

Corruption and Business Integrity: Law, Policy and Company Practices

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ABSTRACT: *Since the 1990s the international community has become acutely aware of the role of businesses in the growth of corruption globally and the debilitating effects of corruption on economic growth and development. A multitude of strategies from regulation in the form of international legal instruments and self-regulation in the form of codes of conduct through to training of employees and involvement of NGOs and citizens in tackling corruption have emerged and these have been vociferously advocated by international organizations, chambers of commerce and NGOs. This article examines the extent to which these strategies have impacted on the policies and practices of businesses through a survey of companies listed in The Times (London) which included all industry sectors with the exception of banking and finance. The survey findings indicate that despite the huge efforts in devising and publicising anti-corruption strategies by the international community these strategies seem to have had limited impact on the policies and practices of companies.*

INTRODUCTION

On 3 June 2009 Transparency International¹ (TI) published its 2009 Global Corruption Barometer (GCB).² Based on surveys of public opinion the GCB found ‘corruption in and by the private sector was of growing concern to the general public’. The perceptions in the UK were no different. Businesses were seen as most corrupt after political parties achieving a rating of 3.5 on a scale of 1 – 5 (1 being ‘not at all corrupt’ and 5 ‘extremely corrupt’). That the public see the private sector as corrupt should come as no surprise. High profile investigations involving businesses across the globe and in the UK are highly likely to have contributed to these negative perceptions about the business sector.³

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** AHRC funded Post Doctoral Research Assistant on the above project.

¹ See <http://transparency.org>.

² Transparency International, (2009) Global Corruption Barometer, (Sixth Edition), Berlin: TI International Secretariat, available at http://transparency.org/news_room/in_focus/2009/gcb2009#dnld.

³ For interesting cases involving allegations and investigations of bribery involving companies such as BAE, Thales, Vivendi, Siemens, John & Johnson and Thames Water see <http://www.againstcorruption.org/BriberyCases.asp>.

Since the last decade of the twentieth century international law-making bodies, international financial institutions, international associations representing industries, accountants and auditors, non-governmental organisations, donor agencies and think tanks have been formulating various ways for combating corruption. These have resulted in a multitude of strategies from regulation in the form of international legal instruments and self-regulation in the form of codes of conduct through to training of employees and involvement of NGOs and citizens in tackling corruption. Taken together they should provide a powerful cocktail to fight corruption. If anything we should witness a sea change for the better in the behaviour of those engaged in corruption in one form or another. The GCB states however that businesses are still viewed as being highly corrupt.

Against this context it is reasonable to ask ‘Have the strategies that had been put in place since the 1990s had an impact on company policies and practices?’ One useful method to assess the impact of the anti-corruption strategies is to study empirically⁴ business responses to the problem of corruption. There is however little empirical research to provide answers to this question.⁵ This article contributes to this important area by presenting the findings of a survey which investigated the experiences, attitudes and perceptions of companies with respect to different anti-corruption strategies and instruments.⁶ The sample population was based upon companies listed in *The Times (London)* and included all industry sectors with the exception of banking and finance.⁷ The findings reported below build and expand upon the insights gained through the pilot phase of the survey⁸ both in terms of the overall number of responses and the sectoral range represented within those responses (see Table 1). Before presenting findings based on the data received from participating companies in Section II, Section I provides a brief summary of the strategies to provide the context against which the survey was designed.

⁴ That empirical study has the potential to offer valuable insights that can contribute to inform reform and policy-making is commonly acknowledged. See Genn, Partington and Wheeler (2006) *Law in the Real World: Improving our Understanding of How Law Works* London: The Nuffield Foundation.

⁵ On an assessment of existing research see Carr & Outhwaite (2008) ‘Surveying Corruption in International Business’ *Manchester Journal of International Economic Law* 5(2): 3.

⁶ The findings are based on data collected through the administration of a postal, self-completion questionnaire. The key limitation of these was the low response rate which means that the resulting findings cannot be said to be statistically representative. The methodology of the survey and its limitations are discussed in some detail in Carr & Outhwaite (2009) *Investigating the Impact of Anti-Corruption Strategies on International Business: An Interim Report*. A copy of this Report may be obtained from Indira Carr (I.Carr@surrey.ac.uk).

⁷ The sample originally also included 96 US companies selected in random from the Fortune 500 list. A decision was taken to exclude these companies because of the slightly different legal and regulatory framework to which they are subject.

⁸ See Carr & Outhwaite (2009) (op. cit.).

1. ANTI-CORRUPTION STRATEGIES

The current anti-corruption strategies are multi-faceted and involve a combination of regulation, self-regulation and multi-stakeholder initiatives.⁹ International legal instruments are an important source in the anti-corruption legislative framework. There are nine regional, sub-regional and international anti-corruption conventions. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-bribery Convention) and the United Nations Convention Against Corruption (UNCAC)¹⁰ are the two most influential conventions.¹¹ The provisions that contribute to improving business integrity are briefly considered below.

⁹ Multi-stakeholder initiatives include, for instance, the UN Global Compact and the PACI (Partnering against Corruption Initiative). For more on this strategy see Pieth (2006) *Multistakeholder Initiatives to Combat Money Laundering and Bribery*, Working Paper Series, No. 2, Basel (Switzerland): Basel Institute on Governance; El-Sharkawy, Jarvis and Petkoski (2006) *Towards a More Systematic Fight Against Corruption: the Role of the Private Sector*, Report on the Global High Level E-Discussion, The World Bank Institute; and Utting (2002) *Regulating Business via Multistakeholder Initiatives: A Preliminary Assessment*, UNRISD: Geneva.

¹⁰ The OECD Convention came into force on 15 February 1999 and the UNCAC on 13 December 2004. The texts of these conventions are available on <http://www.oecd.org> and <http://www.unodc.org>. The OECD Anti-bribery Convention has been ratified by 39 countries including the UK (<http://www.oecd.org/daf/nocorruption/convention>). It has also been ratified by South Africa, Brazil (one of the BRIC countries), Argentina and, more recently, Israel. The OECD is involved in various initiatives throughout the world and is engaging actively for instance with the African Development Bank and Asian Development Bank to promote anti-corruption policies and best practices based on its experiences and knowledge derived from its monitoring of implementation of the Convention in the contracting states. For more on the OECD Convention see Carr & Outhwaite (2008) 'The OECD Convention Ten Years on' *Manchester Journal of International Economic Law* 5(1): 3. The UNCAC has been ratified by one hundred and forty countries. It is expected to have a robust implementation programme and these are to be considered in November 2009. For more on UNCAC see Carr (2006) 'The United Nations Convention on Corruption: Improving the Quality of Life of Millions in the World?' *Manchester Journal of International Economic Law* 3(3): 3.

¹¹ The other regional conventions are:

(1) Organisation of American States Inter-American Convention Against Corruption 1996 (OAS Convention). Came into force on 6 March 1997.

(2) Convention drawn up on the basis of Article K.3(2)(c) of the Treaty of European Union on the Fight Against Corruption involving Officials of the European Union Communities or Officials of Member States of the European Union 1999 (EU Convention), which is still in the process of receiving ratifications. See also Council Framework Decision 2003.568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192 of 31.07.2003). According to Art 249 of the EC Treaty as amended by the Treaty of Amsterdam, a decision is binding in its entirety upon those to whom it is addressed.

(3) Council of Europe Criminal Law Convention on Corruption 1999 (COE Convention). Came into force on 1 July 2002. There is also a Civil Law Convention on Corruption 1999.

(4) Southern African Development Community Protocol on Corruption 2000 (SADC Protocol). Not yet in force. For further on this Convention see Carr (2009) 'Corruption, the Southern African Development Community Anti-corruption Protocol and the Principal—Agent—Client Model' *International Journal of Law in Context* 5(2): 147.

(5) Economic Community of West African States Protocol on the Fight Against Corruption 2001 (ECOWAS Convention). Not yet in force.

(6) African Union Convention of Preventing and Combating Corruption 2003 (AU Convention). Came into force on 5 August 2006; for further on this convention see Carr (2007) 'Corruption in Africa: Is the African Union Convention on Combating Corruption the Answer?' *Journal of Business Law*, 111.

The OECD Anti-bribery Convention together with its Revised Recommendations are particularly pertinent for present purposes on the supply side of bribery (that is, active bribery) of a foreign public official in the context of international business transactions.¹²

Under Article 1(1) each party is required to establish that it is a criminal offence for

any person intentionally to offer, promise or give any undue pecuniary or other advantage, directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

‘Foreign public official’ is given a wide definition in Article 1(2) and includes ‘persons holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organizations’. And international business transactions according to the Convention’s Preamble, includes trade and investment.

Since businesses are on the supply side of bribery the Convention also focuses on making legal persons liable for the bribery of foreign public officials. Article 2 requires ‘each party to take measures as may be necessary with its legal principles to establish the liability of legal persons for the bribery of a foreign public official.’ The parties have the choice, in keeping with their legal systems, to use criminal, civil or administrative law approaches to liability of legal persons.

In order to raise business integrity the OECD Anti-bribery Convention also sets the minimum standards in respect of auditing and accounting standards thus enabling detection of misuse of corporate funds for various purposes such as bribery. The OECD in Article 8 and the OECD Revised Recommendation Article V require the adoption of high quality accounting and auditing standards. These are met with the following measures:

- the maintenance of adequate records of the sums of money received and expended by the company, identifying the matters in respect of which the receipt and expenditure takes place and the prohibition of making off-the-books transactions or keeping off-the-books accounts;

¹² The OECD Anti-bribery Convention is a free standing instrument and is therefore open to all states. A number of non-member states such as Argentina, Brazil and Chile took part in the negotiations and are signatories to the Convention. Any non-member state which has become a full participant in the OECD Working Group on Bribery can accede to the OECD Anti-bribery Convention. In order to become a full participant the state must adhere to the Revised Recommendations.

- the disclosure by companies in their financial statements of the full range of material contingent liabilities;
- adequate sanctions for accounting omissions, falsifications and fraud;
- countries and professional associations maintaining adequate standards to ensure the independence of external auditors which permits them to provide an objective assessment of company accounts, financial statements and internal controls;
- requiring the auditor who discovers indications of a possible illegal act of bribery to report this discovery to management and, as appropriate, to corporate monitoring bodies;
- requiring the auditor to report indications of a possible illegal act of bribery to competent authorities.

The quality benchmark for accounting and auditing standards are the International Financial Reporting Standards (IFRS) published by the International Accounting Standards Board (IASB).¹³ The IFRS helps the production of high quality financial information that is transparent and comparable. It has adopted many of the standards known by the older International Accounting Standards (IAS) formulated by the International Accounting Standards Council now succeeded by IASB. The International Federation of Accountants (IFAC)¹⁴ has adopted the IFRS. The IFAC has drafted the International Standards on Auditing (ISA) and operates through the International Auditing and Assurance Standards Board.

The OECD Anti-bribery Convention requires that parties use effective, proportionate and dissuasive criminal penalties for the bribery of a foreign public official (Article 3(1)) and it is expected that this is comparable to the penalties that a state applies to the bribery of national public officials in their own jurisdiction. Where legal persons are not subject to criminal responsibility then in respect of these persons the sanctions can be of a non-criminal kind, including monetary sanctions but they have to be effective, proportionate and dissuasive (Article 3(2)). Other than these sanctions, states are also expected to take other measures such as the seizure and confiscation of bribes or the proceeds of bribery or property the value of which corresponds to the proceeds of bribery (Article 3(3)). It is also expected that states will 'consider the imposition of additional civil or administrative sanctions upon a person subject to sanction for the bribery of a public official' (Article 3(4)).

The UNCAC is more comprehensive in scope and the language of the UNCAC varies from the mandatory to the discretionary, from 'shall adopt' to 'shall consider adopting' thus indicating that the State Parties (SPs) in some cases have a degree of flexibility in the

¹³ <http://www.iasb.org>.

¹⁴ <http://www.ifac.org>.

adoption of the various offences. This linguistic usage is also found in the creation of offences, some falling within the mandatory and others within the discretionary.

Article 15 requires SPs to establish as offences both the supply and demand side of bribery in relation to domestic public officials introducing a strong dissuasive element. Article 15 states:

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The three elements for active bribery are: (1) the promising, offering or giving (be it direct or indirectly) of an undue advantage (tangible or intangible, pecuniary or un-pecuniary) to a public official or another; (2) the undue advantage is linked to the public official's duty; and (3) the conduct is intentional and there is a link between the advantage promised or offered and inducing the public official to act or refrain from acting in the course of his official duties. In the case of passive bribery the three elements are: (1) soliciting or accepting the bribe directly or indirectly; (2) the undue advantage is for the official or for another person or entity; and (3) the conduct is intentional in that soliciting or accepting the undue advantage is done by the public official to change his conduct.¹⁵

Article 2(a) defines 'public official' as:

- (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

¹⁵ For further information on the elements of active and passive bribery of public officials see UNODC *Legislative Guide for the Implementation of the United Nations Convention Against Corruption* (hereinafter 'UNODC Legislative Guide') Vienna: UNODC, pp 82-83.

The UNCAC also brings the transnational bribery of a foreign public official in international business transactions within its ambit. SPs are required to make the active bribery of foreign public officials and officials of public international organizations an offence. Article 16(1) mirrors the offence of active bribery in article 15(a) and provides as follows:

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

The language of the offence is largely similar to that of Article 1(1) of the OECD Anti-bribery Convention except that the UNCAC uses 'undue advantage' instead of 'undue pecuniary or other advantage.' 'Foreign public official' is defined 'as any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign country, including for a public agent or public enterprise' (Article 2(b)); and 'official of a public international organization' is defined as 'an international civil servant or any person who is authorized by such an organization to act on behalf of that organisation'. The OECD Anti-bribery Convention does not make a distinction between a 'foreign public official' and an 'official of a public international organisation' since its definition of 'public official' in Article 1(4) includes both.

Like the OECD Anti-bribery Convention the UNCAC in Article 26(1) addresses the liability of a legal person by requiring SPs to establish the liability of legal persons in participation of the offences that have been established in accordance with the Convention. SPs however are free to make legal persons subject to civil, criminal or administrative liability depending on their legal principles thus following the diversity of approaches to liability that is found in the OECD Anti-Bribery Convention.

The UNCAC in its Article 12 also requires SPs to adopt adequate accounting and auditing standards which includes the prohibition of the establishment of off-the-books accounts, the making of off-books or inadequately identified transactions and the entry of liabilities with incorrect identification of their objects. The SPs are also required to take measures that will 'enhance the accounting and auditing standards in the private sector and where appropriate to provide effective, proportionate and dissuasive civil administrative or criminal penalties for failure to comply with such measures'. Article 15(3) provides further details regarding the good accounting standards that are to be followed and these include the

prohibition of entry of liabilities with incorrect identification of their objects and recording of non-existent expenditure.

Both the OECD Anti-bribery Convention and UNCAC address the common difficulties of implementation though the approach to the implementation of the former is robust. The OECD adopts a unique model of peer review to ensure that the Convention is being implemented by the Contracting Parties. Article 12 of the Convention requires ‘parties to cooperate in carrying out the programme of systematic follow-up and promote the implementation of this Convention’. Consisting of two phases, the OECD model in Phase 1 assesses the conformity of a state’s anti-bribery laws with the Convention. In Phase 2 there is a one week long on-site meeting with representatives from a variety of backgrounds – the government, trade councils, development agencies, businesses and civil society. The Phase 2 reports are extremely detailed and exhaustive and exhibit the rigour with which the team have followed up the issue of implementation of the Convention through amendments to the national legislation, case law, correlating the success rate with statistical data gathered by criminal agencies, sanctions, jurisdiction and international co-operation. Phase 2 also looks at non-criminal aspects of fighting bribery such as accounting and auditing standards and also notes the innovative and good practices that have been adopted. In 2006 the OECD published a study of the of Phase 2 reports¹⁶ which highlights many of the good practices adopted by Parties such as the adoption of whistleblower legislation and the use of hotlines for reporting by the public. The effort expended in ensuring that there is effective implementation of the OECD Anti-bribery Convention and that there are sound systems in place in the detection, investigation and prosecution of bribery of foreign public officials is having an impact. As stated by the OECD,

[S]ince the entry into force of the *OECD Anti-Bribery Convention*, there has been a marked increase in the number of investigations and prosecutions. There have been over 50 investigations and more than 500 convictions of foreign bribery in various Parties to the Convention. Prison sentences have been handed down in several countries: and individuals and companies found guilty of foreign bribery have been penalised with fines, in some cases of up to EUR 2 million.¹⁷

Chapter VIII of the UNCAC specifically deals with issues relating to implementation and their review. According to Article 63 the review of the UN Convention is to be carried out through a Conference of the State Parties of the Convention. Such a Conference took place in

¹⁶ *Mid-term Study of Phase 2 Reports Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendations on Combating Bribery in International Business Transactions* available at <http://www.oecd.org>.

¹⁷ OECD (2006) *The OECD Fights Corruption* Paris: OECD, pp 6-7. Emphasis in original.

December 2006 and The Background Paper¹⁸ on implementation suggests that the implementation review process may start with an initial self-assessment on the part of the SPs to identify the weaknesses, strengths and vulnerabilities in their systems with a view to reviewing these further and to providing suitable help and guidance in meeting specific goals as identified. How far this has progressed will no doubt be discussed at the meeting scheduled for November 2009.

The UK is a party to both these conventions and the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) implemented the OECD Anti-bribery Convention by extending the bribery offence to include bribery of foreign public officials in s.109.¹⁹

The use of mandatory government regulation including criminal law to regulate behaviour is well equipped, in principle, to achieve the intended objectives of the lawmakers since it does not give much room for manoeuvre by the regulatees. In this sense it may seem a better alternative to voluntary initiatives such as code of conduct to regulate behaviour.²⁰ Regulation however has its limitation in that it is dependant on enforcement for it to be effective. In those countries that do have anti-corruption legislation enforcement may be weak for a variety of reasons such as lack of evidence, political will, national interest and national security.²¹ The US in this context stands out as a country that is very keen to investigate allegations of bribery thoroughly and use its Foreign Corrupt Practices Act 1977 to good effect.²²

¹⁸ CAC/COSP/2006/5 November 15, 2006.

¹⁹ In spite of this the UK has been vigorously criticised by the OECD Working Group for not having specific legislation on corruption. As a result of various consultations the Home Office has produced a Bribery Bill which has been laid before Parliament. As to whether it will pass through the various stages to become law is debatable in light of the current political issues (MPs expenses) taking centre stage. See Law Commission (2008) *Reforming Bribery*, Law Com No. 313, London: The Stationery Office. Draft Bribery Bill available at <http://www.justice.gov.uk/publications/draft-bribery-bill.htm>.

²⁰ See for instance Ayres and Braithwaite (1992) *Responsive Regulation: Transcending the Deregulation Debate*, New York: OUP.

²¹ The UK dropped its investigation of BAE on grounds of national security. For more on this see for instance, The Serious Fraud Office, Official Statement, 14 December 2006 (http://www.sfo.gov.uk/news/prout/pr_497.asp?id=497); The Guardian (London) 'National Interest' halts arms corruption enquiry', 15 December 2006 (<http://www.guardian.co.uk/uk/2006/dec/15/saudiarmstrade>); The Times (London), April 11 2008, 'BAE Investigation: It All Came Down To Sales, Not Security' (<http://www.timesonline.co.uk/tol/news/politics/article3724415.ece>); and *R (Corner House Research (1) & Campaign Against the Arms Trade (2)) v The Director of the Serious Fraud Office* [2008] EWHC 246 (Admin).

²² The US was the first country to introduce legislation on the bribery of foreign public officials. It has been a vigorous promoter of combating corruption. For more on its enforcement see Brodsky, Greenberg & Kelly-Najah (2008) 'Recent Developments in the US Foreign Corrupt Practices Act' *Journal of Securities Compliance* 1(3): 212. For some recent cases see *Korean Businessman Detained in Bribery Conspiracy Involving \$206 Million Contract* at <http://www.usdoj.gov/opa/pr/2008/November/08-crm-1042.html>; *Bayer Healthcare to Pay U.S. \$97.5 Million to Settle Allegations of Paying Kickbacks to Diabetic Suppliers* at <http://www.usdoj.gov/opa/pr/2008/November/08-civ-1050.html>; and *Aibel Group Ltd. Pleads Guilty to Foreign Bribery and Agrees to Pay \$4.2 Million in Criminal Fines* at <http://www.usdoj.gov/opa/pr/2008/November/08-crm-1041.html>. Its code of conduct regarding commercial bribery is available at <http://www.drillingcontrols.com/PDF%20Link%20Documents/DCI%20Directive%20Regarding%20Commercial%20Bribery.pdf>.

The fight against corruption as stated earlier, involves the use of other strategies besides regulation. In the business sector the corporate social responsibility (CSR) framework provides an opportunity to address non-economic issues related to business operations including corruption and to embed socially responsible behaviour within its policies.²³ Social issues such as labour rights and working conditions and environmental protection have been successfully incorporated within the CSR policies of companies and there is no reason why corruption should not be. Indeed the UN Global Compact (UNGC) has included corruption as its tenth principle.²⁴ Another instrument that contributes centrally to the promotion of business integrity is the OECD Guidelines on Multinational Enterprises 2000. Chapter VI of the Guidelines focuses on combating bribery and its coverage is wider than that of the OECD Anti-bribery Convention. It includes within it aspects that help in combating corruption such as enhancing transparency, promoting employee awareness of company policies in respect of bribery and compliance with company policies, and adoption of suitable management control systems and accounting and auditing practices that prevent the use of ‘off the books’ or secret accounts. Illegal contributions to political parties or candidates seeking public office are also prohibited and there is a requirement that contributions, where made, comply with public disclosure requirements and are reported to senior management. The Guidelines are actively promoted and monitored through a National Contact Point (NCP) in the adhering state which collaborates with the business community, employee organisations and other interested parties such as civil society organisations

The International Chamber of Commerce (ICC), a global organisation that has worked to bring about harmonisation through the adoption of rules and promotion of best business practices, has also formulated Rules of Conduct to Combat Extortion and Bribery (RCCEB). First formulated in 1977 in response to the scandals that erupted in the mid-1970s and the US Security Exchange Commission survey that established that many US businesses were engaged in acts of corruption when dealing with foreign public officials, the RCCEB underwent further amendments in 2005.²⁵ They are intended to be a method of self-regulation by businesses against the legal backdrop of national anti-bribery laws. They prohibit bribery and extortion, be it direct or indirect through the use of agents or other intermediaries. The phrase ‘agents and intermediaries’ is construed widely to include sales agents, customs agents and professionals such as lawyers and consultants who may act as a conduit. The distinction

²³A related driver in this case may be the so-called ‘business case’ for CSR, which argues that better engagement with CSR equates with increased financial performance. See for instance, Robins (2008) ‘Why corporate social responsibility should be popularised but not imposed’ *Corporate Governance* 8(3): 330; Yeoh (2007) ‘The Direction and Control of Corporations: Law or Strategy?’ *Managerial Law* 49(1/2): 37.

²⁴ It states: ‘Businesses should work against corruption in all its forms, including extortion and bribery.’

²⁵ Text available at www.iccwbo.org.

often drawn between bribery and facilitation payments leaves scope for companies to pass off bribes as facilitation payments. In this regard, the RCCEB take a robust approach by requiring businesses to refrain from making such payments unless a managerial review indicates that they cannot be eliminated totally. In this event businesses are expected to ensure that they are limited to small payments to low level officials for routine actions. Businesses involved in charitable contributions and sponsorships are expected to behave responsibly and not use them as a means of disguising bribery. As part of this responsibility they must act in accordance with national laws and make public disclosures where required. There is also the expectation that the companies will provide guidance and training in identifying and avoiding bribery or extortion, including protection from retaliation to those wishing to seek advice or make reports of corrupt activities and disciplinary procedures to sanction misconduct. It is expected that these company codes will also extend to controlled subsidiaries (foreign and domestic). The RCCEB also address aspects of accounting and auditing and impose duties on those with ultimate responsibility for the business (e.g. directors) to ensure that the Rules of Conduct are complied with and to sanction violations and take corrective actions. Appropriate public disclosure of the enforcement of business anti-corruption policies or codes is also expected. The ICC has also published *Fighting Corruption: Corporate Practices Manual* which is a practical toolkit providing guidance on how to comply with the Rules of Conduct.

To encourage the creation of safe channels for employees to report bribery without fear of reprisal the ICC has also adopted Guidelines on Whistleblowing.²⁶ Its aim is to bring about inclusion of whistleblower policies in codes of conduct adopted by companies since it is in the business interests to be aware of and deal with a concern of their employee before an illegal act is committed.

Since the focus of the CSR model is stakeholders rather than shareholders the range of stakeholders who provide inputs and demands is wide. Included in the list are the general public, affected local communities, global interests and employees. NGOs are also viewed as key stakeholders, having played a substantial role in promoting and developing the CSR agenda as well as working with stakeholders, including through advocacy efforts on behalf of the public and affected individuals or communities and, more recently, in collaboration with businesses to develop tools and policies for addressing corruption.²⁷ The strategy also assumes voluntary action on the part of businesses and a 'beyond compliance' approach.²⁸

²⁶ Text available at [http://www.iccwbo.org/uploadedFiles/ICC%20Guidelines%20Whistleblowing%20as%20adopted%204_08\(2\).pdf](http://www.iccwbo.org/uploadedFiles/ICC%20Guidelines%20Whistleblowing%20as%20adopted%204_08(2).pdf).

²⁷ For example, Transparency International's Business Principles for Countering Bribery (at http://www.transparency.org/global_priorities/private_sector/business_principles) and 'Corruption Fighters Tool Kit (aimed at civil society) (http://www.transparency.org/tools/e_toolkit).

²⁸ See Albareda (2008) 'Corporate Responsibility, Governance and Accountability: From Self-Regulation to Co-Regulation' *Corporate Governance* 8(4): 430; Schouten (2007) 'Defining the Corporate Social Responsibility of Business from International Law' *Managerial Law* 49(1/2): 16; and

Corporate codes of conduct and other policies and procedures adopted by companies as a response to external pressures and strategies and to the company's own business objectives and ethical perspectives are also a useful strategy to combat corruption. In keeping with the self-regulation approach, such policies are usually adopted on a voluntary basis but may include provisions required under other regulatory measures.²⁹ On a broader basis, collaborative efforts such as those seen in industry wide codes (for instance, Extractive Industries Transparency Initiative – EITI)³⁰ may also be adopted and are seen as beneficial in terms of setting out standardised codes, advice or guidelines.³¹

Corporate Governance (CG) mechanisms, while not directly focusing on corruption, also have the potential to play a role in combating corruption. In requiring transparent, consistent and accountable management practices and systems of internal company regulation these mechanisms minimize the opportunities for corruption or for it to be hidden.³² The common components of corporate governance frameworks include separation of power, regulation of remuneration, conduct of board of directors, internal controls and auditing procedures. There may be national statutory requirements related to CG.³³ For instance, the US Sarbanes-Oxley Act 2002 attempted to strengthen corporate governance rules, particularly in response to high profile failings such as those seen in the Enron/Arthur Anderson scandals.³⁴ However CG extends beyond legislative controls to include recommendations, policies and processes related to the management of a company. For instance, stock exchange listings rules are another type of CG instrument. In the UK the Financial Reporting Council publishes the Combined Code on Corporate Governance (CCCG)³⁵ and companies listed on

Bondy, Matten & Moon (2008) 'Multinational Corporation Codes of Conduct: Governance Tools for Corporate Social Responsibility?' *Corporate Governance: An International Review* 16(4): 294.

²⁹ For instance, certain requirements for corporate ethics codes are required under the US Sarbanes-Oxley Act. As an example, GlaxoSmithKline (GSK), report in the Governance section of their corporate website, having formulated a Sarbanes-Oxley code of ethics, also note that their code goes beyond these legal requirements: <http://www.gsk.com/about/corp-gov-sarb-oxley.htm> .

³⁰ See <http://eitransparency.org>. There is also a Construction Sector Transparency Initiative (CoST), <http://www.constructiontransparency.org>.

³¹ Pieth (2006) *op. cit.*

³² See, for instance, Center for International Private Enterprise (CIPE) (2002) *Corporate Governance: An Antidote to Corruption*, Report on the 10th International Anti Corruption Conference, (CIPE & Transparency International) Prague: Czech Republic, 7-11 October, 2001.

³³ S. 172 of the UK Companies Act 2006 covering duty to promote the success of the company states:

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to – ...

(e) the desirability of the company maintaining a reputation for high standards of business conduct, ...

³⁴ A Sarbanes-Oxley Compliance Toolkit is available at <http://www.soxtoolkit.com>. On the effect of the Sarbanes-Oxley Act on non-US companies see Litvak (2007) 'The Effect of the Sarbanes-Oxley Act on Non-US Companies Cross-Listed in the US' *Journal of Corporate Finance* 13: 195.

³⁵ Present version is the 2008 edition, available at <http://www.frc.org.uk/corporate/combinedcode.cfm>. The FRC is presently undertaking a review of the CCCG; see <http://www.frc.org.uk/corporate/review/Combined.cfm>.

the Main Market of the London Stock Exchange are required under the listing rules to comply with the provisions of the CCCG or otherwise explain why it has not done so.³⁶ Companies might also adopt their own voluntary measures concerning CG. The traditional Anglo-American model of CG is shareholder rather than stakeholder focused, prioritising profit maximisation but stakeholder concerns and other approaches are adopted in some circumstances and jurisdictions.³⁷

Multi-stakeholder initiatives are another strategy that may also respond to CSR pressures as well as to business interests more directly and a number of such initiatives have been developed in the case of corruption. These attempt to respond to limitations in international legal initiatives and national law, particularly related to the governance of multinational corporations (MNCs), and similarly to mitigate the limitations observed in self-regulation, such as those related to enforcement and transparency.³⁸ The content of such initiatives however varies from statements of principle to the production of codes or guidelines. Some initiatives involve multi-stakeholder collaboration of the type suggested by CSR, with civil society in particular playing a strong role, for instance the Partnering Against Corruption Initiative (PACI).³⁹ In other cases initiatives may focus on business involvement, either generally or on a sector specific basis, as in the case of industry initiatives such as the EITI.⁴⁰ Like most corporate codes of conduct, these initiatives are voluntary in nature, though peer-pressure may be influential in encouraging companies to join.

³⁶ For rules published by the Financial Services Authority, see <http://fsahandbook.info/FSA/html/handbook>.

³⁷ See Roussouw (2009) 'The ethics of corporate governance' *International Journal of Law and Management* 51(1): 5; Mason & O'Mahoney (2008) 'Post-traditional Corporate Governance' *Journal of Corporate Citizenship* 31: 1; and Letza & Kirkbridge (2008) 'Corporate Governance Theorising: Limits, Critics and Alternatives' *International Journal of Law and Management* 50(1): 17. In South Africa, companies listed on the Johannesburg Stock Exchange are required to comply with King II which includes a section on sustainability, provides guidelines on the implementation of codes of conduct and requires the use of the GRI reporting guidelines. A draft 'King III' report is currently under development (2009) and it appears that this will continue to strengthen the weight afforded to the issue of 'sustainability'. Painter-Morland suggests that the King II document succeeds in bridging the gap between CSR and CG – see Painter-Morland (2006) 'Triple Bottom-Line Reporting as Social Grammar: Integrating Corporate Social Responsibility' *Business Ethics: A European Review* 15(4): 352.

³⁸ Pieth (2006), see also Utting (2001) *Regulating Business via Multistakeholder Initiatives: A Preliminary Assessment* Geneva: United Nations Research Institute for Social Development (UNRISD).

³⁹ Launched in 2004 by CEOs from Engineering, Construction, Energy, Metals & Mining industries this is a multi-stakeholder initiative which works with, TI, the ICC and the UNGC amongst others. The PACI Principles for Countering Bribery (http://www.weforum.org/pdf/paci/PACI_Principles.pdf) reflect the zero tolerance policy towards bribery. PACI's Highlighting Achievers Survey was published in December 2008. Four UK companies provided feedback on the survey. PACI has 140 member companies.

⁴⁰ Adopted in 2003 and endorsed by the World Bank, the EITI is a global level multi-stakeholder coalition of companies, civil society, donor agencies, investors and developing countries who are resource rich. Under this initiative all payments made by the oil, gas and mining companies to the government have to be published. The government has to also publish the revenues received. To become an EITI candidate a state has to provide detailed work plans together with relevant

Having considered the various anti-corruption strategies aimed at promoting business integrity we now move on to consider the findings with a view to establishing how far these strategies are reflected in the companies' policies and practices.

2. SURVEY FINDINGS

2.1. Corruption and Perceptions of Risk

Since anti-corruption strategies such as self-regulation and industry initiative are expected to play a role alongside regulation their effectiveness is dependant on the active participation of the private sector. Companies need to be aware of corruption as a problem and support the various measures to counter corruption, from the adoption of policies to their implementation and enforcement. The extent to which companies experience corruption and perceive a strong need to address it is therefore likely to reflect both the impact that such efforts have had to date as well as the impact they will have on company attitudes and practices.

2.1.1. *Perceptions and Experiences of Corruption*

Companies reported very low levels of corruption within their own organisation and within their sector. On a scale of 1 – 10 ('1' being low and '10' being high) the level of corruption within their organisation was 2 and within their sector was 3. In the latter case however there was more variation in reported levels.⁴¹ By contrast, a substantial number (42%) had encountered instances or allegations of corruption within the previous twelve months.⁴² In

documentation to indicate how it is going to become EITI compliant. For instance, amongst the African countries with extractive industries, Cameroon, Ghana, Madagascar, Mali, Mauritania, Niger, Nigeria, Sierra Leone and Tanzania are EITI candidates. The validation process is a necessary step in achieving EITI compliant status which indicates achievement of a global standard. This process of validation is conducted by an independent validator chosen by the multi-stakeholders. Of these countries Nigeria has adopted the Nigeria Extractive Industries Transparency (NEITI) Act 2007, which established the NEITI as an autonomous self-accounting body and its objectives are, among others, to ensure due process and transparency in the payments made by all extractive industry companies to the Federal Government and statutory recipients, to conform with the principles of EITI and to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenues accruing to the Federal Government from extractive industry companies. The only country to have achieved full membership status is Azerbaijan.

⁴¹ There is a potential issue of under-reporting of corruption levels associated with this question because of response effects which would encourage respondents to report lower levels of corruption than those actually experienced (i.e. since there may be negative legal or moral connotations associated with the occurrence of corruption companies might be tempted to play down the levels of corruption which they experience, when asked to rank this on a scale).

⁴² The occurrence of corruption in business reported elsewhere is even higher; see Price Waterhouse Coopers (PwC) (2008) *Confronting Corruption: The Business Case for an Effective Anti-Corruption Program*; KPMG (2007) *Overseas Bribery and Corruption*; Chartered Institute of Builders (CIOB) (2006) *Corruption in the UK Construction Sector*; and Association of Certified Chartered Accountants (ACCA) (2007) *Bribery and Corruption: The Impact on UK SMEs*. The figures reported by Simmons and Simmons were closer to the present findings – Simmons & Simmons (2006) *International Business Attitudes to Corruption*. And see Ernst and Young who report slightly lower levels – Ernst & Young (2008) *Corruption or Compliance: Weighing the Costs 10th Global Fraud Survey*.

most cases companies had experienced a maximum of five such cases but two companies, one from the Engineering sector and the other from the Natural Resources sector reported a high number of allegations/instances of corruption: 83 cases from the Engineering company and 186 cases from the Natural Resources company. The reported occurrences of allegations/instances of corruption indicate that this is in fact an issue facing many companies and is more significant than the perceived levels initially indicate. There are therefore good reasons for companies to recognise the potential for corruption to impact upon their business even though many of them may not have thus far been faced with an instance of corruption.

2.1.2. *Corruption and CSR Components*

Many companies have made efforts to address corruption. However in terms of making corruption a priority the figures are not encouraging since it is one of the lowest prioritised aspects of CSR, the most highly prioritised being 'Health and Safety' and 'Equality and Discrimination' (see Figure 1). The low priority ranking for corruption when compared with health and safety for instance could be due to the stringent regulatory regime that governs health and safety at the workplace and the heavy penalties that breaches of health and safety standards attract under UK law. This explanation raises some interesting questions about the synergies between enforcement of regulation, the threat of penalties and the response of companies. Regardless of the low prioritisation of corruption, most organisations had adopted an anti-corruption policy as indicated by Figure 2.

2.1.3. *Sectoral Experiences*

The levels of corruption reported both within individual organisations and the applicable sector overall vary between the sectors. The highest levels of corruption within the responding organisation were reported by companies in the Retail sector (average score of 5) followed by those in Natural Resources (4).⁴³ The highest levels of sectoral corruption were reported by Construction (6) followed by Retail (5). The Natural Resources and Construction sectors have often been reported to have high levels of corruption with the result that they have been subject to special attention. These companies' awareness of corruption is also reflected in their priority rankings as Figure 3 below shows. Construction companies identify corruption as the second most prioritised aspect and Natural Resources companies as the third most prioritised aspect after environmental protection.

The findings in respect of Natural Resources and Construction come as no surprise given the nature of their business and the external campaigning pressure that has been applied

⁴³ All other responding sectors scored an average of 1 or 2.

to these sectors which have seen sector specific initiatives such as the EITI and CoST.⁴⁴ Further CEOs in the Construction and Mining & Metals sectors have actively engaged with the PACI initiative. The findings suggest that corruption is recognised as being of greater relevance to these sectors and possibly that the sector focused initiatives and campaigns have been effective, or at least contributed to the prioritisation of corruption in these sectors.

The findings in respect of the Retail Sector however are unexpected. While the responses identify this sector as having some of the highest levels of corruption none of the respondents reported experiencing instances/allegations of corruption themselves in the preceding 12 months. Despite the higher reported levels at the sector level, corruption was the least prioritised. While it is not possible to derive a clear picture of this sector from these mixed findings they draw attention to an issue requiring further investigation.

Corruption again is the least prioritised in the other sectors such Health, Transport, Leisure and Professional Services (see Figure 3). Whatever the reasons for prioritisation of other aspects, explored further in following sections, it appears that in several cases companies may not be subject to the same pressure to respond to anti-corruption demands as they are to other aspects that fall within the CSR umbrella.⁴⁵

2.1.4. Perceptions of Risk

The data also indicate that companies either do not feel the need to take action in respect of corruption or engage with it in a limited way. While the majority of companies have adopted a corruption policy, those that have not do not necessarily see it as relevant or as a sufficient risk to warrant such measures. Those who have not adopted a policy are not considering adopting one and some responses suggest that corruption is not viewed as relevant by these companies.⁴⁶ Responses also indicate that there is a general understanding within the

⁴⁴ See Global Infrastructure Anti Corruption Centre (GIACC) (<http://www.giaccentre.org/>); the UK Anti-Corruption Forum (<http://www.anticorruptionforum.org/acf/about/>); and Transparency International's Report on Revenue Transparency of Oil and Gas Companies (2008) (http://www.transparency.org/publications/publications/other/2008_report_on_revenue_transparency_of_oil_and_gas_companies) and project on Preventing Corruption in Construction Projects (http://www.transparency.org/tools/contracting/construction_projects).

⁴⁵ There are some methodological issues arising with the responses to this survey question: in a small number of cases the respondent completed the question incorrectly, providing a rating of each aspect separately, rather than an overall ranking. The data are included in the present instance however since on review it was considered that they still provide an important insight into company prioritisation of CSR aspects.

⁴⁶ Respondents comment for instance:

To date we have not [adopted an anti-corruption policy], purely because we are young and maturing.

Corruption is not an endemic problem in our organisation. We have sufficient division of responsibilities and closely monitor budgets so that the opportunities for any one individual to defraud the company are minimised.

company that corruption is not acceptable or that other internal systems would apply to corruption.⁴⁷

It is reassuring to learn that that corruption would not be tolerated. However it must be pointed out that reliance on informal and non-systematic approaches bring with them their own risks in terms of comprehensiveness, transparency, accountability and enforcement.

The low levels of corruption reported by some companies might give rise to or support the view of some companies that corruption is not a sufficient risk to demand action. Since not all companies have experienced corruption this may be another reason as to why they did not consider it to be highly relevant. Such an attitude however places companies in a reactive rather than proactive position thus leaving sufficient space for corruption to embed itself within the organisation.

2.2. Engagement with Stakeholders

A number of anti-corruption initiatives and strategies rely on businesses responding to the demands of their stakeholders and/or on their working collaboratively or co-operatively with stakeholders to reduce and prevent corruption within their organisation, either at an individual or higher level as in sector specific initiatives. It is therefore reasonable to assume that certain stakeholders may play a role in influencing companies' activities or in helping them to develop and apply anti-corruption policies and tools. The extent to which this occurs in practice has implications in terms of the success and impact of such approaches.

2.2.1. Distinguishing Internal and External Stakeholder Roles

Company responses to various parts of the survey provide a relatively consistent view of the ways in which responding companies engage with their various stakeholders. Companies engage principally with a relatively narrow range of stakeholders, limited largely to those having an internal connection with the organisation⁴⁸ with one exception, external auditors.

When implementing their policies on corruption, companies are most likely to apply measures to employees and, to a lesser extent, to the Board of Directors (see Table 2.)

⁴⁷ Respondents comment for instance:

I would consider our company to be in a 'low risk' category. We have very sophisticated IT systems and checks and balances in place.

No, [the company] is not considering adopting a policy specifically relating to corruption. [The company] management considers that there are adequate preventative measures...

⁴⁸ This is to say that the stakeholder is in some way directly involved with the operation of the company, usually through employment or investment. This can be contrasted with those stakeholders operating 'externally' who are not directly linked with the business operations of the company but who may nevertheless have an interest (stake) in its operation; these are the stakeholders more commonly identified within the field of CSR such as NGOs and the general public.

Although internal stakeholders were not subject to equal efforts with respect to implementation, companies focused greater attention on these stakeholders compared with external stakeholders such as government agencies and NGOs. Compliance and enforcement activities relating to company policy were also more reliant on internal stakeholders (see Table 3).

Internal and external auditors, and, to a lesser extent, compliance officers were used to achieve compliance to a greater degree than external stakeholders in the form of NGOs, government agencies and industry-specific bodies in monitoring or enforcement roles. Internal auditing was similarly relied upon for detection of instances/allegations of corruption, as was employee whistleblowing (see Figure 4).

The focusing of implementation efforts on employees and Board of Directors makes sense since these stakeholders are most likely to be directly affected by such policies. However by overlooking implementation opportunities in relation to other stakeholders, companies may be neglecting other means to ensure effective communication of their policies. Engaging other stakeholders such as NGOs or independent or industry bodies who may be affected by company behaviours or policies could also assist in the implementation or monitoring of company policies. Too much reliance on stakeholders who represent the interests of the company in a relatively narrow sense for enforcement purposes also leaves the companies open to accusations about lack of stakeholder engagement and transparency.

2.2.2. Stakeholder Influences and Demands

Whether accusations of lack of engagement with a multitude of stakeholders is a matter of concern to these companies is a separate issue. The more commonly applied compliance measures were viewed as the most effective (Table 4), and responses suggest that the influence of external stakeholders was low. External stakeholders including consumers/clients, the general public, employees and NGOs are reported as having the least influence on company behaviour (see Figure 5).

With respect to enforcement, public access to information, sanctions by trade associations, consumer boycotts and pressure from NGOs were again less influential than other factors. Respondents favoured increased pressure from senior management and increased levels of training and education for management and staff. They were less in favour of collaborative efforts (see Tables 5 and 6). Respondents also reported that while they were not averse to regulatory enforcement, the factors least likely to encourage them to sign a new anti-corruption initiative were the involvement of local or multinational NGOs (see Figure 6).

The low perceived influence of employee demand is interesting since the implementation efforts for company policies have been targeted primarily at employees. This strongly suggests a 'top-down' approach towards implementation concerning these

stakeholders. Employees are most likely to be subject to company efforts to convey appropriate practices with regard to corruption but are unlikely to influence the content or formation of those policies. Potentially this could indicate a weakness with implementation. As described in section 2.6, below, corporate ethical values are seen to be highly influential but these values may not be embedded at all levels such that employees may view anti-corruption efforts as mere box-ticking exercises rather than being fully engaged with their aims and having ownership of these values.

The policy implementation efforts rarely targeted shareholders even though these internal stakeholders were seen as relatively influential on company behaviour including as an enforcement action, through the potential for shareholder action. The reported views appear to conflict and suggest a further weakness in company efforts to combat corruption.

Stakeholders external to the company or internal stakeholders outside of senior levels of influence were seen to exert relatively little influence on company behaviour with respect to corruption. Companies do not consider their involvement to be particularly influential or effective in the limited instances in where it occurs. This obviously constrains anti-corruption efforts envisaged on broad stakeholder involvement since companies appear unlikely to engage with such stakeholders or to view their involvement as worthwhile. This also undermines the anti-corruption efforts within the CSR approach which has focused more substantially on the need for companies to meet the demands of its stakeholders, broadly defined, and has developed initiatives which seek an inclusive stakeholder approach. Different explanations could be offered for this low perceived impact. Companies may be simply reluctant to take on board the demands or pressures of these stakeholders, or they have not felt strong pressure from these stakeholders and therefore consider them to have less relevance to their behaviours and practices (see section 2.3 below).

Among the responses however there was an isolated view which indicates that slowly a wider range of stakeholders may become influential in guiding company policies and practices:

Growing expectation from the civil society for openness and transparency. Growing expectation from CSR rating agencies, institutional investors, pension funds, NGOs, partners, customers. Increasing judicial and reputational risks. Intensified means to fight against corruption (inter-state cooperation). Tougher enforcement on corrupt practices.

2.3. Key Stakeholders

In addition to company responses and activities in relation to stakeholders generally, the data also enabled identification of and understanding the roles of certain key stakeholders in greater detail.

2.3.1. *Supply Chains*

A major concern voiced in respect of corruption practices in the business sector is the extent to which diffuse supply chains and non-hierarchical organization structures contribute to corrupt conduct by removing or obscuring responsibility from the parent organization or central management thus making the task of attaching liability to it extremely difficult.⁴⁹ So, to what extent are company policies and procedures applied throughout the organizational network or supply chain in order to ensure that companies apply anti-corruption measures to all aspects of their operations and are not ‘turning a blind eye’ to bribes paid by sub-contractors or subsidiaries? As Figure 7 shows, 73% of the respondents indicated that the policy applied to acts or omissions carried out in other countries of operation as opposed to the country of head office, where the policy applied to in 77% of cases.⁵⁰ And 70% reported that the policy applied to activities in other aspects of the supply chain as opposed to activities of the main/parent organization, where the policy applied in 77% of cases.⁵¹

Despite this positive picture, implementation of the company policy was not uniform. A smaller range of implementation measures were applied to aspects of the supply chain compared with company employees, and in some cases Board of Directors, and the percentage of companies applying these measures was smaller with respect to aspects of the supply chain. To illustrate, although half of the responding companies applied codes of conduct to the supply chain only 15% received in-house training, compared with 71% company employees (see Table 2). The low figures in respect of the training of actors in the supply chain could be linked to resources since provision of training is expensive. Nevertheless the lack of implementation through training and other measures of a policy reduces the likelihood of the policy objectives being achieved and creates the added danger that the policy will be viewed simply as a paper exercise.

2.3.2. *Auditors*

Both internal and external auditors play an important role in company efforts to address corruption. In terms of achieving compliance with company policy, the large majority of companies applied both internal and external auditing procedures and these were also seen as some of the most effective compliance measure (Tables 3 and 4 above). Along with whistleblowing, internal auditing procedures are seen as one of the activities most likely to be involved with the detection of corruption in relation to reported instances and allegations (see

⁴⁹ For more on supply chains see Sampford, Shackleton, Connor & Galtung (eds) (2006) *Measuring Corruption* Aldershot: Ashgate.

⁵⁰ 29 participants completed the question; the policy applied to acts or omissions carried out in the country of head office in 23 cases and to acts or omissions carried out in other countries of operation in 22 cases.

⁵¹ 23 of the 29 respondents indicated that the policy applied to activities of the main/parent organisation; the figure was 21 in the case of activities in other aspects of the supply chain.

Figure 4). Although internal auditing could be viewed as potentially less useful than external auditing, due to possible conflict of interest issues,⁵² these responses indicate that it has been a useful tool in several instances for the respondents.

Given the prominent role played by these stakeholders it may be important to consider the extent to which existing rules on auditing might be strengthened specifically to address corruption, particularly corruption as more broadly defined, rather than limited to issues such as detection of fraud which might provide too narrow a focus for addressing corruption in a suitably comprehensive manner. In turn, mechanisms for ensuring that auditing procedures are accountable and transparent are also important.

The use of external auditors is one instance in which companies do engage more substantially with external stakeholders. This engagement might be viewed as being in line with a focus on more traditional business attitudes in that the companies are working with stakeholders more closely associated with the businesses' own interests rather than with broader issues or interests.

Some aspects related to detecting or preventing corruption, such as irregularities in invoicing, use of false documents and off-the-book accounting, were less frequently included in company anti-corruption policies. Given the influence and role associated with auditing it is important that these are expressly identified and appropriately incorporated into company anti-corruption efforts. Separating auditing roles and responsibilities from specific anti-corruption activities and objectives implies that one of the key tools in achieving these objectives is in fact treated as peripheral to other efforts. This may result in auditing roles being under-utilised and/or not itself being subject to proper implantation and monitoring activities, particularly in the case of internal auditors.

2.3.3. NGOs

NGO's potentially have a significant role to play in combating corruption in international business, both with respect to more traditional monitoring activities and campaigning and within newer approaches which facilitate more collaborative strategies. Respondents' views on NGOs however suggest significant limitations on the role played by these stakeholders in terms of their interactions with businesses to combat corruption.

Companies liaised with NGOs to a very limited extent. Fifteen percent of respondents indicated that codes of conduct and measure reflecting best practices had been applied to NGOs/independent bodies and the use of other implementation methods involving NGOs was

⁵² Bratton (2007) 'Private Standards, Public Governance: A New Look at the Financial Accounting Standards Board, *B.C.L. Rev.* 48:5; Shapiro (2005) 'Who Pays Calls the Tune? Auditing Regulation and Clients' Incentives' *Seton Hall Law Review* 30: 1029; and Wallace (2003) 'Accounting, Auditing and Audit Committees After Enron et al.: Governing Outside the Box Without Stepping Off the Edge in the Modern Economy' *Washburn L.J.* 43(1): 91.

more limited (see Table 2). Only three percent of companies had involved NGOs for the purpose of monitoring their policy on corruption for compliance purposes (see Table 3) and NGOs were almost always seen as exerting the least influence on companies, based on listed stakeholders and sources (see Figures 5, 6 and 9 and Tables 4 – 6).

Although NGOs might in some instances be viewed, or may view themselves, as monitors of business practices in relation to corruption, the data indicates that they are unlikely to be called upon by businesses themselves to play such a role. While this may not come as a surprise to some it has serious implications with respect to proposals for collaboration and interaction between stakeholders, for instance through multi-stakeholder initiatives, coalitions and alliances such as the PACI. Initiatives such as the UNGC envisage civil society actors playing a role in ‘assisting business participants in the practical implementing the principles [sic]; and in furthering partnership projects’ and is of the view that ‘increasing numbers of companies around the world are working actively with civil society organizations in the development and implementation of their sustainability policies.’⁵³ The responses received in the present case suggest that though NGOs may be playing a prominent role in combating corruption in international business,⁵⁴ this is not being achieved through interaction with companies, who in fact perceive NGOs as being of limited relevance and having limited effect. As a consequence, serious doubts arise about the usefulness of the ‘new-governance’⁵⁵ frameworks where the conflict of self interest seen in self-regulation and operation beyond national jurisdictions is metered by NGO involvement, acting as an alternative system of checks and balances. Companies seem to be relying more on internal efforts and on controls which have strong regulatory power based on either legislative or economic power, in determining company behaviour, rather than on this alternative governance approach.

2.4. Internal Efforts to Combat Corruption

Internal efforts, in the form of anti-corruption policies, programmes and codes of conduct are an important tool in combating corruption since they have the potential to implement the requirements or guidance developed in other initiatives and provide opportunities for companies to set out their own measures and objectives based on motivations such as company ethics and business objectives (e.g. perceived competitive benefits, reputation). One of the most important issues in relation to the internal effort is the extent to which they are

⁵³ http://www.unglobalcompact.org/HowToParticipate/civil_society/index.html.

⁵⁴ Transparency International and its many Chapters throughout the world. TI also undertakes major publications, such as the *Global Corruption Report*, that publicise the problems of corruption in various sectors. Its *Global Corruption Report 2009* is devoted to corruption in the private sector (see TI (2009) *Global Corruption Report 2009: Corruption in the Private Sector* Cambridge: CUP).

⁵⁵ Trubek & Trubek (2007) ‘New Governance & Legal Regulation: Complementarity, Rivalry, and Transformation’ *Columbia Journal of European Law* 13(3): 539.

implemented and enforced thus making a real difference to company practices. Failure to implement leaves companies open to allegations of 'blue washing' and associated negative attention from stakeholders such as the general public, as well as to the negative impacts which may arise from undertaking corrupt practices themselves (such as economic impacts and the possibility of enforcement).

2.4.1. Adoption of Anti-corruption Policies

Around two thirds of companies had a corruption policy in place indicating that the majority, though by no means all, of companies have taken at least this initial step to addressing corruption internally (see Figure 2). The adoption of policies appears to have been gradual, particularly since 1999. The largest number of policies, that is 5, was adopted in 2006. Although this may seem significant in the context of corruption because they were adopted after the entry into force of the UNCAC in 2003 it cannot be assumed from the data that this was a major contributory factor. Eighteen percent of companies had not reviewed their policy for at least 36 months suggesting that it probably had not been revised in light of the development of some prominent anti-corruption measures such as the UNCAC as well as revisions to domestic measures. This failure to revise policies on a regular basis may pose problems since it prevents the policy from reflecting updated perspectives and approaches. It also has the potential to communicate that anti-corruption is not a central to company policy and practice. This appears to be an issue only for the minority of companies since in total two thirds of the companies had revised their policy within the past 12 months. The lack of a policy however did not necessarily relate equally to low prioritisation of corruption and several industries which ranked corruption as least prioritised did have a policy in place so that adopting a policy does not necessarily relate to recognition of the importance of corruption and vice versa.

Whilst most of the more common aspects of corruption – bribery/kickbacks, giving and receiving gifts/benefits/hospitality, facilitation payments – were included in the company policy, some listed aspects which may be viewed as peripheral but which nonetheless could play an important role in the detection or prevention of corruption were less likely to be included. These included irregularities in invoicing, recording of non-existent expenditure, trading in influence, intentional destruction of documents, embezzlement, off-the-book accounting/record-keeping, use of false documents, nepotism and political payments. These aspects were addressed by around half of responding companies (see Figure 7). The difficulty with the more limited scope of the policy in these cases is that it may not be sufficient to actually prevent corrupt practices from taking place or to deal with such acts effectively if they are detected. This view is reinforced by the findings on reported instances or allegations of corruption – the use of false documents and nepotism, for instance, were each reported to

be aspects of the reported instance in six out of fourteen cases (see Figure 8). Thus, although in many cases companies have addressed corruption, there are also a relatively large number of cases in which activities that are reported by these companies as incidents of corruption would not be covered by the company policy. Consequently companies are unlikely either to have taken steps to ensure that these activities are not undertaken (through implementation of the policy) or to be in a position to take enforcement action in the event of such practices being reported.

2.4.2. *Achieving Compliance with Company Policies*

The focus of responding companies on employees and the Board of Directors in relation to implementation of the company policy on corruption is explored in section 2.2.1 above. The data, in addition, also revealed that implementation was carried out using a narrow range of methods. The respondents largely relied on the adoption of a code of conduct or best practice and the provision of written materials. Internal training and the use of contractual conditions and written agreements were applied to some extent but primarily in the case of employees. Other approaches such as provision of external training, use of DVDs or electronic materials were used much less frequently and the responses indicate that even for the stakeholders most likely to be targeted, companies use a fairly limited range of approaches to ensure that their policy is communicated (see Table 2).

With respect to measures taken to ensure achieve compliance with the company policy companies rely principally on internal measures and seek or receive external monitoring and enforcement in only a small number of cases (see Table 3). As well as appointing both internal and external auditors, companies were likely to have adopted CG measures and to have systems in place for internal reporting and monitoring of suppliers. Around half of the companies had appointed a compliance officer or team. Monitoring and enforcement by external bodies were least likely to be adopted – companies reported enforcement by a government agency as applicable in around one third of cases; a quarter of respondents had applied enforcement by an industry-specific body and only 3% had used monitoring by an NGO.⁵⁶ Where incidents or allegations of corruption occurred, respondents indicated that in almost all cases an internal investigation was undertaken, usually by a dedicated officer or team (though as noted above only half of companies had introduced a compliance officer/team) but again involvement of external actors was less common and restricted mainly to legal authorities, in this case the police.

⁵⁶ Lower levels of enforcement by government agencies may not necessarily be indicative of company efforts to achieve compliance since they are likely to be undertaken in only a small number of cases and might only be relevant in situations in which an issue has already come to light. By contrast the opportunity for more ‘routine’ monitoring, for example by NGOs, may indicate a certain degree of transparency and commitment to compliance.

In most cases companies have taken steps to implement their policies and to ensure that it is complied with and where allegations or incidents of corruption have arisen, have followed up the incident and in some cases taken further action.

However the gathered data suggest that concerns about accountability, transparency and enforcement may in some respects be well grounded. Although companies have adopted a range of measures there appears to be relatively limited use of independent actors in monitoring and enforcement activities. This highlights the importance of maintaining independence and integrity in the auditor's role, an issue which is contested based on the tension arising between the auditors role as a 'watchdog' and their position with respect to appointment by the company.⁵⁷ Efforts to investigate allegations or incidents of corruption are primarily internal and details of the incidents are not made public.⁵⁸

An additional consideration is the extent to which companies might wish to avail themselves to further monitoring efforts, for instance by NGOs, but find them unavailable (see 2.3.3 and 2.6.2). Similarly, although there may be limitations with the scope of these activities it can be seen that, with respect to compliance, the more commonly applied measures are also seen to be more effective and that no companies referred to detection of instances of corruption as occurring due to NGO activity. The implications of this are unclear. As seen in other aspects of the data, one possibility is that companies prefer to rely on internal procedures with respect to their own policies and are reluctant to engage with external stakeholders. A second possibility is simply that the role or service provided by such stakeholders and the impact of particular compliance approaches or activities is not considered to have a significant impact.

Although whistleblowing was not considered the most effective measure, ten of the fourteen responding companies indicated that they had discovered an alleged/actual instance of corruption through employee whistleblowing (see Figure 4). This highlights a potential area to be strengthened. Clearly a large number of incidents are detected by this means and it therefore appears important that whistleblowing measures are as effective and widely adopted as possible, though the data indicates that this is probably not the case at present.⁵⁹

⁵⁷ This (potentially) may be particularly relevant in the case of external auditors and was one of the issues which the Sarbanes-Oxley Act attempted to address, in the case of the USA, and governance rules elsewhere may also make some provision for the role and use of auditors.

⁵⁸ With respect to the latter point, there may be clear business reasons for not reporting such instances publicly but equally there may be pressure on companies related to transparency and the ability of stakeholders to provide or withdraw the licence to operate. The low levels of public reporting might in this regard be considered in light of other aspects of the data – see sections 2.2 and 2.6.

⁵⁹ There are two ways of protecting whistleblowers, one regulatory and the other through implementing internal whistleblowing procedures as part of the business integrity initiative. The ICC has recently published its Guidelines on Whistleblowing which may result in greater inclusion of whistleblower policies in company codes of conduct. The text of the Guidelines is available on <http://www.iccwbo.org>.

2.5. Attitudes to Regulation

Besides understanding how and why companies are likely to respond to different regulatory approaches and strategies, views on anti-corruption instruments themselves allow gauging of the impact that these have made on companies and the types of instrument that are likely to receive or not receive support in the event development of further anti-corruption efforts. When read with responses to other questions by the authors a relatively detailed picture on the limitations of particular strategies and how these might be addressed emerges.

2.5.1. Anti-corruption Instruments and Perceptions of Mandatory and Voluntary Influences

From a range of anti-corruption influences listed in the questionnaire, stock exchange listing rules and national legislative measures, both within the main country of operation and other countries of operation emerged as the most influential of the general instruments listed (see Figure 5). International legal instruments and industry-specific initiatives were seen as less influential and voluntary initiatives were regarded as the least influential type of instrument. Stock exchange rules and national legislative measures were also seen as the most influential of listed specific anti-corruption instruments: the General Listing Rules of the London Stock Exchange and the LSE Combined Code on Corporate Governance were identified as the most influential instruments overall and the legislative instruments receiving the highest scores include the US FCPA and the UK Fraud Act (see Figure 9).

These responses suggest that instruments with mandatory applicability as opposed to voluntary principles/rules are exerting the most influence on company behaviour. Although stock exchange rules are of a different legal and regulatory nature than legislative instruments, they may in some instances be based on statutory requirements but may also be viewed by companies as more directly relevant and perhaps as ‘more mandatory’ than other sources. Stock exchange rules may be seen as having considerable regulatory power due to the consequences flowing from a failure to comply, namely potential exclusion from the relevant exchange. In relation to enforcement, exclusion from the stock exchange is in fact seen as one of the most influential of a range of possible influences (see section 2.7).

The identification of voluntary initiatives as the least influential type of instrument has potential consequences with respect to strengthening and developing anti-corruption efforts. Whilst voluntary approaches may be supported and encouraged in some instances and by some stakeholders, they are seen here to have relatively limited influence on company behaviour. Taken together with the views on other types of instruments and stakeholders these responses raise serious questions about the impact and value of these instruments. The data do not reveal why such initiatives receive lower scores but respondent views on the influence of

stakeholders (see section 2.2 above) and on enforcement (see below) provide possible avenues for further investigation.

Both international and multi-stakeholder instruments receive relatively low scores compared with the stock exchange and national legislative instruments suggesting that the influence which these sources exert on company behaviour and attitudes is also limited. The limited influence of international and regional agreements and conventions should come as no surprise since these instruments are not directly applicable to companies but require implementation by contracting states. In this sense it might be argued that these international agreements may have had a more substantial effect than first appears, based on the higher scores awarded to national legislative measures at least in the UK and the US. The matter of to whom the agreement is addressed is irrelevant in the case of multi-stakeholder instruments such as the UN Global Compact and the OECD Guidelines for MNEs, which also received low scores. This again suggests that perhaps instruments which are seen as non-mandatory and having no effect in the event of non-compliance have a limited impact on companies.

The experiences of companies with these instruments, particularly in the case of legislative instruments, are diverse. Companies listed on a UK exchange with their head office in the UK, for example, show a variation in the ratings of UK legislation across the sectors. This may be due to differing regulatory priorities or other factors, for instance resource limitations. Nonetheless it does indicate that the experience of companies is not homogenous. It is possible that particular types of company or sector might potentially be either under- or over-regulated or that regulation may be patchy.

2.5.2. Implementing and Enforcing Anti-corruption Instruments

The survey responses highlight some issues related to the enforcement and implementation of existing measures. Exclusion from the stock exchange and individual imprisonment are some of the enforcement measures seen to have the greatest influence for responding companies (see Table 5). The use of government fines and the revocation of permits/licences were also seen as influential but government incentives to comply were much less so. These enforcement measures are the more punitive of the influences listed. Although certain influences related to business motivations were also seen as influential, the less formal regulatory influences were seen to have a lesser impact (see section 2.6 below).

There is also some support for improved regulation and enforcement activities. But this is not to say increased levels of activity *per se*, but rather more effective action (see Table 6).

Although respondents were opposed to an increase in actions such as the number of applicable regulations and the frequency and stringency of enforcement actions, there was some support for an increase in the probability of sanctions being imposed and the thoroughness of enforcement activities. The belief that a new anti-corruption initiative, were

there to be one, would actually be enforced was also seen as one of the factors most likely to motivate a company to sign up to it (see Figure 6). Respondents were also in favour of harmonisation of existing regulations and of increased levels of compliance. It seems that government legal and regulatory measures are often considered to be influential on company behaviour but that some companies wish to see more consistent application of these measures by both regulators and regulatees and an increase in the impact of the measures. Enforcement measures were considered by companies to be less effective than other measures with respect to achieving compliance internally with the company policy. This might reflect a divergence in approach whereby companies, as subjects of regulation, are not averse to enforcement, based on respondents' views, but the measures adopted by a company internally are viewed differently and internal responses are favoured. On the basis of the above there may also be a feeling that the usefulness of current enforcement activities is limited. Viewed with the findings indicating that in some cases companies have differing experiences of legislation, these responses provide useful insights in terms of how national regulatory approaches might need to be addressed.

2.6. Motivations and Drivers

Understanding the factors which drive a company to adopt anti-corruption activities or to engage in anti-corruption instruments is an essential component for strengthening anti-corruption strategies through appropriate responses to, and targeting of the business community. In addition to views on regulatory approaches and specific activities and instruments, the survey responses also provide insights into the more general motivations and drivers relating to company attitudes and behaviour with respect to corruption.

2.6.1. *Protecting the Corporate Reputation*

The concept of corporate reputation is seen to be a highly influential factor in company responses. 'Protection of corporate reputation' was the most influential of the listed sources (see Figure 5). In relation to enforcement influences (see Table 7), 'damage to company reputation through media coverage' was most influential and 'a high level of external pressure to achieve the initiative' was seen as a relatively motivating factor in relation to a proposed new anti-corruption initiative (see Figure 6). These responses imply that maintaining a 'good' reputation is considered highly important yet this attitude seems difficult to reconcile with the views on stakeholders, particularly external stakeholders such as the general public and NGOs. It might be assumed that these would play a significant role in determining whether or not a company has a 'good' reputation but the responses indicate that these stakeholders are considered to have a limited influence on company behaviour. This raises a number of

questions: (i) what does good reputation mean, as far as companies are concerned? and (ii) where does the concept derive its context from?⁶⁰

It is possible that companies are concerned not so much with the demands and views of a broad range of stakeholders but with a relatively narrow set of interests and influences, to maintain their reputation. Whilst stakeholders such as the general public may exert limited influence on companies, the responses of other companies and particularly competitors and factors more immediately associated with economic impacts may have a greater influence. As noted earlier, shareholders were seen as relatively influential stakeholders; much more so than most other stakeholders, particularly those operating externally to the company, and the possibility of shareholder action, as well as the potential for economic loss and loss of new business opportunities were considered to have a substantial influence on behaviour by most respondents. The importance of stock exchange listing rules and the possibility of exclusion from the stock exchange are also seen as highly motivating factors and imply business – i.e. economic – losses or gains. There is clearly a need for companies to maintain profits and maximise business opportunities but, on the basis of reported attitudes and perceptions, this might not necessarily take place in the broader context of the ‘licence to operate’ which is sometimes suggested.⁶¹

It could also be that companies might be highly influenced by the activities of a broad range of stakeholders *in principle* but that the activities undertaken and pressure mounted by these stakeholders at present is insufficient to achieve a more significant level of influence.

⁶⁰ Soon after the investigation into BAE was dropped by the Serious Fraud Office the Board of Directors of BAE appointed an independent committee, the Woolf Committee, to public report on the ethical policies and principles of the company. The Report of the Committee *Business Ethics, Global Companies and the Defence Industry: Ethical Business Conduct in the BAE Systems, the Way Forward* was published in May 2008 and is available at http://217.69.43.26/woolf/Woolf_report_2008.pdf. It highlighted the close relationship between reputation and commercial success and the concept of reputation was explained in the following manner:

For a company, its reputation will derive from the quality of the product or service, its financial performance and treatment of staff, its leadership and its stand on the ethical issues it faces. So a company needs to test day-to-day commercial decisions by asking itself “would this action (or inaction) damage the company’s reputation in the mind of a right thinking person?” This test is similar to those used commonly for ethical situations: “how would I feel about others knowing of my decision?”, or “how would this be reported in tomorrow’s newspaper?” (At 2.6)

The Woolf Committee was of the view that a company’s reputation is linked to a range of factors:

The range of factors that may impact upon a company’s reputation and be covered by the term “unethical business conduct” is broad and challenging. It covers the behaviour of the company in its relations with employees, customers, shareholders and other investors, suppliers and contractors, governments and local communities, competitors and non-governmental organisations (NGOs). (At 2.8)

The Woolf Committee Report was not published at the time the questionnaires were sent out. Hence it was not possible to get the respondents’ views on this Report.

⁶¹ Henriques and Richardson (2004) *Triple Bottom Line: Does It All Add Up?: Assessing the Sustainability of Business and CSR* London: Earthscan, p 163.

This might explain why damage to reputation caused by adverse media coverage is considered so influential, in apparent contrast to other perceptions.

2.6.2. Sources of Corporate Ethics and Their Influence

The second most influential source was corporate social value and ‘the initiative reflecting the company’s own ethics or morals’ was seen as the factor most likely to motivate companies to sign a new anti-corruption initiative (Figures 5 and 6 above). The internal values of a company appear to be an important driver raising the assumption that corporate ethical values related to corruption will directly impact upon the extent to which companies act to address corruption. This suggests a strong role for the actors and sources responsible for determining and embedding those values. The main instruments influencing company behaviour seem to be those of a more mandatory character and other influences tend to be predominantly internal or related to business interests in a very direct sense.

Two related drivers may be identified here as potentially linking with corporate ethical values. The first is the ‘tone from the top’, that is the attitudes and expectations of senior management and shareholders. Besides the role of shareholders, highlighted previously, increased pressure from senior management was one of the more frequently supported measures. So, ensuring that these stakeholders set the appropriate tone and expectations may be one of the routes to establishing that the values regarded as influential are properly developed and have an impact. One issue in this regard however, is the relatively limited efforts which companies have placed in implementing company policies for these groups. Although an increase in training and education for senior management was supported (see Table 6), responses indicate that presently the efforts adopted have been relatively limited for both management and shareholders (see Table 2), indicating either that the relevant ‘tone from the top’ is not sufficiently in place to carry out these activities or that these activities are being neglected and therefore the impact of the tone could weaken gradually, or a vicious cycle involving both factors.

The second is the influence of peers and competitors. Besides the importance of factors such as loss of new business opportunities noted earlier increased compliance with existing anti-corruption measures by competitors was seen as one of the most supported of proposed measures. Similarly, the likelihood that competitors will comply and a competitor signing up to the agreement were likely to motivate companies to sign up to a new anti-corruption initiative. These views linked with those on implementation and enforcement indicate a desire on the part of companies to see a more even playing field established which, it might be assumed, would prevent anti-corruption efforts by companies from providing other companies with a competitive advantage. They also suggest that in terms of anti-corruption efforts, companies may be more responsive to pressure from competitors than from NGOs and other

interest groups. However it should be noted that a major competitor refusing to sign up to an agreement was not very influential, so that a competitor withholding support would not necessarily have sufficient weight to cause the knock on effect of preventing other companies from acting.

2.7. Corporate Governance Frameworks

Although the concept of corporate governance does not specifically focus on combating corruption, it seems that adoption of corporate governance measures may contribute to the prevention of corruption in business practices. The respondents indicate that this strategy is of particular relevance and that associated corporate governance instruments may play a strong role with respect to company response to combating corruption.

2.7.1. Stock Exchange Listings Rules as an Anti-corruption Tool

Respondents frequently identified corporate governance measures in relation to achieving compliance with the company policy on corruption though they were not considered the most effective measures (see Tables 3 and 4 and Figure 7). Sources of corporate governance rules (primarily the General Listing Rules of the LSE and the Combined Code on Corporate Governance) were seen to be the most influential of listed instruments (see Figures 5 and 9). Exclusion from the stock exchange was seen as one of the strongest potential enforcement activities (see Table 5). It is therefore important that the prominent role played by these frameworks, from the point of view of companies, is recognised. This may not be surprising since in some respects they may be perceived as being more generally applicable, based on the economic implications of exclusion from the stock exchange as opposed to the perhaps less immediate or tangible impacts associated with legislation itself. It is nevertheless significant because CG instruments are not in fact anti-corruption instruments *per se* but rather impose a broader set of requirements and recommendations on companies. It is important to recognise the reliance placed on these frameworks firstly because, as noted, provisions related to corruption might not be subject to the same type of enforcement procedures associated with traditional regulatory measures but also because these perceptions suggest that strengthening of anti-corruption requirements through CG instruments might be an effective approach to improving anti-corruption efforts.

2.7.2. Differing Rules and Differing Impacts

Responses also indicate that the LSE has a greater impact on corruption attitudes and practices than the AIM. Questionnaire data and website data upon cross-referencing indicate that companies that have adopted an anti-corruption policy are more likely to be listed on the LSE exchange than on the AIM. Fewer UK listed companies had adopted a policy and those that had were more likely to be LSE listed than AIM listed (60%: 40%), and those that had

not were more likely to be AIM listed than LSE listed (67%: 33%). Data collected from company websites indicated that although the majority of companies were listed on the AIM, rather than fully listed on the LSE, those that were AIM listed were much less likely to refer to corruption and CSR than those that were fully listed.⁶² When read together these findings indicate that the AIM is less effective in producing company engagement with anti-corruption efforts as well as with CSR more generally. Given the reported importance of stock exchange listings as a source for anti-corruption, from the perspective of responding companies, there are clear policy implications concerning the strengthening of anti-corruption efforts. Whilst AIM's relaxed framework may encourage business development it does not, apparently, lead to companies seeking to address corruption, to the extent that an exchange such as the LSE does. Although the AIM is intended to enable small businesses to grow, a large percentage of companies – almost the majority – are listed on the AIM and consequently this weakness affects very large numbers of companies. It should not be assumed AIM companies are small, local businesses since our data reveal that most companies operate in several countries and regions worldwide and are therefore potentially exposed to similar, if not the same, issues relating to overseas bribery and corruption facing the MNCs. In more general terms, the data suggests that the application of more formalised, mandatory frameworks may increase the likelihood of companies engaging with the need to combat corruption. The UK Financial Reporting Council requires all companies listed on the main market to report on how they have complied with the CCG under the 'comply or explain' model. The AIM listed companies do not have to meet these conditions. Separate Corporate Governance Guidelines for AIM companies have been published but are voluntary.

CONCLUSION

The majority of companies did not view corruption as a significant problem and several did not feel that corruption is sufficiently relevant to warrant a response from them even though all barring two had overseas operations. This of course has implications for anti-corruption strategies since these companies are less likely take steps to prevent corrupt practices from occurring within the scope of their operations or to deal with such occurrences if and when they arise. They are also less likely to participate in voluntary efforts if they do not consider corruption to be relevant to them.

Respondents also seem to be taking a reactive instead of a proactive approach to corruption. This is perhaps symptomatic of their failure to see corruption as a problem or a

⁶² 56.5% of coded, surveyed companies were listed on the AIM. AIM listed companies were found to refer to corruption in 3.7% of cases, CSR in 15.9% cases, and Corporate Governance in 64.2% cases. Companies identified as LSE (fully) listed were found to refer to corruption in 29.1% cases, to CSR in 64.9% cases and to CG in 76.7% cases.

threat to their business operations. While responses suggesting for instance, that corruption has not yet been a problem or that the company is new, imply that corruption may be dealt with once it has arisen, the effectiveness of such an attitude is questionable: failure to place employees and relevant stakeholders such as the supply chain under any expectations in respect of corruption is likely to lead to a failure in preventing it. This is particularly pertinent with respect to voluntary initiatives (rather than mandatorily applicable regulation) which rely largely upon companies adopting measures or following guidelines on their own initiative.

Despite a number of efforts the importance of tackling corruption has apparently not penetrated all companies, suggesting that the impact of these strategies has perhaps been limited in some respects. A priority for the future would therefore be to ensure anti-corruption efforts are appropriately targeted. The most prioritised CSR issues, health and safety, and equality and anti-discrimination, may be subject to more prescriptive state regulation and/or have a longer history of being targeted by various organisations such as NGOs. One reason corruption is not identified as a greater risk or priority might be simply that it has been on the agenda for companies for a relatively short period of time. The ranking of other aspects of CSR cast doubt on this but the data in this instance is not sufficient to draw further conclusions.

Voluntary initiatives also seem to have limited impact. CSR policies, including the use of multi-stakeholder initiatives, assume two key responses on the part of companies: (i) that companies will undertake measures or join initiatives on a voluntary basis; and (ii) that companies will engage with and respond to a broad range of stakeholders including civil society. The responses in the present case cast doubt on the extent to which this does and might take place. Of the external stakeholders, NGOs in particular were seen as least involved and influential sources impacting on company behaviour. Likewise, voluntary approaches, including specific multi-stakeholder initiatives, were also seen to be relatively weak in terms of their influence on company behaviour and attitudes. For such initiatives to have a real impact on company practices there needs to be a rethinking of how these initiatives work and the ways in which stakeholder interaction takes place.

Awareness of anti-corruption initiatives may also be an issue and this requires vigorous and targeted communication to the businesses by chambers of commerce, NGOs and international framers of legal regulation.⁶³ Several prominent anti-corruption initiatives were considered to have limited impact on company responses, including multi-stakeholder initiatives and international legal instruments. While it is understandable that companies may have a low level of awareness of international legal instruments such as the OECD Anti-

⁶³ The OECD has recently indicated that it would be making recommendations to member countries to take steps to examine the awareness raising initiatives to prevent and detect bribery.

⁶⁵ See Pieth (2006) *op. cit.*

bribery Convention, due to the character of such instruments, the lack of awareness of the multilateral initiatives is much more relevant and raises a number of questions. Firstly, the reach of these instruments with respect to companies. Many of the respondent companies were AIM listed and although they undertake international business in most cases, it has been commented that multi-stakeholder initiatives may only include a small number of businesses and are consequently elitist in this sense.⁶⁵ The lower perceived impact of these initiatives seems to endorse this criticism in which case there is an urgent need to broaden the reach of the principles. Secondly, the view that the NGOs exerted little influence is a cause for concern since these stakeholders are one of the key groups involved in such initiatives. More needs to be done to promote engagement between companies and NGOs such that companies are involved with and influenced by these initiatives.

The more traditional approaches to regulation seemed to have made more of an impact on the respondent since they were seen as more influential. It therefore seems that appropriate action at state level may be both more effective and less widely contested than might be supposed. However it was felt that the measures could be made more effective by increasing compliance levels rather than adopting new anti-corruption measures.⁶⁶ Thus, although companies rely largely on internal activities and stakeholders for the implementation and enforcement of their own policies, they are not averse to the application of formal regulatory measures for addressing corruption.

Corporate governance mechanisms were an influential source amongst the anti-corruption measures and had been widely adopted. In regulatory terms such instruments occupy an interesting space, relying primarily on voluntary self-regulation in principle but backed by potentially harsh economic ‘sanctions’ with respect to delisting. In terms of strengthening anti-corruption efforts this is potentially an area which may have a useful role to play. These mechanisms are relevant to combating corruption mainly because of their implications for accountability and transparency, which may make it more difficult to conduct or hide corrupt practices. These do not generally however, expressly relate to combating corruption but it may be that existing measures could be developed in this regard. Governance measures in the UK for instance have been elaborated on several times, beginning with the Cadbury Report,⁶⁷ and may provide a suitable and effective regulatory ‘home’ for anti-corruption requirements, for instance following developments such as the requirements for auditing and remuneration committees. The majority of companies do refer to CG on the website but this was not the case for corruption. The responses also indicate that the influence

⁶⁶ These perceptions might also apply to other anti-corruption initiatives, for instance voluntary initiatives – responses here do not explicitly refer to mandatory regulation in all instances.

⁶⁷ Committee on the Financial Aspects of Business Conduct, *Report on Financial Aspects of Business Conduct*, 1992 (the Cadbury Report).

of peers and competitive pressures may be strong which again suggests that addressing corruption through this market based mechanism might be effective. However, there are undoubtedly issues relating to the burden on companies which would arise from such developments and the extent to which measures might be perceived as interfering too far and ought instead to be applied through alternative approaches. In addition, it seems that the nature of the CG instrument will have a strong bearing on its impact in terms of corruption. The AIM is seen to have much weaker impact than the full LSE in this respect and companies on this exchange are not subject to the same rules as those on the LSE and the consequences. Ensuring that corruption guidance is applicable to the full range of listed companies, or a wider range (noting that many companies listed on this exchange will undertake international business transactions), whilst imposing a regulatory burden therefore may be necessary to achieve objectives related to addressing corruption. In terms of company codes of conduct and internal measures it can be seen that the large majority of respondents had adopted such measures. The traditional criticisms of self-regulation and voluntary efforts focus on the lack of transparency, enforcement and accountability which may arise and thus the extent to which they in fact make a difference to company practices. Findings in this regard are mixed but do provide some indications that such concerns remain relevant. On the plus side, companies in many instances reported adopting implementation and compliance measures, particularly in the case of employees who are the stakeholders most relevant to company policies in terms of their behaviour and attitudes. Similarly, several companies who had investigated instances or allegations of corruption had taken action, including dismissal of staff members. Some companies therefore are taking serious efforts to ensure that their policies have an impact. However, it appears that there is scope for strengthening the use of internal codes especially through widening the range of activities undertaken; shareholders, for instance, were rarely targeted by implementation efforts.

Activities/operations relating to aspects of the supply chain were reportedly included in the large majority of company policies but these were subject to implementation efforts only in a small number of cases. Clearly implementation at this level is more difficult and again has resource implications but equally it must be recognised that failing to undertake such steps is likely to reduce the impact of the policy and may undermine the reputation of a company.

The range of anti-corruption activities was also limited. Companies did not use modern communications technology for instance creatively for training purposes or dissemination of company policies and other materials.

When it came to monitoring and enforcement, internal measures were largely relied upon. Limited use or involvement with external mechanisms for monitoring and enforcement might undermine the impact of company policies and anti-corruption strategies as well as

contribute to perceptions that these seek merely to pay lip service to the principle of fighting corruption.

Of the many external stakeholders NGOs seem to have had the least impact on companies even though their role in furthering the anti-corruption is widely acknowledged. Shareholders were seen to be influential in terms of directing company policy in this respect but they only have a limited role in their implementation. Internal and external auditors were identified as playing an important role within company efforts to combat corruption. This role might also be suitable for the strengthening of anti-corruption measures within corporate governance frameworks, through industry efforts (e.g. clarification/expansion of auditors' role and responsibilities through the Chartered Institute of Internal Auditors), and through internal efforts which expressly recognise and incorporate the role and expectation of auditors within the anti-corruption policy.

In conclusion, the results are mixed. In spite of the relentless and near global promotion of anti-corruption strategies, corruption still does not seem to have taken centre stage and more needs to be done so that companies embed anti-corruption policies firmly within their organisations and in their dealings with others. While national legislation may be viewed as the most influential it has its shortcomings, namely enforcement deficit which may be a consequence of a number of difficulties such as lack of reliable witnesses and problems in obtaining evidence. There is therefore a fundamental need for multi-stakeholder initiatives and CSR initiatives to take firm root in the individual and collective consciousness of businesses if we are to make any meaningful inroads in the fight against corruption.

TABLES

Table 1: Breakdown of responses x industry sector

Industry sector	Did the organisation complete the questionnaire?	
	No	Yes
Industrials	75	4
Construction	148	2
Utilities	21	2
Consumer	57	3
Telecoms	25	2
Engineering	111	4
Health	101	4
Transport	32	1
Technology	144	4
Professional Services	135	9
Media	95	3
Leisure	68	2
Natural Resources	274	10
Retail	62	2
Fortune 500	95	1
Anonymous	0	1

Table 2: Implementation measures adopted by respondents

Measure	Percentage of respondents applying measure to listed stakeholder (%) (Based on 34 of the 54 respondents who answered the question on implementation)							
	Board of Directors	Investors/Shareholders	Employees	NGOs or independent bodies	Customers/clients	Government Agencies	Aspects of the supply chain	Other
Codes of conduct/best practice	85.3	20.6	88.2	14.7	29.4	20.6	52.9	5.9
Training sessions or workshops – in-house	38.2	0.0	70.6	2.9	2.9	2.9	14.7	5.9
Training or workshops provided by external organisations	17.6	0.0	35.3	0.0	0.0	0.0	0.0	2.9
Meetings or announcements	44.1	11.8	70.6	5.9	5.9	2.9	17.6	2.9
Training videos/DVDs	8.8	0.0	14.7	0.0	0.0	0.0	2.9	0.0
Online training material	23.5	0.0	32.4	0.0	0.0	0.0	0.0	2.9
Written materials	73.5	20.6	82.4	5.9	5.9	5.9	23.5	11.8
Signed agreements	23.5	0.0	41.2	2.9	2.9	0.0	23.5	0.0
Contractual condition	35.3	0.0	70.6	5.9	26.5	8.8	35.3	5.9
Other measure	2.9	0.0	8.8	0.0	0.0	0.0	2.9	2.9

Table 3: Compliance measures adopted by respondents

Compliance Measure	Count	Percentage Respondents⁶⁷
Auditing		
Internal auditing of accounts	26	76.5%
Internal auditing of other records	23	67.6%
External auditing (through private body)	29	85.3%
Management and Personnel		
Appointment of compliance officer(s)/team(s)	18	52.9%
Involvement of independent non-executive director(s)	24	70.6%
Identification of composition of Board of Directors	21	61.8%
Identification of management personnel	22	64.7%
Internal Procedures		
Incorporating compliance into staff appraisal system	12	35.3%
Disclosure of financial statements	25	73.5%
Regulation of remuneration within the organisation	24	70.6%
Regulation of nomination within the organisation	21	61.8%
Regulation of Director's shareholdings	25	73.5%
Adopting measures for appointment of suppliers and similar	26	76.5%
In-house monitoring of suppliers and similar	25	73.5%
Penalties for breach of the anti-corruption policy	23	67.6%
In-house confidential hotline or reporting procedure	26	76.5%
Other 'whistle-blowing' measures (please specify)	12	36.4%
External Procedures		
Enforcement by government agency	11	32.4%
Monitoring by industry-specific body	8	23.5%
Monitoring by NGO	1	2.9%
Monitoring by other body (please specify)	5	14.7%
Enforcement by government agency	11	32.4%
Monitoring by industry-specific body	8	23.5%

⁶⁷ Based on 34 responses.

Table 4: Perceived Impact of Compliance Measures

Measure	Response						
	Not relevant	Highly effective	Somewhat effective	Neither effective nor ineffective	Somewhat ineffective	Highly ineffective	Don't know
Internal auditing of accounts	7.1%	50.0%	39.3%	3.6%	.0%	.0%	.0%
Internal auditing of other records	11.5%	61.5%	26.9%	.0%	.0%	.0%	.0%
External auditing (through private body)	6.7%	60.0%	26.7%	.0%	.0%	3.3%	3.3%
Appointment of compliance officer(s)/team(s)	15.4%	50.0%	30.8%	3.8%	.0%	.0%	.0%
Involvement of independent non-executive director(s)	11.1%	44.4%	25.9%	14.8%	.0%	.0%	3.7%
Identification of composition of Board of Directors	19.2%	34.6%	23.1%	23.1%	.0%	.0%	.0%
Identification of management personnel	19.2%	34.6%	23.1%	23.1%	.0%	.0%	.0%
Incorporating compliance into staff appraisal system	26.1%	17.4%	43.5%	.0%	.0%	.0%	13.0%
Disclosure of financial statements	8.0%	44.0%	28.0%	12.0%	4.0%	.0%	4.0%
Regulation of remuneration within the organisation	14.3%	35.7%	32.1%	14.3%	3.6%	.0%	.0%
Regulation of nomination within the organisation	16.7%	37.5%	29.2%	12.5%	.0%	.0%	4.2%
Regulation of Director's shareholdings	15.4%	42.3%	19.2%	23.1%	.0%	.0%	.0%
Adopting measures for appointment of suppliers and similar	.0%	51.7%	37.9%	6.9%	.0%	.0%	3.4%
In-house monitoring of suppliers and similar	.0%	57.7%	30.8%	3.8%	.0%	.0%	7.7%
Penalties for breach of the anti-corruption policy	4.3%	60.9%	34.8%	.0%	.0%	.0%	.0%
In-house confidential hotline or reporting procedure	3.8%	42.3%	38.5%	7.7%	3.8%	.0%	3.8%
Other 'whistle-blowing' measures (please specify)	27.3%	27.3%	36.4%	.0%	.0%	.0%	9.1%
Enforcement by government agency	31.8%	22.7%	36.4%	4.5%	.0%	.0%	4.5%
Monitoring by industry-specific body	33.3%	19.0%	28.6%	9.5%	4.8%	.0%	4.8%
Monitoring by NGO	56.2%	.0%	25.0%	12.5%	.0%	.0%	6.2%
Monitoring by other body (please specify)	64.3%	7.1%	14.3%	7.1%	.0%	.0%	7.1%
Other (please specify)	71.4%	14.3%	.0%	.0%	.0%	.0%	14.3%

Table 5: Perceived influence of enforcement actions on organisation's behaviour in relation to corruption

Compliance measure	Perceived influence (% respondents)					
	No influence at all on behaviour	Not very influential	Neutral	Some influence on behaviour	Substantial influence on behaviour	Don't know
Government fines	9.4%	3.1%	12.5%	28.1%	43.8%	3.1%
Individual imprisonment	3.0%	6.1%	9.1%	12.1%	69.7%	.0%
Refusal/revocation of government licences/permits	2.9%	8.8%	14.7%	17.6%	52.9%	2.9%
Government incentives to comply	18.2%	6.1%	24.2%	18.2%	21.2%	12.1%
Exclusion from stock exchange	2.9%	.0%	11.8%	8.8%	73.5%	2.9%
Shareholder action	6.1%	3.0%	12.1%	24.2%	51.5%	3.0%
Loss of new business opportunities	6.1%	.0%	9.1%	27.3%	57.6%	.0%
Potential for economic loss	2.9%	.0%	17.6%	17.6%	61.8%	.0%
Sanctions by trade associations	11.8%	2.9%	44.1%	23.5%	11.8%	5.9%
Pressure from NGOs	15.2%	.0%	36.4%	36.4%	.0%	12.1%
Consumer boycotts	15.2%	6.1%	36.4%	12.1%	18.2%	12.1%
Damage to reputation through media coverage	2.9%	.0%	5.9%	14.7%	73.5%	2.9%
Public access to information	12.5%	.0%	21.9%	34.4%	25.0%	6.2%
Other	.0%	.0%	50.0%	.0%	50.0%	.0%

Table 6: Support for increased enforcement measure

Measure	Response					
	Strongly opposed to increase	Somewhat opposed to increase	Neither opposed nor in favour	Somewhat in favour of increase	Highly in favour of increase	Don't know
The number of government regulations applied to organisations	29.4%	32.4%	26.5%	11.8%	.0%	.0%
The stringency of government regulations applied to organisations	26.5%	23.5%	32.4%	17.6%	.0%	.0%
Greater harmonisation of regulations across and within jurisdictions	3.0%	3.0%	24.2%	33.3%	36.4%	.0%
The frequency of government enforcement activities applied to organisations	17.6%	23.5%	38.2%	14.7%	5.9%	.0%
The thoroughness of government enforcement activities applied to organisations	5.9%	2.9%	55.9%	17.6%	14.7%	2.9%
The level of sanction imposed	11.8%	11.8%	38.2%	26.5%	8.8%	2.9%
The probability of sanctions being imposed	2.9%	11.8%	32.4%	35.3%	11.8%	5.9%
Collaboration within your specific industry to produce voluntary standards	8.8%	5.9%	35.3%	14.7%	32.4%	2.9%
Collaboration with a coalition or range of stakeholders to produce voluntary	8.8%	8.8%	50.0%	11.8%	17.6%	2.9%
Collaboration between industry to produce standards or measures to be enforced by an independent agency	9.1%	9.1%	42.4%	18.2%	18.2%	3.0%
Collaboration with a coalition or range of stakeholders to produce standards or measures to be enforced by an independent agency	8.8%	14.7%	50.0%	20.6%	.0%	5.9%
The standardisation of corporate codes of practice	2.9%	5.9%	26.5%	44.1%	20.6%	.0%
Increased pressure from senior management/Board of	2.9%	.0%	35.3%	32.4%	29.4%	.0%
Increased compliance with existing anti-corruption measures or initiatives by competitors	2.9%	2.9%	23.5%	35.3%	32.4%	2.9%
Increased training and education measures aimed at organisation's senior management	2.9%	2.9%	26.5%	41.2%	26.5%	.0%
Increased training and education measures aimed at organisation's staff members	2.9%	2.9%	23.5%	41.2%	29.4%	.0%
Increased training and education measures aimed at the general public	6.1%	.0%	54.5%	24.2%	15.2%	.0%

FIGURES

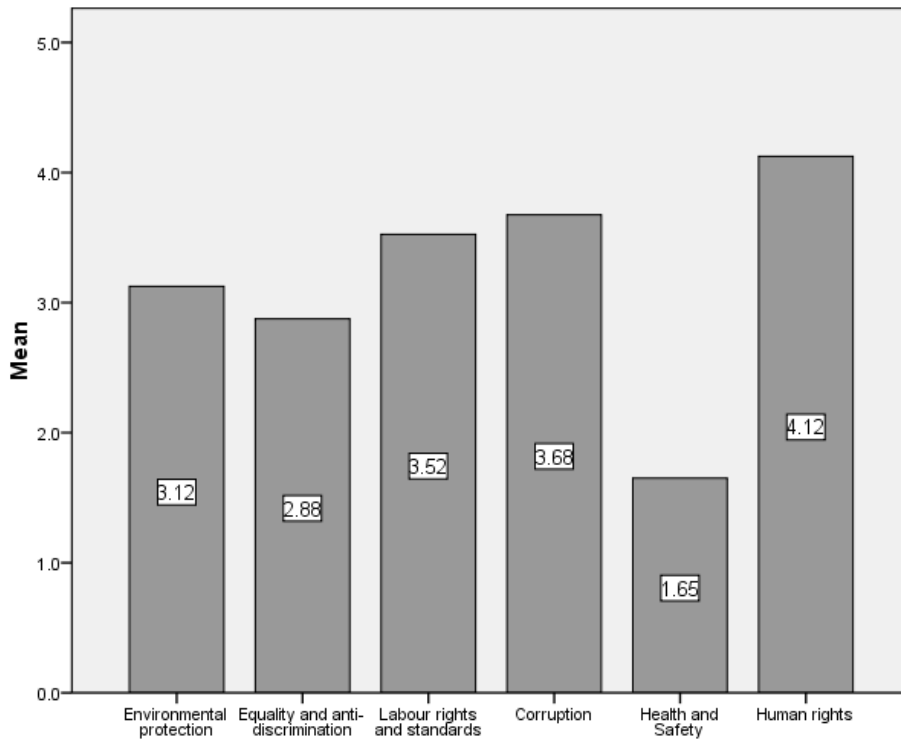


Figure 1: Average respondent scores for aspects of CSR (participants were asked to rank aspects scoring the most prioritised aspect '1' and the least prioritised aspect '6').

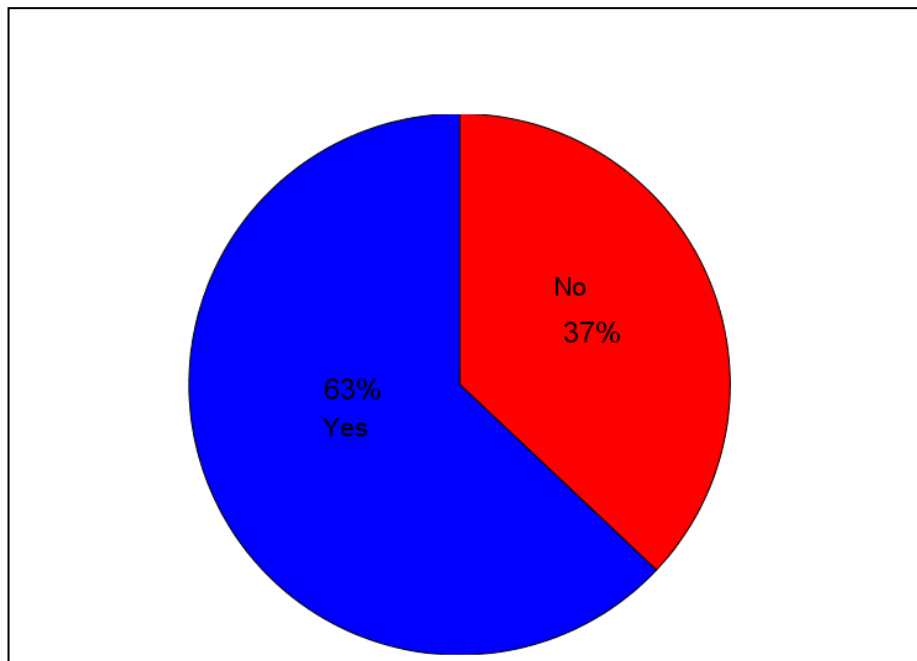


Figure 2: Percentage of companies adopting an anti-corruption policy

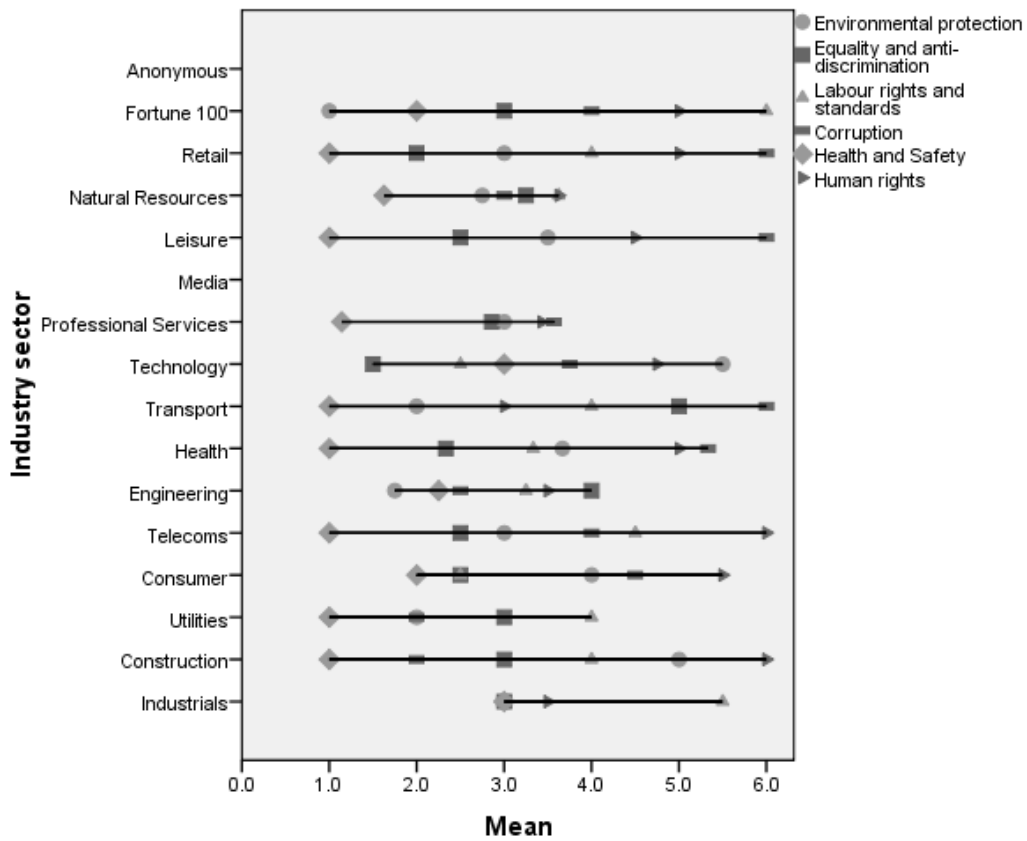


Figure 3: Average respondent scores for aspects of CSR according to industry sector (1 = most prioritised, 6 = least prioritised)

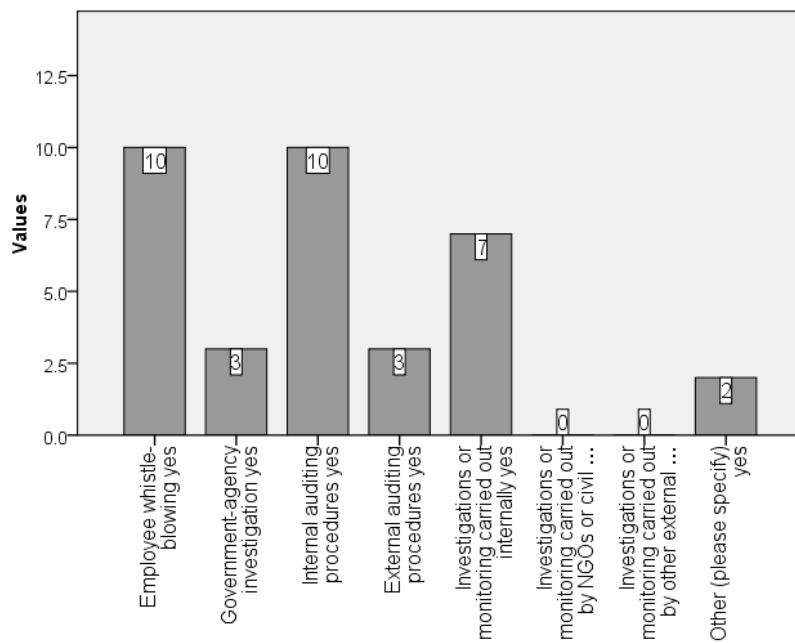


Figure 4: Means by which reported instances of corruption were detected

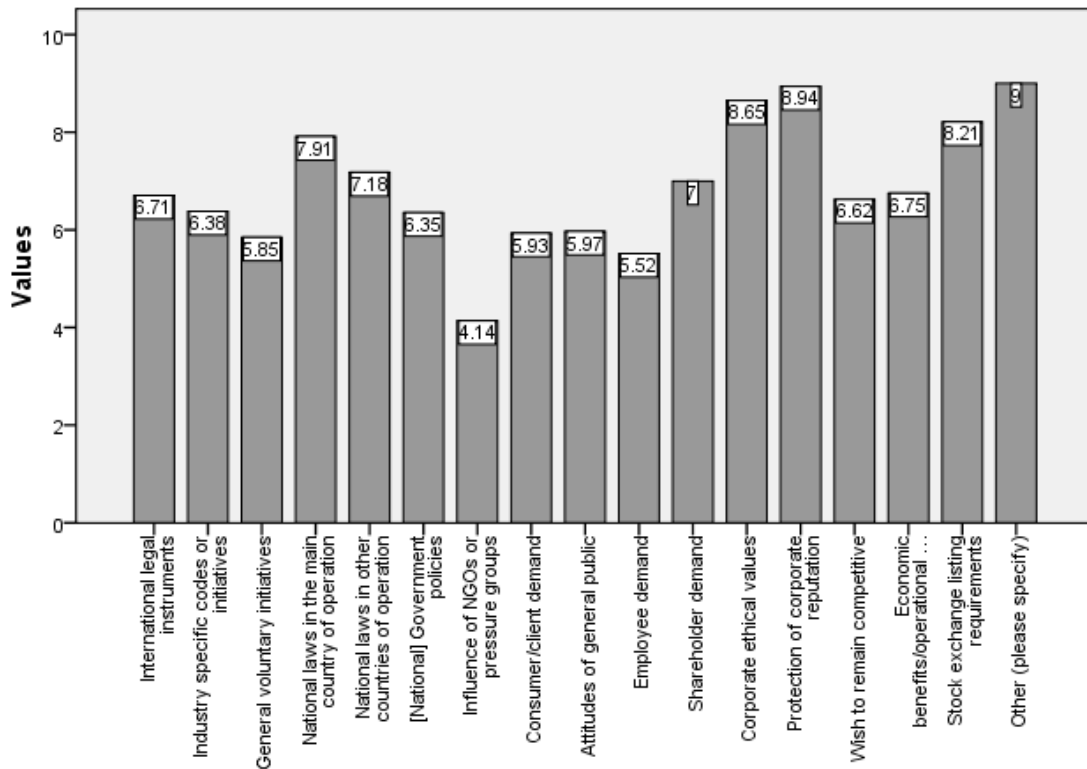


Figure 5: Perceptions of the influence of anti-corruption sources on company behaviour, based on a scale of 1 (no influence at all) – 10 (extremely influential)

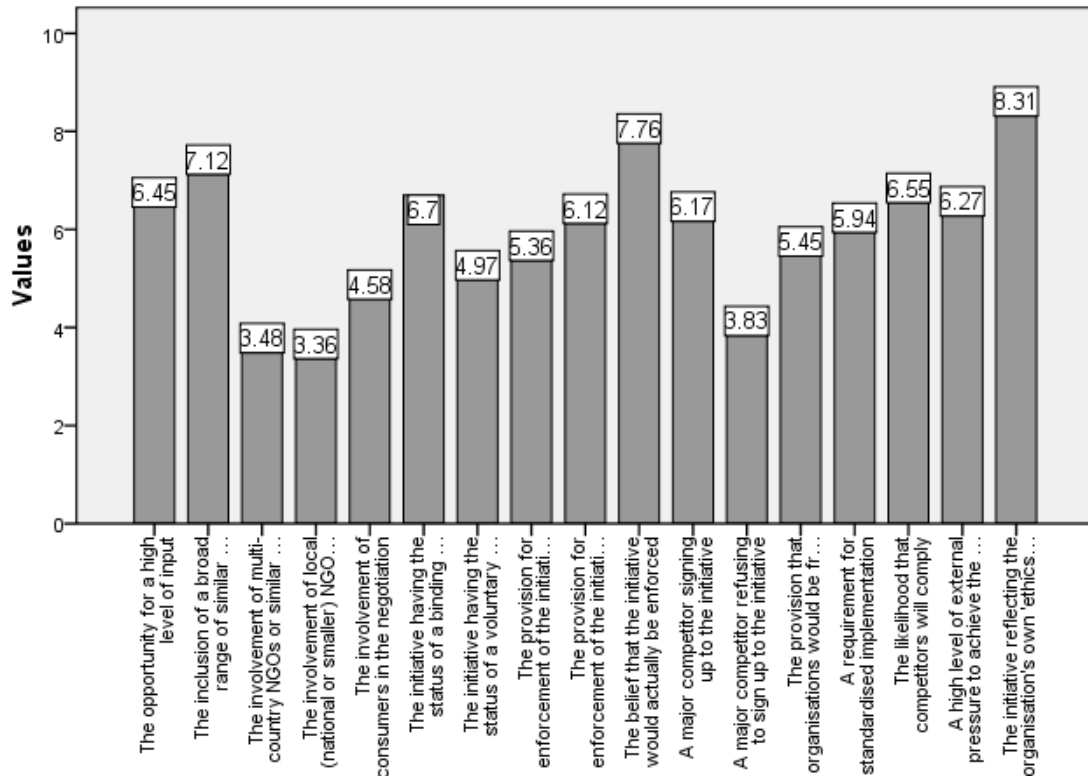


Figure 6: Extent to which factors would increase or decrease the likelihood of companies signing of new anti-corruption initiative, based on a scale of 1 (the factor would strongly decrease the likelihood of signing) – 10 (the factor would strongly increase the likelihood of signing).

Figure 7: Content of anti-corruption policies

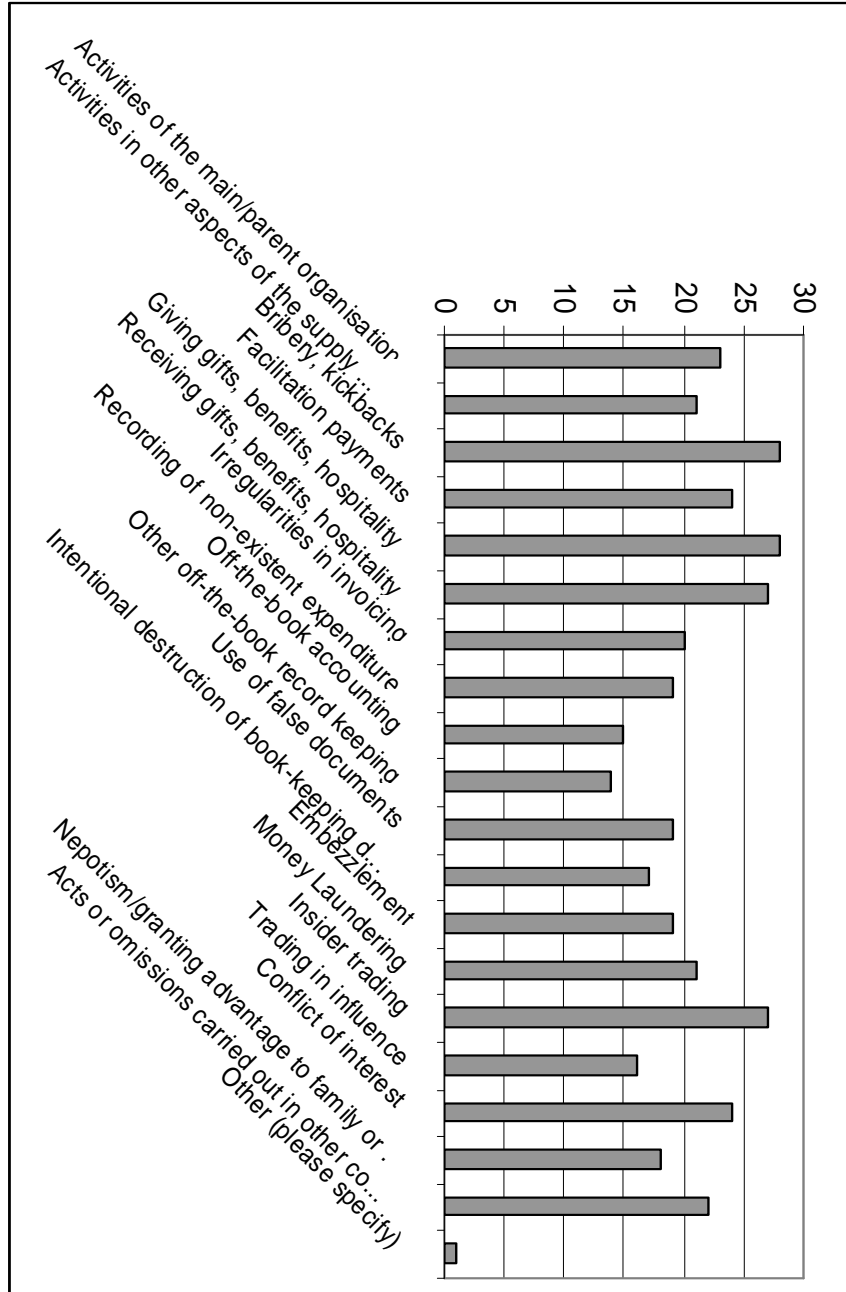
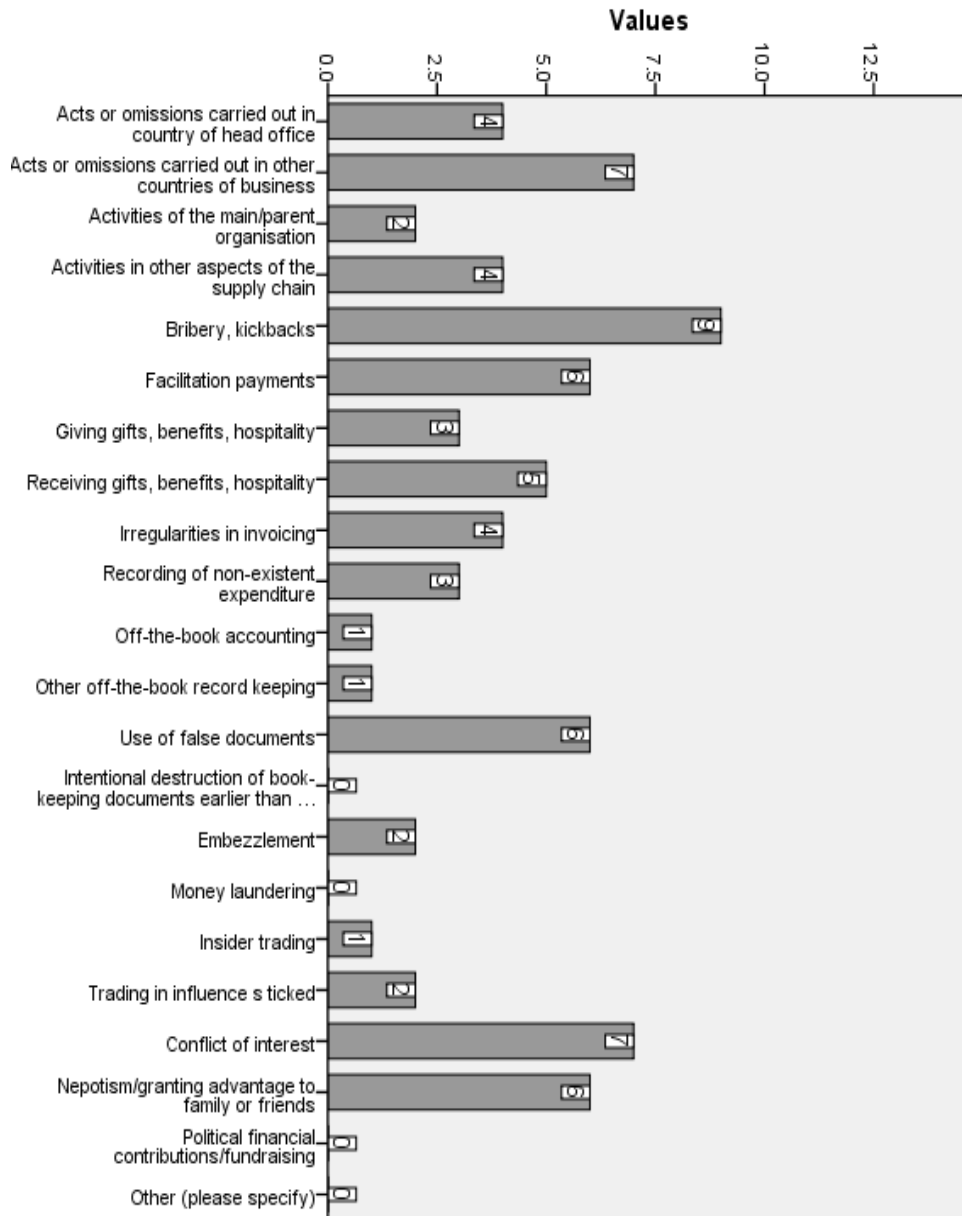


Figure 8: Details on reported instances/ allegations of corruption



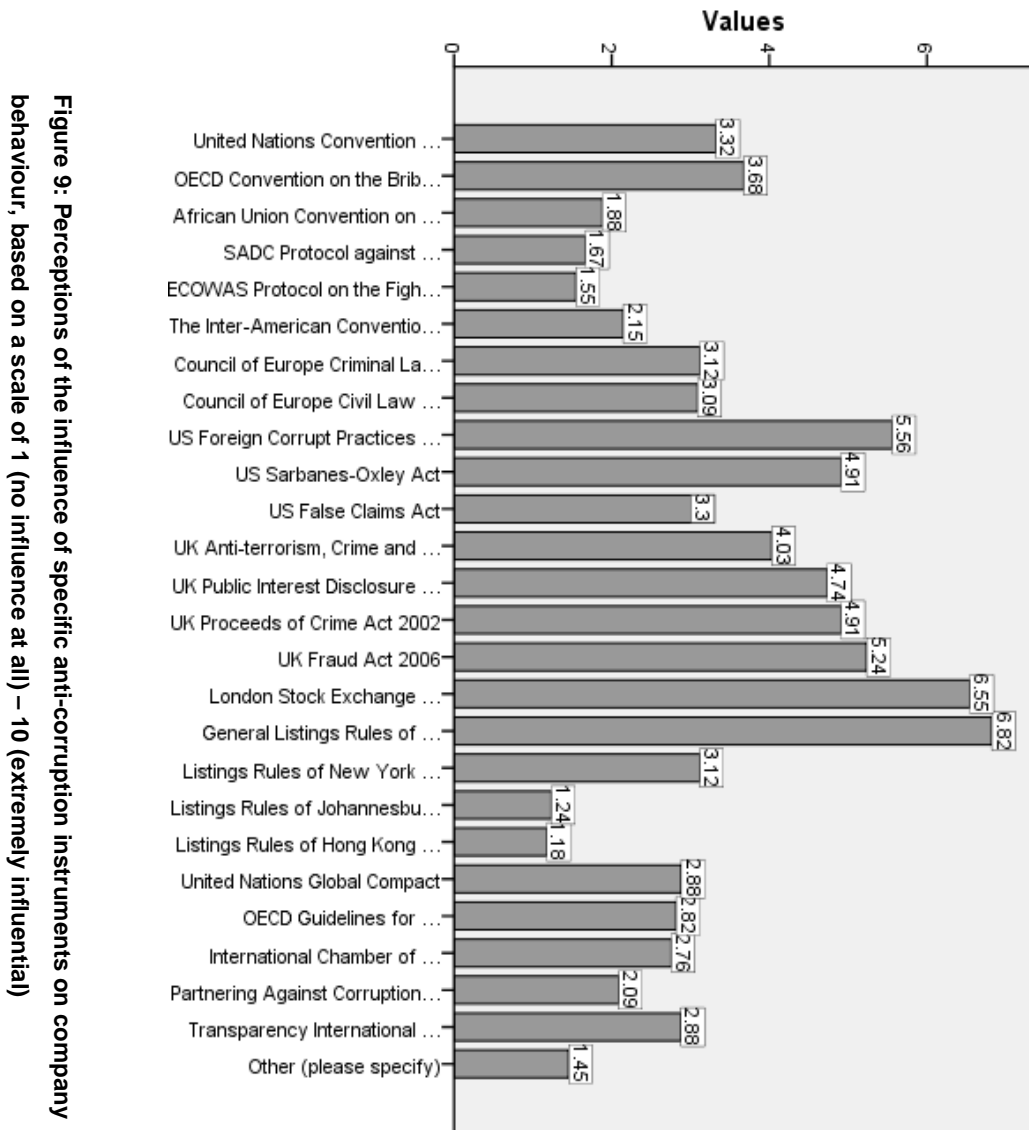


Figure 9: Perceptions of the influence of specific anti-corruption instruments on company behaviour, based on a scale of 1 (no influence at all) – 10 (extremely influential)