40</sup> See Homepage former FSA, Press release:  
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/066.shtml>.

sufficient due diligence had been carried out. Although Willis Limited improved its policies in August 2008, it failed to ensure that its staff were adequately implementing them.

Lastly, throughout the period, Willis Limited's senior management did not receive sufficient information about the performance of Willis Limited's relevant policies to allow them to assess whether bribery and corruption risks were being mitigated effectively.

During the FSA investigation, Willis Limited identified as suspicious a number of payments totalling \$227,000 which it made to two overseas third parties in respect of business carried out in Egypt and Russia. These were subsequently reported to the Serious Organised Crime Agency.

The FSA's view was that Willis Limited had failed to take the appropriate steps to ensure that payments it was making to overseas third parties were not being used for corrupt purposes. The FSA was disappointed because it had repeatedly communicated with the industry on the issue and had previously taken enforcement action for failings in this area.

It said that the involvement of UK financial institutions in corrupt or potentially corrupt practices overseas undermined the integrity of the UK financial services sector. The action it had taken against Willis Limited showed that it was vital for firms not only to put in place appropriate anti-bribery and corruption systems and controls, but also to ensure that those systems and controls were adequately implemented and monitored.

Willis Limited has taken significant steps to address the failings identified by the FSA and has committed to carrying out a review of past payments made to overseas third parties to identify any inappropriate payments.

Willis Limited cooperated with the FSA and agreed to settle at an early stage of the FSA's investigation. The firm qualified for a 30% discount under the FSA's settlement discount scheme. Without the discount the fine would have been £9.85 million.

Comment: Lessons learned

Third-party agreements which involve overseas participants may bear high ABC risks. An adequate commercial rationale, effective due diligence and review third party relationships on a regular basis are crucial.

## JLT Specialty Limited

### Facts<sup>41</sup>

JLT Specialty Limited (JLTSL), which provides insurance broking and risk management services, was found to have failed to conduct proper due diligence before entering into a relationship with partners in other countries who helped JLTSL secure new business, known as overseas introducers. JLTSL also did not adequately assess the potential risk of new insurance business secured through its existing overseas introducers.

The FCA felt that JLTSL's failings were unacceptable given JLTSL actually had the checks in place to manage risk, but didn't use them effectively, despite being warned by the FCA that they needed to up their game. Businesses can be profitable but firms must ensure that they take the necessary steps to control the risks in that business.

Bribery and corruption from overseas payments was an issue the FCA expects all firms to do everything they can to tackle. Firms cannot be complacent about their controls – when it takes enforcement action, it expects the industry to sit up and take notice.

JLTSL's failure to manage the risks created by overseas payments, which occurred between 19th February 2009 and 9th May 2012, breached the FCA's principle on management and control.

During this period, JLTSL received almost £20.7 million in gross commission from business provided by overseas introducers, and paid them over £11.7 million in return.

Inadequate systems around these payments created an unacceptable risk that overseas introducers could use the payments made by JLTSL for corrupt purposes, including paying bribes to people connected with the insured clients and/or public officials.

At the FCA's request, JLTSL also varied its permissions<sup>42</sup> until such time as the FCA was satisfied that JLTSL could adequately mitigate the risk of making payments to overseas third parties.

JLTSL's penalty was increased because of its failure to respond adequately either to the numerous warnings the FCA had given to the industry generally or to JLTSL specifically. The fine of £1,876,000 follows JLTSL's agreement to settle at an early stage of the investigation. As a result, it qualifies for a 30% reduction on the original penalty of £2,684,013.

### Comment: Lessons learned

Setting up new business in foreign countries bears bribery and corruption risks that must be addressed accordingly by both insurers and supervisors. Insurers must control overseas payments by any means. Insurers may not take warning of supervisors seriously enough so that further supervisory action may become necessary.

---

41 Source: Financial Conduct Authority UK, Press release, Homepage : <http://www.fca.org.uk/news/firm-fined-18million-for-unacceptable-approach-to-bribery-corruption-risks-from-overseas-payments>.

42 A variation of permission can be at the supervisor's or the firm's initiative. It is essentially a change (usually a restriction) in the kinds or classes of business a firm can undertake. The variation can be temporary (as in this case) or permanent.

## International developments in combating bribery and corruption

1. Growing international concern has led to a number of initiatives to combat bribery and corruption, most of which treat these terms as synonymous. However, over time the international focus has gone beyond the act of bribery and has extended to any abuse of public office for private gain. Whilst this clearly would include bribery, it would also cover situations where no act of bribery is involved. An example is where a head of state awards a lucrative contract or government post to a close family member. The wider definition would also encompass offences of dishonesty other than bribery such as theft or fraud, for example where state assets or international aid payments are diverted by an official to a sham business created by him which purports to provide a service to the government. For ease of reference, corruption should be taken to include bribery and other activities unless the contrary is clear from the context.

### International Conventions

2. The three principal international instruments dealing with corruption are:
- 1997 Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention)
  - 1999 Council of Europe Criminal Law Convention on Corruption & its 2003 Additional Protocol (C of E Convention)
  - 2003 United Nations Convention Against Corruption (UNCAC)

#### OECD Convention

3. The OECD Convention is expressly aimed at reducing the effect of bribery on international business transactions including trade and investment. It is therefore focused on the offence of bribing foreign public officials and matters related to that offence including penalties, liability of legal persons, jurisdiction, accounting, extradition and mutual legal assistance. Bribery for these purposes means active bribery. The creation of ancillary offences such as incitement, conspiracy and aiding and abetting is also required.

#### C of E Convention

4. The C of E Convention aims to promote a common criminal policy for the protection of society against corruption. It goes beyond the OECD Convention in that it deals with both active and passive bribery and applies to dealings with a much wider range of persons, namely:

- domestic and foreign public officials
- members of domestic and foreign public assemblies
- those who direct or work for private sector entities
- officials of international organisations
- members of international parliamentary assemblies
- judges and officials of international courts
- domestic and foreign arbitrators
- domestic and foreign jurors.

5. It also covers trading in influence. As in the OECD Convention, provision is also made for ancillary offences and for a range of related measures such as penalties, liability of legal persons, jurisdiction, accounting, extradition and mutual legal assistance. There are further measures concerning co-operation between national authorities, evidence gathering and the protection of witnesses.

### UNCAC

6. UNCAC is more comprehensive than either the OECD Convention or the C of E Convention and is now regarded as the primary international instrument governing corruption. Its aims are to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery; and to promote integrity, accountability and proper management of public affairs and public property. Corruption is not defined so its ambit is not limited to bribery. UNCAC deals with the creation of similar offences to those in the C of E Convention in respect of the active and passive bribery of national and foreign public officials and officials of public organizations, active and passive bribery in the private sector and trading in influence. However, it goes further in that it covers offences of embezzlement, misappropriation or other diversion of property by a public official, abuse of functions and illicit enrichment. UNCAC also sets out extensive asset recovery measures, measures relating to technical assistance and training, and a range of preventive measures. The preventive measures include:

- codes of conduct for public officials
- standards for public procurement and management of public finances
- measures to promote integrity and reduce the risk of corruption in respect of the judiciary and prosecution services
- accounting and auditing standards to prevent corruption in the private sector.

### **Other international measures**

7. Bodies such as the Stolen Asset Recovery Initiative (a joint body set up by the World Bank and the United Nations Office on Drugs and Crime), the International Monetary Fund, the OECD, the Commonwealth Secretariat, the G20 and the FATF have anti-corruption working groups that regularly issue reports, plans and guidance documents. A recent example is the G20's 2013 – 2014 Anti-Corruption Action Plan.

### **Domestic legislation and enforcement trends**

8. Many countries have introduced legislation to implement the requirements of the anti-corruption conventions and in some cases to go further, particularly in respect of extra-territoriality. For example, in some countries such as the US and Canada, domestic anti-corruption legislation requires companies whose securities are listed in those countries to meet certain accounting provisions, irrespective of place of incorporation. In addition, many countries have enacted legislation that contains provisions governing extra-territorial application of criminal offences, in order fully to cover the bribery of foreign officials. In some countries this is limited by a requirement that a significant part of the offending conduct has occurred within the country's territory. However, in some other countries, notably the US and the UK, extra-territoriality for corruption offences goes much further.

9. The US's Foreign Corrupt Practices Act (FCPA), introduced in 1977 and subsequently amended, creates offences that apply to acts by US businesses, foreign corporations trading securities in the US, American nationals, citizens, and residents acting in furtherance of a foreign corrupt practice whether or not physically present in the United States. The UK's Bribery Act 2010, which unlike the FCPA applies to both public sector and

private sector bribery, contains extra-territorial provisions which extend the reach of the Act to the activities anywhere in the world of British citizens or companies incorporated under the law of any part of the UK.

10. The Bribery Act creates a new offence of failure by corporate entities to prevent bribery. This is an offence of strict liability and applies to the failure by a company to prevent bribery on the part of any legal or natural person who performs services for it anywhere in the world, whether or not that person is one of its employees, if the bribery was carried out with the intention of gaining or retaining business or a business advantage for the company. The company will have a defence to this offence if it can demonstrate that it had in place adequate procedures designed to prevent persons associated with it from acting in this way. There is a similar offence under the FCPA but without the adequate procedures defence. However, the FCPA contains an exemption for facilitation payments which the Bribery Act does not.

11. There are indications of a move towards the creation of equivalent legislation in other countries. In 2011 Russia and China introduced foreign bribery legislation for the first time. In August 2013 the Brazilian President signed into law the anti-corruption bill also referred to as the "Brazilian Clean Company Act." Under this legislation, Brazilian companies and foreign companies having offices, branches, or agents in Brazil may be held strictly liable for acts of corruption against public authorities either in Brazil or abroad.

12. In addition to extra-territoriality, the domestic legislation of countries such as the US and the UK has a wider reach than that of some other jurisdictions because it applies to both legal and natural persons. In countries where no liability can attach to legal persons, it is not possible to take any enforcement action in connection with corruption by corporate entities unless there is sufficient evidence to establish offences or regulatory breaches on the part of individual employees, managers or board members, whether on the basis of their deliberate acts or negligence. This is usually extremely difficult to establish, and the absence of liability of legal persons is often cited as a major obstacle to the effective tackling of corruption. On the other hand, the need to take action against particular individuals means that enforcement action is more likely to be directed against those truly at fault, and will not adversely affect others such as shareholders who have had no part to play in the relevant conduct.

13. Although differences will remain in the way countries implement anti-bribery and corruption measures, the global direction at present is clearly towards an increasing exposure to strict anti-corruption measures for businesses that trade internationally, and this is unlikely to change.

14. The US has been active in bringing criminal prosecutions for corruption. The level of foreign corruption cases being prosecuted in the US under the FCPA continues to rise and the authorities are increasingly targeting individual employees as well as corporations. A recent example concerns senior executives of a French company, who in July 2013 were charged with FCPA violations in Asia. Other countries are becoming more active in bringing such action. In July 2013 a Canadian businessman was convicted in Canada of a foreign bribery offence in relation to his role in a conspiracy to bribe an Indian politician. In Finland six former executives of a Finnish defence equipment company were put on trial for allegedly offering to bribe Slovenian officials.

15. Regarding regulatory enforcement action, the SEC in the US has brought a higher number of civil proceedings relating to corruption than other supervisory authorities (although there has also been significant regulatory enforcement action in the financial services sector in the UK).

16. There is a trend towards an expansion in the use of alternatives to conventional enforcement in both criminal and regulatory corruption cases, such as declinations or non-prosecution agreements (NPAs) and deferred prosecution agreements (DPAs). These involve an enforcement authority agreeing to refrain from or to postpone taking action

against a particular person or entity, provided that that person/entity complies with certain conditions (usually making a restitution payment and carrying out specified remedial measures). Such arrangements have been available to the prosecuting authorities in the US for many years and in 2010 became available to the SEC. In 2011 the SEC entered into its first DPA with Tenaris, a global manufacturer of steel pipe products, in relation to bribes paid to government officials in Uzbekistan in order to secure a contract to supply pipelines for oil and natural gas. Tenaris paid a \$5.4 million fine as part of the DPA. In early 2013 the UK introduced legislation permitting the use of DPAs in certain criminal proceedings. It is likely that other jurisdictions will give consideration to doing the same and to enabling their supervisory authorities to enter into DPAs and NPAs.

17. Other relevant enforcement trends include:

- the significance of whistleblowers and whistleblower programs as a source of information leading to investigations and enforcement action in corruption cases. This has been accompanied by the development of significant legal protection against dismissal or other reprisals for whistleblowers in some countries, for example Romania and Luxembourg. It is probable that protective measures of this kind, which have received considerable support from organisations such as Transparency International, will be adopted by a wider range of countries as part of their ongoing efforts to address corruption.
- use of non-prosecution agreements and declinations as well as deferred prosecution agreements in the US
- the inclusion of accounting provisions in foreign bribery and corruption statutes (e.g., FCPA and CFPOA<sup>43</sup>).

---

43 The Canadian Corruption of Foreign Public Officials Act.

## Acronyms

AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
C of E Convention	1999 Council of Europe Criminal Law Convention on Corruption & its 2003 Additional Protocol
CFPOA	Corruption of Foreign Public Officials Act (Canada)
DOJ	Department of Justice
DPA	Deferred Prosecution Agreements
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FCPA	Foreign Corrupt Practices Act (US)
FSA	Financial Services Authority
IMF	International Monetary Fund
OECD	Organisation for Economic Co-operation and Development
OECD Convention	1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
PEP	Politically Exposed Person
SEC	Securities and Exchange Commission
UNCAC	2003 United Nations Convention Against Corruption