

goodcorporation

# Combating Corruption: Businesses still at risk



# Contents

<b>Forward by The Rt Hon Lord Woolf</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>GoodCorporation Framework on Bribery &amp; Corruption</b>	<b>5</b>
<b>Findings in brief</b>	<b>7</b>
<b>Detailed findings</b>	
Due diligence	11
Risk assessment	14
Communication and training	15
Government and regulatory affairs	16
Sales and marketing	18
Human resources	20
Procurement and finance	21
Compliance and monitoring	23
<b>Conclusion</b>	<b>25</b>
<b>About GoodCorporation</b>	<b>26</b>

# Foreword

Over the past decade, the corporate world has become increasingly conscious of the importance of companies adopting good business ethics. This is because not complying with acceptable standards of business ethics is likely to result in serious reputational damage and thus harm to a business.

In addition, in the UK, the Bribery Act 2010 has made it abundantly clear that not only can that harm include a liability to damages under civil law, it can constitute a breach of the criminal law as well. What is more, breaches of the Act can apply to conduct that takes place abroad as well as conduct in this country. If conduct is unethical, it is no defence to say my business is doing nothing worse than what habitually happens in a particular country as a result of the actions of others. So, it may be no defence to a breach of the Act to say, *"in Rome I only do what the Romans do"*. Thus, the standard of what is acceptable may be set nationally but also internationally. Whether or not particular behaviour complies with the required standard can be very much a matter of fine judgment. What is more, the standard of behaviour required is being set higher with the passage of time.

In this situation every business is wise to be on its guard and regularly check its standards of ethics so as to ensure that they meet the current standard needed to obtain a clean bill of health. This is where this paper will be of assistance. Its authors, GoodCorporation, have worked with public and private sector organisations since the start of the millennium to test the strength and effectiveness of these organisations' management procedures. It is based on the knowledge gained from this immense experience that GoodCorporation established its anti-corruption framework to enable companies to test the effectiveness of their anti-corruption policies and procedures. This paper is based on the assessments carried out using this framework.

But why a retired judge to write this foreword and give his opinion that this paper will be of great value to the companies it is intended to assist? Well, one of the earliest inquiries into global business ethics was conducted into BAE Systems by the Woolf Committee. I was its chairman. The Inquiry was into the ethical standards to which BAE Systems, a global company, should adhere and the extent to which it met those standards. In so far as BAE Systems had not done so, it also considered what it should do to rectify that situation. In May 2008 the Committee published its report. It made 14 recommendations that have since been accepted as being of general application.

Based on this experience, I feel confident in saying that the framework that GoodCorporation has established and the findings of this paper should be of considerable assistance to most companies seeking to protect their reputation.

**Harry Woolf**  
The Rt Hon Lord Woolf, CH  
December 2019

# Introduction

Every day brings new reports of companies falling foul of anti-bribery and corruption rules and regulations – money laundering, fraud, kickbacks and other inducements to win contracts or gain favours. Despite laws prohibiting bribery and corruption in most countries around the world, these unethical and often dangerous corporate behaviours persist and show little sign of relenting.

As a result, governments and regulators around the world are intensifying their efforts to compel organisations to mitigate these risks by implementing robust anti-bribery and corruption procedures.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) came into force in 1999. It extended the reach of domestic anti-bribery laws by obliging signatories to introduce legislation that prohibits the bribery of foreign public officials.

The UK *Bribery Act*, France's *Loi Sapin II*, Germany's *Criminal Code* and Chile's *Criminal Code* were introduced pursuant, in part, to those countries' commitment under the OECD Anti-Bribery Convention. The UK's *Bribery Act* includes a provision that makes failure to prevent bribery a corporate offence. Laws in many civil law countries, such as France's *Loi Sapin II*, prescribe the compliance requirements that companies must introduce. Recent amendments to Chile's *Criminal Code* complete its Anti-Corruption Statute by expanding criminal liability for legal entities. We can expect to see further legislation follow, not least because the EU directive on non-financial and diversity disclosure requires European companies with over 500 employees to publish details of the controls they have in place to prevent corruption.

For many years, it was the United States Department of Justice (DoJ) which largely investigated and prosecuted allegations of bribery and corruption in contravention of its *Foreign Corrupt Practices Act* (FCPA). However, regulatory authorities in other jurisdictions, initially reluctant, or with insufficient resources to do so, are now actively pursuing allegations of bribery and corruption against businesses. Deferred prosecution agreements are being used in countries such as the UK, France, Singapore and Australia.

## Businesses are under increasing pressure to ensure that robust anti-corruption controls are in place and properly embedded.

Various authorities around the world have published guidance on what is required to comply with anti-bribery and corruption (ABC) legislation. Initiatives such as Transparency International's **Business Principles for Countering Bribery**, and the World Economic Forum's **Partnering Against Corruption Initiative**, have been developed to assist and support businesses. Many organisations are investing considerable sums in ABC compliance programmes.

GoodCorporation is one of the leading practitioners in assessing, advising and measuring corporate anti-corruption programmes. In 2014, GoodCorporation produced a report entitled, *Combating Corruption: are businesses doing enough?* drawing on the dozens of anti-corruption assessments it had carried out to date. In that report, GoodCorporation looked at the ABC processes businesses had in place and identified the procedures that were proving most challenging to implement. The report also analysed why the top performers were beginning to outstrip those at the bottom in terms of ABC compliance.

With over 100 anti-corruption assessments now completed, this publication updates those findings, drawing on the additional work GoodCorporation has undertaken in this area since 2014.

# GoodCorporation Framework on Bribery & Corruption

GoodCorporation has worked with public and private sector organisations since the start of the millennium to test the strength and effectiveness of their management procedures. Anti-bribery and corruption procedures are tested using GoodCorporation's Framework on Bribery & Corruption.

The Framework contains a list of 73 business practices that companies should follow to reduce the risk of corruption within their organisations. It is based on best practice, drawing on, among other things, the six principles outlined in the UK Ministry of Justice's guidance on the Bribery Act, the FCPA guidance published by the US DoJ, and GoodCorporation's own experience. We have conducted over 100 ABC assessments, across the globe, for multinational organisations operating in a broad cross-section of industries, including oil and gas, telecommunications, defence, manufacturing and pharmaceuticals.

The Framework on Bribery & Corruption is the cornerstone of GoodCorporation's work in this area. Assessment against this Framework enables a company to test the effectiveness of its anti-corruption policies and procedures.

## GoodCorporation Anti-Bribery & Corruption Assessment Methodology

The GoodCorporation assessment methodology is well established and allows organisations to evaluate whether they have adequate ABC procedures in place.

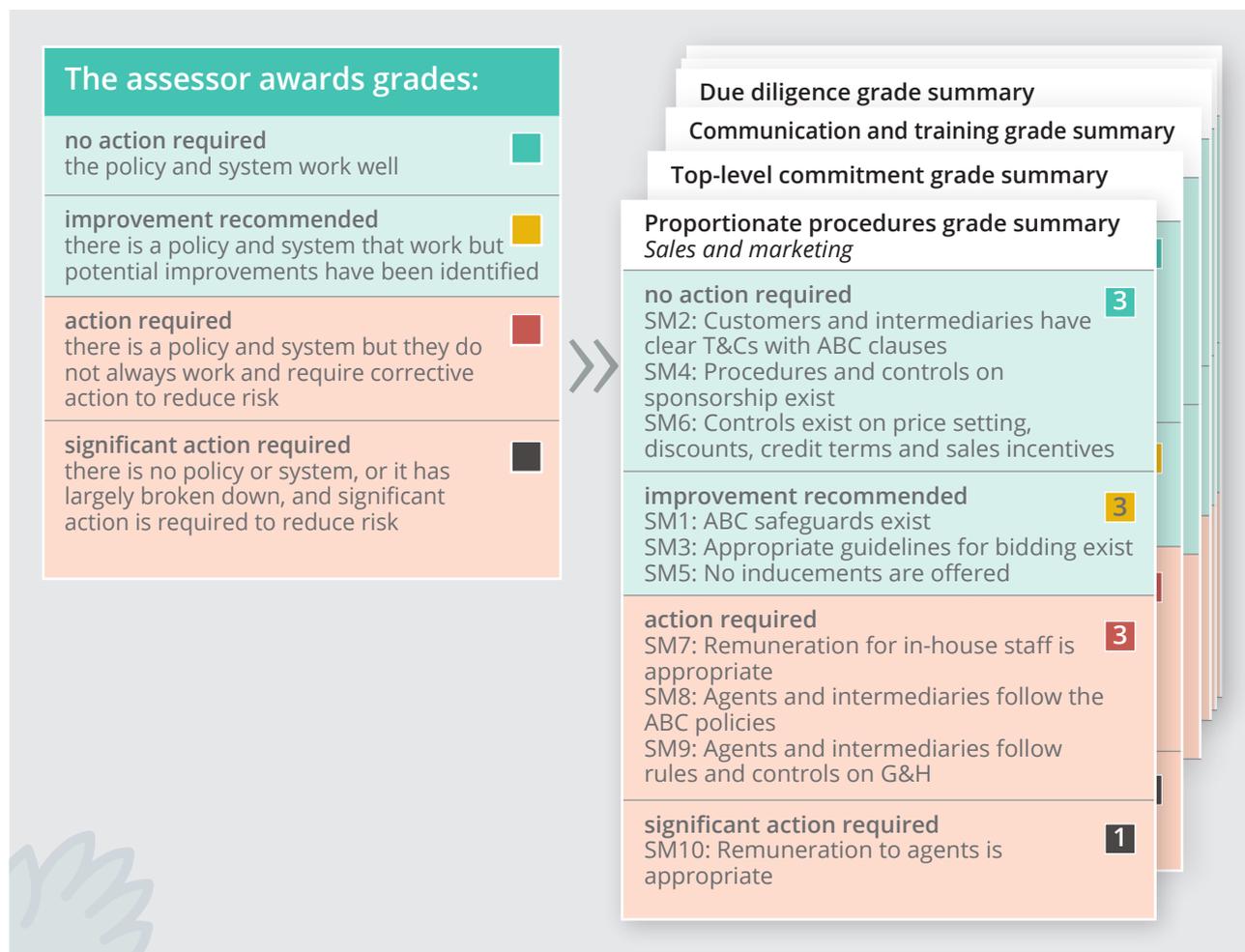
GoodCorporation awards a grade for each business practice in the Framework on a four-point scale, which generates a scoreboard of performance and clear guidance on priorities for improvement. The methodology for scoring using our ABC Framework is set out below:

The diagram illustrates the assessment methodology, divided into two main sections: 'The assessor checks' and 'The assessor awards grades'. The 'checks' section lists four criteria, each with a checkmark icon. The 'grades' section lists four levels of performance, each with a colored square icon. A legend at the bottom indicates that the top two grades (green and yellow) represent 'Adequate procedures', while the bottom two (red and black) represent 'Inadequate procedures'. A double arrow icon points from the 'Adequate procedures' box to the 'Inadequate procedures' box.

The assessor checks:	The assessor awards grades:
that a policy exists policy documents are reviewed ✓	no action required the policy and system work well (Green square)
that a system is in place to implement that policy systems are examined ✓	improvement recommended there is a policy and system that work but potential improvements have been identified (Yellow square)
that records exist which show that the system works in practice a sample of records is reviewed ✓	action required there is a policy and system but they do not always work and require corrective action to reduce risk (Red square)
that stakeholders agree that the system works in practice interviews are held with employees, customers, suppliers, contractors, public sector officials and other relevant stakeholders ✓	significant action required there is no policy or system, or it has largely broken down, and significant action is required to reduce risk (Black square)

Adequate procedures      Inadequate procedures

Where an action or significant action is required, GoodCorporation defines this business practice as 'inadequate'. Where there is no action required, or simply an improvement recommended, this business practice is considered to be 'adequate'. In this way, all 73 business practices in the Framework are graded and can be used to provide an overall view of the adequacy, and inadequacy, of an organisation's ABC procedures.



Since 2011, GoodCorporation has tested more than 7,000 business practices in over 100 ABC assessments. From these assessments, GoodCorporation is able to benchmark organisations on the robustness of their ABC controls, and to identify which anti-corruption procedures are proving most difficult to implement.

## About the data

The data that makes up the basis of this white paper derives from GoodCorporation's ABC Benchmark, which contains the results of the more than 100 anti-bribery and corruption assessments that GoodCorporation has conducted to date.

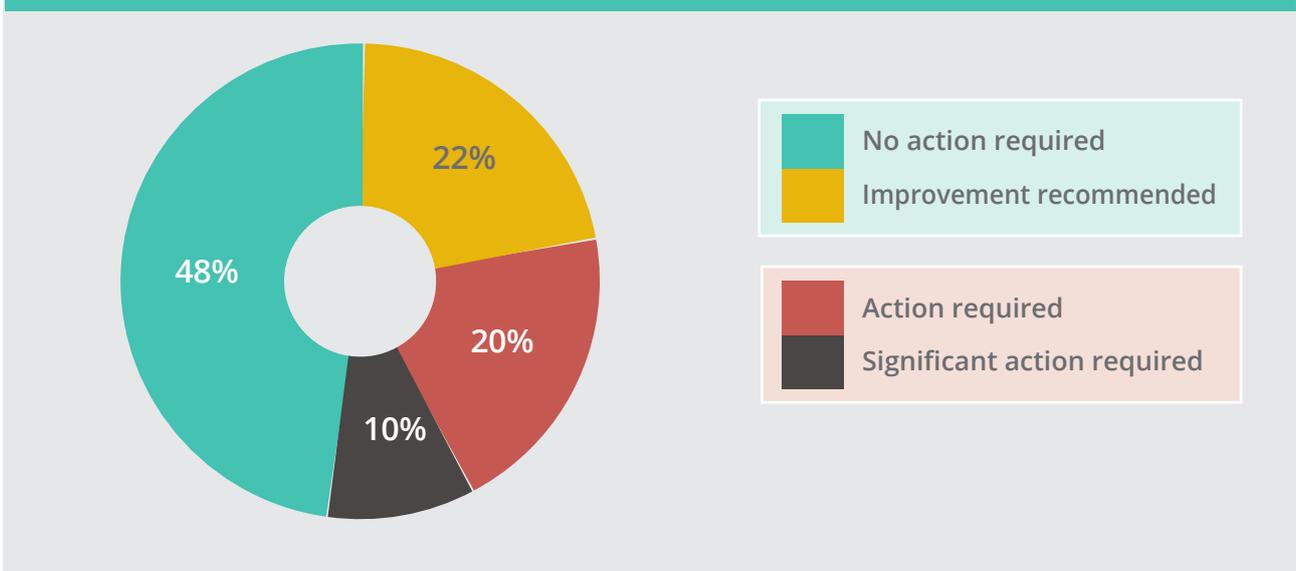
The companies included are mostly large international organisations seeking to test the effectiveness of the measures they have in place to prevent corruption. Many of these companies have faced allegations of corruption and are striving to establish robust ABC procedures in response.

For the purposes of this report, in those cases where an organisation within the Benchmark has been reassessed over time, only the most recent assessment results have been incorporated into the data set in order to prevent inappropriate comparisons. With nearly one quarter of the assessments in the GoodCorporation ABC Benchmark being reassessments, this 2019 analysis is based on a sample of 72 sets of assessment data.

# Findings in brief

GoodCorporation finds that 70% of the ABC procedures assessed across all organisations were considered adequate [Figure 1], which is a promising result. Almost half of the business practices assessed by GoodCorporation were found to require no action, and another 22% were deemed to be adequate, but with improvements recommended.

Figure 1 GoodCorporation ABC Benchmark



However, 30% of ABC business practices were found to be inadequate [Figure 1], requiring some level of action to bring them up to expected standards. This is particularly worrying when we examine which business practices are most problematic (see Figure 2 overleaf).

## Two of the most important ABC business practices are among the least adequate in the GoodCorporation sample of companies: due diligence and risk assessment.

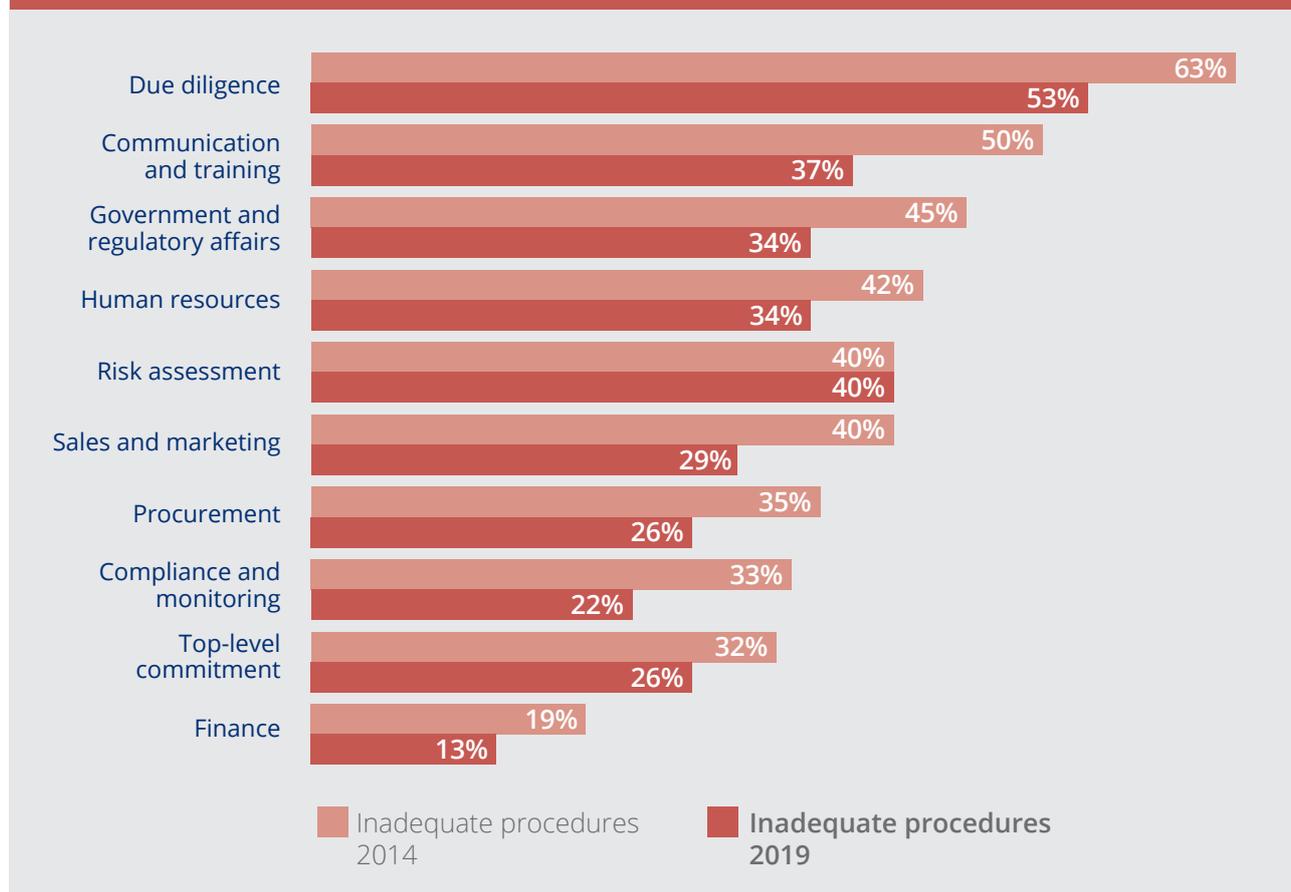
The data shows that 53% of due diligence procedures were found to be inadequate [Figure 2]. That means more than half of the sample of companies are not sufficiently managing the risk of third parties engaging in illegal or unethical behavior on their behalf. Similarly, 40% of risk assessment procedures were found not to be adequate in the analysis. Any organisation which is not systematically identifying the bribery and corruption risks it may be exposed to in its business activities cannot be confident its ABC programme is fully managing those risks.

When compared to the 2014 results, risk assessment remains unchanged. While due diligence has improved significantly, the percentage of inadequate procedures remains disappointingly high. Both of these practice areas can be challenging for companies, but they are absolutely essential for ABC compliance.

In other areas, the analysis shows there have been improvements since the 2014 report, with the number of ABC procedures deemed to be inadequate dropping in several areas.

In sales and marketing, the percentage of inadequate procedures dropped from 40% in 2014 to 29% in 2019. There were also reductions in inadequate procedures in compliance and monitoring (33% to 22%), government and regulatory affairs (45% to 34%) and communication and training (50% to 37%). These improvements reflect that many companies have invested in e-learning and ABC training programmes. It also may be the case that compliance budgets have risen and teams are now better resourced.

**Figure 2 Inadequate procedures 2014 vs 2019**

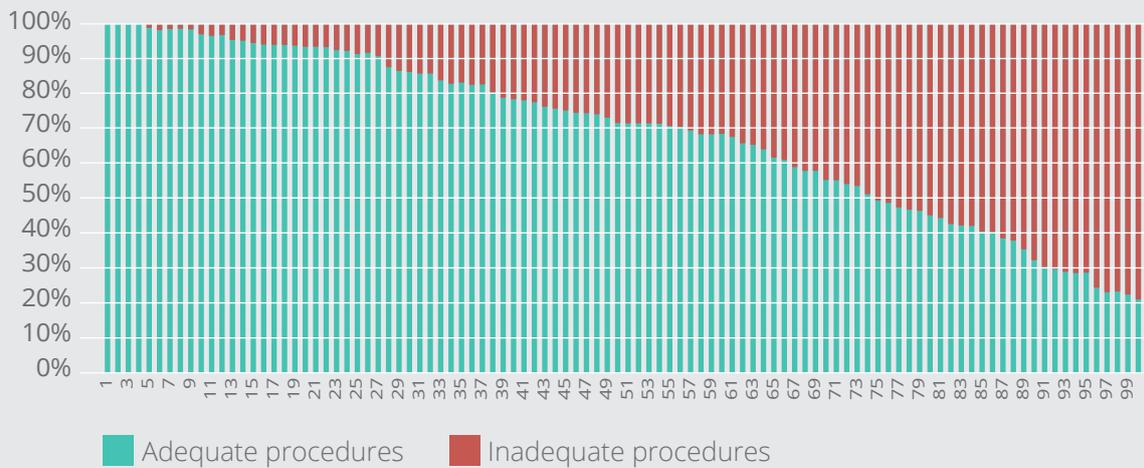


Top-level commitment also improved slightly from 32% inadequate in 2014 to 26% in 2019, and there have been improvements in procurement (35% to 26%), which may reflect the increasing adoption of more sophisticated procurement processes which reduce the need for human intervention and therefore reduce corruption risks. More limited improvement can be seen in finance where 19% of procedures were assessed to be inadequate in 2014 dropping to 13% in 2019. Finance remains the practice area with the least inadequate procedures, with many of the controls present to manage finances day-to-day also providing good defence against ABC risks.

Figure 3 shows how each of the 100 assessments conducted by GoodCorporation compares in the ABC Benchmark. The Benchmark reveals that the top few companies in the sample have adequate procedures in place in all 73 business practice areas in the Framework. At the bottom end, there are companies that have as few as 20% of the necessary practices in place.

The GoodCorporation ABC Benchmark includes multiple data for those companies where more than one assessment has taken place. In some cases, top performers in the ABC Benchmark have themselves been subject to sanctions, such as monitorships, resulting from a prior failing in ABC procedures. This may then have served as a catalyst for making significant improvements in business practices, thus, lifting their scores. The Benchmark is often used by organisations to track changes in their performance from assessment to assessment.

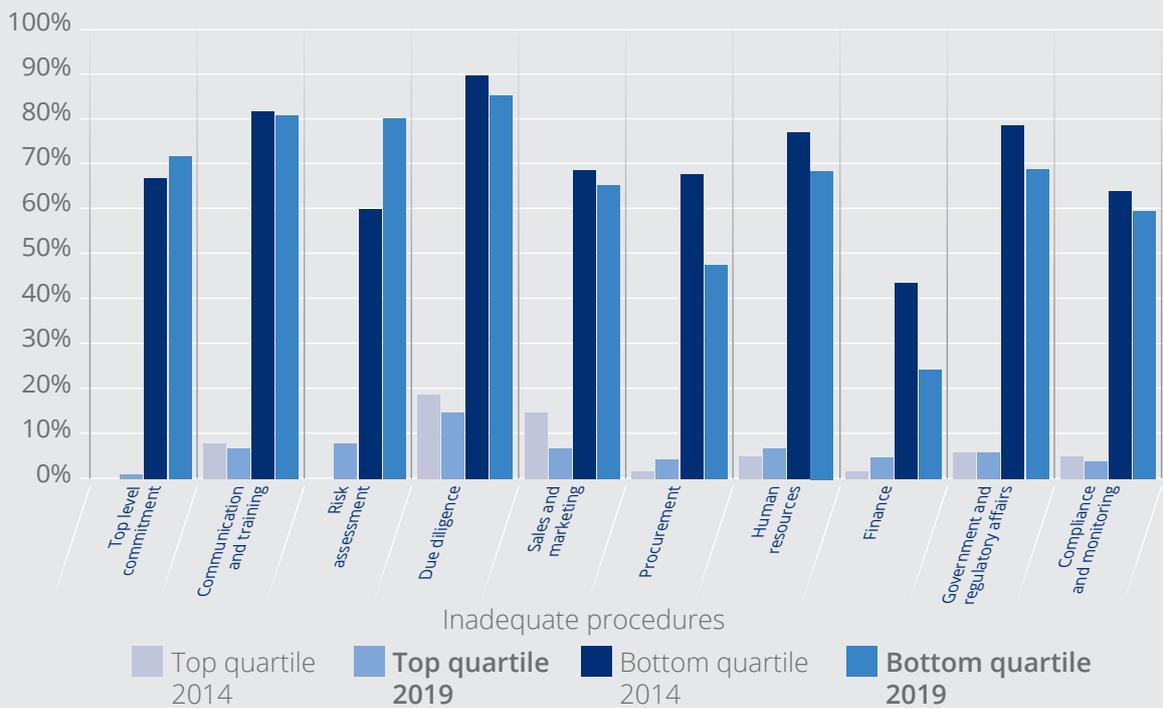
**Figure 3 GoodCorporation ABC Benchmark of procedures by entity**



It is worth noting that while a monitorship may have resulted in subsequent improvements in ABC systems and processes for a company, the cost of a monitorship is high, including loss of management control, material expense and reputational damage. Proactive efforts to address shortcomings before a company reaches crisis point is a much more constructive approach to ABC management.

GoodCorporation has also divided the sample of companies into four equal quartiles according to average assessment grade. Figure 4 compares the percentage of inadequate procedures in the top and bottom quartiles, revealing a marked disparity between the two in many critical areas of ABC compliance. For example, in the area of due diligence, 85% (90% in 2014) of the companies in the bottom quartile have inadequate ABC procedures, compared to 15% (19% in 2014) in the top quartile.

**Figure 4 Inadequate procedures - top and bottom quartiles 2014 vs 2019**



Similarly, in the top quartile companies, senior managers demonstrate an exceptional top-level commitment to strong controls. In the bottom quartile, by contrast, 72% of companies lack a top-level commitment, perhaps in the absence of a specific ABC policy or no high-level ownership of ABC controls. In cases of the most serious corruption seen by GoodCorporation, the collusion of top management in the corruption is often a key factor.

## For organisations wanting to fight corruption, there is no substitute for the most senior people in the organisation championing ABC personally and actively.

The 2019 cohort includes a number of companies from less developed economies which have undertaken ABC activities in recent years in response to calls from the financial community to ensure effective risk mitigation in association with their funding. Such companies are starting out on the journey of integrity compliance from a position of low or no historical commitment to such compliance activities. We should expect to see these companies move to the right of the ABC Benchmark as they build and strengthen their ABC programmes.

It could be argued that the disparity between the good and weak performers is not so much attributed to the risks inherent to the business, but rather, the priority and resources given to implementing an effective ABC programme.

# Detailed findings

## Due diligence

Due diligence of third parties remains the least adequate procedure of the practices GoodCorporation assessed. It is, indeed, one of the most difficult areas to implement.

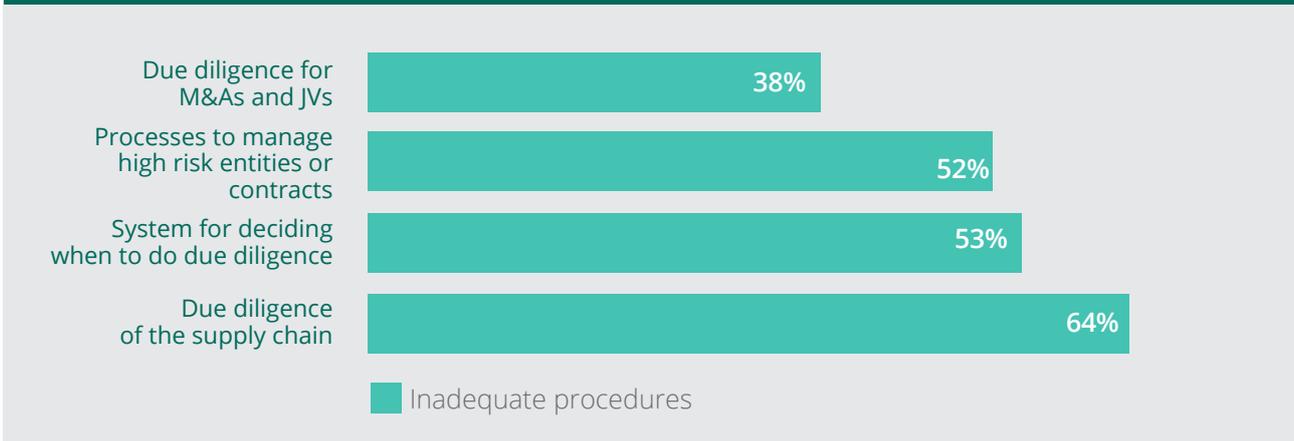
The prosecution landscape has changed significantly over the last few years. Organisations that may once have been inclined to turn a blind eye to the conduct of third parties are now forced to take action. The laws make it abundantly clear that organisations cannot 'outsource' their bribery to third parties and this requires careful due diligence.

The UK's *Bribery Act* and France's *Loi Sapin II*, as well as prosecutorial expectations when enforcing the US FCPA, mean companies must demonstrate thorough and effective due diligence procedures. In its guidance on the UK Bribery Act, the Ministry of Justice places considerable importance on due diligence. Similarly, the US authorities and the French anti-corruption agency emphasise the importance of due diligence in their guidance.

The DoJ bribery and corruption prosecutions to date reveal that most involve the alleged payment of bribes by third parties. In many cases, organisations could have prevented this by undertaking due diligence or improving the nature of the due diligence conducted. Due diligence is critical to a company identifying and managing ABC risks associated with its counter-parties.

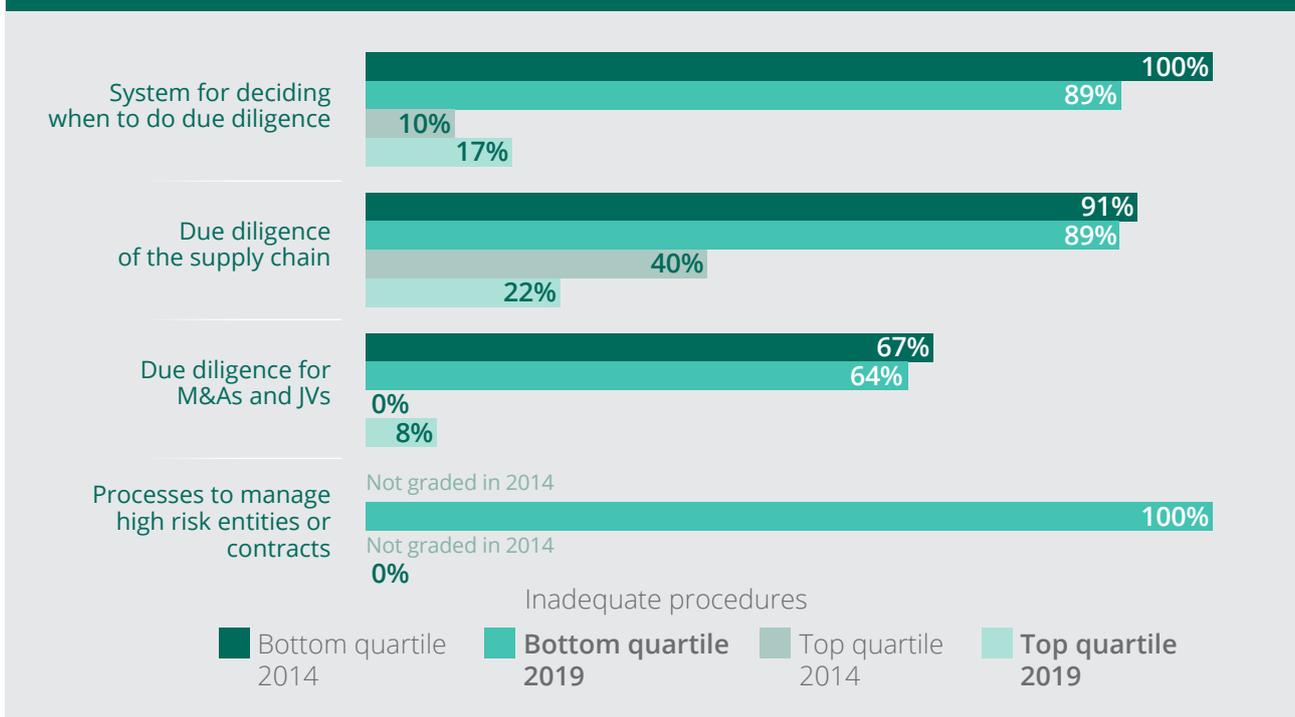
Looking at specific areas of due diligence more closely [Figure 5], GoodCorporation found that in over half of the assessments conducted, there was no clear process for deciding which third parties need to undergo due diligence checks. And, in nearly two thirds of the assessments, there were insufficient procedures for examining the ethical practices of agents, intermediaries, suppliers and distributors. For those companies in the bottom quartiles, the position was even worse [Figure 6].

Figure 5 Due diligence - inadequate procedures



Most of the companies in the bottom quartile (89%) had inadequate systems in place for examining the ethical practices of existing suppliers or for deciding when due diligence was required. This places these companies in a vulnerable position and could severely weaken their adequate procedures defence should these entities face prosecution.

**Figure 6 Due diligence inadequate procedures - top and bottom quartiles 2014 vs 2019**



As prosecutions of Rolls-Royce, Vantage Drilling and Petrofac have shown, businesses are more at risk from corruption by third parties and intermediaries than in any other area of their business. More recently, we have also seen prosecutors turning their sights on those individuals within organisations who have facilitated corruption using third parties.

Developing a process to get this challenging area of anti-corruption due diligence right is clearly vital. Even those companies in the top quartile struggle to implement some aspects of due diligence, with more than 20% (down from 40% in 2014) still failing to implement appropriate due diligence on third parties and suppliers.

With many multinationals having thousands of suppliers, it is not surprising that this proves to be difficult.

All too often, GoodCorporation has observed companies attempting to conduct due diligence across too many third parties and suppliers. The results from such an approach are only ever superficial. The best strategy is to begin with a careful risk-based assessment of third parties to identify those that pose a real threat to the organisation. This more targeted approach ensures that ABC due diligence is proportionate and manageable. When organisations try to ‘boil the ocean’, they often end up missing or ignoring obvious red flags because they are overwhelmed with data.

Carefully designed decision trees can be invaluable, but few companies are using them effectively to risk assess suppliers and gauge the level of due diligence that is proportionate and reasonable. Key third parties to assess include sales agents and intermediaries; joint venture partners; organisations or individuals obtaining permits on a company's behalf; contractors, and those organisations that help in any way with the selection of suppliers.

While general screening criteria can be applied – such as the sample Due Diligence Checklist below – this should ideally be tailored to the company to ensure that appropriate due diligence is conducted on the organisations that pose the greatest risk.

## Due Diligence Checklist

### Stage 1

Third parties are screened against a basic checklist to determine whether due diligence is needed

?

Was the third party recommended by the client/public official or will it be single sourced?

?

Do the third party's services include helping to obtain, promote or expedite sales?

?

Do the third party's services include freight forwarding or customs clearance for the company or might they use sub-agents for these tasks?

Companies also need to recognise that an initial screening is just the first stage.

The use of due diligence online screening tools is becoming increasingly widespread. However, the danger is that companies using these tools think that a screening report, even if comes back blank or with little information, is the end of the job. Worse still, a surprisingly large number of organisations use online screening tools to identify red flags, and then fail to follow these up.

The results need to be analysed and actions taken. ABC procedures need to be built into contracts and enforced as part of a supplier contract management plan (CMP). The practices of those suppliers identified as high-risk need to be scrutinised. The best companies have a menu of options which can be applied, depending on the type of red flag identified. These might be new clauses to be included in a supplier's contract, or specific mitigation actions such as monitoring visits, annual certification, ethical KPIs, communication of speak-up lines, audits, or support to develop specific policies and training.

As mentioned previously, due diligence is critical to a company's efforts to identify and manage ABC risks associated with its counter-parties. Yet, our data shows this area is worryingly overlooked.

# Risk assessment

**As with due diligence, and relevant to it, risk assessment is an area with which organisations struggle.**

In the GoodCorporation sample, 40% of the risk assessment procedures evaluated were found to be inadequate. There has, in fact, been no improvement in the data on risk assessment procedures since 2014: a concerning finding.

Again, the gap between the top and the bottom quartiles of companies is significant, with only 8% of those in the top quartile having inadequate risk assessment systems compared to 81% in the bottom quartile [Figure 4]. It is worth noting that in 2014, the risk assessment procedures were found to be adequate in all upper quartile entities which was no longer the case in 2019. As regular risk assessments are regarded as fundamental by regulatory and investigative authorities, this finding is of concern for entities that may otherwise take comfort from being in the upper quartile of the benchmark.

**The purpose of conducting risk assessments is to systematically identify the risks to which a company might be exposed in relation to particular activities; in this case bribery and/or corruption. Any company that fails to conduct a robust and specific bribery risk assessment cannot be confident its ABC programmes are addressing its risks sufficiently.**

Consequently, organisations that have not fully assessed their corruption risk not only remain vulnerable to corruption within their organisation, but are also limited in their ability to demonstrate an adequate procedures or effective compliance programme defence.

One reason this is so crucial is that an informed risk assessment will ensure that organisations take a proportionate approach to developing their ABC systems. A robust risk assessment will enable organisations to develop controls that are appropriate to their size, structure, location and the nature of their activities. This approach ensures that management time and resources are not unnecessarily diverted. It also allows companies to prioritise the most important risks so they can, in turn, take steps to address those areas which most urgently require mitigation.

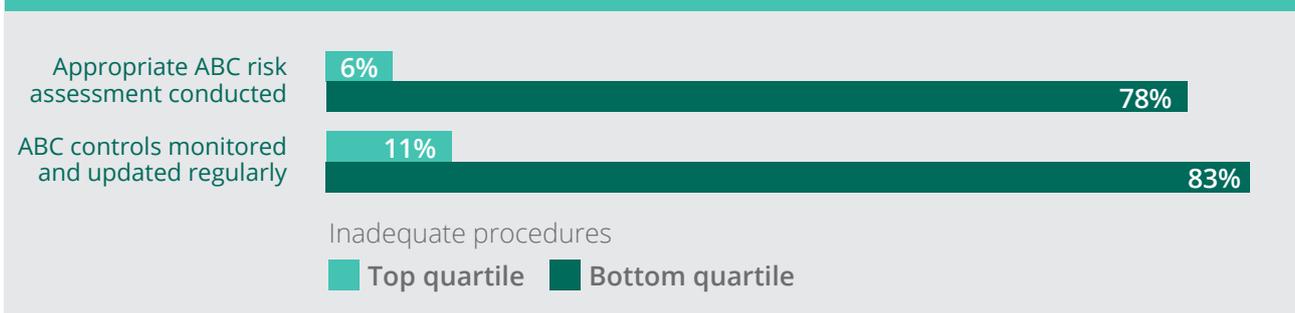
One of the key reasons that companies are not performing ABC risk assessments is because of the confusion about evaluating risks of corruption compared to evaluating the risks of not having an effective ABC programme overall. Because the laws are increasingly designed to ensure that an effective ABC programme is in place, some companies are undertaking an evaluation of the overall programme and describing this as a 'risk assessment'. While this exercise enables an organisation to assess one risk, namely the adequacy or otherwise of its anti-corruption procedures, it fails to address the specific corruption risks they may actually face.

A detailed analysis of inherent ABC risks is needed in order to inform the structure of the compliance programme.

More than three quarters of companies in the bottom quartile of our data set have not conducted an appropriate risk assessment. Likewise, 83% of companies in the bottom quartile are not regularly monitoring and reviewing their ABC controls [Figure 7].

Often risk assessments are undermined by being too high-level or generic. A detailed risk assessment will focus on the granular details of corruption risks. Key areas include selling through intermediaries and operating in sectors and countries where bribery and demands for facilitation payments to obtain licences and permits are commonplace. Other risks include a lack of transparent payment processes, and sales incentives that are too heavily contingent on sales success, and therefore risk encouraging inducement payments.

**Figure 7 Risk assessment - inadequate procedures top vs bottom quartile**



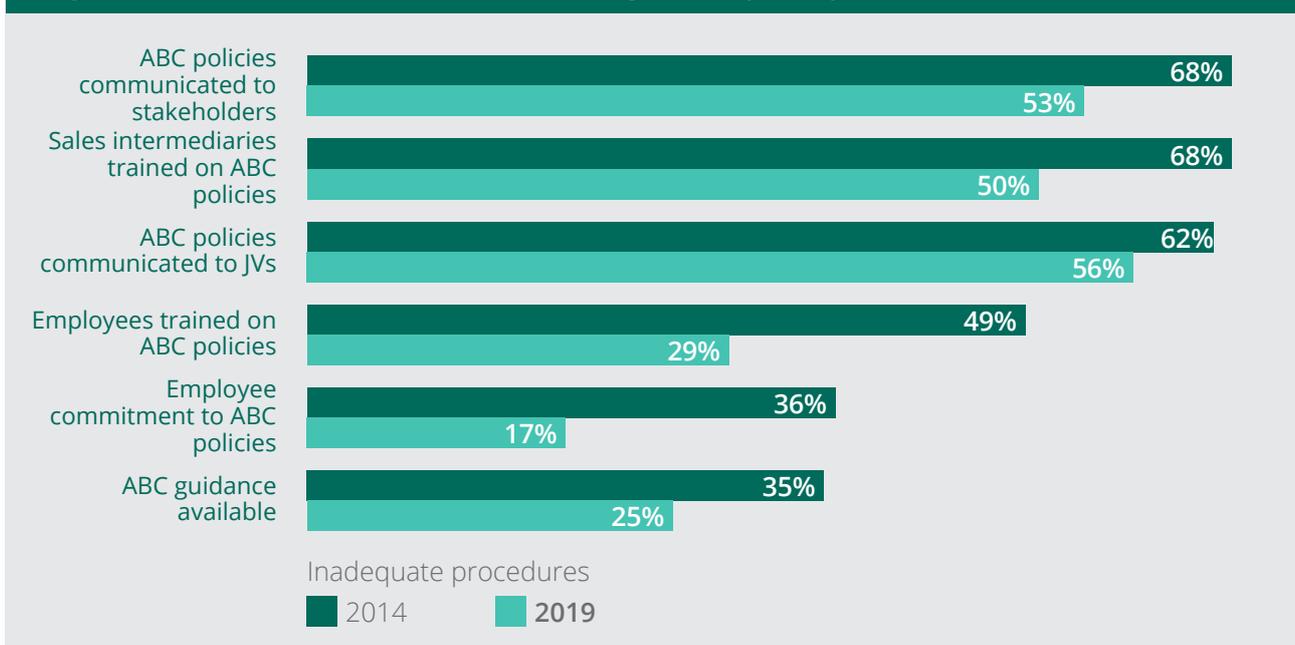
Top-performing companies recognise that knowing what is happening on the ground is vital. As authorities have noted, regularly monitoring and reviewing procedures to prevent bribery should be one of the core elements of any anti-corruption programme. The risks that any organisation faces are likely to change in nature and scale over the years. Consequently, the procedures required to mitigate risks should be regularly tested and reviewed, using either internal or external review mechanisms.

## Communication & training

Organisations scored relatively high on effectively training employees on ABC policies. This has improved considerably since 2014 [Figure 8]. There are, however, areas that require further strengthening, especially with regard to communication with third parties.

Over half of the organisations assessed had inadequate procedures in place around the communication of ABC expectations to sales intermediaries, external stakeholders and joint venture partners, albeit an improvement on 2014. These procedures should be relatively easy to implement, as they are something over which companies have direct control.

**Figure 8 Communications and training inadequate procedures - 2014 vs 2019**



One option for companies is to look at the approach they have taken for internal communication and apply it externally. If e-learning has been made available to the organisation's own employees, it may be sensible to extend this to the employees of high-risk suppliers that are too small to run their own internal training sessions. It may also be helpful to include high-risk vendors or third parties as a means of stressing the importance of the company's anti-corruption commitment and to highlight expectations. In high-risk situations, face-to-face training is recommended. Such sessions also provide a way of assessing a third party's understanding of the risks and how they might be mitigated.

Some lawyers argue that to provide training to suppliers is to take on too much responsibility for the actions of third parties.

**GoodCorporation's view is pragmatic: If the organisation is serious about reducing corruption risks, then training the highest risk suppliers is a clear demonstration of commitment and, the evidence suggests, a genuinely high-impact way of reducing risk.**

Implementing effective communication and training on ABC policies and procedures is straightforward. A formal statement outlining a company's commitment to carry out its business fairly, honestly and openly, with zero tolerance towards bribery, should be available externally as well as internally and made clear during any contractual negotiations with third parties.

Communications with third parties must always be backed up with practical measures. For instance, there should be contractual provisions relating to bribery prevention with the consequences for breaching such provisions made explicit and properly enforced. Details of any confidential reporting lines and training on best practice should also be communicated clearly. The business benefits of rejecting bribery, such as opening up new customer and market opportunities, should also be conveyed as part of the communications undertaken with business partners, suppliers and intermediaries.

We have seen many companies lose contracts because of a failure to prevent corruption, demonstrating that this is more than just a legal compliance issue. The business case for addressing ABC risks effectively should be integral to the messages being communicated to third parties. Such messages are often highlighted effectively via collective action, which is a means by which organisations can act together to strengthen ethical business practices with a focus on the prevention of corruption in particular countries or sectors.

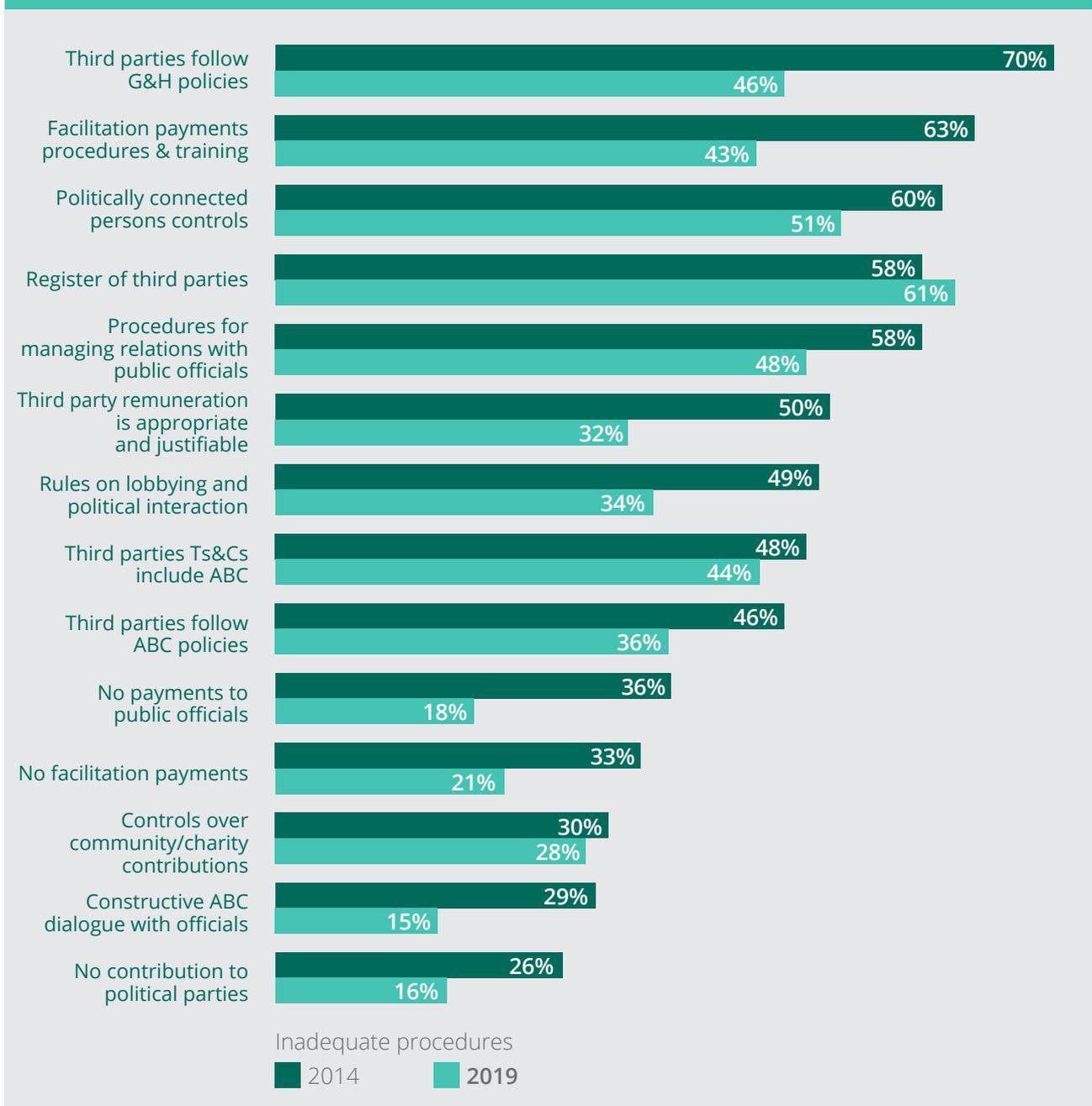
## Government & regulatory affairs

**Anti-corruption controls in government and regulatory affairs continue to raise concerns [Figure 9]; however, GoodCorporation has noted improvements in several areas.**

There has been a 24-point drop in the percentage of inadequate procedures governing the way third parties interact with officials on an organisation's behalf when it comes to gifts and hospitality policies, dropping from 70% inadequate in 2014 to 46% in 2019. There was also a significant decrease in the number of inadequate procedures to prevent facilitation payments backed up by training, down from 63% in 2014 to 43% in 2019.

Progress has also been seen in processes to ensure remuneration to third parties interacting with public officials is appropriate and justifiable, which fell from 50% in 2014 to 32% in 2019, and in developing and implementing clear rules on lobbying and political interaction (49% to 34%) and prohibiting payments to public officials (36% to 18%). While the downward trajectory of these figures is good; however, many of these figures are still too high.

**Figure 9 Government affairs inadequate procedures - 2014 vs 2019**



Government and regulatory affairs are high-risk areas for a number of reasons. In many parts of the world, contracts and permits to operate are not awarded according to clear cut and independently auditable criteria. Agents with local knowledge and experience might be seen as the only practical way to approach these situations. However, depending on the country and sector, these interactions significantly increase the risk of corruption.

The only practice area in this section where performance worsened since 2014 is in maintaining a register of the third parties who may interact with governments on an organisation's behalf. Using agents to obtain permits and deal with local paperwork is commonplace however, payments to these 'permitting' agents require careful oversight and control.

Facilitation payments remain a problem for around one fifth of the businesses in our sample, when dealing with governments and officials. This is particularly true for companies operating in areas of the world where such payments are routinely expected as part of day-to-day business transactions. Facilitation payments have never been legal under most anti-bribery laws, although they are possible under the FCPA. While the majority of organisations forbid them, just under half fail to provide sufficient training as to how to manage and rebuff requests for such payments.

**Allowing agents and intermediaries to interact with government officials without training is a high-risk strategy, especially if they are accustomed to making such payments for companies governed by less demanding anti-corruption legislation.**

Care must be taken to ensure that public officials are not personally gaining from a business relationship, which could be seen as an attempt to influence decisions. Any entertainment must be proportionate and payment for trips justifiable. Several days of travel and accommodation for a one-day meeting should not be considered acceptable. High levels of per diems also need to be avoided.

## Sales and marketing

**From a functional perspective, sales and marketing activities can present a significant risk, particularly when bidding for major contracts or negotiating access to distribution channels with major market access. This is particularly common in the oil and gas, defence, construction and pharmaceuticals sectors, but can be a material risk in most sectors.**

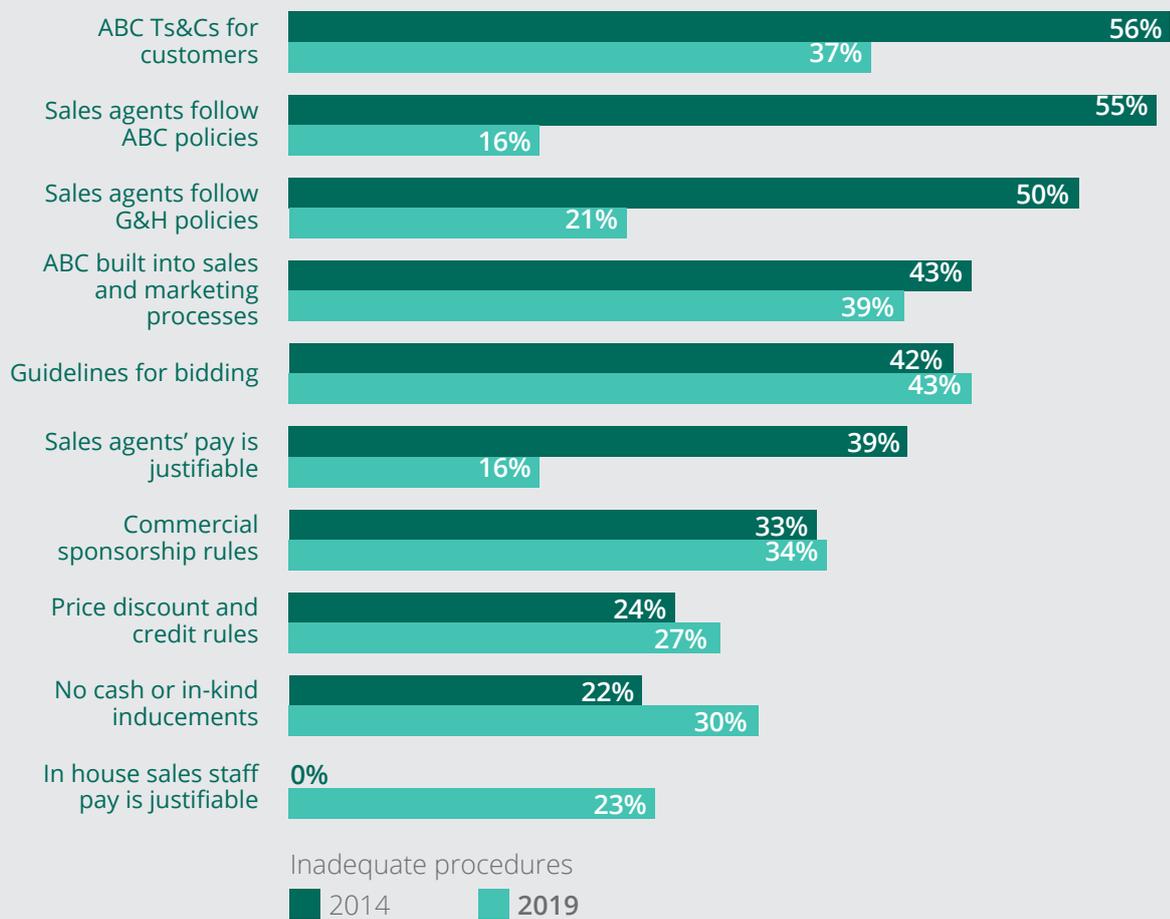
In 2019, 29% of the procedures to reduce ABC risks in sales and marketing practices were inadequate. However, when we examine the specific sales and marketing business practices, there is substantial variation in the effectiveness with which companies apply ABC procedures [Figure 10].

The percentage of inadequate procedures for ensuring no payments of cash or in-kind inducements are used to influence sales increased from 22% in the 2014 report to 30% in 2019, a worrying move in the wrong direction.

There was also a slight rise in inadequate procedures to manage expenditures related to major bids to supply goods and services. Companies working in business-to-business and business-to-government sectors need robust controls over the bidding process to ensure they have clear oversight of what is being spent and for what purpose. Such bids often involve the use of third parties and intermediaries and the challenge is to ensure that their activities and remuneration are appropriately controlled.

**Risk cannot be outsourced to third parties. Prosecution authorities will hold the company contracting the services of third parties accountable in the event of malpractice. As a general rule, the greater the 'success fee' element, the greater the risk. Remuneration, therefore, should be balanced between a retainer and a success fee to ensure greater control and so reduce the risk.**

**Figure 10 Sales and marketing inadequate procedures - 2014 vs 2019**



The controls where there have been the strongest improvements when compared with our 2014 report, are in companies' expectations and requirements of their sales agents. For example, companies are now more routinely requiring their sales agents to follow ABC as well as gifts and hospitality policies and procedures. They are also more likely to ensure their sales agents' fees are justifiable. In each case, these practices improved from roughly half showing inadequate procedures in 2014 to 20% or less in 2019. Companies need confidence in the operational practices of sales agents. They also need to manage sales incentives, even for their own sales force, to ensure that the reward does not inadvertently incentivise risk.

## Nonetheless, GoodCorporation continues to come across companies that rely on high 'all or nothing' sales commissions.

Paying someone a small multiple of a 'normal' annual salary, might be reasonable where the sales cycle is long and the risks of not selling are high. However, paying someone a commission which equates to many multiples of a normal local salary is rarely justified and an obvious corruption risk. Setting a cap on commissions is crucial to prevent bribery. As a rule of thumb, any payment to an individual agent in one calendar year over a sum in the region of US\$500k is an obvious red flag. Having a cap below this level on all sales contracts is a crucial element in the fight against corruption.

The best companies assessed by GoodCorporation have consciously moved away from employing sales agents and have built up their own in-house sales teams. These teams are sometimes combined with local consultants who are paid a flat fee for local support and services where needed.

# Human resources

The human resources (HR) issues fall into two main areas: gifts and hospitality and conflicts of interest. Thirty four percent of the ABC practices that relate to HR were deemed inadequate and required improvement in 2019.

Most organisations address confidentiality issues adequately but find both conflict of interest and gifts and hospitality much more challenging [Figure 11].



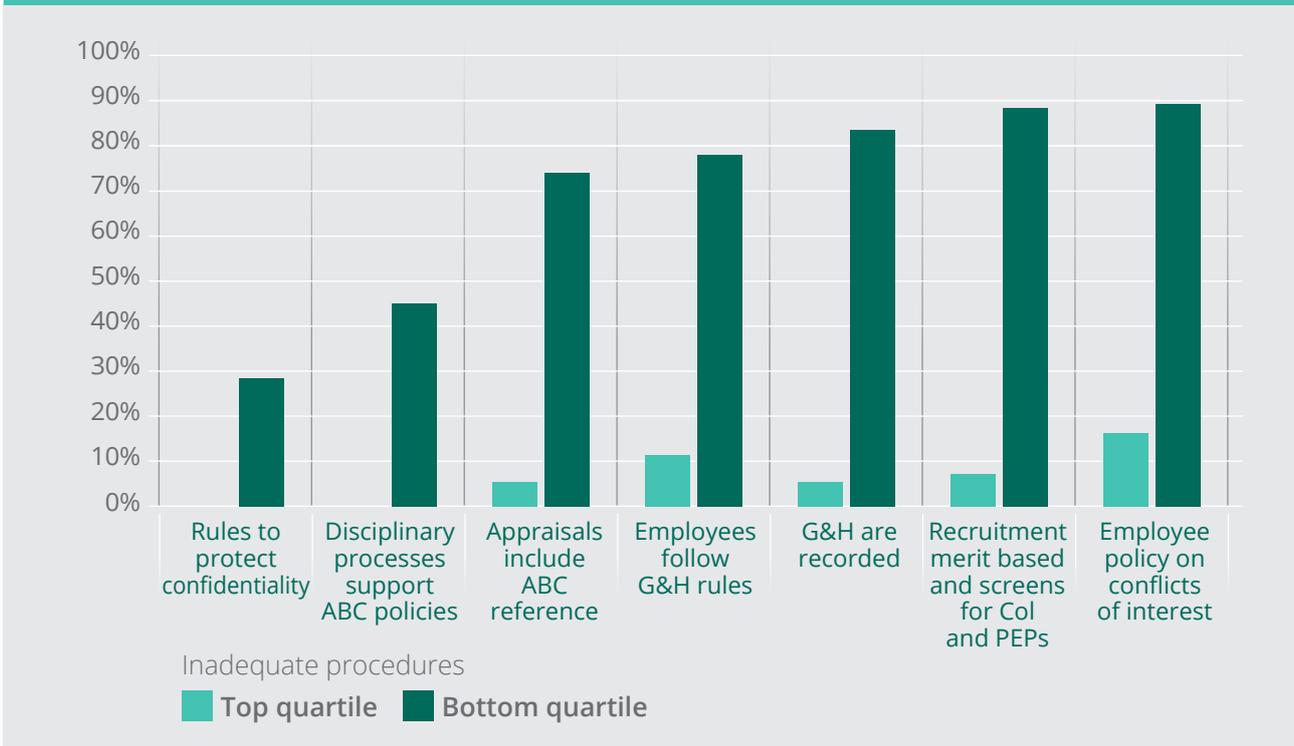
Gifts and hospitality need to be carefully monitored to ensure that the limits are reasonable, and that there is no repeated or unnecessary largesse. The purpose of ABC legislation is not to prevent normal business relationships; however, excessive payments such as cars, flights or hotel suites are considered excessive and suspicious. BHP Billiton was fined US\$25 million when it sponsored the attendance of foreign government officials at the 2008 Summer Olympics in Beijing. In the Rolls-Royce case, in addition to the millions of pounds worth of cash paid to middlemen, the company also gave a top of the range Rolls-Royce car to an intermediary, and paid for employees of a potential customer to attend an MBA course whilst also offering “four-star accommodation and lavish extracurricular activities.”<sup>1</sup> Companies that are serious about managing risk in this area must have an effective gifts and hospitality register that takes a proportionate approach, setting sensible limits and avoiding poor practice such as offering hospitality during a bidding process.

Conflict of interest can be a complex area, particularly in countries where business ownership is not clear, or the business world is small. It is important, therefore, to have transparency and disclosure to act as a disinfectant against corruption.

This is one of the areas where the gap between the top and the bottom quartiles is the greatest; 89% of the companies in the bottom quartile have inadequate practices related to conflict of interest management, while in the top quartile just 17% of entities have inadequate procedures [Figure 12]. That’s a big gap – but it’s worth noting that in 2014, all companies in the top quartile had in place adequate conflict of interest policies and systems, so the rise in inadequate procedures amongst the top quartile demonstrates that there is also room for improvement amongst the top companies in the Benchmark.

<sup>1</sup> Statement of Facts Regina v Rolls-Royce Energy Systems

Figure 12 Human resources inadequate procedures 2019 - top and bottom quartiles



Companies that handle conflict of interest well tend to establish whether or not there might be a conflict of interest before an employee joins the organisation.

A conflict of interest is not necessarily a problem, nor a bar to recruitment, but it does need to be declared and managed. The best performing companies regularly ask employees to declare if they have actual or potential conflicts and give examples so that employees understand the types of issues that can represent conflicts of interest.

These organisations take responsibility for actions to mitigate any conflicts and make it clear to employees that declaring a conflict will be positively, not negatively, regarded. The goal is to reduce the risk of inappropriate practices related to conflicts of interest which are not being actively managed.

## Procurement and finance

The importance of procurement in large businesses means that purchasing systems are normally well established and provide an important line of defence against corruption. Almost three quarters of the procedures for managing corruption in the procurement function were found to be adequate, compared to almost two thirds in 2014.

The most important area for the procurement function is how to adopt and develop good due diligence procedures, such as those mentioned earlier, and ensure that they are a natural part of the set-up of any new supplier.

The procurement department is also in the key position to provide a check and balance for the activities of an organisation's managers or buyers. The top quartile organisations have clear processes to decide when to tender, when to require competitive quotes, when to do due diligence and when single sourcing is allowed. These organisations also tend to avoid 'evergreen' contracts and ensure that goods and services are regularly retendered.

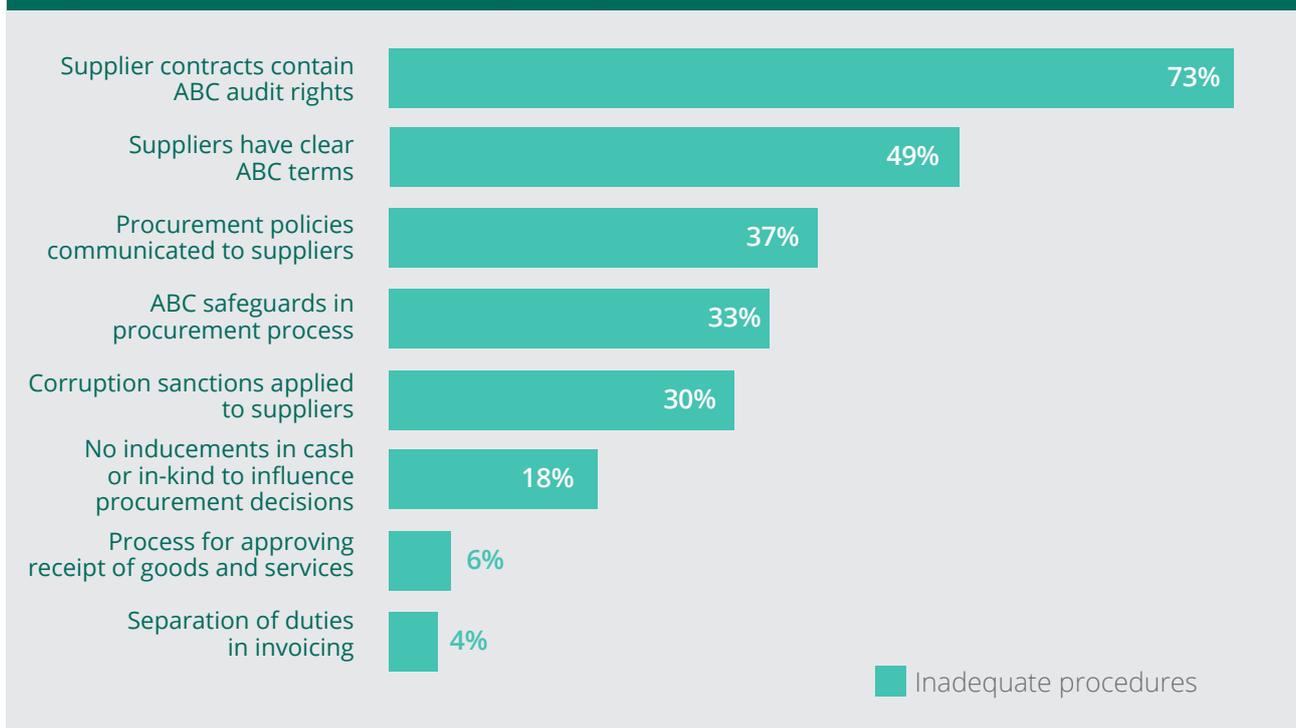
Once goods and services are received, companies also ensure that there is a separation of duties to allow payments to be scrutinised carefully before payment is authorised. Good practices such as these are well implemented across most of the sample, with only 4% found to have inadequate procedures; an improvement from 15% in 2014 [Figure 13]. However, there are two areas where weaknesses were regularly identified in the GoodCorporation assessments.

The standout challenge was in the area of ABC-specific audit rights being included in supplier contracts, where 73% of entities had inadequate procedures. Even where such clauses have been included, GoodCorporation finds that companies often do not exercise their audit rights. Having such rights but never exercising them undermines their usefulness as an adequate procedure to address ABC risks.

Companies need to define when such rights are to be used and apply this in practice in order to demonstrate the meaningful nature of these contractual provisions. ABC audit rights can have a powerful demonstration effect in a market, and have been seen to influence behaviour across a wider group of suppliers.

The second area for improvement was ensuring that anti-corruption clauses and communications are included in the contract set-up or renewal process. Almost half of the sample did not demonstrate that this form of risk mitigation is being consistently applied.

**Figure 13 Procurement inadequate procedures**

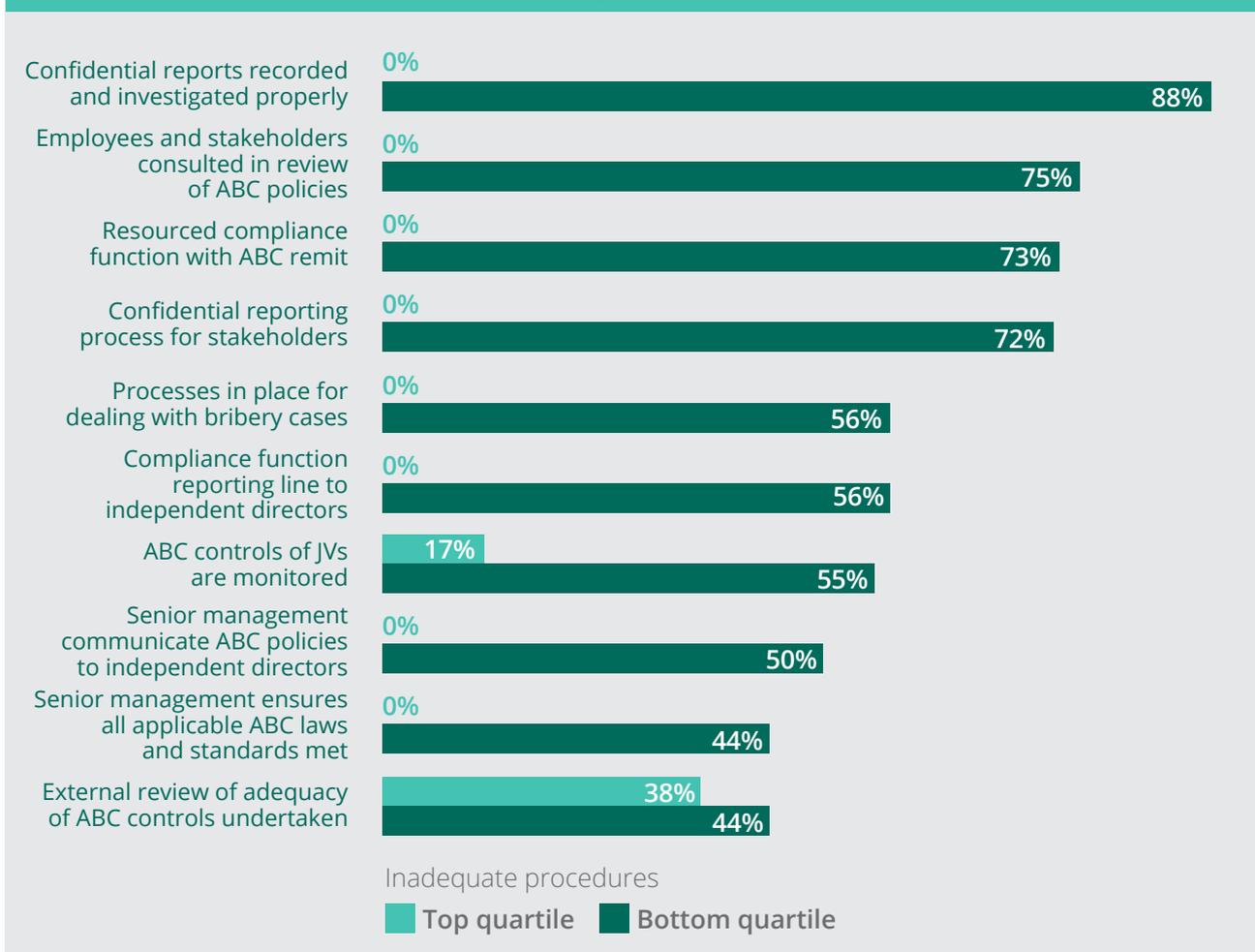


# Compliance and monitoring

The final section of the Framework covers compliance and monitoring, including whistleblowing. There has been a marked improvement in the governance of ethics and compliance since 2014, from two thirds to over three quarters of entities having adequate procedures in place in this area.

Organisations are becoming more formalised in how they manage ethics and compliance. There is, even so, no other area of the GoodCorporation Framework where the gap between 'good' companies and weaker companies is more obvious.

**Figure 14 Compliance and monitoring - inadequate procedures top vs bottom**



GoodCorporation's data shows that businesses have, on average, one full-time ethics/compliance person for every 10,000 employees in the organisation. However, there is no standard ratio as different sectors and geographies will have different risk levels to manage that require support appropriate to the specific need. The best companies ensure that the chief ethics or compliance officer has access to a senior independent director of the company and reports regularly to a board committee. There is also a marked shift away from ethics/compliance officers working for the finance director towards the general counsel, although governance models vary widely in practice.

Whistleblowing systems, also called reporting or speak-up systems, are vital. Yet, in the bottom quartile of companies, 72% have no speak-up process at all [Figure 14], which contravenes corporate governance guidelines, such as the OECD Guidelines for Multinational Enterprises, and, in many cases, regulatory requirements.

## Too many organisations establish hotlines to comply with corporate governance regulations, but the availability of the hotline is poorly communicated and the system often badly operated.

While whistleblowing hotlines play a role, what is even more effective for reducing malpractice is the creation of an open-door culture where wrongdoing can be reported without fear of reprisal or recrimination. Not only does this encourage good corporate behaviour, it also ensures that management is the first to hear if things do go wrong. This should be distinct from any employee grievance process and supported by a whistleblowing mechanism for reporting risks that those involved feel cannot be dealt with in any other way.

In addition to whistleblowing, a problem area for companies in the lower quartile is the establishment of appropriate investigation procedures which are supported by suitably experienced individuals. Perhaps an even more worrying finding is the 73% of entities in the lower quartile that were found to be inadequately resourced when it came to ABC compliance.

There remains a marked disparity between the achievements in this area of companies in the upper quartile and those in the lower quartile of our sample, with top quartile organisations achieving 100% adequacy for eight of the 10 compliance and monitoring procedures tested. Effective monitoring is a key recommendation of leading regulators. Our assessments show that this can be achieved. Those companies with weak monitoring procedures face the dual risk of bribery occurring and also a weakened defence in the face of any subsequent prosecution.

# Conclusion

The fight against bribery and corruption has become more high profile than ever as prosecutors and regulatory authorities increase their laser focus on the role businesses are playing in that fight. Where companies are found to have engaged in misconduct, the organisation, and potentially those employees involved in the misconduct, will be prosecuted. The means by which companies and employees can best protect themselves is by ensuring there are robust ABC business practices in place.

Investment in ABC systems and processes has been substantial. However, GoodCorporation's work indicates there is still considerably more to do.

Developing policies is not difficult. It is the implementation and embedding of those policies that presents challenges; particularly when uncertainty about whether policies and procedures are sufficient or 'adequate' remains high in many quarters. As prosecutions increase, this uncertainty will reduce. However, the challenges of application and realisation of effective safeguarding will remain.

As this report shows, there are some practice areas in which companies have improved compared with 2014. But there remain areas in which ABC business practices are considerably weak. Of particular concern is risk assessment, which showed virtually no sign of improvement from 2014. The starting point for an effective anti-bribery programme is nearly always a risk assessment, which must also be regularly reviewed to take account of any changes to the business. It is an area of ABC control that simply cannot be overlooked, yet it is.

Similarly, while due diligence has improved, it remains weak in more than half of the companies assessed. Due diligence and risk assessment are challenging ABC practices for any company; but they are essential in order to manage exposure to corrupt practices properly.

The companies at the top of the GoodCorporation ABC Benchmark demonstrate what can be achieved through a rigorous and well-embedded programme. As time progresses, organisations and prosecutors alike will take note of these increasingly higher standards. Those that flounder in their endeavours to implement an effective ABC programme may leave costly penalties in their wake.

Finally, companies that struggle with ABC compliance are, in GoodCorporation's experience, often struggling to embed a sound ethical culture in their businesses. It is interesting to note that this is becoming a concern of the regulators, as evidenced by the recently updated Department of Justice guidelines on the FCPA which now requires companies to show how they instill a 'culture of ethics and compliance'. There is also rapidly expanding evidence that ethical business practices are positively correlated with strong, sustainable financial returns.

The motivation for addressing ABC and other ethical business risks is not just to preserve reputation or to minimise exposure to fines; but to demonstrate a management culture that adds shareholder value by proactively addressing ABC and related risks. If this isn't already on the board agenda for every company, it should be.

# About GoodCorporation

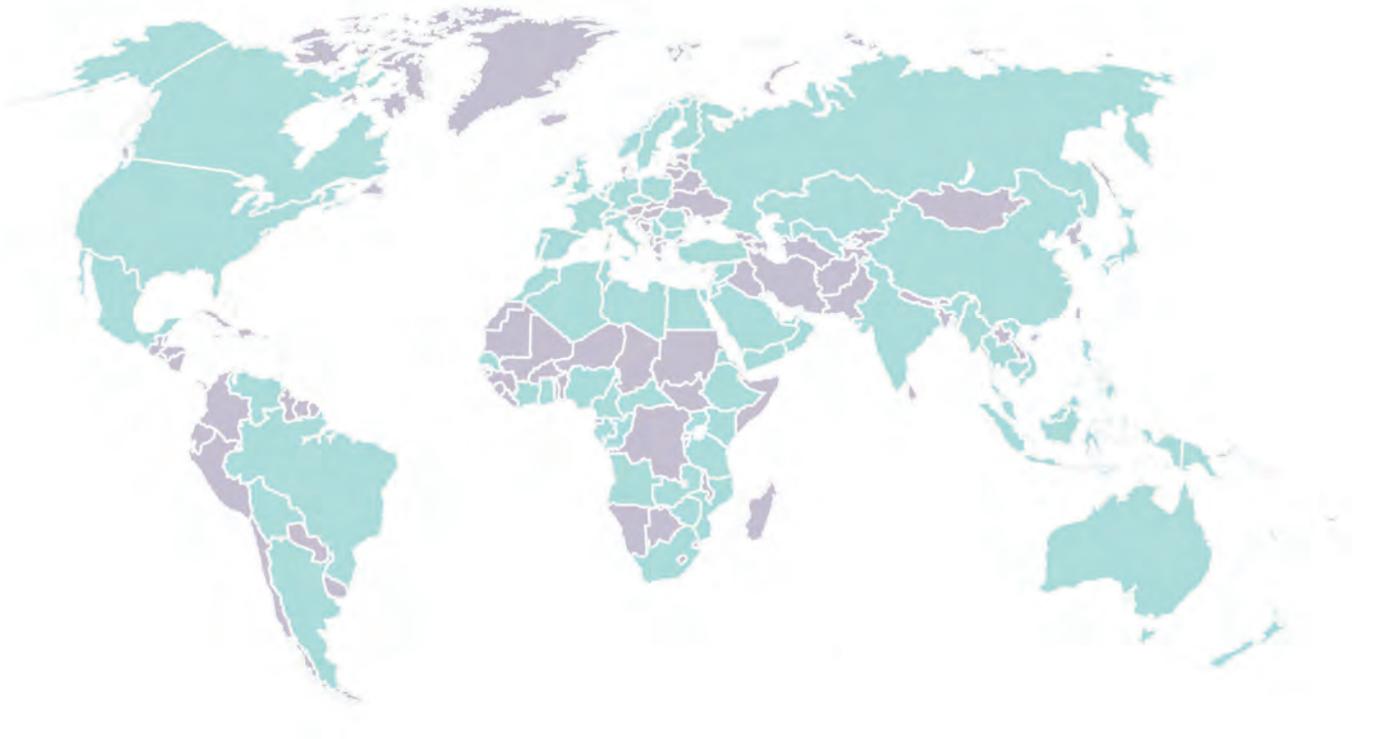
Recognised in the field of corporate responsibility and business ethics, GoodCorporation has almost 20 years' experience of checking and measuring corporate behaviour, including anti-corruption practices. We have conducted over 100 ABC assessment cases, including for FTSE 100 and CAC 40 companies.

Our assessment data gives us the ability to benchmark business behaviour providing insight into the management practices that are successfully embedded, and those that are not, leaving companies and individuals exposed to reputational damage and potentially criminal investigation.

We support our clients through assessment, certification, training and advice. We also provide opportunities to share best practice and thought leadership through our Business Ethics Debate Series at the House of Lords.

For more information about this report or GoodCorporation's anti-corruption and business ethics capabilities, contact Gareth Thomas at [gareth.thomas@goodcorporation.com](mailto:gareth.thomas@goodcorporation.com).

# Where we have worked



- |                      |                |            |                  |                     |            |
|----------------------|----------------|------------|------------------|---------------------|------------|
| Algeria              | Colombia       | India      | Mozambique       | Saudi Arabia        | Turkey     |
| Angola               | Congo          | Indonesia  | Myanmar          | Senegal             | UAE        |
| Argentina            | Côte d'Ivoire  | Ireland    | Netherlands      | Serbia              | Uganda     |
| Australia            | Czech Republic | Israel     | New Zealand      | Singapore           | UK         |
| Belgium              | Egypt          | Italy      | Nigeria          | South Africa        | Ukraine    |
| Bolivia              | Eritrea        | Japan      | Norway           | South Korea         | USA        |
| Brazil               | Ethiopia       | Jordan     | Oman             | Spain               | Uzbekistan |
| Brunei               | France         | Kazakhstan | Papua New Guinea | Sweden              | Venezuela  |
| Bulgaria             | Finland        | Kenya      | Philippines      | Switzerland         | Vietnam    |
| Cambodia             | Gabon          | Libya      | Poland           | Syria               | Yemen      |
| Cameroon             | Germany        | Malaysia   | Portugal         | Tanzania            | Zambia     |
| Canada               | Gibraltar      | Mexico     | Qatar            | Thailand            | Zimbabwe   |
| Central African Rep. | Greece         | Montenegro | Romania          | Trinidad and Tobago |            |
| China                | Ghana          | Morocco    | Russia           | Tunisia             |            |

*Combating corruption: businesses still at risk* has been compiled by GoodCorporation, one of the leading practitioners in assessing and measuring responsible management practices. In this white paper, GoodCorporation looks at the anti-corruption practices that businesses need to have in place to mitigate the risk of corruption occurring within their organisations. We identify the practices and procedures that are proving the most challenging to implement, and the areas where businesses are most at risk.



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