Section 1: LEGAL LANDSCAPE

1.1 What is the Scope of bribe payors and bribe recipients covered by your jurisdiction's anti-corruption laws?

The Bribery Act 2010 applies to all acts of corruption committed since July 1 2011. Acts of corruption committed before that date are subject to a number of older laws, with varying scopes.

Under the Bribery Act, both legal and natural persons can be criminally liable as payor or recipient. Except in respect of the corporate offence (explained below), companies are only criminally liable for offences in which the directing mind or will of the company is involved.

Any person acting within the UK is subject to the Bribery Act's jurisdiction.

In respect of actions outside the UK, the Bribery Act applies to persons with a close connection with the United Kingdom. For natural persons, this means UK citizens, other UK nationals and those ordinarily resident in the UK; for legal persons, this means bodies incorporated in the UK, and Scottish partnerships.

In addition, commercial organisations which carry on a business or part of a business in the UK are liable for the so-called corporate offence of failing to prevent bribery by an associated person.

1.2 What conduct directly related to bribery is prohibited by anti-corruption laws?

The Bribery Act 2010 applies to all acts of corruption committed since July 1 2011. Acts of corruption committed before that date are subject to a number of older laws, with varying scopes.

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In addition, commercial organisations which carry on a business or part of a business in the UK are liable for the so-called corporate offence of failing to prevent bribery by an associated person.
The Bribery Act criminalises the giving and receiving (or the offering, promising or agreeing to receive) of a bribe, which it defines as a financial or other advantage. The Act applies to the public and private sectors, though there is a separate offence of bribing a foreign public official.

The mental element of the offence of giving a bribe is the intention to induce or reward the recipient to perform his or her functions improperly; that of the offence of receiving a bribe is essentially the mirror image. The mental element of the offence of bribing a foreign public official is the intent to influence the official in their capacity as such. There is no de minimis threshold and no exception for facilitation payments.

Under the corporate offence, as stated, commercial organisations are criminally liable for failing to prevent the giving of bribes by associated persons (defined as persons who perform services for or on behalf of the organisation), where the associated person bribes another person intending to gain or retain business or a business advantage for the organisation. There is no required mental element on the part of the organisation. There is one defence to this offence: the existence of adequate procedures to prevent bribery by associated persons.

1.3 What conduct related to internal controls and to books and records is covered by the anti-corruption laws?

Neither the Bribery Act nor preceding anti-corruption legislation has any books and records provisions.

The Companies and Theft Acts contain offences relating to incorrect or false accounting, and can be used to prosecute corruption-related activity.

Further, entities regulated by the Financial Conduct Authority (FCA) are obliged to maintain adequate internal controls and are subject to fines for failure to do so.

Section 2: POTENTIAL PENALTIES

2.1 What is the range of direct financial consequences for a company engaged in a prohibited anti-bribery offence?

Traditionally, punishments for companies involved in corruption were not as high as those in countries such as the US. There was also no fixed basis for the calculation of such punishments, with previous penalties based on such disparate features as the value of the bribe, the profit of the relevant contract and the company's ability to pay. Both of those
aspects may change with the introduction of new sentencing guidelines for bribery. Under 
the guidelines, companies found guilty of bribery will be liable to criminal fines ranging 
between one-fifth and four times the value of the contract the bribe related to, depending on 
their culpability.

Compensation of victims and confiscation of the proceeds of bribery may also be ordered, 
including through civil proceedings.

There have as yet been no prosecutions of companies under the Bribery Act.

2.2 What is the range of collateral consequences for a company adjudicated to have engaged in prohibited anti-bribery offences?

Under EU public procurement legislation, a company's conviction for giving a bribe will result 
in its mandatory debarment from public contracts across the EU. A conviction for the 
corporate offence makes the company liable to discretionary debarment.

There are no limits on collateral lawsuits against companies which have engaged in bribery.

2.3 What are the typical punishments of individuals prosecuted for paying or accepting bribes?

Under the pre-Bribery Act regime, sentences for individuals ranged from suspended 
sentences to several years' imprisonment.

The maximum sentence for individuals under the Bribery Act is 10 years' imprisonment 
and/or an unlimited fine. In principle, compensation and confiscation orders are also 
available, as are disqualifications from acting as a director. So far, three individuals have 
been sentenced under the Bribery Act, with one receiving three years' imprisonment. 
However, these relate to instances of individual, not corporate, bribery.

Section 3: INVESTIGATION

3.1 What is the role of self-investigation at the remedial stages of an anti-
corruption matter?
In June 2009, the Serious Fraud Office (SFO), the body chiefly responsible for investigating and prosecuting foreign bribery, published guidance promising lenience for self-reporting. That guidance was withdrawn in October 2012, and was not replaced by new guidance.

However, under the Joint Prosecutors’ Guidance on Corporate Prosecutions, one of the public interest factors prosecutors must take into account in determining whether to prosecute a company is whether the company's management has adopted a "genuinely proactive approach...when the offending is brought to their notice, involving self-reporting and remedial actions, including the compensation of victims". Prosecutors will consider whether the company has provided sufficient information, which "will include making witnesses available and disclosure of the details of any internal investigation".

Recent guidance on sentencing and deferred prosecution agreements (DPAs) make it clear that for a company to benefit from a reduced sentence or DPA, extensive and transparent self-investigation is necessary.

That said, this is an evolving area, and companies and prosecutors are yet to establish an agreed set of ground rules for the conduct of self-investigations.

3.2 With respect to anti-corruption compliance programmes, what are regulatory expectations if a business wants to receive credit or leniency during an investigation into corrupt behaviour by company personnel?

Under the Bribery Act, it is a complete defence to the corporate offence to have in place adequate procedures to prevent bribery.

As required by the Act, the Ministry of Justice has issued guidance stating that the adequacy of such procedures must be assessed against six principles: (1) proportionate procedure; (2) top level commitment; (3) risk assessment; (4) due diligence; (5) communication and training; and (6) monitoring and review.

Furthermore, sentencing guidelines provide that even procedures not deemed fully adequate can provide companies with some credit towards a reduced sentence.

3.3 What resources are available to regulators to investigate and prosecute anti-corruption offences?
The SFO’s annual budget has fallen from £52 million ($88 million) in 2008 to £32 million in 2014. The SFO can request additional funding from the Treasury for specified investigations. It has been granted such funding for three of its largest investigations.

The FCA, funded by a levy on the City of London, has a budget for 2014/15 of £452 million, part of which is available for enforcement.

The UK’s main prosecuting authority, the Crown Prosecution Service (CPS) which deals with bribery offences of lesser weight than the SFO, has also suffered significant budget reductions in recent years.

3.4 What are the customary forms of resolution of individual and corporate regulatory actions?

A case of bribery can be dealt with either by means of a formal criminal prosecution, involving either a trial or a guilty plea, or civilly, by means of a Civil Recovery Order for the proceeds of the relevant offending.

Enforcement by the FCA is primarily civil.

As of February 2014, the SFO and the CPS can enter into DPAs with companies in respect of violations of the Bribery Act. The DPA process is subject to strict judicial supervision.

Section 4: ADJUDICATION

4.1 What is the perception with respect to the fairness of regulators and the judicial system in addressing anti-corruption?

Anti-corruption enforcement, particularly in the corporate sector, is a relatively recent phenomenon. Consequently, the relevant prosecutors, the SFO in particular, have not as yet established a practice that can be evaluated. For instance, there has yet not been a single prosecution of a company under the Bribery Act.

However, UK prosecutors are considered to act under the law and relevant governmental policies, and are subject to the supervision of a judiciary widely recognised as fair and independent.

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Getz's practice focuses on internal investigations, in particular regarding compliance with corrupt practices legislation, conducting compliance assessments and creating and implementing appropriate compliance programmes and procedures, as well as complex international arbitration matters. He regularly advises clients on EU and UK sanctions and money-laundering regulations.

Getz has represented large multinational companies in internal anticorruption investigations, contractual litigation, intellectual property lawsuits and international arbitration. He has represented individuals and corporations under investigation by the Serious Fraud Office and has advised clients on compliance with the FCPA and the UK Bribery Act.

Getz joined Debevoise in New York in 2005, moving to the London office in 2008. He graduated from Stanford University with a BA in 1994 and from Georgetown University Law Center with a JD magna cum laude in 2005. Between 2005 and 2006, he worked as a judicial intern for Theodor Meron, the president of the International Criminal Tribunal for the former Yugoslavia. He was admitted to the New York Bar in 2006 and was admitted to practise in England and Wales in 2009.

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Lööf has acted on several investigations by the Serious Fraud Office into suspected corporate corruption, and has assisted in advising a wide range of businesses on international sanctions and anti-bribery and corruption compliance. He has acted on several matters related to the Financial Conduct Authority’s investigations into suspected manipulation of Libor and the FX market; he has acted for a number of individuals in challenging Interpol action; and he has assisted in the provision of strategic advice to corporates and individuals facing multijurisdictional criminal and regulatory challenges.

Lööf holds an MA from the University of Cambridge, a Maîtrise en Droit from the Université Paris II Panthéon-Assas and took the BVC at the College of Law in London. He has a doctorate in European law from the European University Institute in Florence, where he defended a thesis on EU criminal law.