



FORENSIC

Overseas Bribery and Corruption Survey 2009

ADVISORY

Overseas Bribery and Corruption Survey 2009: Contents



Introduction	1
The key findings	3
The bribery and corruption regulatory framework:	
1. The evolving UK landscape	5
2. The established US landscape	7
Anti-bribery and corruption challenges for companies	9
How companies are responding to the challenge	13
The future of compliance and enforcement	15
In conclusion	17

Overseas Bribery and Corruption Survey 2009: Introduction

There can be little doubt that the issue of bribery and corruption is firmly on the radar of governments, regulators, law enforcement agencies and business worldwide.

In recent years, the number of enforcement actions relating to violations of national and international bribery and corruption statutes has risen dramatically. Some notable corporate names have hit the headlines for all the wrong reasons, as a result of the increasingly severe fines and penalties levied against them.

As the volume of enforcement action grows, both against companies and individuals, there is also increased cooperation and information sharing amongst governments. This will inevitably facilitate a greater volume of more rapid, targeted and comprehensive action from the regulators.

In the difficult current economic climate, competition for contracts is increasingly fierce and margins are being squeezed across sectors. The drive to achieve and maintain that competitive edge could tempt those within businesses to push the boundaries of acceptable behaviour, significantly raising their entity's exposure to bribery and corruption risks.

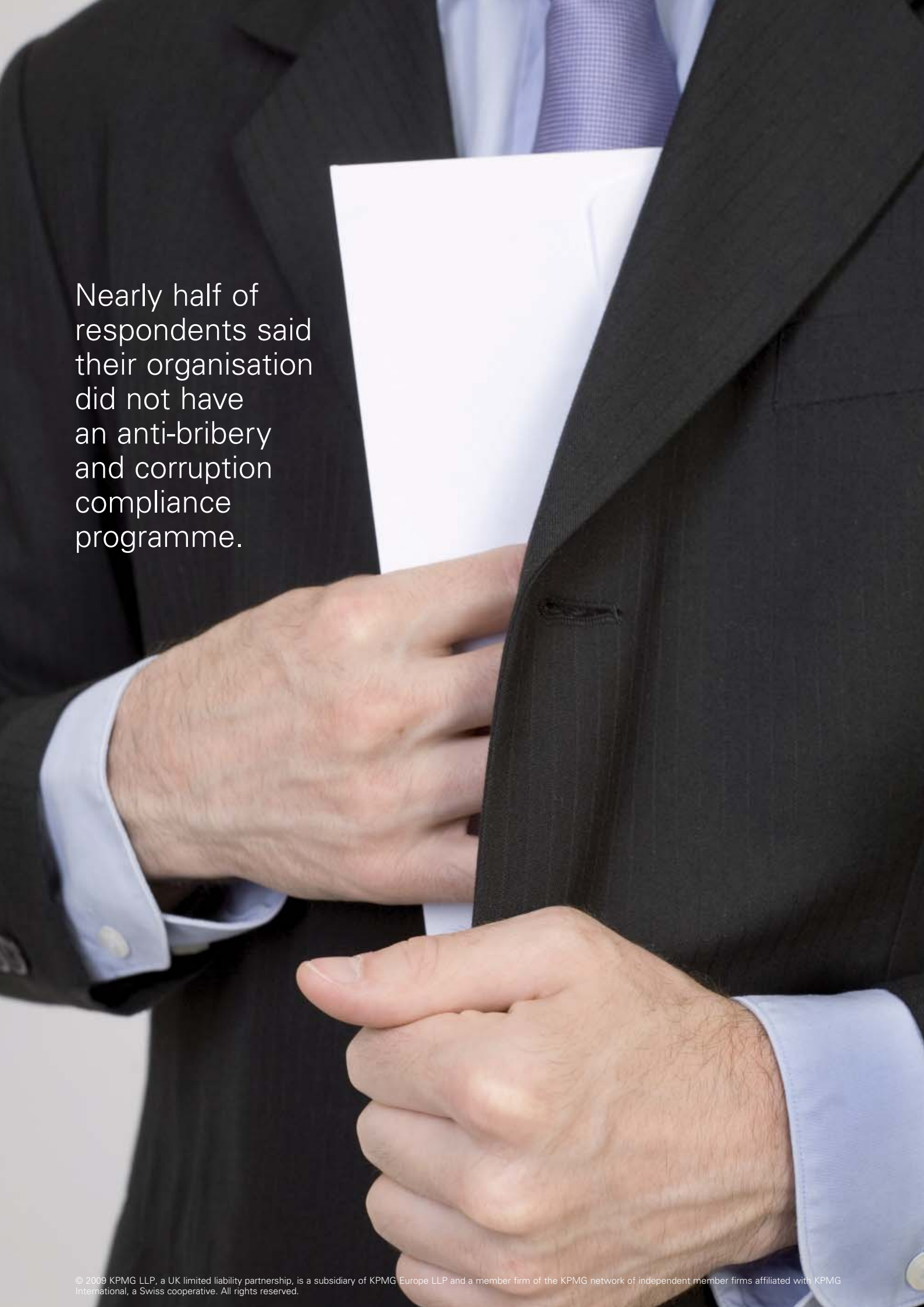
KPMG Forensic's Overseas Bribery and Corruption Survey 2009 examines the UK and US regulatory framework and assesses the impact of trends in enforcement action, both on legislation and on companies operating in multiple jurisdictions. The survey assesses companies' awareness of, and reactions to, anti-bribery and corruption issues as well as comparing the responses against our original 2007 survey in this area.

The survey also highlights some of the challenges multinational companies face when comparing legislation across the different jurisdictions in which they operate.

How the survey was conducted

KPMG commissioned Ipsos MORI to survey 109 FTSE Allshare companies, asking individuals responsible for compliance with anti-bribery and corruption legislation a series of questions. These questions centred on their knowledge of both the US Foreign Corrupt Practices Act 1977 (US FCPA) and the UK Anti-Terrorism, Crime and Security Act 2001 (UK 2001 Act), as well as what steps their organisation is taking to ensure compliance with these regulations.

The survey findings are interspersed with KPMG Forensic's commentary on the anti-bribery and corruption regulatory regime, the implications of the results and how companies can address the issues they face.



Nearly half of respondents said their organisation did not have an anti-bribery and corruption compliance programme.

Overseas Bribery and Corruption Survey 2009: The key findings

We found that:

1	Despite high profile cases and increased regulatory activity, respondents still do not have detailed knowledge of the impact of UK and US bribery and corruption legislation on their business.
2	Many respondents still have a fundamental lack of understanding of the extra-territorial reach of the UK and US legislation.
3	Two thirds of respondents believe there are places in the world where they cannot do business without engaging in bribery and corruption, however, over half have not taken the decision to opt out of doing business there.
4	Nearly half of respondents stated that they did not have an anti-bribery and corruption compliance programme.
5	Those respondents that are addressing bribery and corruption risks are implementing global policies covering their entire worldwide operations.
6	Less than half of respondents with an anti-bribery and corruption compliance programme stated that it includes the execution of third party audits.
7	In comparison with our 2007 survey, there has been a 44 percent rise in the proportion of responding organisations that have carried out internal bribery and corruption investigations.
8	Less than 5 percent of respondents stated that they would immediately report an allegation of bribery and corruption to regulators, whilst almost a quarter stated they would conduct a full internal investigation first.



Many respondents still have a fundamental lack of understanding of the extra-territorial reach of the UK and US legislation.

Overseas Bribery and Corruption Survey 2009: The bribery and corruption regulatory framework

1. The evolving UK landscape

UK Bribery Laws

The UK's bribery laws date back to the turn of the twentieth century and include the common law offence of bribery, the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916. These statutes have never been consolidated into a complementary framework. As a result, prosecution has proved difficult and the legislation is not a straightforward reference point for companies and individuals.

Overseas bribery prosecution¹

In September 2008, the City of London Police's Overseas Anti-Corruption Unit (OACU) successfully prosecuted a Ugandan government official, who received payments totalling more than £50,000 into his personal bank account from a UK government contractor.

The payments were purportedly made as part of an agency agreement, but were actually inducements to assist in the awarding of contracts. The inducements went directly into two bank accounts opened by the Ugandan official and the contractor.

The Ugandan official was sentenced to 12 months imprisonment and signed a disclaimer releasing the £52,800 from his bank account into the custody of the City of London police for restitution.

UK Anti-Terrorism, Crime and Security Act 2001 (UK 2001 Act)

It was not until the UK 2001 Act came into force that UK companies and nationals could be prosecuted in the UK for an act of bribery committed wholly overseas. Although 86 percent of respondents who had heard of the UK 2001 Act said they were aware of this, 39 percent had not taken action to communicate the significance of the UK 2001 Act to their employees.

Despite 46 percent of respondents who had heard of the UK 2001 Act saying that their knowledge has increased over the last three years, the majority said they still knew little or nothing about the UK 2001 Act itself.

These survey results are very similar to the 2007 results, evidence that UK businesses are still failing to recognise the importance of the UK 2001 Act and its extensive application. They also indicate a significant area of risk for UK corporates who are failing to identify and address their anti-bribery and corruption risks.

Civil settlement²

In a landmark settlement in October 2008, the Serious Fraud Office (SFO) settled its case against Balfour Beatty plc with the use of a £2.25 million Civil Recovery Order, plus a contribution to its costs, following an investigation into payment irregularities that occurred within a subsidiary entity during a construction project in North Africa which completed in 2001.

In reaching this settlement, the SFO took account of Balfour Beatty's self-reporting of the matter in 2005, as well as its agreement to take steps to review and improve its control and compliance processes, including an external monitoring programme. This is the first time the SFO has deployed civil recovery powers made available to it under the Proceeds of Crime Act 2002 as from April 2008.

The UK has been subject to international criticism due to a lack of prosecutions for bribery and corrupt behaviour. This is evidenced by the fact that, when asked about the current state of implementation of the relevant UK anti-bribery and corruption legislation, almost half (47 percent) of respondents who had heard of the UK 2001 Act thought that investigations are being carried out by the UK prosecutors and regulators but that no public resolutions have resulted to date.

In spite of previous inactivity, recently UK governments, prosecutors and regulators have made significant steps to move against bribery and corruption. 2008 saw enforcement actions in two landmark cases: the first UK prosecution of foreign bribery, and the first civil settlement as part of an investigation into payment irregularities. Both of these cases, along with other recent regulatory actions, are discussed in more detail in the boxes highlighted on this and the following page.

¹ <http://www.cityoflondon.police.uk/CityPolice/Media/News/NewsArchive/2008/governmentofficialguiltyofcorruption.htm>
² http://www.sfo.gov.uk/news/prout/pr_582.asp?id=582

Regulatory fine in the financial sector³

In January 2009, the UK's Financial Services Authority (FSA) fined Aon Ltd £5.25 million for failing to maintain adequate systems to counter the risks of bribery and corruption.

UK companies should take particular note of the fact that although Aon Ltd had risk prevention and anti-corruption systems in place throughout the relevant period, the FSA found that these were insufficiently monitored, inconsistently followed and inappropriately assessed.

It is important to note that the FSA did not establish that illegal payments were in fact made and Aon Ltd did not admit to paying bribes. Aon Ltd was found to have breached Principle 3 of the FSA's Principles for Businesses by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Prosecutions currently underway in the UK

In June 2009, the City of London Police's Overseas Anti-Corruption Unit (OACU) charged a UK solicitor and two Dutch consultants with conspiracy to corrupt in a £21 million United Nations deal to supply life-saving medicine to the Democratic Republic of Congo.⁴ In July 2009, the SFO charged a UK steel bridging supplier with corruption offences relating to public contracts in Jamaica and Ghana.* Both cases are ongoing at the time of writing.

* This is the first prosecution brought in the UK against a company for overseas corruption.⁵

The draft UK Bribery Bill 2009

In March 2007, the UK Government asked the Law Commission to undertake a fundamental review of the law on bribery. This resulted in the draft Bribery Bill (the Bill) being presented to Parliament in March 2009. The Bill is currently being scrutinised by the Parliamentary Joint Select Committee and it is anticipated that the new law will come into force in 2010. The Bill will replace the existing common law offence of bribery and repeals the existing anti-corruption legislation.

The Bill creates three general bribery offences covering:

- The offer, promise and giving of an advantage.
- The request, agreeing to receive or acceptance of an advantage.
- Bribery of a foreign public official.

These offences focus on the intention to induce improper conduct.

The Bill also creates a new corporate offence of negligent failure of a commercial organisation to prevent bribery. This offence means an organisation would be criminally liable for bribery committed in connection with its business – by those working for it or on its behalf – when “a person (or persons) connected with the organisation who has the responsibility of preventing bribery, negligently fails to prevent the bribe. Where there is no person within the organisation whose responsibilities include preventing bribery, the responsibility is deemed to be that of any senior officer of the organisation.”⁶

The Bill provides a defence for an organisation charged with such an offence, if it can show it had adequate procedures in place to prevent bribery being committed on its behalf.

If a junior person is appointed as the responsible person, and his or her negligence has failed to prevent the bribe, the company can still rely on the defence of having adequate procedures in place. However, if a senior officer is appointed and is negligent, then the company will not be able to rely on this as a defence. This defence also does not apply if it is a senior official of the organisation who is accused of committing the bribery.

The appointment of a junior person as the responsible person is subject to much debate by UK law firms and it will be interesting to see whether there will be any amendments to this defence following the scrutiny by the Parliamentary Joint Select Committee.

The Bill retains the extra territorial reach, created in the 2001 Act, with the ability to prosecute bribery committed abroad by persons ordinarily resident in the UK as well as UK nationals and UK corporate bodies.

The enhanced legislative framework and greater enforcement activity within the UK makes it clear that it is critical for UK companies to focus their attention on anti-bribery and corruption matters. Worryingly, our survey found that 43 percent of respondents said their organisation did not have an anti-bribery and corruption compliance programme.

³ <http://www.fsa.gov.uk/pubs/final/aon.pdf>

⁴ Briton charged with Congo corruption, June 17 2009, FT.com

⁵ http://www.sfo.gov.uk/news/prout/pr_630.asp?id=630

⁶ Draft Bribery Bill - Clauses 5 and 6, Paragraph 44. A copy of the Draft Bribery Bill can be found at <http://www.justice.gov.uk/publications/draft-bribery-bill.htm>.

More than half of respondents said their company conducted business in the US, but less than one third thought their company was subject to the US FCPA.

2. The established US landscape

The US Foreign Corrupt Practices Act 1977 (US FCPA)

The US FCPA imposes both civil and criminal penalties, making it a federal crime for any US person or entity, or any issuer of US securities, acting anywhere in the world, or any foreign persons that cause an act in the United States, to make a corrupt payment to any foreign government official, to obtain or retain business.

The US FCPA also has extra-territorial reach, extending liability for improper conduct to foreign nationals and businesses for conduct they undertake within the US that furthered a corrupt payment.

Principal parts of the US FCPA

The US FCPA has two principal parts:

1) Anti-bribery provision:

The US FCPA makes it a criminal offence for a director, employee, agent or any third party acting on behalf of a US domestic concern or Securities and Exchange Commission (SEC) registrant to provide anything of value to a foreign official for the purpose of obtaining or retaining a business advantage.

The definition of a foreign official has been interpreted broadly and this is discussed in more detail later in this survey.

2) Books and records and internal controls provision:

The US FCPA requires SEC registrants and foreign issuers to maintain accurate books and records and to devise and maintain an adequate system of internal accounting controls regarding all transactions, including those that might violate the anti-bribery provisions.

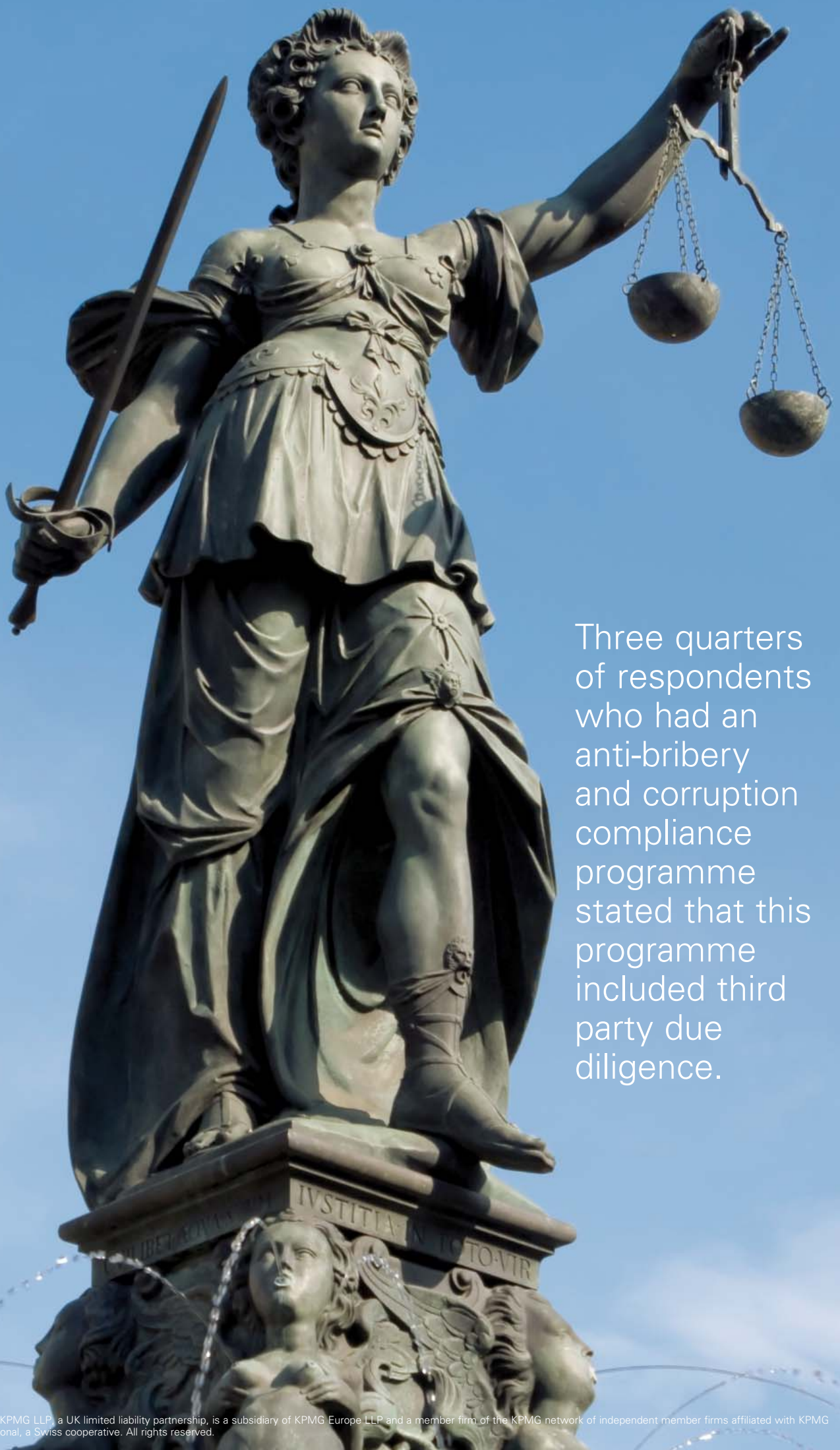
The impact of US FCPA on UK multinationals

A finding from our survey was the significant lack of awareness of the fact that UK multinationals may be exposed to prosecution from US regulators. 59 percent of respondents said their company conducted business in the US, but only 31 percent of respondents thought their company was subject to the US FCPA.

Foreign entities that have a US 'footprint' can be held liable for violations of the anti-bribery provision. This 'footprint' can be created in many ways, including conducting business or having operations in the US and using US commerce systems including banking, telephone, fax and e-mail.

UK citizens acting on behalf of a company with a US 'footprint' can be found liable for violations of the US FCPA. This extra-territorial reach was recently demonstrated in the indictments of Jeffrey Tesler and Wojciech Chodan, both UK citizens and residents, for their alleged roles in the Halliburton/KBR matter.⁷ The US Department of Justice has stated that they are seeking to extradite Mr Tesler and Mr Chodan from the UK to the US to stand trial. If convicted on all charges, they face up to 55 years in prison. The indictment also seeks forfeiture from them of more than \$132 million.

⁷ http://www.usdoj.gov/criminal/pr/press_releases/2009/03/03-05-09tesler-charged.pdf



Three quarters of respondents who had an anti-bribery and corruption compliance programme stated that this programme included third party due diligence.

Overseas Bribery and Corruption Survey 2009: Anti-bribery and corruption challenges for companies

Regardless of industry, multinational firms find themselves faced with an ever-increasing array of risks which must be addressed when conducting business across the globe. Recent cases regarding bribery and corruption violations have highlighted a few of these areas as presenting a particular challenge.

Our survey has confirmed the importance of these areas amongst respondents as potentially causing concern. The main risk areas are as follows:

Agents and other third party representatives

It is generally accepted that the use of agents and other third party representatives to obtain and retain business is a matter of risk and reward. While many industries and geographic locations regularly use third parties in order to conduct business effectively, companies do cede some degree of control and accept some increased level of risk when using such representatives. Specifically, companies who do so as part of their businesses in 'high risk' countries,⁸ may find themselves balancing the desire to work with – or obtain business or necessary action from – that country's government and the increased risk of being inadvertently associated with corrupt activities.

It is interesting to note that 74 percent of respondents who had an anti-bribery and corruption compliance programme stated that this programme included third party due diligence. Although third party due diligence is an important aspect of initiating a third party relationship, the extent of these procedures will vary depending on the level of risk imposed on the organisation by the third party.

Moreover, although it is important to know your business partner prior to developing a relationship, and to properly document expectations and requirements in a written contract, it is also essential to regularly and consistently monitor a third party's activities throughout the relationship. One method to achieve such monitoring is the periodic execution of the audit rights included in their contracts.

While such third party audits are becoming a business imperative when employing the services of agents and representatives in high risk countries, only 42 percent of our respondents with anti-bribery and corruption compliance programmes in place stated that their programmes include the execution of such audits. This is perhaps surprising given the numerous recent enforcement actions taken against multinational companies whose agents and representatives were involved in bribery and corrupt activities.

⁸ As defined by the relevant indices including Transparency International's Corruption Perception Index. http://www.transparency.org/policy_research/surveys_indices/cpi

Mergers and acquisitions

The onset of the 'credit crunch' has been accompanied by a significant downturn in the volume of merger and acquisition activity. However, given the deflation of share value experienced by numerous companies as a result of the global recession, there are a number of organisations taking this opportunity to acquire competitors or new business lines in order to expand their business portfolios, especially into emerging markets.

While acquisitions, especially in emerging markets and high risk geographic areas, present opportunities for increased business reach and revenues, they also come with potential bribery and corruption risks and pitfalls for the acquiring party. One of these is successor liability, whereby the acquiring entity takes on liability for the past transgressions of the acquired entity. Many companies who become involved in such transactions or fail to address these risks by not conducting appropriate bribery and corruption due diligence prior to, during, and following the transaction.

Recent enforcement actions in the US against companies who have failed to conduct these procedures provide a stark reminder of the severe consequences of ineffective due diligence.

Our survey revealed that 79 percent of respondents with an anti-bribery and corruption compliance programme include merger and acquisition due diligence as one of its components. However, a 2008 anti-bribery and anti-corruption survey conducted by KPMG Forensic in the US⁹ revealed that 73 percent of respondents to that survey found it challenging to perform due diligence during merger and acquisition activities. Moreover, only 36 percent said that they felt their organisation's level of US FCPA due diligence in a merger, acquisition, or other transaction in the past five years was "adequate," with 27 percent stating that it was "minimal." This is despite recent enforcement action, and related large criminal and civil fines and penalties, levied against companies who have inherited bribery and corruption liabilities as a result of a merger or acquisition.

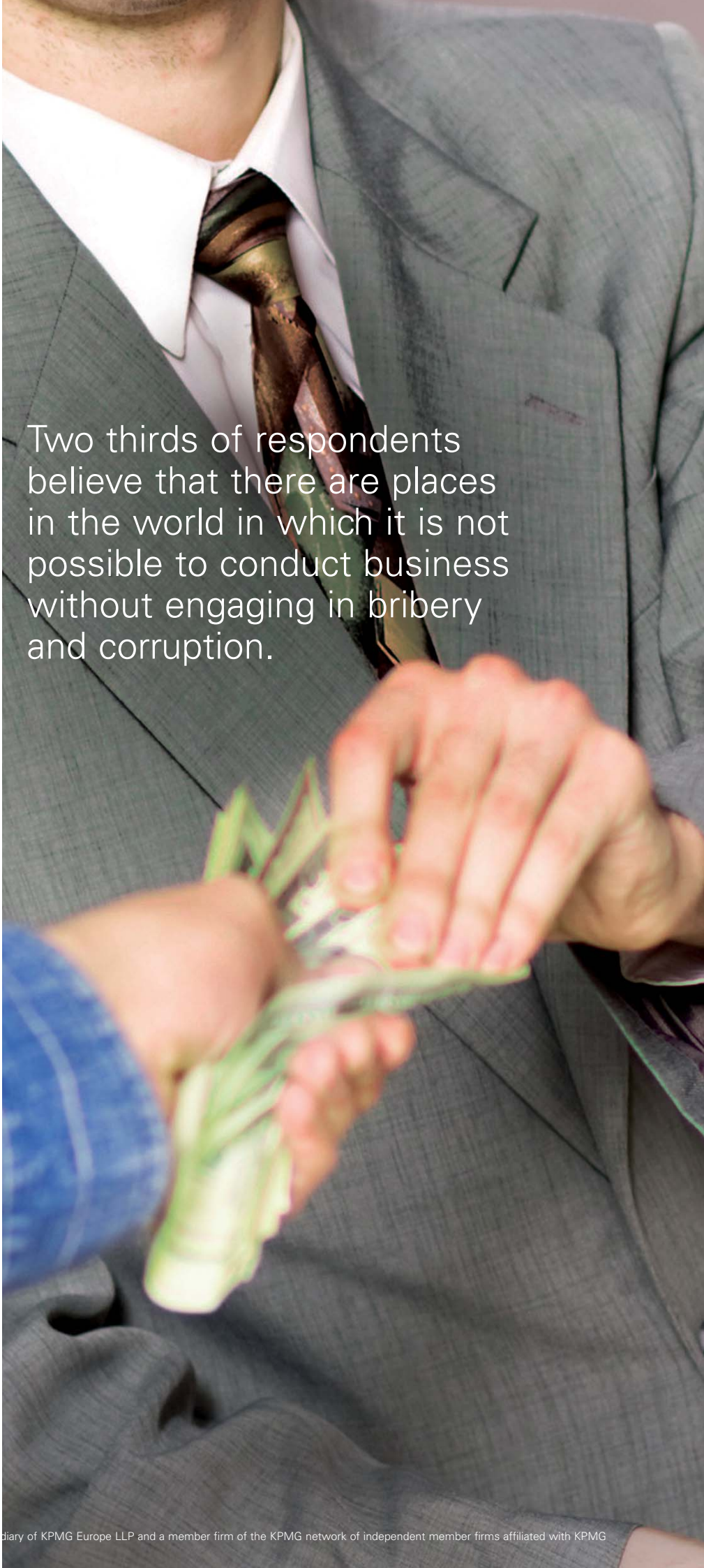
Expansion into high risk and high growth markets

Expansion into high growth markets also frequently comes with an increase in the risk of involvement in bribery and other forms of corruption. As has been seen in recent cases across a variety of industries including energy, pharmaceuticals, and technology, expansion into such markets without an effective and well-planned approach to managing bribery and corruption risks can lead to severely damaging consequences.

In the context of the increased interest in expansion into emerging markets, our survey results reveal that 67 percent of respondents believe that there are places in the world in which it is not possible to conduct business without engaging in bribery and corruption. 47 percent of these respondents believe that the way to manage bribery and corruption risks in these countries was simply not to conduct business there. However, only 35 percent of respondents stated that their organisation had ever chosen not to conduct business in a country because of bribery and corruption issues.

More than three quarters of respondents with an anti-bribery and corruption compliance programme include merger and acquisition due diligence as one of its components.

⁹ http://us.kpmg.com/RutUS_prod/Documents/8/2008_FCPA_AntiBriberySurvey.pdf



Two thirds of respondents believe that there are places in the world in which it is not possible to conduct business without engaging in bribery and corruption.

These statistics seem to highlight a dilemma which is frequently encountered by companies: the desire to conduct business in high growth / high risk countries weighed against the potential reputational risks of doing so.

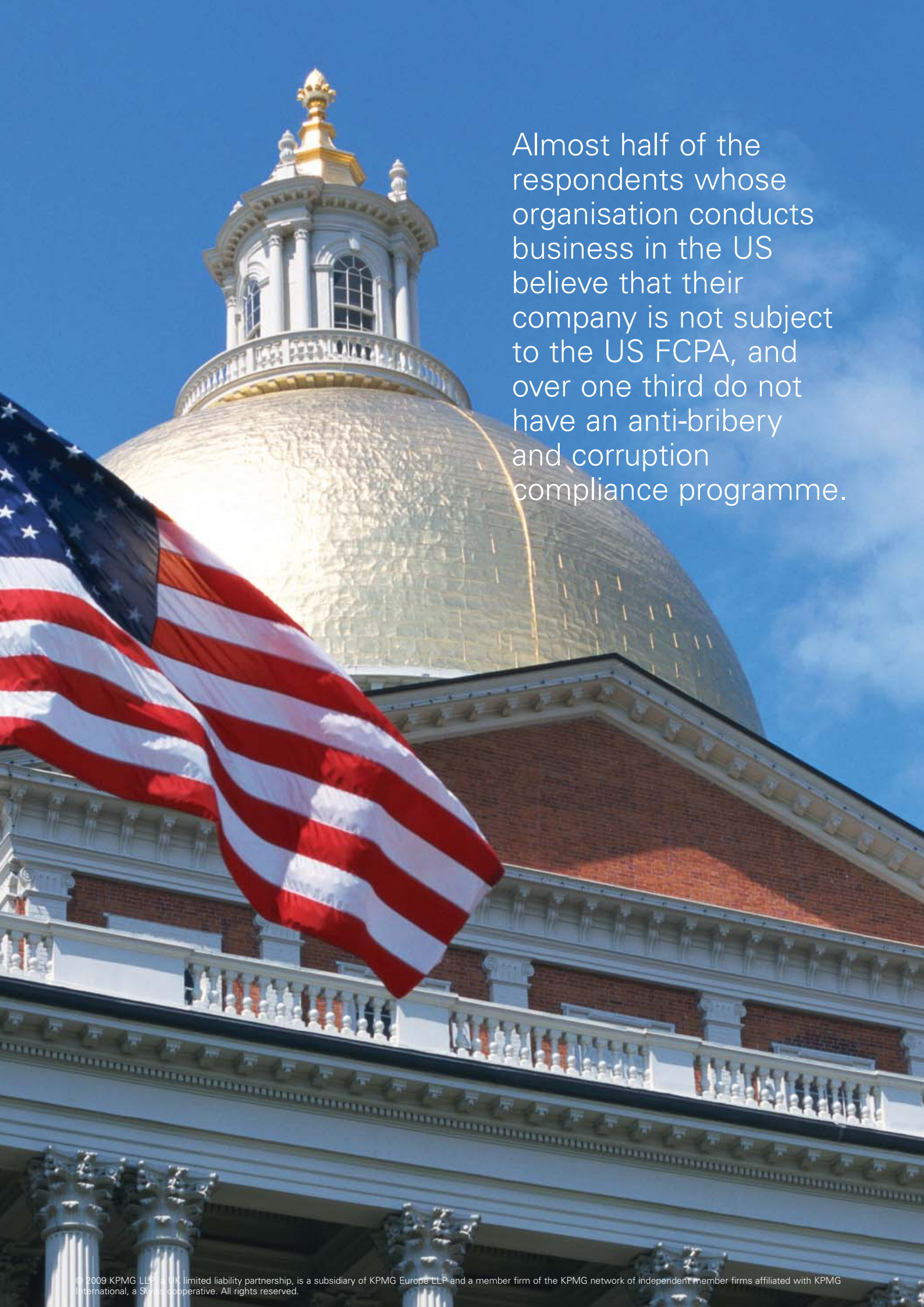
Some respondents provided other options for addressing bribery and corruption risks when operating in high risk countries. The key areas of enhancement include controls, monitoring and provision of training (see table below).

Figure 1

Ways to mitigate risks in these countries

	%*
Don't conduct business in such countries	47%
Implement enhanced internal controls	29%
More closely monitor operations	16%
Provide training	12%
Obtain anti-bribery and corruption certifications	7%
Conduct due diligence on third parties	3%
Other	26%

*% Of those who answered the question (73/109)



Almost half of the respondents whose organisation conducts business in the US believe that their company is not subject to the US FCPA, and over one third do not have an anti-bribery and corruption compliance programme.

Overseas Bribery and Corruption Survey 2009: How companies are responding to the challenge

Developing and implementing a compliance programme

Since publishing our 2007 Survey, we have witnessed a marked increase in the thought and attention devoted to the issue of anti-bribery and corruption compliance by a growing number of companies across the UK.

Despite the recent increased level of corporate attention given to anti-bribery and corruption compliance, only 57 percent said that their organisation actually has an anti-bribery and corruption compliance programme in place. In addition, only 37 percent of these have a distinct anti-bribery and corruption compliance programme with the majority (60 percent) choosing to address the issue within an overall ethics and compliance programme. It should be said that we did find a few respondents in the

process of developing and implementing distinct anti-bribery and corruption compliance programmes at the time they were surveyed.

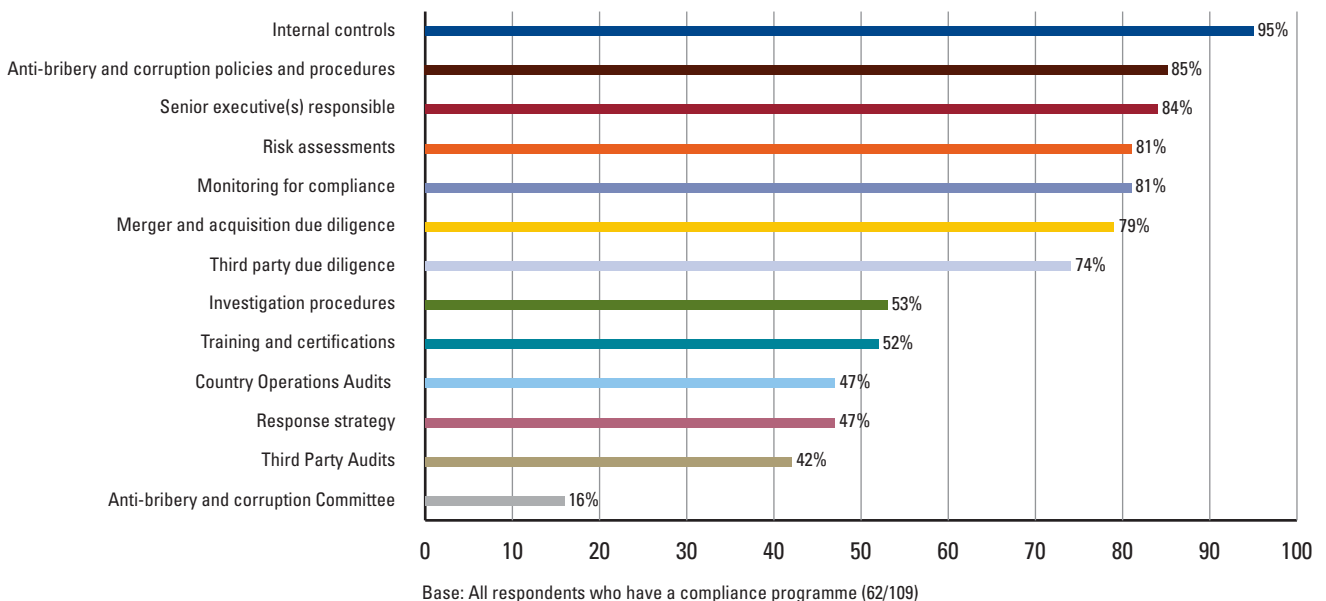
For those respondents who do not have an anti-bribery and corruption compliance programme (43 percent), the primary reason provided was a lack of perceived necessity and relevance to their organisation, business, or sector (55 percent). Further, almost half (44 percent) of the respondents whose organisation conducts business in the US believe that their company is not subject to the US FCPA, and 36 percent do not have an anti-bribery and corruption compliance programme.

We were also interested to learn how the Woolf Report was being utilised by UK companies in the development of their anti-bribery and corruption compliance programmes. We discovered that 41 percent of participants are

familiar with the Woolf Report.¹⁰ Only a few (two percent) of these have actually used it as a pattern for their anti-bribery and corruption compliance programme. However, 40 percent of those who were familiar with it have consulted it for better practice ideas.

In addition to identifying the proportion of companies who are attempting to address their bribery and corruption risks, our survey also sought to determine the specific methods which these corporates are utilising to do so. We therefore asked a variety of questions regarding the various components that comprise each company's anti-bribery and corruption compliance programme to understand those elements which are being widely implemented and those which are not. Our findings are illustrated in Figure 2 below:

Figure 2
Does your anti-bribery and corruption compliance programme include:



¹⁰ http://217.69.43.26/woolf/Woolf_report_2008.pdf

Our findings reveal that 52 percent of respondents with an anti-bribery and corruption compliance programme stated that they were conducting anti-bribery and corruption training and obtaining related certifications. While companies need to effectively communicate their unwavering stance against bribery and corrupt activity via relevant policies and procedures, it is also imperative that their employees are properly trained and receive an adequate understanding of what constitutes bribery and corruption in the 'real world'.

This training should be tiered based upon the company's assessment of its bribery and corruption risks – which 81 percent of our respondents with anti-bribery and corruption compliance programmes stated they were conducting – and delivered in a way that is tailored to the needs and job duties of the employees. Companies should also subsequently obtain a certification from each employee stating not only that they have successfully completed the required training, but also that they are in compliance with the company's anti-bribery and corruption policy and relevant laws and regulations, and that they are not aware of any related violations.

Anti-bribery and corruption investigations

Given the fact that the number of global regulatory bribery and corruption investigations has recently soared, we expected to see a similar increase in the number of internal investigations conducted by our respondents. In comparison with our 2007 Survey, there has been a 44 percent rise in the proportion of responding organisations that have carried out internal investigations of suspected bribery and corruption in the last two to three years. More specifically, 39 percent currently say that their organisations have conducted anti-bribery and corruption investigations during that time frame, in comparison to 27 percent two years ago.

Despite the significant increase in anti-bribery and corruption internal investigations being conducted by companies, our survey indicates that only about half of the respondents with an anti-bribery and corruption compliance programme (53 percent) had developed formal procedures for conducting such investigations. These findings appear

to highlight an area which companies should consider addressing in the improvement of their anti-bribery and corruption compliance programmes. Although failure to identify bribery and corrupt activity within an entity can lead to negative consequences, failure to properly investigate and remediate these issues when they are uncovered can have disastrous consequences.

Our survey also found that interaction with regulators tends to occur after preliminary investigative procedures into their nature and accuracy have already been conducted (57 percent). Only five percent of respondents stated that they would immediately report to regulators, whereas 21 percent would conduct a full internal investigation first. Only two percent would not report to regulators at all.

Only just over a half of respondents with an anti-bribery and corruption compliance programme stated that they were actually conducting anti-bribery and corruption training.

Overseas Bribery and Corruption Survey 2009: The future of compliance and enforcement

Having addressed the legislative background and the challenges faced by companies operating under such legislation, we briefly consider patterns and trends in anti-bribery and corruption compliance and enforcement, and what the future may hold.

The global perspective

As bribery and corruption moves up the global political agenda following public criticism by Non Governmental Organisation's (NGOs) such as the Organisation for Economic Development (OECD), countries are making changes to existing legislation and are stepping up their efforts to obtain prosecutions. The dangers are exacerbated when considered alongside the difficult economic conditions, tougher global competition, internal cost-cutting exercises and continued popularity of investing in high risk jurisdictions.

Increased cooperation between global regulators mentioned earlier is set to continue, and could lead to parallel or joint investigations being undertaken in a bid to achieve the most efficient and effective prosecution.

Companies should also be considering the risk of associated litigation from third parties as a result of bribery and corruption litigation. This legal action could involve shareholder lawsuits, anti-trust action and breach of contract. An unfavourable judgement could lead to significant further financial and reputational damage.

Recent enforcement actions have also highlighted the cooperation received from countries which traditionally maintained stringent bank confidentiality laws. The relaxation of these laws could lead to an increased number of cases, as the money trail becomes clearer and countries are able to claim jurisdiction due to the use of their banking systems.

The influence of the US

President Barack Obama's strong position on transparency in government and multilateralism, together with his attorney general's experience of corruption investigations, strongly suggests that US FCPA enforcement activity – with its promise of substantial fines and publicity – will be an equal if not greater priority for the US Department of Justice (DoJ) than under the previous administration. There is little doubt that the US will continue their enforcement efforts with the same rigour as in the past. At a recent conference, Mark Mendelsohn, the Deputy Chief, Fraud Section, Criminal Division, U.S. DoJ, stated his top 10 trends for 2009 anti-bribery and corruption enforcement (See Figure 3 overleaf).

Figure 3

Mark Mendelsohn, Deputy Chief, Fraud Section, Criminal Division, DoJ – Top 10 Trends for 2009

1. Increased enforcement activity by US regulators coupled with greater cooperation by foreign authorities
2. Prosecuting senior company executives in their individual capacities will be a priority
3. The US will investigate US and foreign issuers equally, as well as companies operating within US territory
4. Multi-jurisdictional investigations are on the rise
5. Informal international cooperation will continue to improve, together with increased mutual legal assistance
6. The DoJ and Federal Bureau of Investigation (FBI) are committing more resources to US FCPA enforcement, including eight full-time, dedicated FBI investigators
7. The DoJ will coordinate, where appropriate, sector-wide investigations, as it has in the oil and gas, medical devices and freight forwarding industries
8. The pace of voluntary disclosures is likely to continue
9. US FCPA due diligence will be a regular feature of mergers and acquisitions and transactional work
10. Increased enforcement of other crimes, alongside US FCPA violations, is expected, including money-laundering, export controls violations and false accounting

Source: C5 Anti-Corruption conference, 27-28 January 2009, Frankfurt

Implications for the UK

The UK has stepped up its efforts to respond to bribery and corruption following the criticism it received from the Organisation for Economic Cooperation and Development's (OECD) anti-corruption working group in its 2008 report.

Richard Alderman, director at the UK Serious Fraud Office (SFO) has publicly declared his desire to continue to prosecute companies for bribery and corruption. He has stated that he will consider implementing some of the US methods such as deferred prosecutions and compliance monitors.¹¹

At a recent KPMG event, Mr Alderman stressed the importance of early disclosure of issues to the SFO so that the scope of the investigation can be determined and a workplan agreed at the outset. He made it clear that Board-level commitment to investigation and remediation efforts is essential in order to be able to commence discussions with the SFO.

Mr Alderman's comments have been reinforced by the guide recently issued by the SFO setting out their approach to dealing with overseas corruption.¹²

¹¹ http://www.sfo.gov.uk/publications/speechesout/sp_147.asp?id=147

¹² <http://www.sfo.gov.uk/news/downloads/SFO-COP-dealing-with-overseas-corruption.pdf>

Overseas Bribery and Corruption Survey 2009: In conclusion

Companies can no longer afford to turn a blind eye to bribery and corruption risks. Ignorance is certainly not an acceptable defence, and regulators have proven to be more than willing to levy severe fines and penalties against those who are deemed to be non-compliant.

With increasing governmental and public scrutiny of multinational organisations, it is absolutely critical that companies are able to implement effective policies and procedures to mitigate the risk of breaches occurring. Our survey has revealed that although some limited steps have been made in recent years, many of the largest UK entities need to do a lot more to adequately equip and protect themselves in this area. With the threat of severe fines and penalties, not to mention possible imprisonment, the consequences of not doing so are likely to be extremely serious.



How KPMG Forensic can help

Our anti-bribery and corruption team consists of forensic accountants, technology and corporate intelligence professionals, former prosecutors, regulators, law enforcement officials and other federal investigators, all supported by a global network of professionals sharing consistent training and methodologies.

We have an established track record of helping clients and their legal representatives undertake sensitive, complex, global investigations and compliance risk reviews. We understand how to maintain legal privileges, manage evidential material and adhere to data privacy standards.

We are supported by our corporate intelligence team, who conduct confidential integrity due diligence investigations on the background, track record, connections, ownership, reputation and probity of third parties (such as prospective agents, joint venture partners, acquisition targets and others). The team is experienced in the collection and analysis of information from both public and non-public sources, and works extensively in emerging markets.

Drawing on our wealth of practical experience, together with our strong working relationships with government and regulatory agencies, we can help clients to comply with the US FCPA and UK 2001 Act and other anti-bribery and corruption regulations.

If you have any questions about this document or would like assistance on any of the issues covered in this survey please contact us.

UK Contacts

Brent McDaniel
+44 (0) 20 7311 3516
brent.mcdaniel@kpmg.co.uk

Alex Plavsic
+44 (0) 20 7311 3862
alex.plavsic@kpmg.co.uk

Global Contacts

Europe, Middle East and Africa Region
Richard Powell
+44 (0) 161 838 4044
richard.powell@kpmg.co.uk

Asia Pacific Region
Mark Leishman
+82 (2) 2 112 0882
mleishman1@kr.kpmg.com

Americas Region
Phil Ostwalt
+1 404 222 3327
postwalt@kpmg.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2009 KPMG LLP, a UK limited liability partnership, is a subsidiary of KPMG Europe LLP and a member firm of the KPMG network of independent member firms affiliated with KPMG International, a Swiss cooperative. All rights reserved.

KPMG and the KPMG logo are registered trademarks of KPMG International, a Swiss cooperative.

Designed and produced by KPMG LLP (UK)'s Design Services.

Publication name: Overseas Bribery and Corruption Survey 2009

Publication number: RRD-150550

Publication date: August 2009