

Anti-Corruption and Bribery Practices in Corporate Australia

**A review of exposure to
corruption and bribery risk
across the S&P/ASX 200**



Research commissioned by
The Australian Council of Superannuation Investors and
prepared by CAER - Corporate Analysis. Enhanced Responsibility.

Research Paper

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About the Authors

The Australian Council of Superannuation Investors

The Australian Council of Superannuation Investors (ACSI) assists its member superannuation funds to manage environmental, social and corporate governance (ESG) investment risk.

ACSI's services include:

- ✓ Advice and proxy voting services.
- ✓ Engagement with ASX 200 companies on material ESG issues.
- ✓ Research to support our policy positions.
- ✓ Public Advocacy for improved governance practices and standards including promotion of effective legislative and regulatory regimes.
- ✓ Assistance to members for implementation of the UN Principles for Responsible Investment.

Contact details:

Ann Byrne
Chief Executive Officer
Australian Council of Superannuation Investors
Ground Floor
215 Spring Street | Melbourne VIC 3000 | Australia
Tel: +61(0)3 8677 3893
Fax: +61(0)3 8677 3889
Email: info@acsi.org.au
Website: www.acsi.org.au

CAER – Corporate Analysis. Enhanced Responsibility.

CAER is an independent, not-for-profit research organisation assisting investors in Australia and around the world. CAER was established in 2000 to provide independent environmental, social and governance (ESG) data on companies operating in Australia and the Asia-Pacific region. CAER collects data on approximately 300 ESG issues for the S&P/ASX 300 and the NZX 50. With our UK partners EIRIS we are able to provide consistent sustainability data on over 3,000 of the world's leading companies. The data is based on publicly available information gathered from company, government and NGO sources, as well as via direct communication with companies.

Contact details:

Duncan Paterson
Chief Executive Officer
CAER
PO Box 229
Belconnen ACT 2616
Australia

Tel: +61(0)2 6201 1900
Fax: +61(0)2 6201 1987
Email: contact@caer.org.au
Website: www.caer.org.au

Foreword

The Australian Council of Superannuation Investors (ACSI) is proud to introduce *Anti-corruption and Bribery Practices in Corporate Australia: A review of the S&P/ASX 200.*

ACSI believes that sustainable and lasting value creation require a company to successfully manage its relationships with all stakeholders that have a legitimate interest in the operation of the business and in the communities in which it operates. However to achieve this, companies have a responsibility to discourage behaviours that erode the strength of these relationships and diminish the core values upon which the organisation is built.

The issue of corruption and bribery epitomize such detrimental behaviours that adversely affect the strength and success of a company and represent a pervasive obstacle to the stability and growth of long-term value for investors.

Incidents and allegations of corrupt practices in corporate behaviour have increased in recent years, bringing the risks of a formerly peripheral issue into sharp focus. Such incidents have generally been accompanied with international criticism, sharp declines in company share price and considerable litigation expenses – costs that are ultimately borne by shareholders.

Importantly, companies embroiled in such events are often characterised by poor corporate governance processes, the failure of internal processes to protect the integrity of stakeholder relationships and an inability to successfully implement and monitor company codes of conduct.

A growing proportion of Australian companies are expanding operations into countries that represent an increased likelihood of corruption risk. This is either due to host countries introducing stricter regulation and penalties on corporate corruption and bribery or alternatively because the trading conditions in host countries are volatile and poor governance structures offer little protection to foreign operators. Regardless of the circumstance, the responsibility for protection against corruption and bribery now falls to companies and the boards that manage them.

ACSI has commissioned this report through CAER - Corporate Analysis. Enhanced Responsibility. (CAER) to examine the current state of anti-corruption and bribery practices in Australia, with a focus on the ASX 200. It provides insight into the extent of exposure to corruption and bribery risk inherent in leading Australian companies and highlights the trends and gaps in current risk mitigation strategies. ACSI hopes that this report will provide a starting point for investors to begin to understand and address the complex issue of corruption and bribery risk among Australian companies.

In an increasingly globalized business environment that presents increasingly challenging obstacles ACSI encourages investors to understand, investigate and establish pathways for sustainable and responsible investment.



Ann Byrne
Chief Executive Officer

Executive Summary

Bribery and corruption are not problems most Australians are exposed to in their everyday lives. Little has changed in this regard over the past decade. By contrast, the level of exposure of large listed Australian companies to the risks of involvement in bribery and corruption has clearly increased.

There are two reasons. Firstly, by the nature of their operations three quarters of companies in the S&P/ASX 100 (ASX 100) are now exposed to high risk sectors or countries where bribery is a potential problem, compared to just over half of the companies five years ago (see Section 2.2).

Secondly, the adverse legal consequences of involvement in bribery have become progressively more severe in recent years and this trend is continuing. More countries are adopting and strengthening anti-bribery laws and more resources are being devoted to the pursuit of those taking and paying bribes and tolerance of 'facilitation payments' is reducing. Financial authorities in the United States and the United Kingdom in particular now have a track record of successful investigation and prosecution of bribery cases and very large penalties have been imposed (see Section 1).

ACSI commissioned CAER to prepare this report to understand the extent to which the S&P/ASX 200 (ASX 200), representing a significant asset pool for Australian investors, is exposed to corruption and bribery risk. It examines the exposure of Australian listed companies to bribery and corruption risk and analyses their responses.

The first section of the report defines bribery and describes how it is distinguished from a 'facilitation payment'. It looks at the legal background in Australia as opposed to the situation in the US and the UK to make a comparison between the three countries in regard to the practical application of the relevant law. Finally, it describes internal approaches taken by corporations to reduce the risk of paying bribes.

The second section compares anti-bribery policies of the top 100 largest companies (by market capitalisation) in Australia, Europe, the United Kingdom and the United States. It describes both changes in levels of exposure of Australian companies to bribery risk and changes in their anti-bribery response over the past five years. It also looks at the quality of implementation of processes to mitigate the risk of staff becoming involved in bribery.

The third section looks at two subsets of the ASX 200 companies. It examines the degree to which internationally operating ASX 200 companies are exposed to corruption risk via participation in at-risk sectors or at-risk regions and it explores the extent to which ASX 200 companies with operations in the UK or the US, where anti-corruption legislation is particularly stringent, are liable to corruption risk, what corruption and bribery prevention systems they have employed and how well those systems are implemented and monitored.

Bribery is a 'long tail' risk difficult to quantify and address. Bribe giving or taking can remain hidden for many years then unexpectedly surface with catastrophic consequences. Directors and employees with shorter term horizons are less likely to suffer immediate consequences of engaging in corruption or bribery than investors but ultimately this risk threatens the long-term success and stability of a company and consequently value for shareholders, who eventually pay the price.

These risks may be addressed by a company through the adoption of a Code of Conduct which prohibits bribery and ensuring staff are familiar with it and that it is implemented effectively. The indicators discussed in subsequent sections provide a first step to reducing bribery risk but ongoing vigilance is needed to address this growing area of risk.

Some of the key findings of the report are:

- More large Australian companies are now prohibiting bribery than five years ago but still lag their international peers in this regard (see Section 2.1);
- 59% of ASX 200 companies with international operations prohibit bribery (see Section 3.1);
- 16% of ASX 100 companies prohibit facilitation payments and only half restrict or control them (see Sections 2.2 and 2.3);
- Half of the ASX 200 companies with international operations and one third of ASX 100 companies make brief, limited or no reference to their Code of Conduct in their management implementation systems. Little has changed in this regard in the past five years. (see Sections 2.3 and 3.2);
- Pressure for companies to improve their performance in preventing bribery and corruption is coming more from foreign events, particularly legislative changes in the United States and the United Kingdom, than from Australian law enforcement (see Sections 1.3 and 1.4);
- Of over half of the ASX 200 companies that have operations in the UK or US, 35% have no stated policy that prohibits bribery or facilitation payments and 43% have inadequate management systems to implement company policy.

It may be that in some cases companies have put systems in place to address bribery risk but have failed to publicly disclose these systems. But given the clear increase in exposure and the increased scrutiny and penalties imposed, investors should be concerned as to how well companies they are invested in are prepared to prevent their employees from becoming involved in corrupt practices. In the current environment, the chances of an ASX 200 company with international operations, no stated anti-bribery policy, and/or inadequate anti bribery management controls becoming embroiled in another large scale corruption scandal over the next five years appear to be substantial.

Table of Contents

About the Authors	2
Foreword	3
Executive Summary	4
1. Background and Content	7
1.1 Bribery versus Facilitation Payments	7
1.2 The Australian Legal Background and Content	8
1.3 The United States and United Kingdom: Legal Background and Content	9
1.4 Anti-Corruption Law in Practice: A Comparison	9
1.5 Code of Conduct and Anti-Corruption Policies	10
2. Anti-Corruption and Bribery Performance of the ASX 100 in 2006 and 2011	12
2.1 The ASX Compared to the Top 100 Companies in the UK, US and Europe	12
2.2 Corruption Exposure and Prohibition Policies: 2006 - 2011	13
2.3 Implementation of Anti-Corruption Policy: Codes of Conduct and Management Systems	16
2.4 Conclusion	19
3. ASX 200 Companies Operating Internationally: Corruption and Bribery Risk	20
3.1 ASX 200 Companies with International Subsidiaries: Corruption and Bribery Exposure and Prohibition	20
3.2 Codes of Conduct: Inclusion of Ethical Issues and the Strength of Management Implementation Systems (“ASX 200 Internationals”)	21
3.3 ASX 200 Companies Operating in the UK and the US: Bribery and Corruption Risk Response	22
3.4 Conclusion	25
4. Concluding Remarks	26
5. Tools and Resources	28
6. Sources and Methods	29
7. Acronyms	32

1. Background and Context

Corrupt practices corrode the rule of law and adversely impact the business environment in areas where they are the norm. By harbouring ineffective competition and creating instability, such practices discourage investment in these environments. Therefore 'host' states have an interest in fighting corruption. Corruption also damages the reputation of the 'home' country where the bribe payers are based. For companies, managing assets based on contracts or licences that require illicit payments in order to secure them, or dependence on revenue streams based on these payments contributes additional layers of risk in operating in such business environments. This can damage the position of particular companies and industries involved and impacts on a company's informal 'licence to operate' in both host and home country. As a result, countries, industries and companies have an interest in avoiding involvement in corruption. But there is a 'free rider' problem. In regions where corrupt practice is the norm there may be little one company can do alone if it wants to continue to operate. This section examines legal and corporate responses to this issue in regards to the impact on Australian companies.

The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* is a multilateral legal framework that has shaped anti-bribery legislation across OECD countries. The way the principles of anti-corruption policy are applied in local law varies however, especially in clarity as to what constitutes an offence. There are also significant differences in the way responsibility for handling prosecution is apportioned between agencies in each country.

This section, firstly, defines bribery and distinguishes a bribe from a facilitation payment. Secondly, it looks at the legal background to bribery law in Australia. Thirdly, it describes the legal situation in the US and the UK. It then makes a comparison between the three countries in regards to practice and application of the relevant legislation. Finally, it outlines internal corporate approaches to reducing the risk of paying bribes. The discussion describes the potentially adverse consequences for companies which find themselves involved in bribery scandals. This in turn highlights the need for investors to consider the risks faced by companies they own and the adequacy of individual company responses.

1.1 Bribery versus Facilitation Payments

In line with the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, a bribe is defined as a favour or gift offered or given with the intention of influencing behaviour or opinions of foreign public officials in order to obtain business or other improper advantages.

The OECD Convention identifies facilitation payments by the circumstances in which they are made. A payment is a facilitation payment, and not a bribe, where it is paid to government employees to speed up an administrative process where the outcome is already pre-determined.

The difference lies, in the simplest terms, in the decision-making power of the recipient. A payment to hurry along a visa application that is certain to be granted is a facilitation payment. If the outcome (in this example whether the visa is granted or not), is determined by regulation, then a payment to alter a decision in this respect would be a bribe. For example a payment to a government employee before a tender process has been concluded to be a bribe as the recipient may consider the payment when deciding on awarding the contract.

Signatories to the United Nation's Global Compact commit to Principle 10 which prescribes that "Businesses should work against corruption in all its forms including extortion and bribery."¹ However, under Article 30 (9) of the United Nations Convention against Corruption signatory states are permitted to establish defences to the charge of corruption (such as exempting facilitation payments) as they choose. Such payments are still considered a part of doing business in many countries, and companies around the world handle the issue in various ways.

¹ UN Global Compact, Anti-Corruption Reporting, p5, available online: http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf

1.2 The Australian Legal Background and Context

Bribery is considered a crime under the provisions of the Commonwealth *Criminal Code Act 1995* as amended by the *International Trade Integrity Act (2007)* (ITIA) and the *Crimes Legislation Amendment, (Serious and Organised Crime) Act (2009)* (CLA). Australian nationals engaging in bribery of foreign government officials can receive fines of up to AUD 1.1m and jail terms of up to ten years. Australian companies face fines of up to AUD 11m if convicted of bribing foreign officials. Australian companies and individuals may be convicted of bribery whether the act is committed from within Australia or from overseas.

A defence against bribery is permitted by the Commonwealth *Criminal Code Act 1995* in the case that the payments made were not illegal under the written law of the recipient's country.

A second defence allows for companies and individuals to legally engage in 'facilitation payments'.

The *Criminal Code* defines 'facilitation payments' by stating that:

- The value of the benefit must be of a minor nature;
- It is paid to a foreign official for the sole or predominant purpose of expediting a routine government action; and
- It is documented as soon as possible.

The documentation of the payment must satisfy the reporting requirements set out within the *Criminal Code* to be accepted as a facilitation payment.

The Income Tax Assessment Act (1997) (ITAA) sets out a definition of facilitation payments that is consistent with the *Criminal Code*. Until 1999 the *ITAA* permitted companies to claim costs incurred generating assessable income as a tax deduction, without requiring assurances that those costs were not incurred in the course of bribery². As a consequence of Australia's ratification of the OECD Convention in 1999 the *ITAA* was amended so companies can now only claim tax deductions on these costs if they qualify as facilitation payments.

Neither the *ITAA* nor the *Criminal Code* define what constitutes a payment of a 'minor nature' as per the legislation, therefore it remains unclear at what size a payment ceases being a legal facilitation payment 'of a minor nature' and becomes an illegal payment of a bribe.

In recent years material has been prepared by the Australian Taxation Office (ATO) and the Commonwealth Attorney General's Department advising businesses on the differences between bribes and facilitation payments. The ATO does not define 'minor' but quotes examples from the *Criminal Code* of payments which are classed as a 'routine government action'. These include for example processing permits, visas, cargo, and scheduling inspections.

Some Australian States add to the ambiguity regarding the distinction between bribes and facilitation payments made at federal law: they define bribery implicitly to include facilitation payments. Further, they extend lawful application of State law to include extra-territoriality; their law has application outside the State and beyond Australia where there is some connection to the State of the conduct which has resulted in the facilitation payments being made.

² S 26.52 of the *ITAA 1997* which commenced application effective the 99/00 income tax year precludes a deduction for bribes to a foreign public official.

1.3 The United States and United Kingdom: Legal Background and Context

The *Foreign Corrupt Practices Act 1977 (FCPA)* is the predominant legislation governing bribery in the US. Individuals may receive fines of up to USD 100,000 and up to five years imprisonment if convicted of bribing foreign officials. Corporations face fines of USD 2m if convicted of the charge. Punitive actions against corporations may also include the withdrawal of export approvals and exclusion from government contracts. US law also has provisions to increase the maximum fines available if the bribe has resulted in a loss or gain. The fine, in this case, may be twice the amount of the loss or gain incurred.

As in Australia, US legislation does not consider a payment to be a bribe if it is lawful under written law in the recipient's country and facilitation payments are also permitted. The US does not make reference to 'small' or 'minor' when defining facilitation payments; rather they are defined as payments for 'routine governmental action' (as outlined in section 1.2). Some forms of facilitation payments are tax deductible in the US. The OECD identifies the ambiguity of what constitutes a facilitation payment as an area where US legislation could be improved.

In the UK, under the *Bribery Act 2010* bribery of foreign public officials is defined in line with the provisions of the OECD convention as described in Section 1.1. However, unlike the situation in the US and Australia the new UK law does not recognise facilitation payments as legal.

A summary conviction in the UK may result in fines of up to GBP 5,000 and 12 months imprisonment. An indictment for bribery may result in a prison term of up to 10 years and unlimited fines. In practice, as the OECD notes, it is unlikely that the UK would prosecute individuals or companies making small facilitation payments to officials in areas where this is usual practice.

The UK has also introduced a new corporate offence under the *Bribery Act* of "failure to prevent bribery". A defence to the charge exists if the business has in place adequate procedures to prevent bribery. A significant feature of the new UK law is that it explicitly sets out that the test of the appropriateness of the behaviour must be "what a reasonable person in the United Kingdom would expect"³.

1.4 Anti-corruption Law in Practice: A comparison

Australia ratified its commitment to the *OECD Convention on Combating Bribery of Foreign Officials* in 1999 with the amendment of the *Criminal Code*. From December 1999 when this legislation came into force, until as recently as December 2010, there have been no criminal cases heard in Australia dealing with foreign bribery.

The most closely related incident occurred in 2005, when grain marketing organisation the Australian Wheat Board (AWB), was found to have been involved with illegal payments to the Iraqi government in order to retain business. Subsequently the Australian Government established the "Cole" Royal Commission, which recommended that 12 people be investigated for possible criminal offences over the matter. However, the case was discontinued as a criminal investigation by the Australian Federal Police under the advice of Paul Hastings QC who declared that the prospect of convictions was limited and "not in the public interest"⁴. Instead, the scandal, which drew severe international condemnation and damaged the reputation of AWB, resulted in several civil cases brought against former directors of AWB by the Australian Securities and Investments Commission (ASIC).

The AWB scandal resulted in some changes in Australian law. Most of these changes related to dealings with the United Nations but they also included some strengthening of Australia's anti-bribery laws (as described in Section 1.3 above). Overall however, the incident did not result in any claims of offences of foreign bribery against the company.

³ UK *Bribery Act 2010*, Section 5(1)

⁴ The Australian, 29 August 2009, Federal police drop AWB investigation, available online:

www.theaustralian.com.au/business/breaking-news/federal-police-drop-awb-investigation/story-e6frq90f-1225767255737

The complete absence of any record of effective enforcement of corruption regulation in Australia stands in stark contrast to the situation in the US and the UK. In the US, 48 individuals and 27 businesses have been sanctioned in criminal cases dealing with foreign bribery. There have also been 37 settlements with individuals and 45 with businesses under civil provisions.

Similarly in the UK in the same period three individuals and two businesses have been criminally sanctioned. There is now a proven record of prosecutions for bribery offences resulting in large punitive penalties and gaol sentences. Examples include a London based insurance company director sentenced to 21 months gaol for making corrupt payments to the Costa Rican State Insurance Company and BAE Systems which agreed to pay GBP 30m in relation to illegal activities undertaken in Tanzania.

It should be noted that the most significant practical difference between the Australian situation and the situation in the US and the UK is the involvement of financial authorities – such as the US Securities and Exchange Commission (US SEC) and the UK Financial Services Authority (UK FSA) - in bribery cases. The US SEC is responsible for civil enforcement of the anti-bribery legislation with respect to any “issuer” of securities in the US and has devoted significant resources to investigating and prosecuting bribery offences. For example, Siemens paid USD 1.34b in fines after being investigated by the SEC over widespread and systemic bribery over multiple business lines paid to obtain contracts. Similarly, the UK FSA fined the insurance broker AON GBP 5.25m for “failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption”. In Australia, the Australian Federal Police and the Director of Public Prosecutions, not ASIC, which represents the Australian equivalent of the US SEC and UK FSC, are responsible for the enforcement of anti-corruption and bribery laws.

1.5 Codes of Conduct and Anti-Corruption Policies

As well as states, companies and industries have an interest in fighting corruption. Because of the ‘free-rider’ problem for companies, industry-wide initiatives are common. The Extractive Industries Transparency Initiative (EITI) is one example where signatories commit to greater disclosure of payments made to foreign officials. The initiative is designed to improve the outcomes of resource-rich developing nations by requiring signatory governments to gather and disclose information regarding payments made to and received from companies operating in the local extractives industry. While EITI signatory companies agree to supply data on payments made to the government of participating countries, companies who officially ‘support’ the initiative are not required to make additional or public disclosures.

Other international initiatives aimed at encouraging companies to combat bribery and corruption include the UN Global Compact, the International Corporate Governance Network’s Statement and Guidance on Anti-Corruption Practices and guidance provided by Transparency International.⁵

Company policy is another avenue available to businesses to prohibit or regulate payments made to foreign officials. It is an attempt at self regulation of internal conduct. While company policy is not legally binding, it is an indication that directors have seriously considered the issues and are willing to implement safeguards. When supported by a stringent system to enforce compliance, company policy is an effective first step in managing issues such as bribery and corruption.

⁵ For more information on these and similar initiatives see the box on p31 which contains a list of resources.

The ASX Corporate Governance Council's Principles of Good Corporate Governance and Best Practice Recommendations - Version 2 of 30 June 2010 includes a suggestion under Principle 3 'Ethical and responsible decision making,' that companies have a Code of Conduct which includes a description of the company's approach to bribes and facilitation payments⁶.

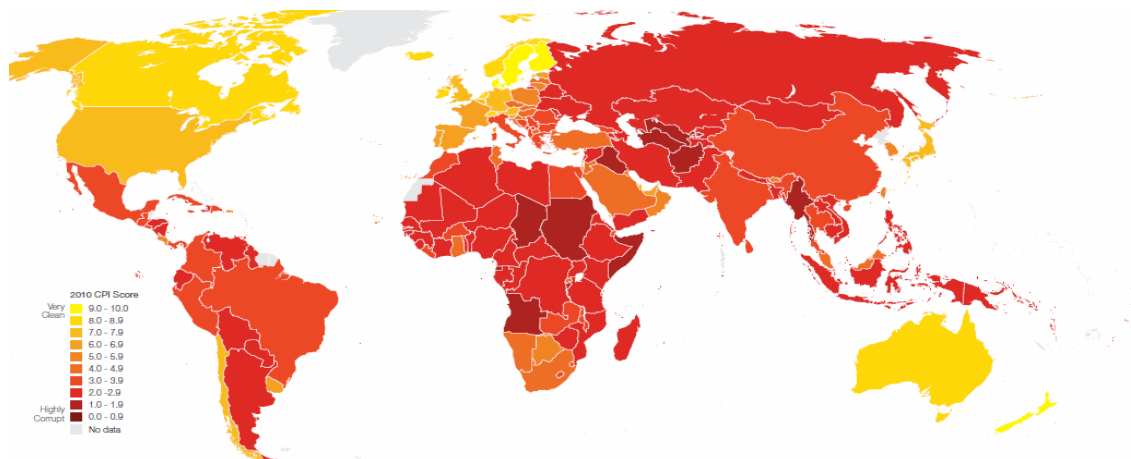
The clarity and vigour with which the code is implemented is important, especially for companies with investments and operations in areas and industries susceptible to corruption, as there is often no clear cut-off between legal and illegal behaviour under Australian law. Unlike the situation in the US and the UK, Australia has not yet developed a record of successful bribery prosecutions, which can have a strong deterrent impact and focus attention on the importance of these issues.

The next section of this report examines the extent of the risks faced by large listed Australian companies and the perceived adequacy of their response.

⁶ ASX Corporate Governance Principles and Recommendations with 2010 Amendments:
http://www.asx.com.au/documents/about/cg_principles_recommendations_with_2010_amendments.pdf , p23

2. Anti-corruption and Bribery Performance of the ASX 100 in 2006 and 2011

Companies with operations in Australia generally face little risk in relation to corrupt behaviour. Transparency International's 2010 Corruption Perception Index⁷ identifies Australia as one of the ten least likely countries where businesses will encounter bribery and corruption. Companies listed on the S&P/ASX 100 (ASX 100), however, have considerable interests in industries and countries with a worse reputation than Australia in this area, and face very real business risks. The map below shows that almost three quarters of the 174 countries included in Transparency International's Corruption Perception Index score below five on a scale to 10 (from 1 'highly corrupt' to 10 'very clean').



Map 1: Transparency International's Corruption Perceptions Index 2010⁸

This section firstly compares anti-bribery policies of the 100 largest (by market capitalisation) Australian, European, UK and US companies. Secondly, it describes both changes in likely levels of exposure of Australian companies to bribery risk and changes in their anti-bribery response over the past five years. Thirdly, it looks at the quality of implementation of processes to mitigate the risk of being involved in bribery. The data analysis looks at specific components of changes made by companies covering not just prohibition of bribery, but also restriction or prohibition of facilitation payments, improvements in codes of conduct and improvements in management systems.

2.1 The ASX 100 compared to the top 100 companies in the UK, US and Europe

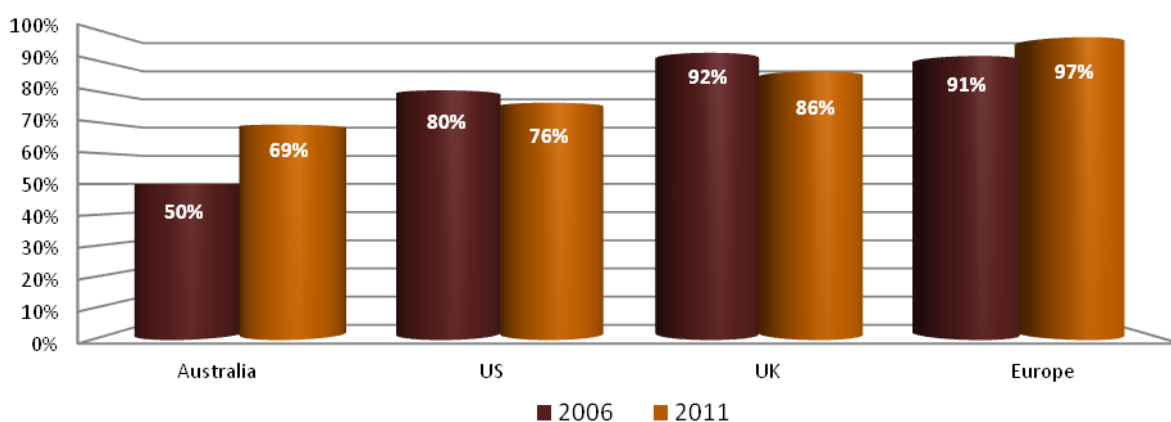


Figure 1: Percentage of top 100 companies from Australia, UK, US and Europe which prohibit both the giving and receiving of bribes in 2006 versus 2011

⁷ Transparency International is a global civil society organisation that set out its mission to create changes towards a world free of corruption. Every year Transparency International publishes the Corruption Perceptions Index (CPI) which ranks countries according to the perception of corruption in the public sector. For more information on Transparency International's work visit their website: www.transparency.org

⁸ Transparency International Corruption Perception Index 2010: www.transparency.org/policy_research/surveys_indices/cpi/2010/results

The 2006 CAER report *Just how business is done? A review of Australian business' approach to Bribery and Corruption* found that the Codes of Conduct of the top 100 Australian companies (by market capitalisation) were not as stringent in prohibiting bribery as the top 100 companies in other international markets. Figure 2 shows progress made by the top 100 companies in Australia, the US, the UK and Europe between 2006 and 2011. Overall, Australian companies are still trailing behind their international peers in prohibiting bribery: 97% of top 100 companies in Europe and 86% of the top 100 UK companies explicitly prohibit the giving and receiving of bribes in company Codes of Conduct or include specific anti-bribery policies as opposed to 69% of top 100 Australian companies.

US companies are trailing behind European and UK companies, but still show a higher proportion with clear statements prohibiting bribery than the ASX 100; 76% of US top 100 companies prohibit bribery.

Interestingly, while the number of Australian and European companies prohibiting bribery improved between 2006 and 2011, the number in the US and UK dropped slightly. This is not to say that a proportion of US and UK companies regressed in their anti-bribery policies, but rather that changes to the composition of top 100 companies (by market capitalisation) during the financial crisis impacted on the overall performance for this indicator. Interestingly, changes to the composition of top 100 companies in Europe and Australia did not result in the same trend in regard to the proportion of companies prohibiting bribery.

The data also shows that of the individual companies included in the top 100 in 2006 and 2011, in the UK and US almost no company has changed its approach to prohibiting bribery since 2006. The lack of improvement in these markets may lie in companies waiting for new regulation to be enforced before reviewing policies that ensure compliance with improved laws and regulations.

During the last five years an additional 19 companies in the top 100 Australian companies prohibited bribery, an improvement of 38% since 2006. This suggests that while Australian companies continue to lag behind their international peers, they are starting to place the issue of bribery on the agenda.

2.2 Corruption exposure and prohibition policies: 2006 to 2011

The above analysis shows that Australian companies have improved in addressing the prohibition of bribery in 2011 when compared to 2006. This section will take a closer look at how the exposure to bribery risks among the ASX 100 has changed over the last five years, based on their industry sectors and countries of operation. Further, this section compares how companies address both bribery and facilitation payments.

In Section 1 we highlighted the pertinence of both the prohibition of bribes and the management of facilitation payments to Australian companies. Given the uncertain legislative definitions it is vital for companies to clearly define and impose restrictions on facilitation payments to government officials to ensure legitimacy of operations. Failure by companies to provide guidance on what constitutes a facilitation payment increases the risk of employees unknowingly crossing the line and breaching company policy and Australian law.

Figures 2a to 2c demonstrate progress made by the top 100 Australian companies in addressing the issues of bribery and facilitation payments, relative to increases in exposure to at-risk sectors and countries.

Figure 2a breaks down how many companies in the ASX 100 are exposed to high risk business sectors such as mining, oil and gas exploration or construction and materials, and how many companies have operations in countries with high risks of bribery and corruption occurring.⁹

⁹ Business sectors were analysed by EIRIS to identify those sectors with likely exposure to direct government interactions. Countries are identified by EIRIS as high risk based on the Transparency International Corruption Perceptions Index and the World Bank Governance Indicators. For more information on the methodology, see the Sources and Methods section at the end of the report.

It further shows that in the last five years exposure to these risk sectors and countries increased for the ASX 100 companies: in 2006 just over half of the companies in the ASX 100 were involved in either a high risk sector, a high risk country or both; in 2011 three quarters of the ASX 100 have exposure to at least one of these risk areas. The total number of companies that have interests in both at-risk areas also increased from 21% of companies in 2006 to more than a third of the ASX 100, at 36%, having exposure in 2011.

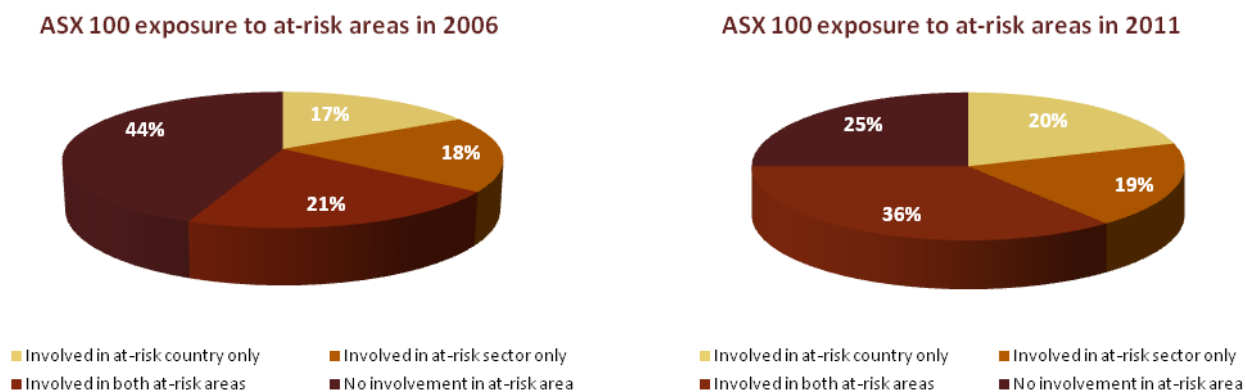


Figure 2a: ASX 100 exposure to at-risk areas in 2006 and 2011

- Overall, in 2006, 50% of the ASX 100 explicitly prohibited bribery, whilst a mere 15% explicitly prohibited facilitation payments. In 2011, this pattern shifted slightly, with 69% prohibiting bribery and 16% prohibiting facilitation payments.
- Of the ASX 100 in 2006, 47% did not publicly disclose a policy that prohibited either bribery or facilitation payments; in 2011, 28% of the ASX 100 do not publicly disclose a policy that prohibits either bribery or facilitation payments.

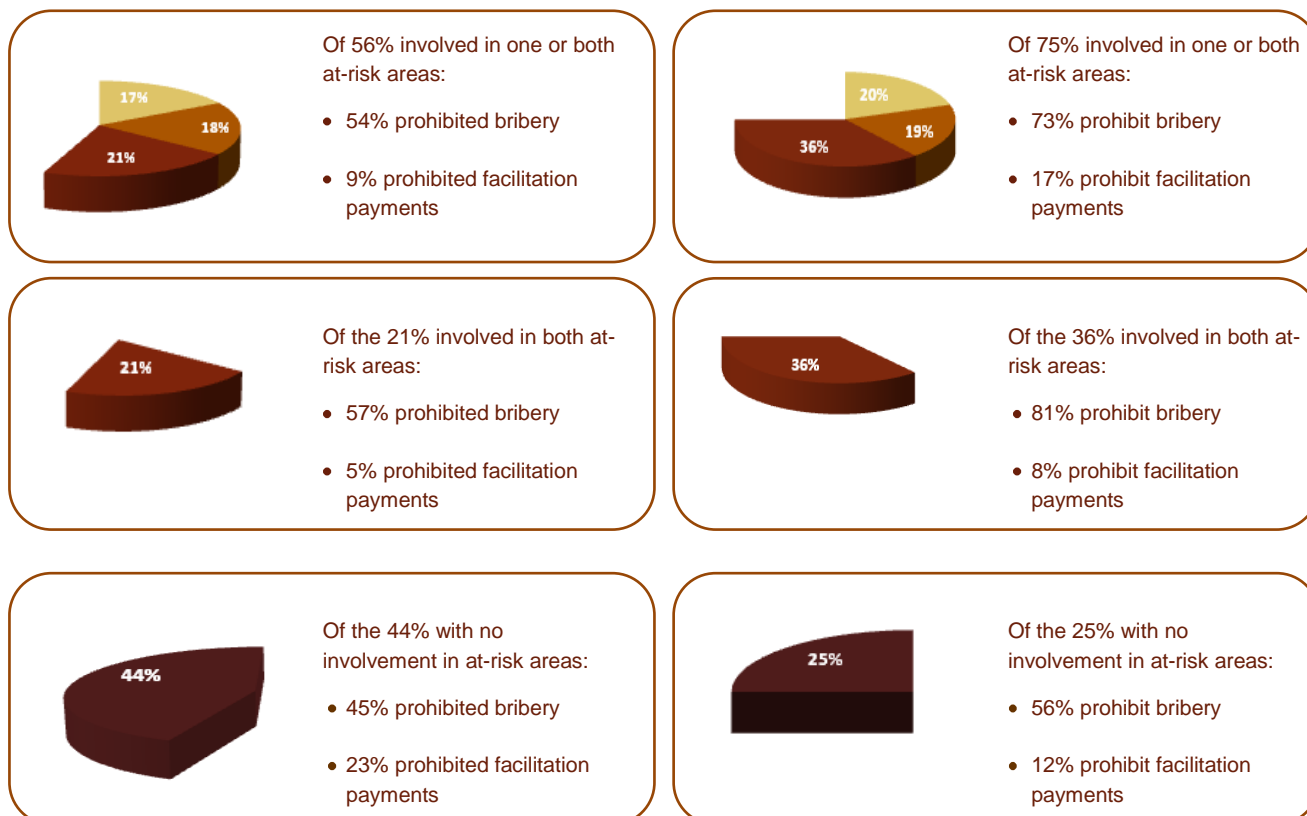


Figure 2b: ASX 100 exposure to at-risk areas, and prohibition of bribery and facilitation payments in 2006 and 2011

ASX 100 exposure to at-risk business sectors in 2006

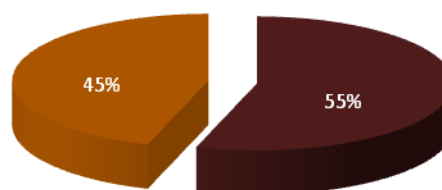


■ Involved in at-risk sector
■ ASX 100 companies not operating in at-risk sector

Of the 39 companies involved in at-risk sectors:

- 49% prohibited bribery, and
- 3% prohibited facilitation payments

ASX 100 exposure to at-risk business sectors in 2011

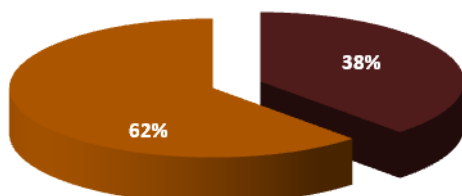


■ Involved in at-risk sector
■ ASX 100 companies not operating in at-risk sector

Of the 55 companies involved in at-risk sectors:

- 69% prohibit bribery, and
- 11% prohibit facilitation payments

ASX 100 exposure to at-risk countries in 2006

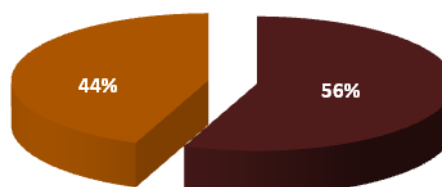


■ Involved in at-risk country
■ ASX 100 companies not operating in at-risk countries

Of the 38 companies involved in at-risk countries:

- 61% prohibited bribery, and
- 13% prohibited facilitation payments

ASX 100 exposure to at-risk countries in 2011



■ Involved in at-risk country
■ ASX 100 companies not operating in at-risk countries

Of the 56 companies involved in at-risk countries:

- 82% prohibit bribery, and
- 18% prohibit facilitation payments

Figure 2c: ASX 100 exposure to at-risk sectors and at-risk countries, and prohibition of bribery and facilitation payments in 2006 and 2011

Figure 2c shows that in 2006, 39% of ASX 100 companies were involved in high risk sectors, but this exposure increased to 55% in 2011. One explanation for the increase is that more companies involved in mining, oil and gas – categorised as high-risk sectors – joined the ASX 100 compared with its composition in 2006.

Further, the total number of companies involved in countries perceived as having high occurrence of bribery and corruption also increased from 38% of ASX 100 in 2006 to 56% in 2011 (see Figure 2b). This increase is due to more companies venturing into Asian markets such as China, and resource companies establishing a larger presence in developing countries, which are often considered more prone to bribery and corruption.

Given that three quarters of companies in the ASX 100 are now exposed to a high risk business sector, a high risk country, or both, compared to just over half of the companies in the same position in 2006, there is now a significant increase in overall risk of bribery and corruption for the largest Australian companies compared to five years ago. The response to this increased risk is considered in Figures 2b and 2c.

The data identifies companies with interests in at-risk areas that are known to prohibit bribery. Overall, in 2011 a total of 69 ASX 100 companies explicitly prohibit their employees giving and receiving bribes, a slight improvement from 2006 data when just half of the ASX 100 explicitly prohibited the giving and receiving of bribes (see Figure 2b).

Five years ago, out of the 39 companies on the ASX 100 involved in high risk sectors, 49% explicitly prohibited employees from engaging in bribery and corruption. This improved to 69% of the 55 companies involved in high risk sectors in 2011. This is in line with the general improvement in prohibition of bribery noticed across the ASX 100.

Of the 56 companies with subsidiaries in high risk countries in 2011, 82% have explicit policies on bribery. This shows an improvement in policies on bribery for those companies that operate in countries at high risk of corruption (2006: 61%; see Figure 2c).

Overall companies operating in at-risk countries maintain more explicit prohibitions against bribery than companies operating in at-risk sectors.

In 2006 only half of the companies exposed to one or both areas of bribery and corruption risk had public policies addressing the issue (Figure 2b). Today 73% of companies in this segment address bribery demonstrating a marked improvement on addressing this ESG risk. However, there are still 27% of companies that are exposed to either a high-risk sector, a high-risk country or both risk areas, which fail to address the issue of bribery. The restriction and prohibition of facilitation payments and other core aspects in Codes of Conduct is further analysed in the next section.

2.3 Implementation of anti-corruption policy: Codes of Conduct and Management Systems

The ASX 100 has shown overall improvement in including bribery and corruption issues in company codes of conduct as can be seen in Figure 3 below. While a significant proportion of companies still fall behind in this area, there has been clear progress over the last five years.

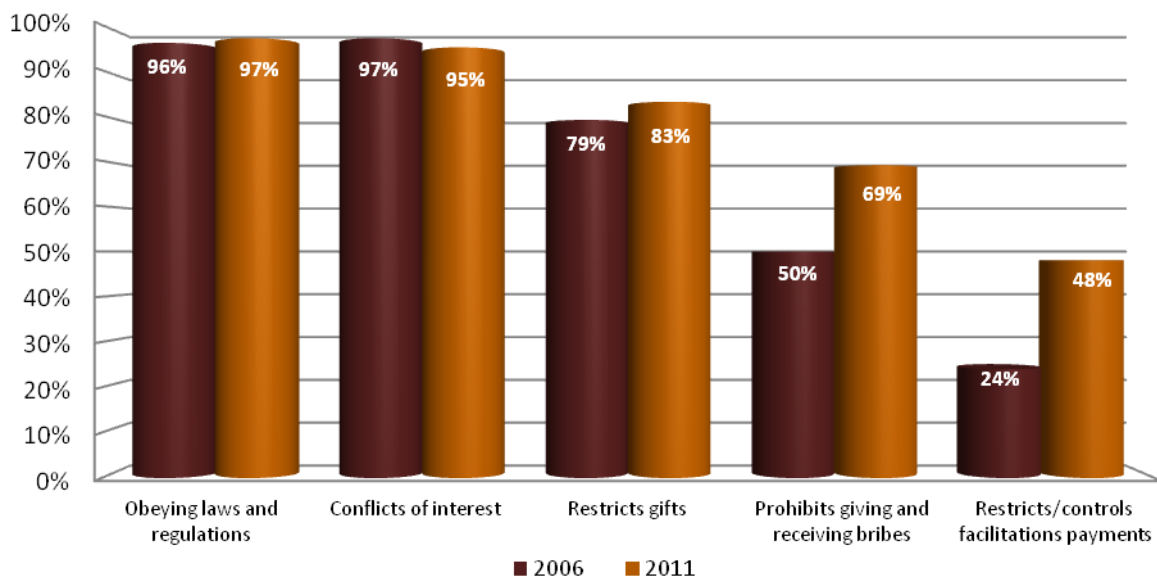


Figure 3: ASX 100 companies - key elements addressed in Codes of Conduct, comparison 2006 and 2011

Comparing core aspects in corporate codes of conduct across the ASX 100 Figure 3 shows that there has been little change in the number of companies addressing the criteria ‘obeying laws and regulation’, and ‘conflict of interest’. As these issues have been explicitly mentioned in the ASX corporate governance principles for many years, almost all companies address these aspects in their code of conducts.

However, clear shifts are seen in the number of companies regulating bribery and facilitation payments in their codes of conduct between 2006 and 2011. This could be partly attributable to the updated ASX

corporate governance recommendations for 2010, which included specific reference to bribery and facilitation payments. Figure 3 shows that the number of companies seeking to control the way in which facilitation payments are made by adding restrictions into their code of conduct increased from only 24% of those companies listed on the ASX 100 in 2006 to 48% in 2011, although the number of companies prohibiting facilitation payments altogether only improved marginally from 15% to 16% (see Figure 2c). This shows disparity within Australian companies in addressing bribery and corruption risks.

It is worth noting that in 2006 companies with interests in at-risk areas tended not to prohibit facilitation payments; a mere one company out of 39 in high risk sectors, and five out of the 38 in high risk countries, prohibited facilitation payments. This pattern shifted during the last five years. There are now six companies, or 11% out of the 55 companies in high risk sectors that explicitly prohibit facilitation payments and 18% of 56 companies operating in high risk countries that prohibit facilitation payments.

More companies in high risk sectors and high risk countries address the issue of facilitation payments through a clear prohibition of any payment in 2011 than in 2006. However, this result should not deter from the fact that there is still a significant lack of companies with policies that make clear how facilitation payments are to be treated.

There is also only a slight increase in the number of companies restricting gifts, which is considered a measure to provide clarification on what constitutes a legitimate business exchange.

To understand whether these improvements in Codes of Conduct translate to improved management systems for the implementation and monitoring of corruption and bribery prevention policy, Figure 4 examines the strength of the relevant management systems used by the ASX 100 in 2006 and 2011.

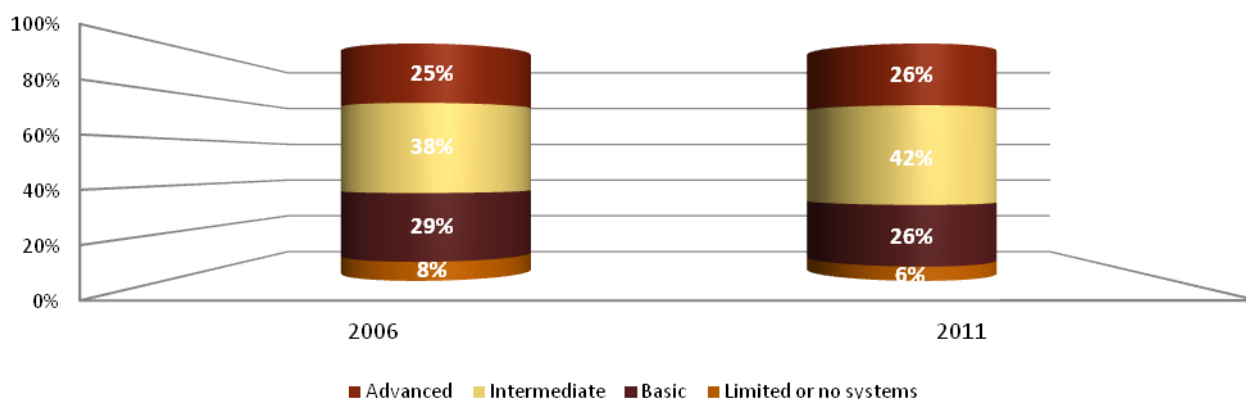


Figure 4: ASX 100 categorisation of standard of management systems to implement and monitor the company's Code of Conduct, comparison 2006 and 2011

Figure 4 is based on a categorisation of the adequacy of management systems used to implement Codes of Conduct. The categorisation is based on the following criteria:

- **Advanced** – Company disclosure addresses a range of indicators including issues such as employee training, monitoring systems or whistle-blowing procedures, and provides details on implementation.
- **Intermediate** – Company disclosure provides some detail on the implementation of monitoring systems.
- **Basic** – Company disclosure only makes brief reference to indicators without providing details on implementation.
- **No or Limited** – Company disclosure makes no or brief reference to one of the indicators.

It is positive to note from Figure 4 that overall the quality of systems to implement a culture of compliance with company policy improved slightly with less companies having no systems or basic systems, and more with intermediate or advanced systems in 2011 relative to 2006. However, the number of ASX 100 companies with advanced management systems continues to be low at 26%.

Figure 5 shows the categorisation of management systems to implement Codes of Conduct for those companies that prohibit bribery and Figure 6 displays the categorisation for companies that prohibit facilitation payments. The graphs demonstrate that companies that prohibit bribes and facilitation payments are more likely to have intermediate and advanced levels of systems for compliance - a pattern that is consistent with the findings in 2006. In addition, companies prohibiting facilitation payments in 2011 are once again most likely to have adequate systems for compliance in place; 94% of these companies had intermediate or advanced systems in 2011.

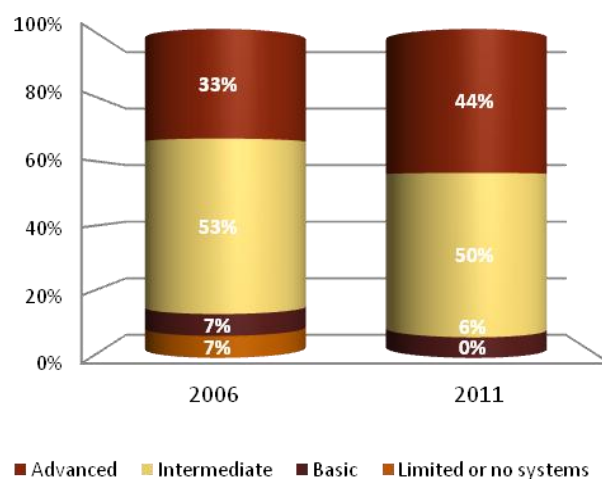
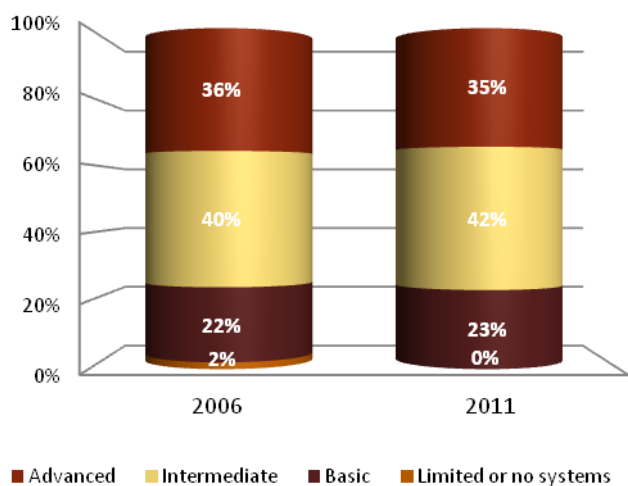


Figure 5: ASX 100 companies that prohibit bribery – categorisation of standard of management systems to implement and monitor the company's Code of Conduct, comparison between 2006 and 2011.

Figure 6: ASX 100 companies that prohibit facilitation payments – categorisation of standard management systems to implement and monitor the company's Code of Conduct, comparison between 2006 and 2011.

2.4 Conclusion

The likelihood that an ASX 100 company will be exposed to a bribery problem has significantly increased in recent years. This is both due to the nature of their operations - three quarters of companies in the ASX 100 are now exposed to high risk sectors or countries where bribery is a potential problem, compared to just over half of the companies five years ago - and due to anti-bribery regulation becoming more strict.

As a group, while the ASX 100 companies have shown improvement over the past five years in prohibiting bribery, they have work to do to measure up to their international counterparts.

Collectively the ASX 100 continue to focus on bribery prevention more than on facilitation payment prevention, although more companies are seeking to regulate facilitation payments now than in 2006. While indicators included in Codes of Conduct are improving, more work is needed for companies to implement a strong culture of compliance through provision of reviewing, monitoring and training measures. Otherwise these Codes are not likely to result in meaningful outcomes. For example, although 69% of companies prohibit bribery in their Codes of Conduct, 32% have been rated at basic or worse in regards to having adequate management systems to implement that Code.

Given the increase in risk exposure over the last five years, the progress in the adequacy of company responses to bribery issues shown overall is encouraging. However, there are still a large number of companies that are at-risk that do not address bribery issues adequately.

In the next section, we broaden the focus to cover two subsets of the ASX 200 to see if current trends in bribery prevention in these subsets are similar to trends identified in this section in the ASX 100.

A large percentage of Australian companies operate internationally and are exposed to the business practices and government regulations of foreign countries. This section will firstly examine the degree to which Australian-listed companies operating internationally are exposed to corruption risk via participation in at-risk sectors or at-risk regions. Secondly, it will explore the trends in prohibition of bribery and/or facilitation payments of companies operating in an at-risk sector or at-risk countries.

Due to the implementation of the *Foreign Corrupt Practices Act* (FCPA) and Dodd-Frank in the US during 2010, and the *Bribery Act 2010* coming into effect in July 2011 in the UK, ASX 200 companies operating in the US and the UK are now exposed to increased regulatory risk in those jurisdictions stemming from non-compliance with anti-corruption measures. The next section will also explore the extent to which ASX 200 companies are exposed to this US and UK legislation, what corruption and bribery prevention systems they have employed and how well those systems are implemented and monitored.

3. ASX 200 Companies Operating Internationally: Corruption and Bribery Risk

3.1 ASX 200 Companies with international subsidiaries: corruption and bribery exposure and prohibition

There are 164 companies in the ASX 200 that have subsidiaries operating internationally ("ASX 200 Internationals"). Of those 164, 77%, representing 126 companies, are involved in either an at-risk sector, an at-risk country or both. This group's proportional exposure to at-risk areas is displayed in Figure 7 below.

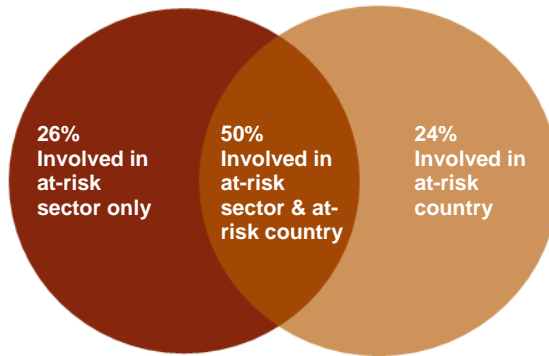


Figure 7: Source of corruption risk exposure of the 126 ASX 200 companies operating internationally with involvement in one or both at-risk areas

Figure 8 below displays the percentage of ASX 200 Internationals that prohibit bribery and facilitation payments and whether these measures are more frequently taken by companies that operate in at-risk sectors or at-risk areas. Companies operating in at-risk countries are slightly more likely to address the issue of bribery than companies operating in at-risk sectors. However, when it comes to prohibiting facilitation payments there is only a marginal difference between the two groups. Surprisingly, companies operating in at-risk sectors are less likely to prohibit facilitation payments than the ASX 200 Internationals overall.

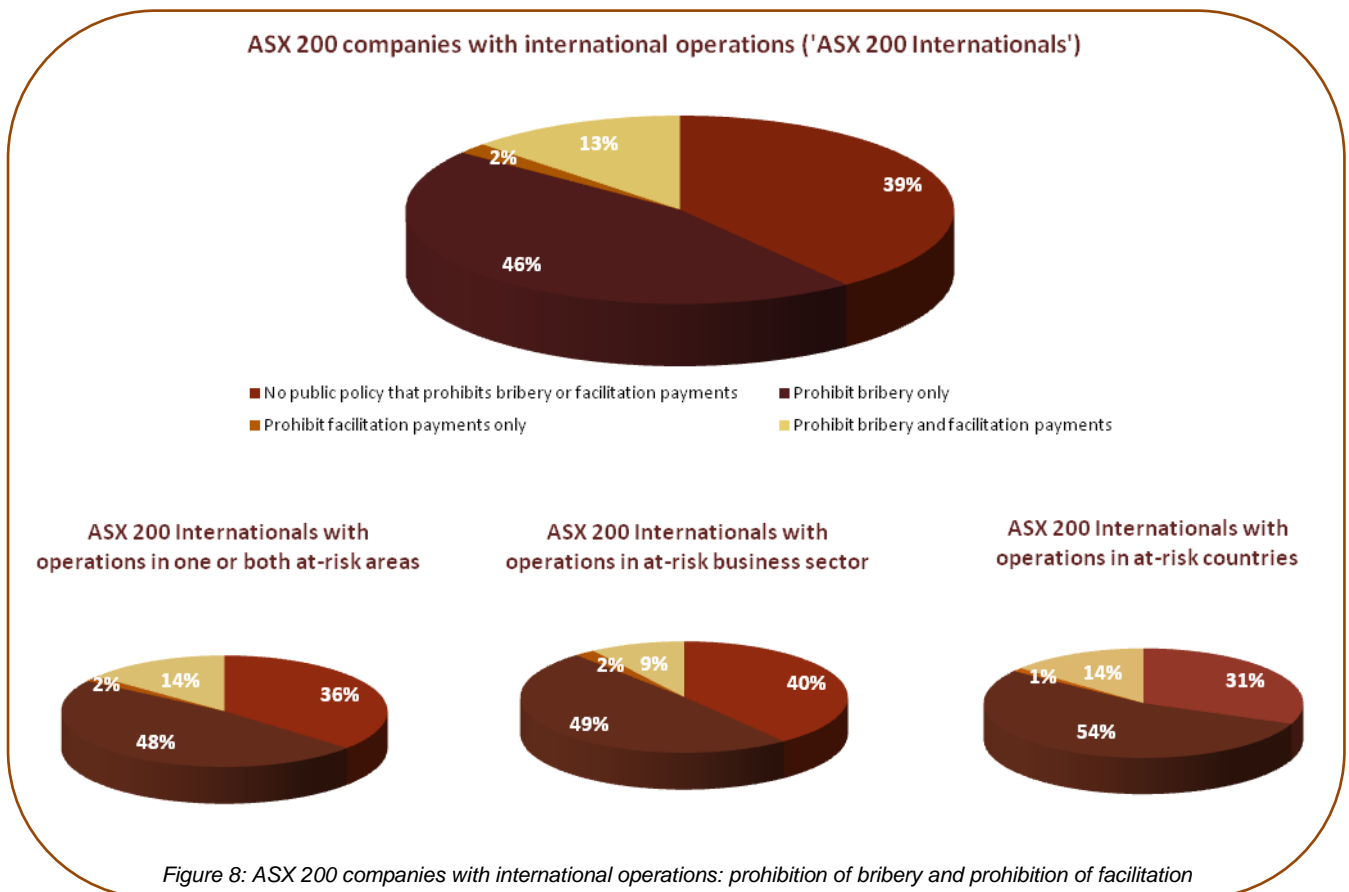


Figure 8: ASX 200 companies with international operations: prohibition of bribery and prohibition of facilitation

There is a clear lack of companies prohibiting facilitation payments amongst ASX 200 Internationals, much like in the ASX 100. The failure of regulators to clearly distinguish between facilitation payments and bribery could be one explanation for companies not addressing the issue more clearly. However, in some cases companies prohibit bribery and do not prohibit facilitation payments, allowing for continued reliance by staff on facilitation payments and the possibility bribes will be paid but disguised as facilitation payments.

Bribery and corruption measures are typically laid out in a company’s Code of Conduct which addresses the ethical issues important to a company. The ASX provides some guidance on what a Code of Conduct should address, which now also includes the issues of bribery and facilitation payments. The next sub-section explores which key issues are addressed in codes of conduct across the ASX 200 Internationals and the quality of the systems to implement these codes.

3.2 Codes of Conduct: inclusion of ethical issues and the strength of management implementation systems (“ASX 200 Internationals”)

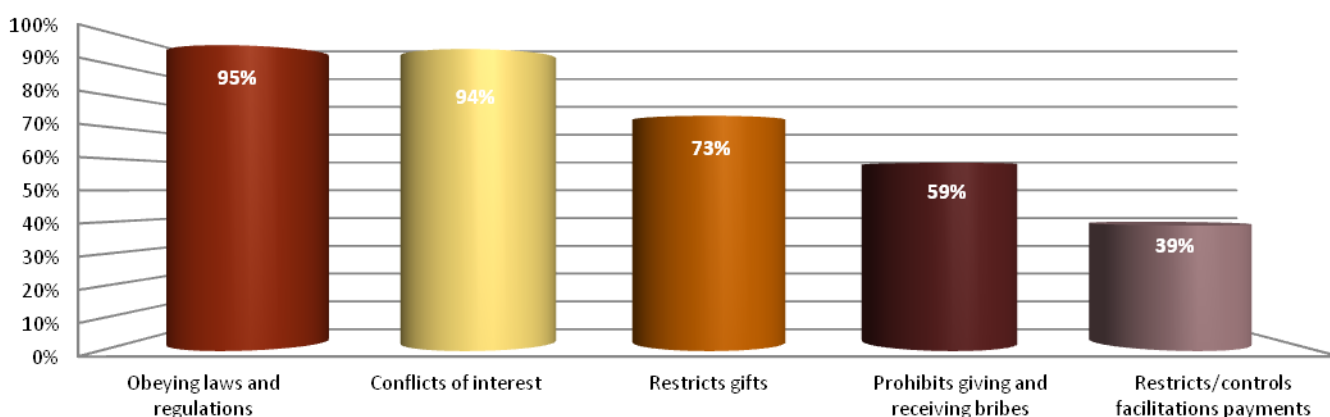


Figure 9: Inclusion of various Ethical issues in Codes of Conduct for S&P/ASX 200 companies with operations internationally

Figure 9 shows that almost all companies address areas such as ‘Obeying laws and regulations’ and ‘Conflicts of interest’. A smaller proportion of companies regulate business gifts. Strikingly, more than a third of the ASX Internationals do not prohibit giving and receiving bribes and less than half (39%) of the companies restrict facilitation payments.

Changes to the ASX Principles of Good Governance and Best Practice Recommendations to specifically address bribery and facilitation payments are coming into force this reporting season (see Section 1.5). These changes may encourage more companies to adopt clearer approaches to core ethical issues such as restricting gifts, prohibiting bribes and regulating facilitation payments.

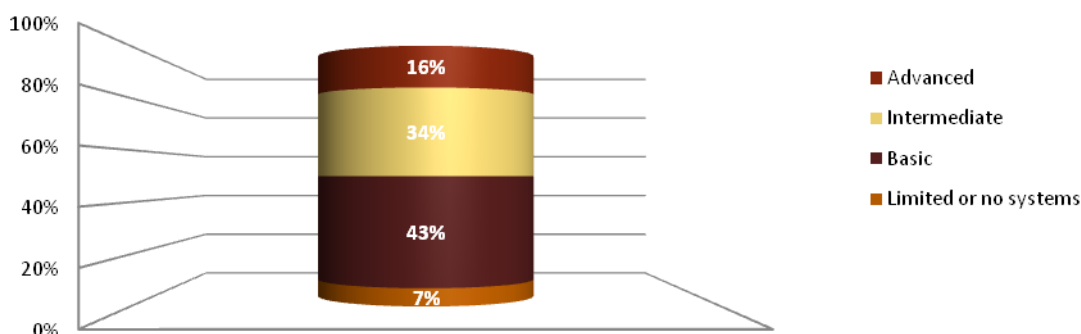


Figure 10a: Categorisation of standard of management systems to implement and monitor the company's Code of Conduct for the S&P/ASX 200 with operations internationally

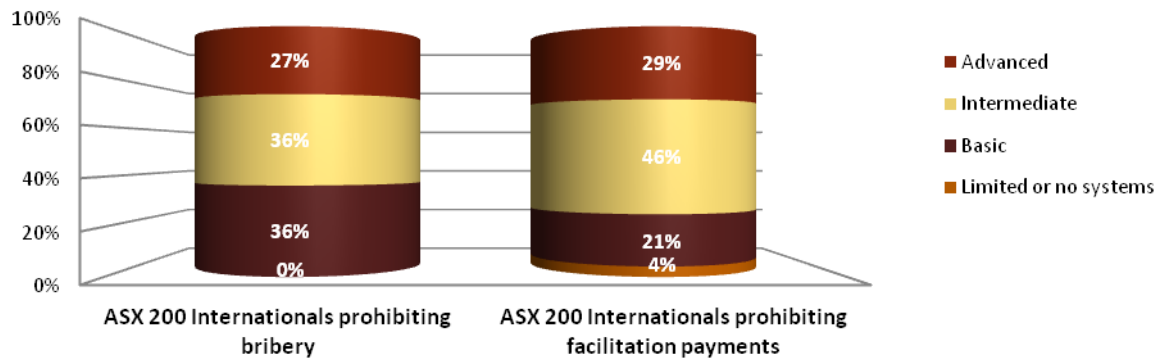


Figure 10b: Categorisation of standard of management systems to implement and monitor the company's Code of Conduct for the S&P/ASX 200 with operations internationally, those companies prohibiting bribery and those prohibiting facilitation payments

Figures 10a and 10b show the quality of the ASX Internationals' management systems for implementing their Codes of Conduct. The scores consider how well companies are addressing issues such as compliance monitoring, employee training and internal and external reporting. Without implementing systems that support a culture of compliance with company code, the prohibition of bribery in a policy may be meaningless to many employees or agents of a company. Half of the ASX 200 Internationals have inadequate management systems (i.e. basic, limited or none), which increases companies' exposure to the risk of involvement in bribery and corruption, possibly in foreign jurisdictions. Companies prohibiting bribery and those prohibiting facilitation payments tend to better address the implementation of a culture of compliance.

3.3 ASX 200 companies operating in the UK and the US: Bribery and Corruption risk response

As of 1st July 2011 Australian companies operating in the UK will be exposed to strict anti-corruption and bribery regulation as set out in the *Bribery Act* (see section 1.3.) The UK legislation introduces strict offences for offering or receiving bribes and also categorises corporate failure to prevent bribery as an offence. Also, the *Bribery Act* does not exempt facilitation payments, although the extent to which they will be targeted is not yet clear. The Act is not only applicable to UK-based companies and their international operations; the new law is expected to have a significant extra-territorial impact. For example, if an Australian company with registered UK operations was to pay a bribe in South Africa, if even one phone call about the bribe was made in the UK (say from a branch office or by an agent), the company is liable for the act under UK law.

In addition, under the FCPA and the *Dodd-Frank Act* passed by the US Congress in 2010 companies operating in the US will be subject to more stringent disclosure requirements regarding their dealings with foreign governments and companies. The FCPA applies to US and foreign companies registered in the US, and any foreign companies or persons who further the payment of a bribe while in the US. The *Dodd-Frank* legislation deals with companies in the extractives industries, requiring them to disclose any payments made to US or foreign governments to gain access to the resources they extract. Final rules on disclosure requirements are still to be released by the Securities Exchange Commission (SEC), but the publication of payments from oil, gas and mining companies to governments will potentially expose corrupt practices where business operations are not subject to adequate internal governance and vigilance. Companies that make legitimate payments are likely to benefit from improved disclosure and will be less vulnerable to allegations of contributing to or supporting corrupt governments. Whistleblower protection and reward has also been improved under *Dodd-Frank*: whistleblowers are entitled to 10-30% of monetary sanctions recovered by the US government. Such amendments further increase the likelihood that illegitimate exchanges will be brought to government attention.

Under these developments Australian companies operating in the UK and the US must improve their corruption and bribery prevention measures to decrease their risk of prosecution.

Approximately 55% of ASX 200 companies operate in the UK or the US. Figure 11 displays the proportion of these companies that prohibit bribery and/or facilitation payments.

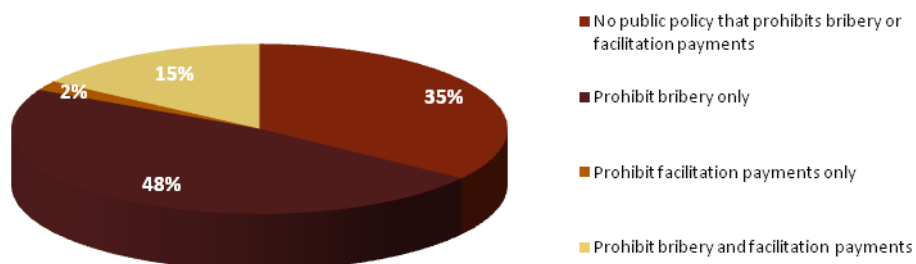


Figure 11: Percentage of ASX 200 companies operating in the UK or US prohibiting bribery and/or facilitation payments

Once again, a larger proportion of companies in this subset prohibit bribery than prohibit facilitation payments. The lack of prohibition of facilitation payments potentially exposes these companies to the provisions in the UK *Bribery Act* where facilitation payments have not been expressly allowed.

To understand the relative importance given to bribery and corruption prevention in the company Codes of Conduct of this subset, Figure 12 displays the degree to which companies address bribery prohibition and restrictions on facilitation payments in their codes relative to other elements. Again the data shows that bribery and facilitation payments lack attention in many corporate codes. Given that only 47% of ASX 200 companies operating in the US or UK have addressed the regulation of facilitation payments in their Codes of Conduct, there exists a clear business risk for the remaining companies. The lack of a precedent for prosecution on bribery and corruption offences in Australia is now much less relevant for the 55% of ASX 200 companies that have operations in the UK or the US, as they are liable to prosecution under strengthened UK and US law.

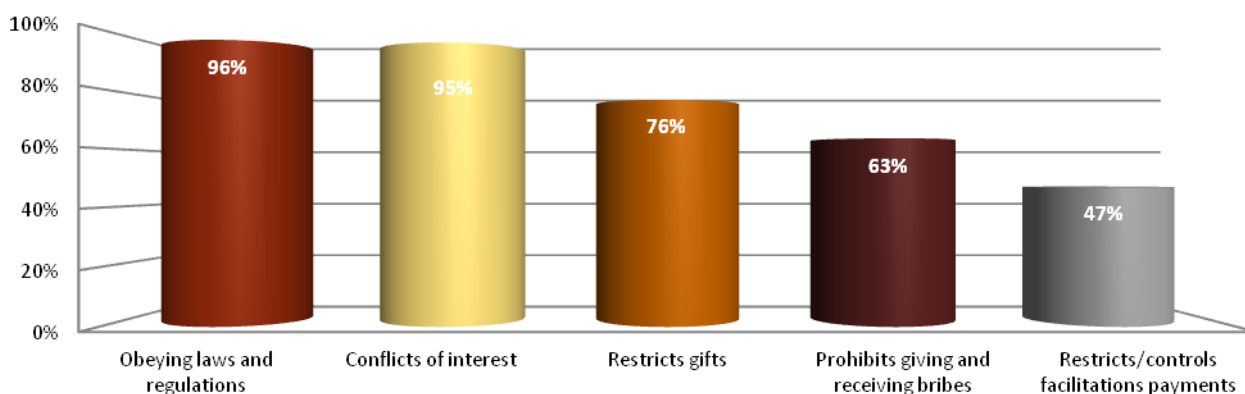


Figure 12: Inclusion of Ethical issues in Codes of Conduct for ASX 200 companies with operations in the UK or US

The inclusion of bribery and corruption prevention in a company's Code of Conduct represents the first step along the road to adequate anti-corruption practices. While around 63% of companies prohibit bribery in their Code, unfortunately only a mere 21% of ASX 200 companies with operations in the UK or the US have best practice management arrangements in place to pursue compliance with their ethical principles (Figure 13a). Figure 13a categorises the strength of management systems amongst these companies.

While 58% have management practices in place that demonstrate a culture of compliance at an adequate level, about half of the companies have basic, limited or no systems in place to implement their Codes. Figure 13b depicts this categorisation by those companies which prohibit bribery and those which prohibit facilitation payments. Again, those companies addressing the prohibition of bribery and/or facilitation payments tend to have better management systems in place than their counterparts; 71% of those companies prohibiting bribery have adequate systems in place to implement that prohibition. This proportion increases to 79% for those companies prohibiting facilitation payments.

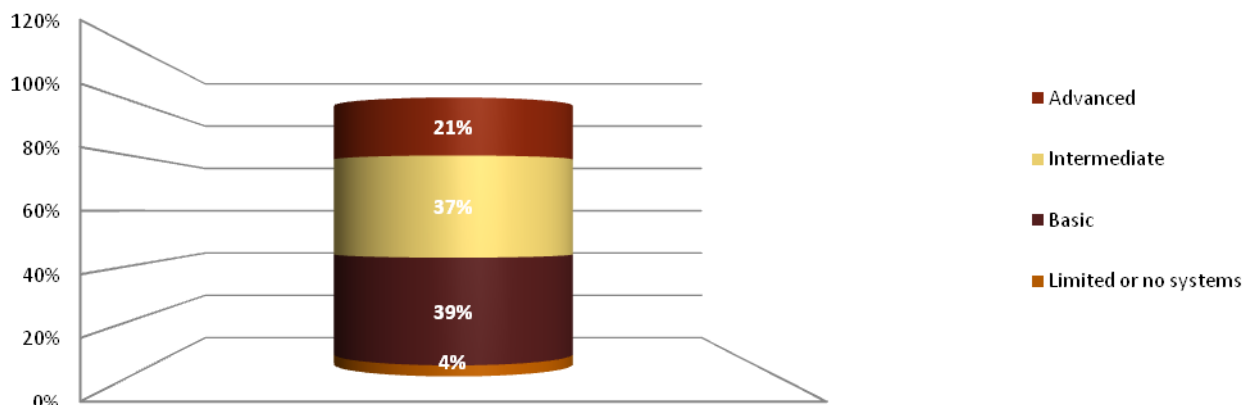


Figure 13a: Categorisation of standard of management systems to implement and monitor the company's Code of Conduct for the S&P/ASX 200 with operations in the UK or US

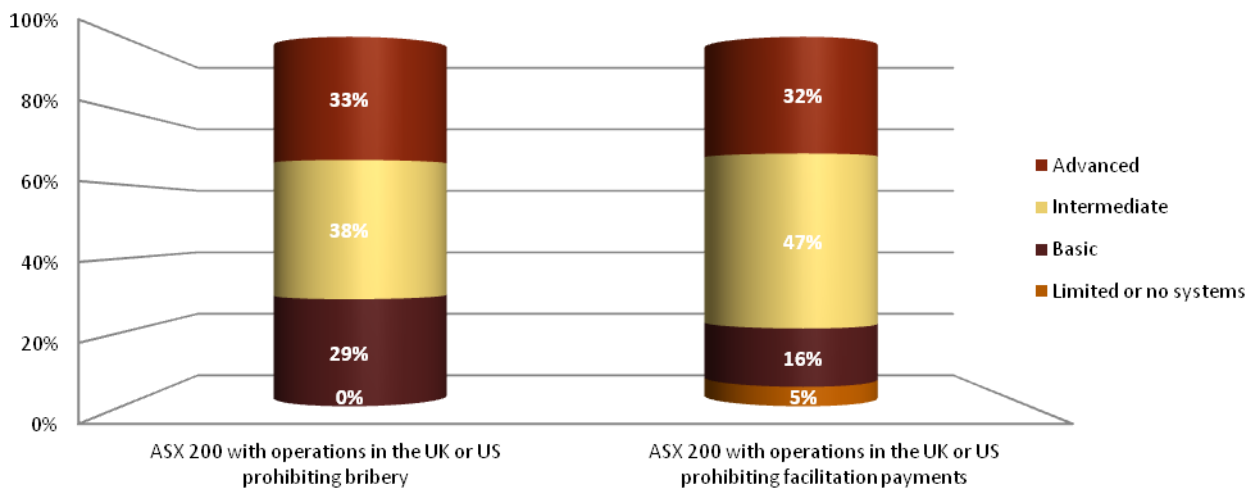


Figure 13b: Categorisation of standard of management systems to implement and monitor the company's Code of Conduct for the S&P/ASX 200 with operations in the UK or US, those companies prohibiting bribery and those prohibiting facilitation payments

Although the ASX 200 has a large proportion of companies facing increased regulatory risks through their direct exposure to new legislation in the UK or the US, many Australian companies appear ill-prepared. Companies with operations in these jurisdictions need to ensure they at least address prohibition of bribery and facilitation payments in their Code of Conduct. The evaluation of enforcement systems, even for those companies that have best practice policies in place, shows that there is still considerable work to do for companies to ensure their policies are adequately implemented.

3.4 Conclusion

This section restricted its focus to companies amongst the ASX 200 with an increased exposure to bribery risk.

Some ASX 200 companies have increased risk because they operate in at risk sectors or countries where the risks of staff being confronted with unclear trading requirements are high. The standard of response to bribery risk amongst these companies is generally poorer than the response observed among ASX 100 companies overall. Only 59% of these companies prohibit bribery compared with 69% of the ASX 100; half of these companies have management implementation systems rated at inadequate compared with 32% of the ASX 100.

Some ASX 200 companies have increased risk of bribery litigation because they are subject to strict regulations under UK and/or US law. The standard of response of this group of companies to bribery risk is again generally worse than for the ASX 100 overall. 37% of ASX 200 companies in the UK and US have no policy to prohibit bribery or facilitation payments and 43% have their management systems rated at inadequate. These companies fail to provide investors with the confidence that they have addressed their exposure to bribery risk and have the means to successfully implement their company Code of Conduct.

4. Conclusion

As this report has shown, the level of exposure of large listed Australian companies to the risks of involvement in bribery and corruption offshore has increased over recent years.

There are two reasons. Firstly, as shown in section 2.2., by the nature of their operations three quarters of companies in the ASX 100 are now exposed to high risk sectors or countries where bribery is a potential problem, compared to just over half of the companies five years ago. (See the increased level of 'Exposure' in Figure 14 below.)

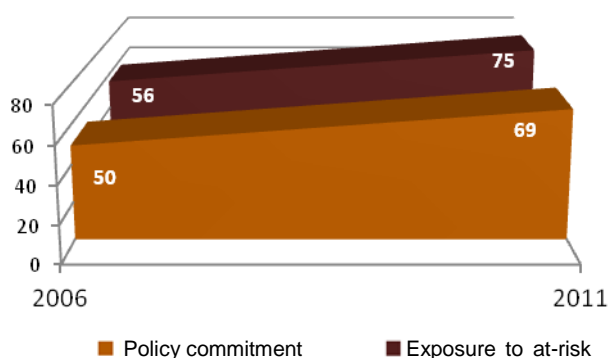
Secondly, as described in Section 1 the adverse legal consequences of involvement in bribery have become progressively more severe in recent years and this trend is continuing. Throughout the world more countries are adopting and strengthening laws to reflect the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and other similar international agreements. More resources are being devoted to pursuit of those taking and paying bribes and tolerance of 'facilitation payments' is reducing.

As bribery is a 'long tail' risk, it is difficult to quantify and address. Bribe paying can remain hidden for many years then unexpectedly surface with catastrophic consequences.

The risks may be addressed by companies by having a Code of Conduct which prohibits bribery, ensuring staff members are familiar with it, and ensuring that it is implemented effectively. More Australian companies have a Code of Conduct that addresses bribery today than they did five years ago, but overall Australian companies still lag when compared to their international peers in this regard (see Section 2.1). 59% of ASX 200 companies with international operations prohibit bribery and 39% restrict or control facilitation payments (see Sections 3.1 and 3.2) which suggests that a considerable proportion of the index does not consider bribery and corruption risk as a material threat. Of the ASX 100, 69% prohibit bribery, but a mere 16% of companies prohibit facilitation payments (see Sections 2.2 and 2.3).

As displayed by Figure 14, over the last five years the increase in bribery risk has been met with an increase in companies' stated treatment of bribery risk i.e. through policy prohibitions. However when it comes to the standard of systems implemented to protect against bribery risks, Australian companies have not risen to the challenge, leaving them highly exposed: half of the ASX 200 companies with international operations and one third of ASX 100 companies have inadequate management implementation systems to pursue compliance with their Codes of Conduct. Only one quarter of the ASX 100 companies have advanced management implementation systems and this fraction has remained unchanged over the past 5 years.

ASX100: % of companies with bribery policy commitment



ASX100: % of companies with advanced bribery management systems

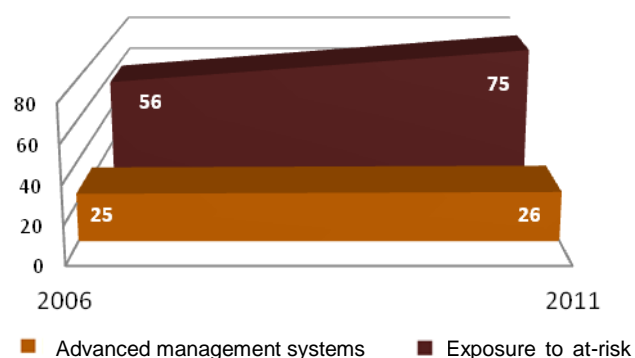


Figure 14: Words versus action – percentage of ASX100 companies with a bribery policy commitment versus percentage of ASX100 companies with advanced management systems disclosed.

Currently pressure for companies to improve their performance in preventing bribery and corruption is coming more from foreign events than from Australian law enforcement (see Sections 1.3 and 1.4). The UK and the US have introduced strengthened laws and regulation to combat bribery and corruption and, under prior law, they both have a record of successful prosecution. Over half of the ASX 200 companies have operations in the UK or US; 35% of these companies have no stated policy that prohibits bribery or facilitation payments.

It may be that some companies have not focussed on communicating the systems they have in place to address bribery risk, rather than that they are unprepared. But given the clear increase in exposure and the increased legal scrutiny and penalties it is high time companies, investors and governments pay heed to the issue. Based on current research, it appears that the likelihood of an ASX 200 company with international operations, no stated anti bribery policy, and/or inadequate anti bribery management controls becoming embroiled in another high profile scandal are significant.

5. Tools and Resources



TRANSPARENCY INTERNATIONAL AUSTRALIA

Affiliate of Transparency International, the Coalition against Corruption

Transparency International (TI) is the global civil society organisation leading the fight against corruption. TI has about 90 Chapters worldwide and a Secretariat based in Berlin. It works with partners in government, business and others to develop and implement measures to tackle fraud and corruption. That work can be found at www.transparency.org

Apart from country rankings - such as the Corruption Perception Index (CPI) - TI has developed valuable workshop materials and tools to assist enterprises in programs to minimise corruption exposure. The “Business Principles for Countering Bribery” 2009 edition is a sound basis and the UK Chapter has valuable materials on its separate site.

Transparency International workshop material and tools:

The [Business Principles for Countering Bribery](#) provides a model for companies seeking to adopt a comprehensive anti-bribery programme.

The [RESIST](#) publication provides a set of 22 case studies with methods found useful in combating extortion and other perils encountered in the private sector offshore corruption scene.

[Corruption and Public Procurement](#) is a short working paper on risks of offshore procurement published in 2010.

The [Global Corruption Barometer](#) is a survey that assesses general public attitudes toward, and experience of, corruption in dozens of countries around the world.

The [Corruption Perception Index](#) (CPI) ranks almost 200 countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys.

Additional valuable material can be found on the [Transparency International UK Chapter](#) website.

Other useful resources:

Australian Standard 8001-2008 Fraud and Corruption Control
<http://fraud.govspace.gov.au/files/2010/12/Australian-Standard-8001-2008.pdf>

Commonwealth Attorney General's Department's *Foreign Bribery Information and Awareness Pack*
http://www.ag.gov.au/agd/WWW/ncphome.nsf/Page/Financial_Crime_Information_and_Awareness_pack

Extractive Industries Transparency Initiative
<http://eiti.org/>

International Corporate Governance Network (ICGN) *Statement and Guidance on Anti-Corruption Practices*
http://www.icgn.org/files/icgn_main/pdfs/best_practice/guidance_on_anti-corruption_practices/2009_anti-corruption_practices_%28march%29.pdf

OECD *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*
<http://www.oecd.org/dataoecd/26/21/36885821.pdf>

UN Global Compact/Transparency International *Reporting Guidance on the 10th Principle – Corruption*
http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf

UN Global Compact *Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers*
http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/Fighting_Corruption_Supply_Chain.pdf

6. Sources and Methods

The data for this study is sourced from a database developed and maintained by EIRIS, a leading global provider of independent research into the environmental, social, governance (ESG) and ethical performance of companies. EIRIS assessments of Australian companies are undertaken by, and make use of, information and research provided by CAER.

EIRIS/CAER research process:

The core research process begins with the data companies make public. EIRIS and CAER then send targeted questionnaires to companies in areas where the public data is unclear. This results in considerable focused dialogue with companies, and also encourages them to address the issues of concern to investors and to improve their public reporting. Sector specialists within each team review the research conducted by colleagues before it is released.

Data chosen for this report:

This report is based on four data sets of companies. In some analyses these data sets are dissected to further focus on those companies with increased exposure to bribery risk. For each company in each data set four indicators of bribery and corruption risk response are evaluated.

The four sets of companies examined for the selected key indicators in relation to bribery and corruption are:

A) S&P/ASX 100 in 2006 and S&P/ASX 100 in 2011

The data for 2006 was extracted from the EIRIS database in 2006 for a similar study published by CAER (*Just how business is done? A review of Australian business' approach to Bribery and Corruption*), and provides the basis for indicators chosen for the 2011 dataset. The snapshot of the S&P/ASX 100 taken in 2006 was compared to a snapshot taken in June 2011.

B) International comparison 2006 and 2011

The international data, provided by EIRIS, took a snapshot of the top 100 companies in Europe (excluding UK), the US and the UK based on the size of companies by market capitalisation. Snapshots were taken in 2006 and 2011. This dataset only focuses on one key indicator: the inclusion in Codes of Conduct of a prohibition on staff giving and receiving bribes. The data for the S&P/ASX 100 was then compared to the performance of the top 100 companies on this indicator in peer markets.

C) S&P/ASX 200 with international operations

This dataset identified those companies within the S&P/ASX 200 that had at the time of data extraction operations outside of Australia. A company is considered as operating internationally if it has a subsidiary in which it owns at least a 20% stake (or, for mining, oil and gas companies, exploration or production interests of at least 5%) incorporated in a country other than Australia.

D) S&P/ASX 200 with operations in the UK or US

This dataset identified those companies within the S&P/ASX 200 that have a subsidiary in which they own at least a 20% stake (or, for mining, oil and gas companies, exploration or production interests of at least 5%) incorporated in the UK or the US.

Data sets A, C & D were further dissected to focus on companies with increased risk exposure because of the nature of their operations.

Operate in At-Risk countries

At-risk countries are identified by EIRIS based on countries with poor performance on the Transparency International Corruption Perception Index (see CPI Map in Section 2) and low scores in the World Bank Governance Indicators (<http://info.worldbank.org/governance/wgi/index.asp>).

Operate in At-Risk sectors

Business sectors (based on FTSE Industry Classification Benchmark (ICB) Sectors) that have been identified by EIRIS as having a higher likelihood of being involved in bribery or corruption based on typical activities and related government interactions for each business sector. High risk sectors include mining, oil and gas exploration and construction and materials. These sectors typically require government licences and approvals, and may be bidding for government contracts, interactions that could entice companies to influence government officials to gain advantage. A company is identified as operating in an at-risk sector regardless of the country of operation (i.e. this also includes companies operating in a risky sector in Australia).

Core indicators examined:

1. Prohibition of giving and receiving bribes (PB)

This looks primarily at companies' Codes of Conduct and other related public policies and guidelines, and whether these explicitly prohibit bribery.

2. Prohibition of facilitation payments (PF)

This looks primarily at companies' Codes of Conduct and other related public policies and guidelines, and whether these explicitly prohibit facilitation payments.

3. Restriction and control of facilitation payments (RF)

This looks primarily at companies' Codes of Conduct and other related public policies and guidelines, and whether these address, regulate or provide guidance to employees on how to deal with facilitation payments.

4. Categorisation of management systems to implement and monitor Codes of Conduct (CM)

The management systems of a company are assessed on a scale of four grades from no or limited evidence to basic, intermediate and advanced:

- **Advanced** – a company meets the Advanced level if it addresses a range of indicators including issues such as employee training, monitoring systems or whistleblowing procedures, and provides sufficient details on how it implements these rather than just a token acknowledgement.
- **Intermediate** – a company meets the intermediate level if it provides at least some detail on the implementation of systems.
- **Basic** – a company meets the basic level if it makes brief reference to these indicators without providing details.
- **No or limited** – a company is rated at No or Limited if it makes no or only very brief reference to one of the indicators sought.

5. Other ethical issues addressed in Codes of Conduct such as restricting giving and accepting gifts (OEI).

The figures and tables in the text deal with the data sets/increased risk exposure subsets and risk response metrics as set out below.

Figure/Table	Data set of companies used	Subset of companies with increased risk exposure used	Indicators examined
Figure 1	A, B		PB
Figure 2a	A	yes	
Figure 2b	A	yes	PB,PF
Figure 2c	A	yes	PB,PF
Figure 3	A		OEI/PB/RF
Figure 4	A		CM
Figure 5	A but limited to PB companies only		CM
Figure 6	A but limited to PF companies only		CM
Figure 7	C but limited to increased risk subset	yes	
Figure 8	C	yes	PB & PF
Figure 9	C		OEI/PB/RF
Figure 10a & 10b	C		CM and CM limited to PB & PF
Figure 11	D		PB & PF
Figure 12	D		OEI/PB/RF
Figure 13a & 13b	D		CM and CM limited to PB & PF
Figure 14	A	yes	PB,CM advanced

Sources and Methods Table 1: Use of data sets, increased risk exposure subsets and response indicators in Figures and Tables throughout the report

7. Acronyms

AS 8001

Australian Standard 8001-2003 Fraud and Corruption Control

ATO

Australian Taxation Office

CLA 2009

Crimes Legislation Amendment (Serious and Organised Crime) Act

FCPA1977

Foreign Corrupt Practices Act 1977 (United States)

ITAA1997

Income Tax Assessment Act 1997 (Australia)

ITIA 2007

International Trade Integrity Act 2007

OECD Convention

Organisation for Economic Co-operation and Development: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – implemented in February 1999.

UK FSA

United Kingdom Financial Services Authority

UN Convention

United Nation's Convention against Corruption – implemented in December 2005.

US SEC

United States Securities and Exchange Commission

