

## Guidance consultation

# Anti-bribery and corruption systems and controls

## Proposed guidance and amendments to '*Financial crime: a guide for firms*'

March 2012



### Background to this consultation

This consultation seeks views on the changes we propose to make to our regulatory guide, 'Financial crime: a guide for firms' (the FC Guide) in response to the findings of our thematic review, '[Anti-bribery and corruption systems and controls in investment banks](#)'. This thematic review was published on 29 March 2012.

The FC Guide sets out our expectations of firms' financial crime systems and controls and provides examples of the steps firms can take to reduce the risk of being used to further financial crime.

We have committed to keeping the FC Guide up to date. And we are required to consult on changes to 'guidance on rules' in the Guide, such as relevant examples of good and poor practice from financial crime thematic reviews, which have not already been subject to consultation.

### Summary of the key issues

Our thematic review 'Anti-bribery and corruption systems and controls in investment banks' examined how investment banks and firms carrying on investment banking or similar activities in the UK mitigate bribery and corruption risk. Bribery and corruption risk is the risk of the firm, or anyone acting on the firm's behalf, engaging in bribery and corruption.

We found that despite a long-standing regulatory requirement to mitigate financial crime risk, the majority of firms in our sample did not have robust anti-bribery systems and controls in place and some firms fell short of our regulatory requirements. Weaknesses related in particular to:

- a limited understanding of the applicable legal and regulatory regimes;
- incomplete or inadequate bribery and corruption risk assessments;
- a lack of senior management oversight; and
- a failure to monitor the effective implementation of, and compliance with, anti-bribery and corruption policies and procedures.

We propose to update chapters 2 and 6 of Part 1 of our FC Guide, with new guidance and examples of good and poor practice drawn from these findings. We also propose to include a new Chapter 13 in Part 2 of our FC Guide, which will consolidate all examples of good and poor practice highlighted in the thematic review. We have highlighted proposed changes to the existing text.

**We invite your views on:**

- The changes we propose to make to Part 1 of the FC Guide; and
- The examples of good and poor practice we propose to include in Chapter 13 of Part 2 of the FC Guide.

**Please respond by**

29 April 2012

**Please send your responses by email to**

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**Alternatively, please send your responses by post or telephone us:**

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Proposed changes to Part 1 Chapter 2 of 'Financial Crime: A Guide for Firms'

## 2 Financial crime systems and controls

[...]

<p><b>Box 2.5: Staff recruitment, vetting, training and awareness <u>and remuneration</u></b></p> <p>Firms must employ staff who possess the skills, knowledge and expertise to carry out their functions effectively. They should review employees' competence and take appropriate action to ensure they remain competent for their role. Vetting and training should be appropriate to employees' roles.</p>		<p>SYSC 3.1.6R SYSC 5.1.1R</p>
<p><u>Firms should manage the risk of remuneration structures that reward staff at all levels for taking unacceptable risks, including in relation to bribery and corruption, thereby countering the risk that the firm might be used to further financial crime. Remuneration Principle 12(h), as set out in SYSC 19A.3.51R and 19A.3.52E, may be relevant to firms subject to the Remuneration Code.</u></p>		<p><u>SYSC 3.2.6R SYSC 6.1.1R</u></p>
<p>Self-assessment questions:</p>		
<ul style="list-style-type: none"> <li>○ What is your approach to vetting staff? Do vetting and management of different staff reflect the financial crime risks to which they are exposed?</li> <li>○ How does your firm ensure that its employees are aware of financial crime risks and of their obligations in relation to those risks?</li> <li>○ Do staff have access to training on an appropriate range of financial crime risks?</li> <li>○ How does the firm ensure that training is of consistent quality and is kept up-to-date?</li> <li>○ Is training tailored to particular roles?</li> <li>○ How do you assess the effectiveness of your training on topics related to financial crime?</li> <li>○ Is training material relevant and up-to-date? When was it last reviewed?</li> </ul>		
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>○ Staff in higher risk roles are subject to <b>more thorough vetting.</b></li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>○ Staff are <b>not competent</b> to carry out preventative functions effectively, exposing the firm to</li> </ul>	

<ul style="list-style-type: none"> <li>○ <u>Where <b>employment agencies</b> are used, the firm periodically satisfies itself that the agency is adhering to the agreed vetting standard.</u></li> <li>○ <u>Temporary staff in higher risk roles are subject to the same level of vetting as permanent members of staff in similar roles.</u></li> <li>○ <u>The firm assesses and manages the risk of <b>remuneration structures</b> rewarding staff for taking unacceptable financial crime risks to generate business.</u></li> <li>○ Tailored training is in place to ensure staff knowledge is adequate and up-to-date.</li> <li>○ New staff in <b>customer-facing</b> positions receive financial crime training tailored to their role before being able to interact with customers.</li> <li>○ Training has a strong <b>practical</b> dimension (e.g. case studies) and some form of testing.</li> <li>○ The firm satisfies itself that staff <b>understand</b> their responsibilities (e.g. computerised training contains a test).</li> <li>○ <b>Whistleblowing</b> procedures are clear and accessible, and staff respect confidentiality.</li> </ul>	<p>financial crime risk.</p> <ul style="list-style-type: none"> <li>○ Staff vetting is a <b>one-off</b> exercise.</li> <li>○ <u>The firm fails to <b>identify changes</b> that could affect an individual's integrity and suitability.</u></li> <li>○ <u>The firm <b>limits enhanced vetting</b> to senior management roles and fails to vet staff whose roles expose them to higher financial crime risk.</u></li> <li>○ <u>The firm fails to identify the <b>political connections</b> of staff whose roles expose them to corruption risk.</u></li> <li>○ <u>Poor compliance records are not reflected in <b>staff appraisals and remuneration.</b></u></li> <li>○ Training dwells unduly on <b>legislation and regulations</b> rather than practical examples.</li> <li>○ Training material is <b>not kept up-to-date.</b></li> <li>○ The firm <b>fails to identify</b> training needs.</li> <li>○ There are no <b>training logs</b> or tracking of employees' training history.</li> <li>○ Training <b>content</b> lacks management sign-off.</li> <li>○ Training does not cover <b>whistleblowing</b> and <b>escalation</b> procedures.</li> </ul>
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Proposed changes to Part 1 Chapter 6 of *'Financial Crime: A Guide for Firms'*

## 6 Bribery and corruption

**Who should read this chapter?** This chapter applies to **all firms** subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R and to **e-money institutions** and **payment institutions** within our supervisory scope.

**Content:** This chapter contains sections on:

- Governance Box 6.1
- Risk assessment Box 6.2
- Policies and procedures Box 6.3
- Dealing with third parties Box 6.4
- Case study – corruption risk Box 6.5
- Case study – inadequate anti-bribery and corruption systems and controls Box 6.6

6.1 Bribery, whether committed in the UK or abroad, is a criminal offence under the Bribery Act 2010, which consolidates and replaces previous anti-bribery and corruption legislation. The Act introduces a new offence for commercial organisations of failing to prevent bribery. It is a defence for firms charged with this offence to show that they had adequate bribery-prevention procedures in place. The Ministry of Justice has published guidance on adequate anti-bribery procedures.

6.2 The FSA does not enforce or give guidance on the Bribery Act. But:

SYSC  
3.2.6R;  
SYSC  
6.1.1R

- firms which are subject to rules SYSC 3.2.6R and SYSC 6.1.1R are under a separate, regulatory obligation to establish and maintain effective systems and controls to mitigate financial crime risk; and

E-  
Money  
Reg 6;  
Payment  
Service  
Reg 6

- e-money institutions and payment institutions must satisfy us that they have robust governance, effective risk procedures and adequate internal control mechanisms.

PRIN  
2.1.1R:  
Principle  
1

Financial crime risk includes the risk of corruption as well as bribery, and so is wider than the Bribery Act's scope. And we may take action against a firm with deficient anti-bribery and corruption systems and controls regardless of whether or not bribery or corruption has taken place. Principle 1 of our Principles for Business also requires authorised firms to conduct their business with integrity.

- 6.3 So while we do not prosecute breaches of the Bribery Act, we have a strong interest in the anti-corruption systems and controls of firms we supervise, which is distinct from the Bribery Act’s provisions. Firms should take this into account when considering the adequacy of their anti-bribery and corruption systems and controls

#### Box 6.1: Governance

The guidance in **Box 2.1** on governance in relation to financial crime also applies to bribery and corruption.

A firm’s senior management are responsible for ensuring that the firm conducts its business with integrity and tackles the risk that the firm, or anyone acting on its behalf, engages in bribery and corruption. A firm’s senior management should therefore be kept up-to-date with, and stay fully abreast of, bribery and corruption issues.

Self-assessment questions

- What **role** do senior management play in the firm’s anti-bribery and corruption effort? Do they approve and periodically review the strategies and policies for managing, monitoring and mitigating this risk? What steps do they take to ensure staff are aware of their interest in this area?
- Can your firm’s board and senior management **demonstrate** a good understanding of the bribery and corruption risks faced by the firm, the materiality to its business and how to apply a risk-based approach to anti-bribery and corruption?
- How are **integrity** and **compliance** with relevant anti-corruption legislation considered when discussing **business opportunities**?
- What **information** do senior management receive in relation to bribery and corruption, and how frequently? Is it sufficient for senior management effectively to fulfil their functions in relation to anti-bribery and corruption?

Examples of good practice

- The firm is **committed** to carrying out business fairly, honestly and openly.
- Senior management lead by example in complying with the firm’s anti-corruption policies and procedures.

Examples of poor practice

- There is a **lack of awareness** of, or engagement in, anti-bribery and corruption at senior management or board level.
- An ‘ask no questions’ culture sees management turn a **blind eye** to how new business is

<ul style="list-style-type: none"> <li>○ Responsibility for anti-bribery and corruption systems and controls is <b>clearly documented</b> and apportioned to a single senior manager <u>or a committee</u> with appropriate terms of reference <u>and senior management membership</u> who reports ultimately to the board.</li> <li>○ Anti-bribery systems and controls are <b>subject to audit</b>.</li> <li>○ Management information submitted to the board ensures they are <b>adequately informed</b> of internal and external developments relevant to bribery and corruption and respond to these swiftly and effectively.</li> </ul>	<p>generated.</p> <ul style="list-style-type: none"> <li>○ <b>Little or no management information</b> is sent to the board about <u>existing and emerging bribery and corruption risks faced by the business, including: higher-risk third-party relationships or payments; the systems and controls to mitigate those risks; the effectiveness of these systems; and controls and legal and regulatory developments.</u></li> </ul>
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### Box 6.2: Risk assessment

The guidance in **Box 2.3** on risk assessment in relation to financial crime also applies to bribery and corruption.

We expect firms to identify, assess and regularly review and update their bribery and corruption risks. Corruption risk is the risk of a firm, or anyone acting on the firm's behalf, engaging in corruption.

#### Self-assessment questions

- How do you **define** bribery and corruption? Does your definition extend beyond the scope of the Bribery Act 2010 to cover all forms of bribery and corrupt behaviour falling within the definition of 'financial crime' referred to in SYSC 3.2.6R and SYSC 6.1.1R?
- Where is your firm **exposed** to bribery and corruption risk? (Have you considered risk associated with the products and services you offer, the customers and jurisdictions with which you do business, your exposure to public officials and public office holders and your own business practices, for example your approach to providing corporate hospitality, charitable and political donations and your use of third parties?)
- Has the risk of **staff or third parties** acting on the firm's behalf offering

<p>or receiving bribes been assessed across the business?</p> <ul style="list-style-type: none"> <li>○ <u>Who is <b>responsible</b> for carrying out a corruption risk assessment and keeping it up to date? Do they have sufficient levels of expertise and seniority?</u></li> <li>○ <del>Could remuneration structures increase the risk of bribery and corruption?</del></li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>○ Corruption risks are assessed in <b>all jurisdictions</b> where the firm operates and across all business channels.</li> <li>○ <del>The firm assesses and manages the risk of remuneration structures rewarding staff for taking unacceptable corruption and bribery risks to generate business.</del></li> <li>○ <u>The firm considers factors that might lead business units to <b>downplay</b> the level of bribery and corruption risk to which they are exposed, such as lack of expertise or awareness, or potential conflicts of interest.</u></li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>○ Compliance departments are <b>ill equipped</b> to identify and assess corruption risk.</li> <li>○ For fear of harming the business, the firm classifies as <b>low risk</b> a jurisdiction generally associated with <b>high risk</b>.</li> <li>○ <u>The risk assessment is <b>only</b> based on <b>generic, external sources</b>.</u></li> </ul>



**Box 6.3: Policies and procedures**

The guidance in **Box 2.4** on policies and procedures in relation to financial crime and in **Box 2.5** on staff recruitment, vetting, training and awareness and remuneration also applies to bribery and corruption.

Firms must take adequate steps to prevent their corruption and bribery risks crystallising.

Self-assessment questions:

- Do your anti-bribery and corruption policies adequately address all areas of bribery and corruption risk to which your firm is exposed, either in a stand-alone document or as part of separate policies? (For example, do your policies and procedures cover: expected standards of behaviour; escalation processes; conflicts of interest; expenses, gifts and hospitality; the use of third parties to win business; whistleblowing; monitoring and review mechanisms; and disciplinary sanctions for breaches.)
- Have you considered the extent to which corporate hospitality might influence, or be perceived to influence, a business decision? Do you impose and enforce limits that are appropriate to your business and proportionate to the corruption risk associated with your business relationships?
- How do you satisfy yourself that your anti-corruption policies and procedures are applied **effectively**?
- How do your firm’s policies and procedures help you to **identify** whether someone acting on behalf of the firm is corrupt?
- How does your firm **react** to suspicions or allegations of bribery or corruption involving people with whom the firm is connected?

SYSC  
3.2.6R  
SYSC  
6.1.1R

Examples of good practice

- The firm **clearly sets out** behaviour expected of those acting on its behalf.
- There are **unambiguous consequences** for breaches of the firm’s anti-corruption policy.
- Risk-based, appropriate additional monitoring and due

Examples of poor practice

- The firm **does not assess** the extent to which staff comply with its anti-corruption policies and procedures.
- The firm’s anti-corruption policies and procedures are **out of date**.
- A firm relies on passages in the staff code of conduct that

<p>diligence are undertaken for jurisdictions, sectors and business relationships identified as <b>higher risk</b>.</p> <ul style="list-style-type: none"> <li>○ <u>Staff responsible for implementing and monitoring anti-corruption policies and procedures have adequate levels of anti-corruption expertise.</u></li> <li>○ <u>Where appropriate, the firm refers to existing sources of information, such as expense registers, policy queries and whistleblowing and complaints hotlines, to monitor the effectiveness of its anti-corruption policies and procedures.</u></li> <li>○ <u>Political and charitable donations are subject to appropriate due diligence and are approved at an appropriate management level, with compliance input.</u></li> <li>○ <u>Firms who do not provide staff with access to whistleblowing hotlines have processes in place to allow staff to raise concerns anonymously, with adequate levels of protection.</u></li> </ul>	<p>prohibit improper payments, but has no other <b>controls</b>.</p> <ul style="list-style-type: none"> <li>○ <u>The firm does not record corporate hospitality given or received.</u></li> <li>○ The firm <b>does not respond</b> to external events that may highlight weaknesses in its anti-corruption systems and controls.</li> <li>○ <u>The firm fails to consider the political connections of clients or charities who stand to benefit from corporate hospitality or donations.</u></li> <li>○ <u>The firm fails to maintain records of incidents and complaints.</u></li> </ul>
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#### Box 6.4: Dealing with third parties

We expect firms to take adequate and risk-sensitive measures to address the risk that a third party acting on behalf of the firm may engage in corruption.

Self-assessment questions

- Do your firm's policies and procedures **clearly define** 'third party'?
- Do you **know** your third party?

<ul style="list-style-type: none"> <li>○ What is your firm's policy on <b>selecting</b> third parties? How do you check whether it is being followed?</li> <li>○ To what extent are third-party relationships <b>monitored</b> and <b>reviewed</b>? <u>Is the frequency and depth of the monitoring and review commensurate to the risk associated with the relationship?</u></li> <li>○ Is the <b>extent</b> of due diligence on third parties determined on a risk-sensitive basis? Do you seek to identify any bribery and corruption issues as part of your due diligence work, e.g. negative allegations against the third party or any political connections? Is due diligence applied consistently when establishing and reviewing third-party relationships?</li> <li>○ Is the <u>risk assessment and</u> due diligence information kept <b>up-to-date</b>? How?</li> <li>○ <u>Do you have effective systems and controls in place to ensure payments to third parties are in line with what is both expected and approved?</u></li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>○ Where a firm uses third parties to generate business, these relationships are subject to <b>thorough due diligence</b> and management oversight.</li> <li>○ The firm reviews in sufficient detail its relationships with third parties on a regular basis to confirm that it is still necessary and appropriate to <b>continue with the relationship</b>.</li> <li>○ Third parties are paid <b>directly</b> for their work.</li> <li>○ <u>The firm includes specific anti-corruption clauses in contracts with third parties.</u></li> <li>○ <u>The firm provides anti-corruption training to third parties.</u></li> <li>○ The firm <b>reviews and monitors</b> payments to third parties. It</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>○ <i>A firm using intermediaries</i> fails to satisfy itself that those businesses have <b>adequate controls</b> to detect and prevent where staff have used bribery to generate business.</li> <li>○ The firm fails to establish and record an <b>adequate commercial rationale</b> to support its payments to overseas third parties. For example, why it is necessary to use a third party to win business and what services would the third party provide to the firm?</li> <li>○ The firm is <b>unable to produce a list</b> of approved third parties, associated due diligence and details of payments made to them.</li> <li>○ The firm does not discourage the giving or receipt of <b>cash gifts</b>.</li> </ul>

<p>records the purpose of third-party payments.</p> <ul style="list-style-type: none"> <li>○ There are higher or extra levels of due diligence and approval for <b>high-risk third-party relationships</b>.</li> <li>○ There is appropriate <b>scrutiny</b> of and <b>approval</b> for relationships with third parties that introduce business to the firm.</li> <li>○ The firm's compliance function has <b>oversight</b> of all third-party relationships and monitors this list to identify risk indicators, for example a third party's political or public service connections.</li> </ul>	<ul style="list-style-type: none"> <li>○ There is <b>no checking</b> of compliance's operational role in approving new third-party relationships and accounts.</li> <li>○ A firm <b>assumes</b> that long-standing third-party relationships present no bribery or corruption risk.</li> <li>○ A firm relies exclusively on <b>informal</b> means to assess the bribery and corruption risks associated with third parties, such as staff's personal knowledge of the relationship with the overseas third parties.</li> </ul>
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#### **Box 6.5: Case study – corruption risk**

In January 2009, Aon Limited, an insurance intermediary based in the UK, was fined £5.25m for failures in its anti-bribery systems and controls. The firm made suspicious payments totalling \$7m to overseas firms and individuals who helped generate business in higher-risk jurisdictions. Weak controls surrounding these payments to third parties meant the firm failed to question their nature and purpose when it ought to have been reasonably obvious that there was a significant corruption risk.

- Aon Limited failed properly to assess the risks involved in its dealings with overseas third parties and implement effective controls to mitigate those risks.
- Its payment procedures did not require adequate levels of due diligence to be carried out.
- Its authorisation process did not take into account the higher levels of risk to which certain parts of its business were exposed in the countries in which they operated.
- After establishment, neither relationships nor payments were routinely reviewed or monitored.
- Aon Limited did not provide relevant staff with sufficient guidance or training on the bribery and corruption risks involved in dealings with overseas third parties.
- It failed to ensure that the committees it appointed to oversee these risks received relevant management information or routinely assessed whether bribery and corruption risks were being managed effectively.

See our [press release](#):

[www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml).

#### **Box 6.6: Case study – inadequate anti-bribery and corruption systems and controls**

In July 2011, we fined Willis Limited, an insurance intermediary, £6.9m for failing to take appropriate steps to ensure that payments made to overseas third parties were not used for corrupt purposes. Between January 2005 and December 2009, Willis Limited made payments totalling £27m to overseas third parties who helped win and retain business from overseas clients, particularly in high risk jurisdictions.

Willis had introduced anti-bribery and corruption policies in 2008, reviewed how its new policies were operating in practice and revised its guidance as a result in May 2009. But it should have taken additional steps to ensure they were adequately implemented.

- Willis failed to ensure that it established and recorded an adequate commercial rationale to support its payments to overseas third parties.
- It did not ensure that adequate due diligence was carried out on overseas third parties to evaluate the risk involved in doing business with them.
- It failed to review in sufficient detail its relationships with overseas third parties on a regular basis to confirm whether it was necessary and appropriate to continue with the relationship.
- It did not adequately monitor its staff to ensure that each time it engaged an overseas third party an adequate commercial rationale had been recorded and that sufficient due diligence had been carried out.

This fine was the largest yet levied by the FSA for failures related to financial crime. See our [press release](#):

[www.fsa.gov.uk/pages/Library/Communication/PR/2011/066.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/066.shtml).

#### 6.4 Part 2 of the Guide contains the following additional material on bribery and corruption:

- Chapter 9 summarises the findings of our thematic review, *Anti-bribery and corruption in commercial insurance broking*, and includes guidance on:
  - Governance and management information (Box 9.1)
  - Risk assessment and responses to significant bribery and corruption events (Box 9.2)

- Due diligence on third-party relationships (Box 9.3)
  - Payment controls (Box 9.4)
  - Staff recruitment and vetting (Box 9.5)
  - Training and awareness (Box 9.6)
  - Risk arising from remuneration structures (Box 9.7)
  - Incident reporting (Box 9.8)
  - The role of compliance and internal audit (Box 9.9)
- Chapter 13 summarises the findings of our thematic review, *Anti-bribery and corruption systems and controls in investment banks*, and includes guidance on:
- Governance and management information (Box 13.1)
  - Assessing bribery and corruption risk (Box 13.2)
  - Policies and procedures (Box 13.3)
  - Third party relationships and due diligence (Box 13.4)
  - Payment controls (Box 13.5)
  - Gifts and hospitality (Box 13.6)
  - Staff recruitment and vetting (Box 13.7)
  - Training and awareness (Box 13.8)
  - Remuneration structures (Box 13.9)
  - Incident reporting and management (Box 13.10)

6.5 To find out more, see:

- The Bribery Act 2010:  
[www.legislation.gov.uk/ukpga/2010/23/contents](http://www.legislation.gov.uk/ukpga/2010/23/contents)
- The Ministry of Justice's guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing:
  - [www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf](http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf) (full version)
  - [www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-quick-start-guide.pdf](http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-quick-start-guide.pdf) (quick-start guide)
- Our [one-minute guide](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/insurance_intermed/anti_bribery.shtml) for smaller firms on anti-bribery and corruption:  
[www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/insurance\\_intermed/anti\\_bribery.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/insurance_intermed/anti_bribery.shtml).

**Proposed new Part 2 Chapter 13 of 'Financial Crime: A Guide for Firms'**

*\*\* This chapter consolidates existing guidance and proposes new guidance. Proposed new guidance is highlighted in **red**. \*\**

## 13 Anti-bribery and corruption systems and controls in investment banks (2012)

### Who should read this chapter?

This chapter is relevant, and its statements of good and poor practice apply, to:

- **investment banks** and firms carrying on investment banking or similar activities in the UK;
- **all other firms** who are subject to our financial crime rules in SYSC 3.2.6R or 6.1.1R; and
- **electronic money institutions** and **payment institutions** within our supervisory scope.

**Box 13.4 and Box 13.5 only apply to firms or institutions who use third parties to win business.**

### Content: This chapter contains sections on:

- Governance and management information (Box 13.1)
- Assessing bribery and corruption risk (Box 13.2)
- Policies and procedures (Box 13.3)
- Third party relationships and due diligence (Box 13.4)
- Payment controls (Box 13.5)
- Gifts and hospitality (Box 13.6)
- Staff recruitment and vetting (Box 13.7)
- Training and awareness (Box 13.8)
- Remuneration structures (Box 13.9)
- Incident reporting and management (Box 13.10)

**13.1** In March 2012, we published the findings of our review of investment banks' anti-bribery and corruption systems and controls. We visited 15 investment banks and firms carrying on investment banking or similar activities in the UK to assess how they were managing bribery and corruption risk. Although this report focused on investment banking, its findings are relevant to other sectors.

**13.2** We found that although some investment banks had completed a great deal of work to implement effective anti-bribery and corruption controls in the months preceding our visit, the majority of them had more work to do and

some firms' systems and controls fell short of our regulatory requirements. Weaknesses related in particular to: many firms' limited understanding of the applicable legal and regulatory regimes, incomplete or inadequate bribery and corruption risk assessments; lack of senior management oversight; and failure to monitor the effective implementation of, and compliance with, anti-bribery and corruption policies and procedures.

- 13.3 The contents of this report are reflected in Chapter 6 (Bribery and corruption) of Part 1 of this Guide.

### Our findings

- 13.4 You can read the findings of the FSA's thematic review here:  
<http://www.fsa.gov.uk/pubs/other/anti-bribery-investment-banks.pdf>

### Consolidated examples of good and poor practice

<b>Box 13.1: Governance and management information (MI)</b> (Proposed new guidance is highlighted in <b>red</b> )	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> <li>• Clear, documented responsibility for anti-bribery and corruption apportioned to either a single senior manager or a committee with appropriate terms of reference and senior management membership, reporting ultimately to the Board.</li> <li>• Regular and substantive MI to the Board and other relevant senior management forums, including: an overview of the bribery and corruption risks faced by the business; systems and controls to mitigate those risks; information about the effectiveness of those systems and controls; and legal and regulatory developments.</li> <li>• Where relevant, MI includes information about third parties, including (but not limited to) new third-party accounts, their risk classification, higher risk third-party payments for the preceding period, changes to third-party bank account</li> </ul>	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> <li>• <u>Failing to establish an effective governance framework to address bribery and corruption risk.</u></li> <li>• Failing to allocate responsibility for anti-bribery and corruption to a single senior manager or an appropriately formed committee.</li> <li>• Little or no MI sent to the Board about bribery and corruption issues, including legislative or regulatory developments, emerging risks and higher risk third-party relationships or payments.</li> </ul>



<p>details and unusually high commission paid to third parties.</p> <ul style="list-style-type: none"> <li>• MI submitted to the Board ensures they are adequately informed of any external developments relevant to bribery and corruption.</li> <li>• Actions taken or proposed in response to issues highlighted by MI are minuted and acted on appropriately.</li> </ul>	
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<b>Box 13.2 Assessing bribery and corruption risk</b> (Proposed new guidance is highlighted in <b>red</b> )	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> <li>• Responsibility for carrying out a risk assessment and keeping it up-to-date is clearly apportioned to an individual or a group of individuals with sufficient levels of expertise and seniority.</li> <li>• <u>The firm takes adequate steps to identify the bribery and corruption risk, for example by using a range of expertise from both within and outside the business.</u></li> <li>• Risk assessment is a continuous process based on qualitative and relevant information available from internal and external sources.</li> <li>• <u>Firms consider the potential conflicts of interest which might lead business units to downplay the level of bribery and corruption risk to which they are exposed.</u></li> <li>• <u>The ABC risk assessment informs the development of monitoring programmes; policies and procedures; training; and operational processes.</u></li> <li>• <u>The risk assessment demonstrates an awareness and understanding of firms' legal and regulatory obligations.</u></li> </ul>	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> <li>• The risk assessment is a one-off exercise.</li> <li>• Efforts to understand the risk assessment are piecemeal and lack coordination.</li> <li>• Risk assessments are incomplete and too generic.</li> <li>• <u>Firms do not satisfy themselves that staff involved in risk assessment are sufficiently aware of, or sensitised to, bribery and corruption issues.</u></li> </ul>

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| <ul style="list-style-type: none"> <li>• The firm assesses where risks are greater and concentrates its resources accordingly.</li> <li>• The firm considers financial crime risk when designing new products and services.</li> </ul> |  |
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### Box 13.3: Policies and procedures

(Proposed new guidance is highlighted in red)

#### Examples of good practice:

- The firm clearly sets out the behaviour expected of those acting on its behalf.
- Firms have conducted a gap analysis of existing ABC procedures against applicable legislation, regulations and guidance and made necessary enhancements.
- The firm has a defined process in place for dealing with breaches of policy.
- The financial crime/compliance team engage with the business units about the development and implementation of ABC systems and controls.
- ABC policies and procedures will vary depending on a firm's exposure to bribery and corruption risk. But in most cases, firms should have policies and procedures which cover expected standards of behaviour; escalation processes; conflicts of interest; expenses, gifts and hospitality; the use of third parties to win business; whistleblowing; monitoring and review mechanisms; and disciplinary sanctions for breaches. These policies need not be in a single 'ABC policy' document and may be contained in separate policies.
- There should be an effective mechanism for reporting issues to the ABC committee or compliance.

#### Examples of poor practice:

- The firm has no method in place to monitor and assess staff compliance with ABC policies and procedures.
- Staff responsible for the implementation and monitoring of ABC policies and procedures have inadequate expertise on ABC.

### Box 13.4: Third-party relationships and due diligence

(Proposed new guidance is highlighted in red)

#### Examples of good practice:

- Where third parties are used to generate business, these relationships are subject to thorough due diligence and management oversight.
- Third-party relationships are reviewed regularly and in sufficient detail to confirm that they are still necessary and appropriate to continue.
- There are higher, or extra, levels of due diligence and approval for high risk third-party relationships.
- There is appropriate scrutiny of, and approval for, relationships with third parties that introduce business to the firm.
- The firm's compliance function has oversight of all third-party relationships and monitors this list to identify risk indicators, eg a third party's political or public service connections.
- Evidence that a risk-based approach has been adopted to identify higher risk relationships in order to apply enhanced due diligence.
- Enhanced due diligence procedures include a review of the third party's own ABC controls.
- Consideration, where appropriate, of compliance involvement in interviewing consultants and the provision of anti-corruption training to consultants.
- Inclusion of ABC-specific clauses and appropriate protections in contracts with third parties.

#### Examples of poor practice:

- A firm using intermediaries fails to satisfy itself that those businesses have adequate controls to detect and prevent staff using bribery to generate business.
- The firm fails to establish and record an adequate commercial rationale for using the services of third parties.
- The firm is unable to produce a list of approved third parties, associated due diligence and details of payments made to them.
- There is no checking of compliance's operational role in approving new third-party relationships and accounts.
- A firm assumes that long-standing third-party relationships present no bribery or corruption risk.
- A firm relies exclusively on informal means, such as staff's personal knowledge, to assess the bribery and corruption risk associated with third parties.
- No prescribed take-on process for new third-party relationships.
- A firm does not keep full records of due diligence on third parties and cannot evidence that it has considered the bribery and corruption risk associated with a third-party relationship.
- The firm cannot provide evidence of appropriate checks to identify whether introducers and consultants are PEPs.
- Failure to demonstrate that due

	diligence information in another language has been understood by the firm.
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<b>Box 13.5: Payment controls</b>	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> <li>• Ensuring adequate due diligence on and approval of third-party relationships before payments are made to the third party.</li> <li>• Risk-based approval procedures for payments and a clear understanding of the reason for all payments.</li> <li>• Checking third-party payments individually prior to approval, to ensure consistency with the business case for that account.</li> <li>• Regular and thorough monitoring of third-party payments to check, for example, whether a payment is unusual in the context of previous similar payments.</li> <li>• A healthily sceptical approach to approving third-party payments.</li> <li>• Adequate due diligence on new suppliers being added to the Accounts Payable system.</li> <li>• Clear limits on staff expenditure, which are fully documented, communicated to staff and enforced.</li> <li>• Limiting third-party payments from Accounts Payable to reimbursements of genuine business-related costs or reasonable hospitality.</li> <li>• Ensuring the reasons for third-party payments via Accounts Payable are clearly documented and appropriately approved.</li> <li>• The facility to produce accurate MI to assist effective payment monitoring.</li> </ul>	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> <li>• Failing to check whether third parties to whom payments are due have been subject to appropriate due diligence and approval.</li> <li>• Failing to produce regular third-party payment schedules for review.</li> <li>• Failing to check thoroughly the nature, reasonableness and appropriateness of gifts and hospitality.</li> <li>• No absolute limits on different types of expenditure, combined with inadequate scrutiny during the approvals process.</li> </ul>

<b>Box 13.6: Gifts and hospitality (G&amp;H)</b> (Proposed new guidance is highlighted in <u>red</u> )	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> <li>• <u>Policies and procedures clearly define the approval process and the limits applicable to G&amp;H.</u></li> <li>• <u>Processes for filtering G&amp;H by employee, client and type of hospitality for analysis.</u></li> <li>• <u>Processes to identify unusual or unauthorised G&amp;H and deviations from approval limits for G&amp;H.</u></li> <li>• <u>Staff are trained on G&amp;H policies to an extent appropriate to their role, in terms of both content and frequency, and regularly reminded to disclose G&amp;H in line with policy.</u></li> <li>• <u>Cash or cash-equivalent gifts are prohibited.</u></li> <li>• <u>Political and charitable donations are approved at an appropriate level, with compliance input, and subject to appropriate due diligence.</u></li> </ul>	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> <li>• <u>Senior management do not set a good example to staff on G&amp;H policies.</u></li> <li>• <u>Acceptable limits and the approval process are not defined.</u></li> <li>• <u>The G&amp;H policy is not kept up-to-date.</u></li> <li>• <u>G&amp;H and levels of staff compliance with related policies are not monitored.</u></li> <li>• <u>No steps are taken to minimise the risk of gifts going unrecorded.</u></li> <li>• <u>Failure to record a clear rationale for approving gifts that fall outside set thresholds.</u></li> <li>• <u>Failure to check whether charities being donated to are linked to political causes.</u></li> </ul>

<b>Box 13.7: Staff recruitment and vetting</b> (Proposed new guidance is highlighted in <u>red</u> )	
<p>Examples of good practice:</p> <ul style="list-style-type: none"> <li>• Vetting staff on a risk-based approach, taking into account financial crime risk.</li> <li>• <u>Enhanced vetting – including checks of credit records, criminal records, financial sanctions lists, commercially-available intelligence databases – for staff in roles with higher bribery and corruption risk.</u></li> <li>• Conducting periodic checks to ensure that agencies are complying with agreed vetting standards.</li> </ul>	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> <li>• <u>Failing to carry out repeat checks to identify changes that could affect an individual's integrity and suitability.</u></li> <li>• <u>No risk-based processes for identifying staff who are PEPs or connected to PEPs.</u></li> <li>• Where employment agencies are used to recruit staff, failing to demonstrate a clear understanding of the checks these agencies carry out on prospective staff.</li> <li>• Temporary or contract staff</li> </ul>

	receiving less rigorous vetting than permanently employed colleagues carrying out similar roles.
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<b>Boxes 13.8: Training and awareness</b> (Proposed new guidance is highlighted in <u>red</u> )	
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<p>Examples of good practice:</p> <ul style="list-style-type: none"> <li>• Providing good quality, standard training on anti-bribery and corruption for all staff.</li> <li>• Ensuring training covers relevant and practical examples.</li> <li>• Keeping training material and staff knowledge up-to-date.</li> <li>• <u>Awareness-raising initiatives, such as special campaigns and events to support routine training, are organised.</u></li> </ul>	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> <li>• Failing to provide training on ABC that is targeted at staff with greater exposure to bribery and corruption risks.</li> <li>• <u>Failing to monitor and measure the quality and effectiveness of training.</u></li> </ul>
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<b>Box 13.9: Remuneration structures</b> (Proposed new guidance is highlighted in <u>red</u> )	
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<p>Examples of good practice:</p> <ul style="list-style-type: none"> <li>• Remuneration takes account of good compliance behaviour, not simply the amount of business generated.</li> <li>• <u>Identifying higher-risk functions from a bribery and corruption perspective and reviewing remuneration structures to ensure they do not encourage risk taking.</u></li> </ul>	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> <li>• <u>Failing to reflect poor staff compliance with anti-bribery and corruption policy and procedures in staff appraisals and remuneration.</u></li> </ul>
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<b>Box 13.10: Incident reporting and management</b> (Proposed new guidance is highlighted in <u>red</u> )	
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<p>Examples of good practice:</p> <ul style="list-style-type: none"> <li>• Clear procedures for whistleblowing and the reporting of suspicions, which are communicated to staff.</li> <li>• <u>Details about whistleblowing hotlines</u></li> </ul>	<p>Examples of poor practice:</p> <ul style="list-style-type: none"> <li>• <u>Failing to maintain proper records of incidents and complaints.</u></li> </ul>
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<p><u>are visible and accessible to staff.</u></p> <ul style="list-style-type: none"><li>• <u>Where whistleblowing hotlines are not provided, firms should consider measures to allow staff to raise concerns anonymously, with adequate levels of protection and communicate this clearly to staff.</u></li><li>• <u>Firms use information gathered from whistleblowing and internal complaints to assess the effectiveness of their ABC policies and procedures.</u></li></ul>	
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