



The UK Bribery Act

TISA Financial Crime Conference

4 March 2011

Large bank, C-level manager, 10 Feb

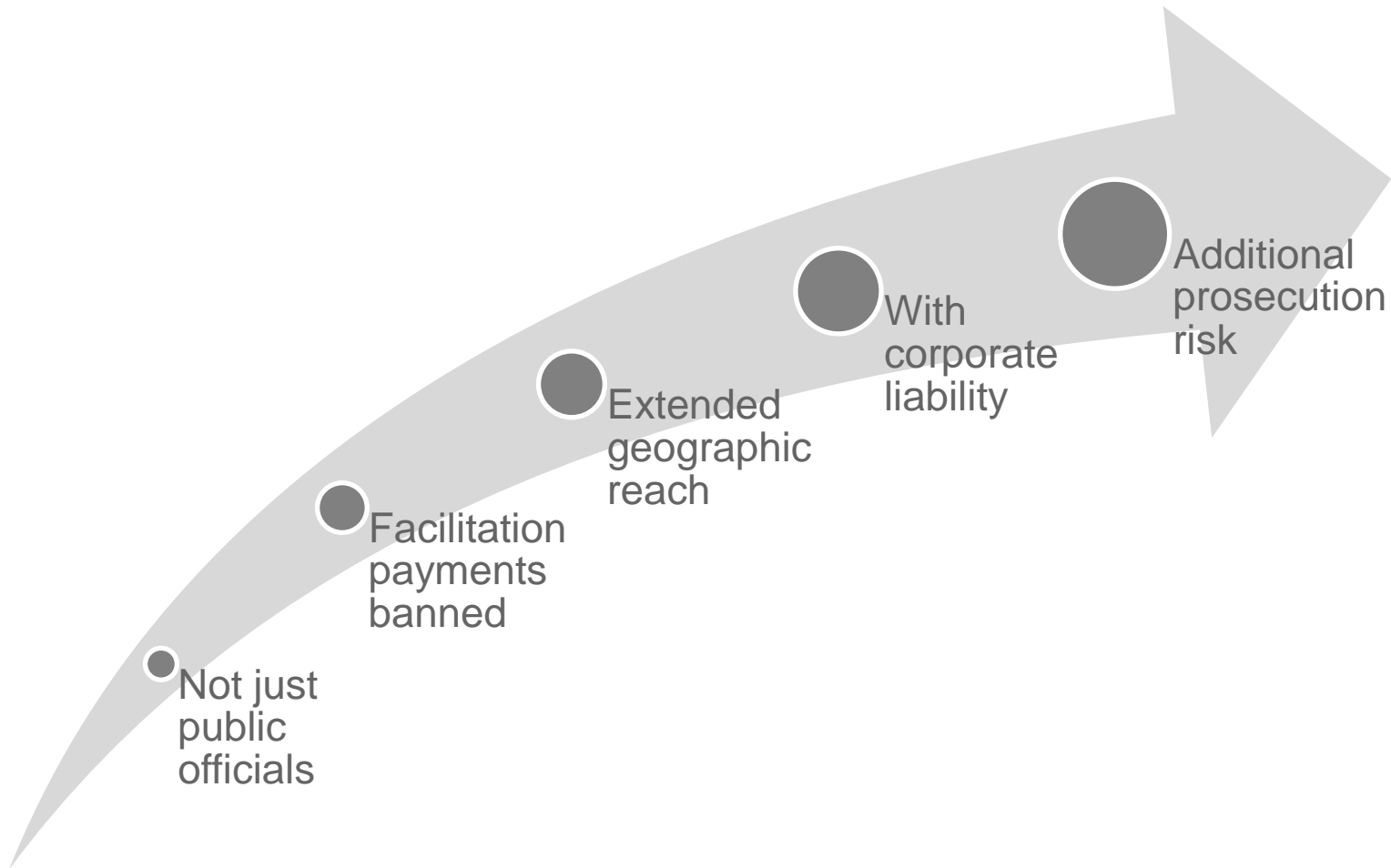
“I was personally offered a house
in the Florida Keys
as part of a global vendor proposal.

It would have been legal, but didn't feel ethical”

Ernst & Young 10th Global Fraud Survey

- ▶ From 1186 senior decision-makers in large organisations:
 - ▶ 43% of respondents indicated their company did not have specific procedures in place for dealing with government officials
 - ▶ 23% of respondents knew that someone in their company had been asked for a bribe in order to win or retain business
 - ▶ 18% of respondents said that they knew that their company had lost business to a competitor who had paid a bribe
 - ▶ 31% said corrupt practises are prevalent within the Banking and capital markets sector

Why “The FCPA on steroids?”



“Adequate Controls”

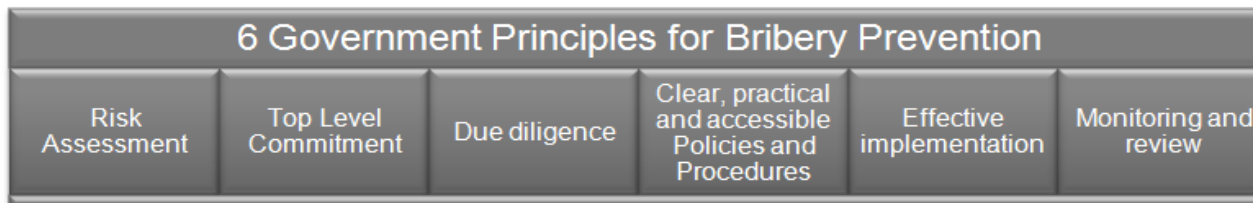
- ▶ Appropriate, common sense, sufficient, suitable, acceptable, proportional, risk based, relevant...
- ▶ Application to entertainment, gifts, hospitality, donations, vendor selection, marketing promotions, suppliers, real estate management,
- ▶ An important defence against imprisonment for up to 10 years and unlimited fines for senior managers who “should have known better.”

Concerns sound familiar?

- ▶ Similarity with 9/11 AML?
 - ▶ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
 - ▶ “Adequate” used 9 times, e.g. “identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity”
 - ▶ “Appropriate” used 17 times.
- ▶ JBSG (similar to JMLSG) required?

Talking points

- ▶ (When) will it happen?
- ▶ What do organisations need to do?
 - ▶ Assign + engage senior resources and steering / working groups
 - ▶ Formally assess the risks
 - ▶ Understand current processes throughout your global enterprise



- ▶ Understand industry practise and business gap analysis
 - ▶ Governance framework and operating model
 - ▶ Operational deployment of enhanced controls and testing
- ▶ What is the business risk of inadequate controls?
 - ▶ SFO and FSA (ECA) - resources, targets, returns

Risks due to bribery have been increasing

- ▶ 2008: Siemens **fined \$1.6b** for \$1.3b suspicious payments
- ▶ 2010: BAE fined £256m in US and £30m in UK, for allegations around a £43bn trade deal with Saudi Arabia.
 - ▶ SFO's prosecution focused on the **Companies Act 1985** offence of failing to keep reasonably accurate accounting records (in common with their previous prosecution 'successes').
- ▶ 2009: AON fined **£5.25m by FSA** for weak controls over suspicious payments abroad totalling \$7m

Questions?

Are you ready for the Act?



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