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Article (Accepted Version)

David-Barrett, Elizabeth, Yakis-Douglas, Basak, Moss-Cowan, Amanda and Nguyen, Yen (2017) A bitter pill? Institutional corruption and the challenge of antibribery compliance in the pharmaceutical sector. *Journal of Management Inquiry*, 26 (3). pp. 326-347. ISSN 1056-4926

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# **A Bitter Pill? Institutional Corruption and the Challenge of Anti-bribery Compliance in the Pharmaceutical Sector**

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Nguyen<sup>5</sup>**

## **Abstract**

We investigate why top-down directives aimed at eradicating corruption are ineffective at altering on-the-ground practices for organizations that have adopted industry-wide “gold standards” to prevent bribery and corruption. Using interview and focus group data collected from leading multinational pharmaceutical firms, we unearth antecedents contributing to organizations’ systemic failure to embed their anticorruption policies in business practice. We identify two tensions that contribute to this disconnect: a culture clash between global and local norms, especially in emerging markets and a similar disconnect between the compliance and commercial functions. To overcome these tensions, we suggest that organizations are likely to find it easier to implement a no gifts policy if they cease to rely on local agents embedded in local norms and that there needs to be strong evidence of board-level commitment to antibribery programs, innovative ways of incentivizing compliant behavior, and a fundamental rethinking of organizations’ business model and remuneration practices.

**Keywords: deviant/counterproductive behavior, corruption, emerging markets, ethics, interviews, qualitative research**

## **Introduction**

Companies doing business internationally face a number of political and legal risks that do not occur when they do business domestically. Among these, risks associated with bribery and corruption have gained prominence in recent years owing to increasingly proactive enforcement of anti-bribery laws, i.e., laws that prohibit the payment of bribes to foreign public officials (Koehler, 2011), in many jurisdictions. While the US Foreign Corrupt Practices Act (FCPA) was introduced in 1977, it has only been aggressively enforced since other major exporting nations - OECD members - committed themselves to similar self-restraint twenty years later in the form of the OECD Anti-Bribery Convention (Koehler, 2012; Pieth, Low, and Cullen, 2007). As a whole, these laws constrain a large swathe of international business activity, not least because they have considerable extra-territorial reach. Most international companies have subsidiaries in the United Kingdom or United States and therefore have to comply with either the FCPA or the UK Bribery Act (Jing and Graham, 2008). Moreover, the definition of a bribe in these laws as “anything of value” poses a threat to a number of business practices relating to gifts and hospitality that are considered the norm in many countries (Jing and Graham, 2008; Sanyal, 2005).

It is not surprising then that the pharmaceutical sector has faced a number of enforcement actions relating to violations of anti-bribery laws, often for practices related to the provision of gifts, entertainment and hospitality to physicians. The TRACE International Compendium, a database of international anti-bribery enforcement actions, records 59 cases relating to companies in the pharmaceutical/healthcare/medical devices sector, of which 21 relate to the provision of gifts and hospitality, for which companies received either lucrative contracts or a significant increase in prescriptions in return<sup>i</sup>. The US authorities have also

focused their attentions on this sector in recent years: in 2009, US assistant attorney general Lanny Breuer gave a speech to the Pharmaceutical Regulatory and Compliance Congress annual forum in Washington, warning that FCPA violations in pharmaceutical companies would be a new focus for his department.<sup>1</sup> Pharmaceutical companies also face pressure to disclose payments made to physicians from another new US law, the Physician Payments Sunshine Act. This requires companies supplying federal healthcare programs to disclose all financial relationships with physicians and teaching hospitals to the Centers for Medicare and Medicaid Services (CMS), which in turn publishes it online.<sup>2</sup> The aim is to allow civil society groups or individuals to uncover potential conflicts of interest, whereby a physician might be over-prescribing or advocating the use of a drug whilst receiving an income from its manufacturer. The law has shone a further spotlight on the relatively common sectoral practice of pharmaceutical companies making payments to physicians, prompting many compliance departments to clamp down on practices that used to be commonplace.

The proliferation of anti-bribery laws and the more serious approach towards their enforcement have created risks for companies with certain characteristics – and many of these factors are pertinent to the pharmaceutical sector. First, companies that have multiple interactions with foreign governments in the course of their business are at risk because the laws prohibit bribes to ‘foreign public officials’. Pharmaceutical companies interact with governments as regulators (e.g., agencies that monitor drug safety), as clients (e.g., state hospitals or healthcare trusts), and as distributors to end-users (e.g., physicians who prescribe drugs to patients). The number and character of interfaces with the state vary considerably from country to country, but they are always significant and there is frequently scope for state officials to exercise discretion, which means that they are potential targets of influence.

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<sup>1</sup> Quoted here: <http://blogs.wsj.com/law/2009/11/13/breuer-sends-fcpa-warning-to-big-pharma-and-its-executives/>

<sup>2</sup> Data is available here: [openpaymentsdata.cms.gov](http://openpaymentsdata.cms.gov)

Second, companies that rely heavily on third parties and agents are at risk, since these laws make them liable for bribes paid by such actors on their behalf; and yet, such third parties may be difficult to monitor and control. Again, this often applies to pharmaceutical companies, who tend to rely on local distributors. Indeed, physicians might in some contexts be regarded as agents, since they play an intermediary role between the seller and the user.

Third, companies that operate in emerging markets - where corruption risks are thought to be higher, according to country-level measures such as the Transparency International Corruption Perceptions Index - are at greater risk than companies which operate in more mature and less corrupt markets. Many pharmaceutical companies are global, but most see emerging markets – particularly in Asia and Africa - as their most important targets for future growth.

Pharmaceutical companies seeking to protect themselves against the risks associated with anti-bribery laws and with operating in corruption-prone environments have typically responded by introducing anti-bribery and corruption (ABAC) programmes. This reflects the legal approach taken by major prosecuting authorities, whereby they offer to treat companies that have violated anti-bribery laws leniently if they can demonstrate that they had adequate procedures in place to prevent bribery. Such programmes tend to include policies regarding gifts, training, political and charitable contributions, reporting lines and governance processes for authorising payments, requirements of due diligence on partners, and accounting policies regarding the proper recording of transactions.

Companies that wish to identify themselves as being exceptionally committed to avoiding bribery and corruption tend also to utilise third-party certification mechanisms to demonstrate their resolve. For example, many multinational pharmaceutical companies have signed up to the International Federation of Pharmaceutical Manufacturers and Association (IFPMA) Code of Practice. IFPMA is a global, non-profit organization with a mission to

*promote and support principles of ethical conduct and practices voluntarily* in pharmaceutical industry. In the last decade, its code has been frequently updated, with reforms primarily intended to raise standards around the interactions between pharmaceutical companies and healthcare providers, particularly regarding marketing practices (Francer et al., 2014). For instance, in the 2006 update, the Code incorporated strict rules relating to company-hosted activities and tightened rules affecting gifts and hospitality; in the 2012 revisions, fees for services and clinical research transparency were addressed (Francer et al., 2014). Following such revisions, many companies that are members of IFPMA have tightened up their policies on gifts and hospitality, imposing low limits and banning certain types of hospitality. Companies have, by and large, been somewhat slower to clamp down on practices of paying KOLs to speak at or attend training events and conferences.

Arguably, by signing up to these agreements, pharmaceutical companies establish a commitment to eschewing bribery and corruption as core to their organizational purpose. Such voluntary self-regulation appears intended to go beyond the bare minimum of compliance designed to achieve ‘plausible deniability’ if an incident of bribery is revealed, but rather signal commitment to a grand purpose, through very public displays and symbolic commitments from the company leadership. For example, when AstraZeneca announced, in 2011, that it would no longer pay for physicians to attend international conferences and launched its Competitive Distinction Through Integrity policy, it was regarded as a courageous first-mover. AstraZeneca’s senior leadership visibly promoted the new approach company-wide, demonstrating strong ‘tone at the top’, which is key to ensuring that values are embedded in organisations and regarded as key to organisational purpose.

Our puzzle is the following: Many major pharmaceutical companies have adopted high standards and commitments to prevent bribery and corruption from occurring in their organisations, and yet violations of anti-bribery laws continue to emerge frequently in this

sector, often relating to the provision of gifts and hospitality. In some cases, companies that are regarded as having first-rate ABAC programmes are nonetheless found to have engaged in systematic bribery in certain business units or countries. Our aims therefore are to 1) explore why is this happening and 2) offer advice to pharmaceutical firms to mitigate this risk. Moreover, whilst many studies of bribery focus on particular national settings or use cross-country comparisons to understand organisation-level determinants of corrupt behaviour, this paper studies the particular tensions that arise within organisations owing to the international context, and particularly the legal, political, and social dimensions of that environment. Our evidence suggests that company ABAC policies and codes of conduct are often seen as unrealistic policies designed by compliance teams in head office, lacking purchase with commercial teams in the field. We start by illustrating this argument with a prominent example.

In July 2013, executives at UK-based pharmaceutical multinational GlaxoSmithKline (GSK) awoke to accusations from the Chinese Ministry of Public Security that the company had paid \$489m in bribes to government officials, healthcare organizations, hospitals, and doctors.<sup>ii</sup> According to Chinese police, GSK had used ‘middlemen’, including many travel agencies, to channel bribes to health officials and doctors.<sup>iii</sup> Jianyong Wang, the legal representative of Shanghai Linjiang International Travel Agency, admitted on national television that the travel agency had arranged cash payments amounting to 40,000-500,000 yuan for GSK, commenting that, “company (GSK) regulations only allowed gifts of a hundred or two hundred yuan which definitely wouldn’t do”.<sup>iv</sup> These practices are alleged to have caused GSK’s product prices to be inflated by 20-30 per cent.<sup>v</sup>

On 19 September 2014, after a one-day trial, the Changsha Intermediate People’s Court in Hunan province found GSK guilty of bribery and imposed a \$490 million fine - the largest such penalty levied on a company in China. Mark Reilly, the head of GSK’s China

operations at the time, received a three-year suspended sentence and a deportation order. Four Chinese-national GSK defendants – Liang Hong (Head of Operations), Zhao Hongyan (Legal Counsel), Zhang Guowei (Head of Human Resources) and Huang Hong (Head of Business Development) – were also given suspended sentences. All five individuals had entered guilty pleas.

GSK is a respected multinational with well-resourced legal and compliance teams, operating under the scrutiny of numerous regulators. Company policy quite clearly prohibited bribery. The company had a Code of Conduct in place throughout the period in which the offences were committed. Entitled ‘One Company One Approach’, it stated quite clearly,

*“The GSK attitude towards corruption in all its forms is simple: it is one of zero tolerance, whether committed by GSK employees, officers, complementary workforce or third parties acting for or on behalf of the company.”*

Moreover, in a separate Code of Practice for Promotions and Customer Interactions, GSK set out a detailed procedure regulating any sponsorship of a corporate event, conference or travel. GSK also had a Third Party Code of Conduct, which stated: “Third Parties shall conduct their business in an ethical manner and act with integrity.” As US Attorney Thomas Fox commented,

*“Frankly I do not know how much clearer a company can state that we will not engage in bribery and corruption. But the problem for GSK seems to be that none of the above was effective because *the company did not follow its own stated protocols regarding its operations in China*”<sup>vi</sup> [emphasis added].*

Despite these gold-standard policies, some GSK employees and agents in China appear to have systematically acted in ways that contradicted these codes and policies.

Drawing on the issues revealed by the GSK case, our focus is *organizations’ systemic failure to embed their anti-corruption policies in business practice*. GSK had a respected anti-corruption program and yet one of its major regional business units acted in ways that

systematically subverted it. Our research question therefore is: *why are top-down directives aimed at eradicating corruption ineffective at altering on-the-ground practices within the organization's business units?* In investigating this research question, our aim is to extend findings by Fleming and Zyglidopoulos (2008, 2009) and Zyglidopoulos and Fleming (2008), which reveal how corruption practices escalate within a given organization and ultimately conquer organizations as a whole (Pinto et al., 2008) and add recommend a more nuanced understanding towards organizational corruption. In our paper, we expose a disconnect between intra-organizational groups. Specifically, we find a disjunction between senior managers and directors' goal of eradicating corruption and practices shaped by a perception that corruption is inevitable and manageable within business units of the same organization. Our paper therefore focuses on the decoupling of organizational practice from statements of organizational purpose.

We seek also to situate our research within a broader literature on 'institutional corruption', a term used to describe a serious form of corruption which undermines the greater purpose of an institution (Lessig, 2013). Within the pharmaceutical sector, the practice of giving gifts and hospitality to physicians is widespread, as is the provision of funding to medical researchers. GSK is by no means the only company to have found itself facing bribery cases as a result of such practices. Bribery enforcement actions also relate to failures to implement central anti-bribery programs. This is indicative of the existence of weaknesses in governance that hinder the transfer of company values into operational practice. We focus on the pharmaceutical sector because it acutely demonstrates the tensions in which we are interested: while its broader purpose of promoting healthcare is uncontested and it is relatively advanced in its elaboration of anti-bribery and compliance programs, the questions that we pose are very far from being resolved.

We organize our paper in three main sections. In the first, we review the literature on institutional corruption in international contexts and embed our research within it. In the second section, we present our methods and data, comprising interviews and focus groups with organizational actors in leading multi-national pharmaceutical companies that operate in emerging markets. Following a discussion of findings, the article concludes by presenting additional questions to inform future organizational research regarding institutional corruption in international business.

### **Literature**

The literature on corruption in international contexts has focused on four main areas: (1) What does bribery and corruption in an international context look like (definition and measures); (2) Antecedents of bribery and corruption; (3) Outcomes of bribery and corruption; (4) How to prevent bribery and corruption. Research in these four areas typically addresses either macro contextual or institutional concepts on the one hand or micro firm or individual-level factors on the other. We review the literature on institutional corruption in international contexts with two intentions. First, we aim to position our work within the existing literature and second, we illustrate that our research focus (i.e. the mismatch between institutional / industry-wide purpose of fighting bribery and corruption and the organizational practice of failing to do so) is an important step in addressing tensions between macro and micro and unearthing tensions between the two levels of analyses.

According to the OECD Anti-Bribery Convention, bribery is “the offering, promising, or giving something in order to influence a public official in the execution of his/her official duties”. In an international business context, bribery typically involves a firm from country A offering financial or nonfinancial inducements to officials of country B to obtain a commercial benefit (although note that we do not imply that officials never solicit bribes; the power dynamics vary). The reward offered in return for influence can be non-

monetary: what is key is that it is offered with intent to influence decisions (Pacini et al. 2002 and Becker, Hauser, and Kronthaler, 2013). Indeed, Carmichael (1995) notes that bribes can include not only money and other pecuniary advantages (such as scholarship for a child's college education), but also non-pecuniary benefits, such as favorable publicity. These definitions are consonant with key anti-bribery laws, which allow a broad definition of bribes as "anything of value"; FCPA enforcement actions commonly concern bribes in the form of cars, jewellery, foreign travel, hospitality and entertainment, and even charitable donations.

Measuring bribery and corruption is extremely problematic, owing to the secretive nature of bribery and the ability of those engaged in bribery to cover up their actions (Lancaster and Montilola, 1997; Eigen, 2002; Svensson, 2005; Kaufman, Kraay and Mastruzzi, 2008). The country-level survey-based measures of corruption provided by Transparency International, a Berlin-based non-governmental organization, in the form of the Corruption Perceptions Index and Bribe Payers Index are widely used, but also acknowledged to be prone to systematic biases (Andersson and Heywood, 2009; Gingerich et al., 2015). Survey-based measures may also lack comparability across countries, owing to cultural differences in how bribery and corruption are defined and perceived. Indeed, such differences are highly pertinent to the risks facing companies: there may not be a shared view across cultures of what constitutes a bribe or a gift.

In identifying the antecedents of bribery and corruption, there is widespread agreement that cultural factors play a significant role in how organizations behave in international contexts (Hofstede, 1980; Ronen and Shenkar, 1985; Morishima, 1982; Husted, 1999). Martin et al. (2007) argue that bribery is influenced to a great extent by national culture. Jing and Graham (2008), Sanyal (2005), Hooker (2009), and Leisinger and Wieland (2015) present a nuanced way of looking at cultural differences regarding gift-giving and bribery. They state that "stakeholders living in different contexts have different needs and

expectations. The cultural dimension of this difference is often neglected”. The authors draw attention to the need for corporate understandings that grasp the significance of pluralism. Baughn, Bodie, Buchanan, Bixby (2010) and Scholtens and Dam (2007) draw attention to the fact there are likely to be differences not only in the ways that domestic actors and organizational actors perceive gifts, but also in the way that business ethics is practiced in different international contexts. On similar lines, there are also other authors that help readers understand differing cultural practices in international contexts. For instance, Millington, Eberhardt, and Wilkinson (2005), Smart and Hsu (2007), and Ho and Redfern (2010) give detailed descriptions of “Guanxi” in Far East Asian cultures while Meyer, Boness, and Louw (2008) do the same for the traditional practice of “Ubuntu” in some African cultures. Taking a less detailed and more categorical view, Nie (2011) gives a useful and detailed comparison of the collectivist Chinese, Korean, and Japanese cultures versus the more individualistic Western ones and Vorley and Williams (2005) give a detailed account of how entrepreneurs gain access to capital in Bulgaria and Romania. Collectively, these authors draw attention to the areas and issues where sensitive reflection is advised to understand how cultural norms might alter business practices.

Another antecedent is the level of overall corruption in the host country. In certain countries, business transactions can rarely be initiated or completed without paying bribes and the vast majority of bribes paid by multinationals are to government officials (Luo, 2005). Therefore, organizations operating in multinational settings where government corruption is widespread are likely to engage in bribe giving (Schleifer and Vishny, 1993; Svensson, 2003; Teisman, 2007). In addition, domestic or foreign firms desperate for business may resort to such practices (Sanyal, 2005). Furthermore, if bribery is perceived as common practice, it may not be perceived as morally wrong because “everybody does it” (Sanyal, 2005).

Studies also demonstrate that inadequate legal frameworks in the host country (Cragg and Woof, 2002; Andelman, 1998; Rodriguez, Uhlenbruck, and Eden, 2005; Doh et al. 2003; Lee, Oh, and Eden, 2010) are associated with bribes because individuals and firms in such contexts have opportunities to “influence the performance of a public function” (Martin, 1999). In some cases, unreasonably high taxes, customs duties, and strict government regulations that favor domestic firms provide incentives for bribery (Djankov et al., 2002) as a way to lower the costs of doing business (Besley and McLaren, 1993; Rijckegham and Weder, 1997). There may also be country-specific circumstances such as political, economic, and social changes, as witnessed in Eastern Europe and the former Soviet Union following the end of the Communist system, that may act as antecedents to corrupt practices (Theobald, 1990). In transition economies, access to public resources such as credit may be determined by the amount of bribes firms pay to government officials because these economies lack infrastructure and adequate laws and therefore governments still have control over valuable resources (Barth et al., 2009; Olken and Barron, 2007). For Asian companies, factors such as fierce market competition, corrupt courts, convoluted licensing requirements, nontransparent interpretation of laws and regulations, inefficient official government services, and high taxes were identified as factors associated with corruption (Wu, 2009).

At the organizational level, antecedents of bribery and corruption include micro behavioral factors such as blind spots (Bazerman and Tenbrunsel, 2011), bounded ethicality (Simon, 1959; Kahneman, 2011), framing (Druckman, 2011), individual perceptions regarding how ethical it is to pay bribes (Bernardi, Witek, and Melton, 2009), groupthink, conflicts of interests (Janis, 1982), and plenty of other behavioral, psychological, and social factors (World Bank, 2015). The firm itself may have external contextual characteristics that make it vulnerable to bribery such as small size, low growth rate (Wu, 2009) and internal factors such as top management team characteristics (Collins, Uhlenbruck, and Rodriguez,

2009) and inadequate corporate governance (Wu, 2009). Alternatively, a firm may be proactive in bribing in order to acquire preferential treatment (Bertrand et al., 2007; Lee et al., 2010; Svensson, 2005; Martin et al., 2007; Rose-Ackerman, 1997). Firms' main motivations in doing so may include seeking access to privileged information (Porta and Vannucci, 1999), credit and other public resources (Barth et al., 2009), relief from heavy regulations and red tape (Rose-Ackerman, 1999), or speedy access to operating permits in highly regulated markets with tight government control (Djankov et al., 2002). From the perspective of firms that are seeking to gain advantage through corrupt practices, these practices are rent-seeking (Krueger, 1974; Tullock, 1996; Bardhan, 1997) and bribery is a quick and effective strategic instrument (Luo, 2005).

As multinational businesses increasingly find themselves encountering issues associated with bribery and corruption, literature focusing on the outcomes of corruption has also flourished. While some authors have focused on strategic outcomes associated with bribery and corruption in international contexts (see for instance Robertson and Watson, 2004; Troy et al., 2011; Spencer and Gomez, 2011; Jeong and Weiner, 2012), others have pursued research in business ethics (for example Zekos, 2004; Sanyal, 2005; Pelletier and Bligh, 2008; Brown and Mitchell, 2010; Ho and Redfern, 2010).

Bribery adds to the costs of operating abroad (Nichols, 2012) and can eventually become so costly or risky that withdrawal from the foreign country becomes more attractive (Cuervo-Cazurra, 2008; Carmichael, 1995). On an annual basis, bribes amount to three percent of the world's economy and can amount to up to twenty per cent of tax on international trade (Feinstein, Holden, and Pace, 2010). Bribery can act as a hindrance to economic development especially in developing countries as just over five per cent of all exports to developing countries are soaked up by corrupt international trade officials (Mauro, 1997). In addition to causing financial harm, bribery and corruption have serious social

consequences such as posing as a threat to stability of societies and undermining democratic values (Lambsdorff, 1999; Mauro, 1995).

At the firm level, there are tangible negative consequences associated with bribery and corruption such as inefficient allocation of limited, rare, and valuable organizational resources (Argandoña, 2007). There may also be equally harmful yet less visible negative outcomes such as challenges to governance (Jorge and Basch, 2013) and unfavorable reputational outcomes (Campbell, 2003). For instance, if an action is viewed as unethical by the public, it can harm an organization's legitimacy even if that action was legal (Campbell, 2003).

With so many harmful outcomes, it is unsurprising that there has been a plethora of articles published on measures that organizations can take to prevent corrupt practices (e.g., Ashforth and Anand, 2003; Anand *et al.*, 2005; Uhlenbruck *et al.*, 2006; Ashforth *et al.*, 2008; Pinto *et al.*, 2008; Lange, 2008; Misangyi *et al.*, 2008; Umphress and Bingham, 2011). In addition to seeking to comply with proliferating anti-bribery laws, authors have suggested voluntary corporate implementation of normative solutions (Schwartz, 2009). At the more micro level, many scholars argue that achieving organizations can best protect themselves from corruption risk through building a robust anti-corruption corporate culture. While Donaldson (1996) argues that multinational organizations must create a global integrity culture that rewards ethical behavior, Leisinger and Wieland (2015) support this by arguing for a corporate effort to build global values. Others suggest establishing a code of ethics (McKinney and Moore, 2008) or codes of conduct to ensure ethical business practices (Gordon and Miyake, 2001). Carroll (1993) argues that such an organizational culture depends on the organizational actors' capabilities of dealing with guidelines and codes that require responsibility. Building on Carroll's work, Werhane and Moriarty (2009) argue that the most effective organizational actors are those that can translate codes and guidelines on

bribery and corruption into operational practice – especially ones that are open to interpretation. Organizational actors that are able to implement and adopt these guidelines in culturally acceptable ways are described as having “moral imagination” (Werhane and Moriarty, 2009). Ideally, managers of multinationals should have the capabilities to act as “situation ethicists” (Fletcher, 1996); leaders also require equally abstract skills such as “ethical musicality”, “cultural sensitivity”, and “societal intelligence and competence” (Leisinger, 2015).

While managerial and leadership qualities are of great importance to preventing bribery and corruption, some authors focus on putting preventive governance measures into place. Using supporting evidence regarding how corruption payments made by foreign subsidiaries was considered ordinary and necessary to business (Pacini et al., 2002) and that these payments were tax-deductible (Richers and Weber, 2013), Hauser and Hogenacker (2013) have argued that organizational practices play an important role in preventing bribery and corruption. Taking the case of Switzerland, the authors argue that multinational firms are not proactive about taking measures to avoid bribery and corruption and instead, the great majority of multinational firms tend to address corruption-related issues only in their international divisions and only when they are confronted with the issue. Similarly, Elango, Paul, Kundu, and Paudel (2010) advise organizations to be proactive and suggest putting in place governance mechanisms to enhance ethical congruence. Furthermore, some authors find that attitudes towards corruption in the home country play a significant role in propensity to bribe (Barr and Serra, 2009; 2010). Baughn, Bodies, Buchanan, Bixby (2010) argue that propensity to bribe is lowest when corruption is not tolerated in multinational firms’ home countries, when the firms’ countries are signatories of the OECD anti-bribery convention, and when those countries trade heavily with wealthier nations.

### **Insert Table 1**

Management scholarship has lagged other disciplines, such as political science, economics, and law in its attention to corruption. Until recently, most management research in this area focused on individuals and negative behaviours that might or might not be considered corrupt. Examples of the main areas of research focus are unethical behaviour, antisocial behaviour, dysfunctional deviance, organizational misbehaviour, and counterproductive work behaviour (e.g., Bennett and Robinson, 2003; Marcus and Schuler, 2004; Treviño, Weaver, and Reynolds, 2006).

Interest in the issue of corruption in organizations increased as a topic of scholarly interest in the aftermath of the 2001-2002 scandals at corporate giants Enron, WorldCom, and Tyco. Misconduct in these cases occurred within the organizations, mainly constituting fraud and embezzlement. Bribery, by contrast, represents an exchange between a company, or one of its employees, and an external actor. The external actor can be another company, but is more commonly a public official, who provides access to special treatment – for example, providing a license despite a company’s failure to meet the relevant criteria, or granting preferential treatment to a company that bids for a government contract - in return for the bribe.

In a 2008 special topic forum on organizational corruption in the *Academy of Management Review*, the guest editors called on scholars to adopt lenses for researching corrupt behaviour that delve beyond the more common micro perspective to engage different levels of analysis, more systemic perspectives, historical renderings, and research into causation - what they termed the macro, wide, long, and deep views (Ashforth et al, 2008). However, its articles focused largely on misconduct within organizations. One article developed a typology of corruption that distinguished between corrupt individuals and

corrupt collectives within organizations (Pinto, Leana, and Pil, 2008) and the other three articles focused on controlling or ending corruption (Lange, 2008; Misangyi, Weaver, and Elms, 2008; Pfarrer, DeCelles, Smith, and Taylor, 2008).

Research since the *Academy of Management Review* special topic forum has examined processes of corruption normalization (Palmer, 2008; Spicer, 2009), sources and processes of organizational diffusion and escalation (Fleming and Zyglidopoulos, 2009; Fleming and Zyglidopoulos, 2008; Zyglidopoulos and Fleming, 2008; Pinto et al., 2008), and corruption's causes and outcomes (Greve et al., 2010; Palazzo et al., 2012; Zyglidopoulos, 2016).

This focus on how corruption manifests within the organization has often led the management literature to overlook the broader context and, particularly, the role played by companies in corrupting external actors in order to gain a business advantage. It is the latter kind of corruption that is the focus of anti-bribery laws, such as the FCPA and its similar counterparts in other countries, including the UK Bribery Act. As such, companies often address this kind of corruption risk as a matter of legal compliance. The link between corruption within the organization and the corruption by companies of external actors (or at least, their complicity in corrupt acts involving external actors) is underexplored. This missing link is the focus of our paper. In focusing on this, we argue that corrupt behaviour cannot be understood without understanding political and social factors in the external environment, and how this context interacts with the organizational culture. Change in the external environment can therefore create new corruption risks for international business that require an organizational response.

Recent years have seen a greater willingness to address the impact of organizational corruption on the economy, with some scholars arguing that corruption was an important contributor to the global financial crisis of 2008 (Lounsbury and Hirsch, 2010). Such

arguments echo an emerging discussion in political science, which focuses on forms of corruption that are systemic rather than opportunistic, and whose impact may threaten to undermine the very purpose of the institution.

Writing about ethics in the U.S. Congress in the early 1990s, political scientist Dennis F. Thompson argued that ‘institutional corruption’ need not be motivated by individual gain (1993). Indeed, it sometimes involved forms of conduct that were, in certain conditions, a necessary or desirable part of public office. However, this conduct could become problematic when it undermined the role or purpose of the institutions. Thus, when a Member of Congress accepts a political donation while doing a favour for the donor, the act is only institutionally corrupt if the favour has the effect of undermining political competition or undermining the democratic process. Laurence Lessig has developed this idea further in his rendering that if a campaign contribution to an elected judge results in that judge acting less objectively, the practice is corrupt, no matter the motives of the donors (2011).

We apply the concept of institutional corruption, defined as “widespread or systemic practices, usually legal, that undermine an institution’s objectives or integrity” (Rodwin, 2013a, p. 544) to the study of international business. This type of corruption deviates from more common definitions that view corruption as an outcome solely of self-interested misuse of authority (Anand, Ashforth, and Joshi, 2004; Clarke, 1983; Williams, 2000; Bratsis, 2003). In politics, institutional corruption might be the outcome of activity designed to further a political party’s chances of winning an election; in business, the lending practices of banks prior to the financial crisis might qualify.

In the example of GSK, the company faced charges over its practices in China, but GSK is one of many in the pharmaceutical industry that engaged in similar practices. In fact, these attempts to influence practitioners’ choices using ‘gifts’ are endemic to the industry, and represent only one of a much wider range of tactics used to promote pharmaceutical

products. These practices have recently been defined as institutional corruption in a special issue of the *Journal of Law, Medicine, and Ethics* in 2013. The papers in the special issue discuss a multitude of ways in which pharmaceutical companies seek to influence practitioners to authenticate, approve, prescribe and promote their products, addressing systemic problems (Jorgensen, 2013; Gagnon, 2013; Rodwin, 2013c; Light, Lexchin, and Darrow, 2013), funding medical research (Brown, 2013; Feldman, Gauthier, and Schuler, 2013; Gray, 2013), shaping medical knowledge and practice (Sismondo, 2013; Cosgrove and Wheeler, 2013, Rodwin, 2013b), supporting patient advocacy organizations (Rose, 2013), and through marketing (Sah and Fugh-Berman, 2013; Landa and Elliott, 2013). As the editor argued:

“...due to institutional corruption in (the pharmaceutical) industry, practitioners may think they are using reliable information to engage in sound medical practice, while they are actually relying on misleading information; they may then prescribe drugs that are unnecessary or harmful to patients, or more costly than equivalent medications” (Rodwin 2013a: p. 544).

The special issue paints a shocking portrait not only of how the pharmaceutical sector has become reliant on practices that might be regarded as institutionally corrupt but also how relevant these issues are to managers and managerial scholars. Having an institutional corruption lens therefore broadens the scope and depth of the relevant debates by linking the study of corruption within organizations to the study of corporate bribery of external actors. Furthermore, the concept of institutional corruption can help us to re-assess common corporate practices and how they might undermine organizational values or ‘purpose’, an emerging area of interest in organizational research (Donaldson and Walsh, 2015; Hendersen and Van den Steen, 2015; Hollensbee, Wookey, Hickey, George, Nichols, 2014; Adler, 2014; Grant, 2012).

In terms of prescriptive outcomes, drawing on insights laid out by the institutional corruption literature helps us consider the organizational-level challenge of implementing

anti-bribery and anti-corruption programs. These present internal governance problems for organizations when they attempt to manage corruption risks, with particular reference to emerging markets in China and Southeast Asia. While advice on doing business in emerging markets often emphasises the need for ‘local knowledge’ of institutions and culture, the regulation of international business activity is increasingly global (Vogel 2005; Buthe and Mattli, 2011). This creates legal and reputational risks for multinationals operating in emerging markets - where corruption risks are higher, and thus increasingly strict anti-bribery laws and international business norms often clash with local norms.

### **Methods**

The study design used in this research rests on the belief that, “the social world is already interpreted before the social scientist arrives” (Blaikie, 2000: 36). As such, we sought to interpret the interpretations of the study’s participants, relying “as much as possible on the participants’ view of the situation being studied” (Creswell, 2003: 8). A qualitative approach is suitable for research that has as its goal understanding the world from the perspective of those studied (Pratt, 2009: 856). We therefore follow a case study approach (Yin, 2009).

The pharmaceutical industry can be said to provide an ‘extreme case’ for the study of corruption and bribery. Extreme cases are valuable for unveiling insights that may be difficult to discern in ordinary conditions (Bamberger and Pratt, 2010; Creed, DeJordy, and Lok, 2010; Eisenhardt, 1989). There are multiple reasons for considering the pharmaceutical industry an extreme case for gaining understanding of these topics, which we elucidate in the following paragraphs.

Although the evidence suggests that pharmaceutical companies have been making payments to physicians in exchange for prescribing or promoting their products for some time and in many markets, these practices have attracted attention from law enforcement

authorities for only a short time. The legal framework prohibiting bribery in international business has been developed only relatively recently, and enforcement lagged behind for many years.

The introduction of the UK's Anti-Bribery Act provided the impetus for this study. Particularly given that most pharmaceutical companies are multinationals that would already be subject to US FCPA liability, our expectation as we began data collection was that the industry would have a well-developed compliance function and thus would be well prepared for the new restrictions in the UK. Thus, the tensions revealed in our interviews and focus groups were a surprising and interesting finding.

### **Data Collection and Analysis**

For our study, as recommended by Yin (2009), in order to provide greater reassurance that study findings are representative, we relied on two different types of data, interviews and focus groups. These methods are complementary and help us achieve a better understanding of the tensions inherent in our participants' work lives (Hesse-Biber and Leavy, 2006). We conducted 14 in-depth, semi-structured, face-to-face interviews with eight managers and six senior managers. All interviews were transcribed verbatim by a professional service prior to analysis.

We carried out our data collection in three phases, targeting two different levels of pharmaceutical company employees. These three phases occurred in the following order: i) interviews with senior managers/board of directors based in the United Kingdom at the time of the introduction of the *United Kingdom Bribery Act*; followed by, ii) a focus group of compliance directors responsible for the Europe, Middle East and North Africa regions; and finally, iii) a second round of interviews with managers of the same companies working on the ground in Asia. These last two data sources provided the perspective of employees

working in cultures where the local norms and expectations include gift-giving as part of doing business, employees now responsible for complying with the ABAC policies set by the elites interviewed in the initial phase. Thus we heard from a variety of voices with multiple perspectives, both in terms of their organizational roles and their geographic work environments. More detailed accounts of these three phases follow.

First, in 2011, the first author conducted individual interviews with senior executives in anti-bribery compliance, legal counsel, and marketing departments in leading multinational pharmaceutical companies operating in the UK. The compliance function is generally based in corporate headquarters, so these interviewees were elite managers. Gaining access to these types of elite managers can be difficult (Thomas, 1993). However, elite sources are appropriate in this case, both because they were the people responsible for setting policy regarding bribery and corruption for their organizations, and because more generally elites tend to have privileged access to information and thus can bring a 'big picture' perspective that other interviewees may not (Marshall and Rossman, 1999).

The interviews were on average an hour long and followed a simple protocol structured around issues associated with corruption within the pharmaceutical industry and responses to anti-bribery laws. Interviewing people about corruption requires a nuanced approach; asking direct questions is generally not productive, since people are not likely to admit to wrongdoing. We therefore asked interviewees about 'corruption risks', vulnerabilities in the system, and how 'people in their positions' might behave. The initial interviews were selected through a purposive sampling process (Lincoln and Guba, 1985). Our intent was to gather a broad horizontal sample of senior managers and directors. Having gained access to those initial interviewees, we were able to use a purposive snowballing technique to increase our pool (Miles and Huberman, 1994) by asking participants at the conclusion of their interviews to recommend other potential interviewees.

Based on the initial findings from that first phase of interviews, the first author conducted a focus group with fifteen pharmaceutical compliance directors responsible for business units located in Europe, the Middle East and North Africa (MENA). This focus group was held at a one-day seminar of a professional association of pharmaceutical compliance directors. A variety of companies were represented, including Eli Lilly and Johnson and Johnson. The aim of the focus group was to test initial findings and to get the perspective of people working in one of the emerging markets (Africa) considered most attractive by pharmaceutical companies. The first author presented the preliminary findings and gathered feedback from participants, taking detailed notes on their comments.

Finally, the fourth author conducted a final round of interviews with managers in health care compliance and commercial departments in Asia, three years after the *UK Bribery Act* came into effect.

By including both very elite managers based in Western headquarters, and commercial managers working at the ‘coalface’ in emerging markets, we were able to hear the perspectives of those involved in setting ABAC policy at the highest levels of the organization as well as those working ‘on the ground’. The latter group, people charged with meeting marketing and sales targets, frequently faced pressures that put them in conflict with those organizational policies set at the top. At this point in the data collection, we had reached the point of theoretical saturation, that is, we were hearing similar stories and themes from each new interaction (Glaser and Strauss, 1967). Table 2 summarizes our interview sources.

### **Insert Table 2**

We used an inductive, open-ended strategy in analysing the data. The collected data were broken apart and analysed. We iterated back and forth between data and literature, and gradually began to develop theory (Locke, 2001). Relying on theoretical memoranda (Martin

and Turner, 1986: 151-153) and reflexivity, we gradually refined our research questions and sorted the data into discrete categories of meaning. This was a process of gradual abstraction, as we structured our raw data into categories, linked those categories to themes, and reassembled them into our theoretical framework (Pratt, Rockmann, and Kaufmann, 2006).

To provide one example of how we moved from first-order concepts to second-order ones, we heard these words from one of our interviewees:

*“It’s a tradition in Asian countries for gift giving. For example, it is very rampant during Christmas season that local companies offer gifts to the doctors, key customers, key suppliers.”*

It was apparent that those working in emerging markets were concerned that by not giving gifts they risked severing the critical relationship between healthcare providers and sales representatives. As we examined the data, we found many similar types of statements, which we gradually came to recognize as evidence of a tension between global laws and local norms. Similarly, we began to recognize a pattern of conflicting aims between those charged with ensuring compliance with organizational statements of purpose around corruption and bribery and those in the trenches who were expected to balance the demands from the top for adherence to new ethical standards with their often more compelling requirements to achieve commercial targets. Thus, the data provided evidence that two tensions exist that are difficult to resolve: that between global laws and local norms, and another pitting compliance goals against commercial ones.

### **Findings**

Our goal is to investigate the disconnect between the institutional purpose of combating bribery and corruption and organizational practices that consistently fail to do so in the pharmaceutical industry. Our findings point to two significant tensions that are likely to be associated with and contributing to this disconnect: 1) The tension between global laws (that prohibit bribery and corruption, and may regard gifts and hospitality as equivalent to bribes)

and local norms (that regard bribery – or at least gift-giving -as acceptable); 2) The misalignment of the objectives of the compliance departments (that advocate engaging in practices aimed at combating bribery and corruption) and the commercial departments (that are driven by, and rewarded for, the volume of sales they undertake). We discuss these two tensions in detail below.

### ***Global laws, local norms: a complex external environment***

Under the FCPA, and most national bribery laws in OECD ABC-signatory countries, companies can be held liable for payments made by their employees or agents. This creates a tension, particularly in countries where corrupt business practices are the norm and where gifts and hospitality are regarded as key tools for building business relationships. Yet there are commercial pressures to operate in just such areas: the main growth opportunities for international pharmaceutical companies in the coming years are in emerging markets, particularly Asia and Africa. For most companies, the challenge is how to operate in these markets without falling foul of the law.

In such markets, the relationship between the sales team and the healthcare provider – physicians or hospital directors - remains critical to sales, and healthcare providers often expect to be given gifts or provided with hospitality. To cease such practices would not only risk insulting an individual, but could also lead to the loss of business – particularly if competitors continue to engage in such practices. One interview respondent told us,

“It’s a tradition in Asian countries for gift giving. For example, it is very rampant during Christmas season that local companies offer gifts to the doctors, key customers, key suppliers.”

“I’ve heard stories that MRs, in local companies could give valuable gifts such as phones, tablets, which can be interpreted as bribery already.”

In an environment where corruption is endemic, companies may find it difficult to discern legitimate from corrupt motives. One respondent recounted the kind of difficulty that might arise:

“the regulator or the guy in the Indian Ministry of Health, can just say, oh, you know, the head of the agency requires a trial to be done locally, which is fair enough, and he suggests that you use so-and-so, who might be his brother-in-law or...whatever. Now, you could genuinely have a situation where there is a very good clinic ...or it may be just his best friend who he wants to, you know, generate some business for.”

Thus, a company might think that it is making a legitimate payment for a clinical trial, but could find that this payment will be regarded as a bribe if it has not carried out adequate due diligence on the third party.

The corruption risks in emerging markets may be exacerbated because pharmaceutical companies tend to rely on third parties with ‘local knowledge’, whose conduct may be more difficult to monitor and control. One respondent told us,

“[We were] very often operating through agents because, like anything else operating in a foreign country, there are people who know the right people to approach and get you the right contacts and all that.”

However, this makes it difficult to assess whether the agent has internalised company norms and policies or might rather be pursuing a different agenda.

Another problem is that the local companies with which MNCs compete are not always bound by international laws or norms, creating competitive pressure to behave in line with local traditions.

“There should be a legitimate purpose for sending doctors to a congress event. But local companies do not have that restriction. So of course tit for tat, doctors that receive such hospitality prescribe the drugs that those local companies manufacture.”

Our interviews further suggest that even the most honourably intentioned multinationals must grapple with the fact that there may be local expectations – among

physicians, regulators or potential business partners – that the company will pay bribes or provide excessive hospitality.

Therefore, using our data, we identify the following factors as contributing to the tension between global laws and local norms: perceived risk of harming relationships, perceived demand for gifts, perceived risk of individual insult, perceived risk of losing future business, perceived understanding that it is “common practice” and necessary in order to compete, difficulty in separating legitimate and corrupt practices, challenges in monitoring motives and activities of local agents, domestic competitors are not governed by international anti-bribery and corruption laws. Table 3 illustrates these in detail, giving explanations of each and providing evidence from our data to support each category.

Insert Table 3

### ***Compliance versus commercial: An internal culture clash***

The compliance and legal teams in multinational pharmaceutical companies tend to be large, and well-resourced relative to many other sectors, reflecting the heavy regulatory burden in such a complex and sensitive industry. Corporate policies on ethics and legal compliance are often well advanced and, although the anti-corruption and bribery element represents only one element, it is typically regarded as being of central importance by the compliance team. However, several companies that have faced FCPA enforcement actions because their employees paid bribes had had exemplary anti-bribery and corruption programs in place, yet this had not prevented the misconduct.

Our interview evidence suggests that individuals operating in high-corruption contexts often fail to internalise the values set out in codes of conduct and anti-bribery policies. Compliance teams are often unaware of the pressures on sales and marketing teams, while the latter often regard compliance as an unhelpful and unnecessary constraint on their core activities. Although both compliance and commercial have an interest in the company’s

long-term performance, their short-term objectives might conflict. The compliance team is concerned with avoiding risk, while the sales team wants to maximise sales - and their salaries or bonuses may depend on it. One sales executive told us,

“In the eyes of the stock market and the financial markets, if you don’t hit your numbers, you’re dead. There are no prizes for being the most honest company.”

These conflicts are typically latent, with commercial teams ‘paying lip-service’ to compliance advice provided in training sessions, for example. Several compliance directors recounted their experiences of providing anti-bribery training to rooms full of glazed expressions:

“in the [training sessions] where you haven’t had a lot of feedback, you wondered if they were listening politely because they had to and, actually, as soon as the guy from Headquarters has gone, it’s, you know, back to the normal way of doing business.”

Some were also sympathetic, aware that the company policy was unrealistic in a particular local context:

“I can understand, you know, if they’re living in...Brazil or in Indonesia, where pretty much everything is corrupt, then you’re asking a hell of a lot of them.”

The sales professionals that we interviewed also noted that the pressure from compliance is weak, particularly compared to the pressure to deliver sales. Where their pay or promotion prospects depend on meeting sales targets, such concerns are likely to dominate any appeals to change their practices. Arguably, achieving compliance in such situations requires a more fundamental re-thinking of organizations’ business model and remuneration practices.

The difficulty of getting the message across was seen as a problem not just with employees, but also with local agents, despite efforts to set out firm rules in their contracts.

“They will sign that document, in some cases knowing that they cannot abide by it. They sign it because they need the business but doing business in the correct way would make it ‘no go’.”

Where the conflicts become more overt, compliance professionals often bemoan the absence of ‘tone at the top’, arguing that their training would have more force if the company’s directors and Board were more vocal about the need to avoid corrupt practices.

In sum, we identify the following as contributors to the tension between compliance and commercial teams: conflicting short-term goals, lack of commitment, perception of unrealistic company anti-corruption policies, perceived mismatch of weight placed on compliance versus sales, and challenge of communicating the significance of anti-bribery compliance to local agents. Once again, Table 3 gives detailed explanations of these and provides evidence using our data.

### **Discussion**

The concept of institutional corruption is of particular interest because of the importance it places on an institution’s underlying purpose. This fits with emerging interest in the management literature on organizational purpose which, following Selznick (1957), Henderson and Van den Steen (2015) define as “a concrete goal or objective for the firm that reaches beyond profit maximization” (Henderson and Van den Steen, 2015). Recently, intellectual questions such as “why do so many firms publicly espouse a ‘purpose’ beyond simple profit maximization?” and “why do so many managers and employees appear to care deeply about this purpose and to believe that it is critically important?” are being posed. Henderson and Van den Steen cite the case of consumer goods giant Unilever, which “has committed to obtaining 100 percent of its agricultural inputs from sustainable sources by 2020, while Henry Schein, a distributor of medical and dental products, claims that one of its most important goals is the ‘expansion of care to at-risk groups’. Both firms appear to believe that purpose is critical to their success, even though it seems to imply significant costs without obvious commensurate gains”. Henderson and Van den Steen thus note that the broader purpose of a company can conflict with other aims such as profit maximisation,

although other scholars might situate purpose within the literature on corporate social responsibility, some of which suggests that ‘doing good’ is equivalent to ‘doing well’ (Hollensbe et al., 2014).

For an individual company, however, this might come into conflict with other aims, such as the company’s duty to its shareholders to maximise profit. Moreover, some scholars have noted that the potential for pharmaceutical companies to alleviate suffering may impose specific ethical obligations or, at the very least, make them subject to political and social pressures that affect their ‘licence to operate’ (Kapstein and Busby, 2013).

Institutional corruption negatively affects an organization’s effectiveness by threatening its ability to fulfil its purpose (Lessig, 2013a). As demonstrated by the GSK example, at the very least the company’s actions resulted in significantly higher costs for patients. The greater risk is that companies’ ‘gifts’ to healthcare officials and doctors influence the way in which they treat patients. Besides making medicines more costly, these gift-giving practices may lead to unnecessary prescriptions with the potential even to cause harm to patients (Rodwin, 2013a).

To be institutionally corrupt, such practices need not render an organization unable to fulfil its purpose. It might be sufficient that such practices make purposeful outcomes uncertain. In either case, the failure to fulfil organizational purpose or the uncertainty about whether it is fulfilled is likely to erode public trust in the organization and the sector. Just as a politician might lose objectivity due to a campaign contribution, so might a physician who has received gifts from a pharmaceutical company lose objectivity when prescribing drugs, interpreting the results of clinical trials, or advising a regulator. This is an important risk for a pharmaceutical company; in the eyes of the public, the purpose of the industry is less about profitability than it is about advancing human health; if it is seen to obstruct that purpose, it could have serious consequences in terms of public trust and ‘license to operate’.

Despite the overarching purpose of pharmaceutical organizations to save lives and to do so in ways that is in the best interest of the public, corrupt practices are rife in the pharmaceutical sector. This may reflect a structural difficulty for pharmaceutical companies. Because of the nature of their products, regulators usually prevent pharmaceutical companies – to varying degrees – from reaching out directly to their potential customers. Rather, pharmaceutical companies gain access to markets through a variety of intermediaries, including regulators (e.g., agencies that monitor drug safety) and healthcare providers (e.g., hospitals or physicians who prescribe drugs to patients). Because physicians often represent an important nexus between the company and the purchasers and/or end-users of medical products (i.e. in terms of both state healthcare providers (HCPs) and patients), pharmaceutical companies have developed a range of marketing strategies that seek to influence physicians to support their products. At one end of the spectrum, relatively small payments are made to multiple physicians to influence them to prescribe a company's products. At the other end, larger payments are made to a much smaller number of physicians and medical researchers to act as 'key opinion leaders', influencing other physicians in their field, and potentially to advising regulatory agencies on the safety and efficacy of certain drugs (Sismondo, 2013).

Research suggests that these practices are by no means restricted to operations in emerging markets (Oldani, 2004; Rodwin, 2012; European Commission, 2013). One study conducted in 2007 showed that 83% of US physicians received gifts from the industry, while 28% received payments for services such as honoraria for speaking at conferences and consulting fees (Campbell, 2007). The payments are not always monetary and are often provided under the guise of hospitality at training events and conferences – a theme familiar from the GSK case.

Such payments may not be overtly provided in exchange for influence, but they seek to build long-term relationships of loyalty among high-status individuals with the potential to

exert influence. As such, they introduce conflicts of interest that may cause intermediaries to be biased, leading to institutional corruption (Rodwin 2013a).<sup>vii</sup> Pharmaceutical companies argue, in their defence, that they rely on physicians to inform and train their peers in how to use new products. However, in many cases, the hospitality associated with conferences and training is excessive. Sah and Fugh-Berman (2013), document six psychological principles that pharmaceutical firms use to influence physicians and suggest that “commitment to ethical behaviour” cannot eliminate subconscious bias on the part of physicians.

Our interviews confirmed that the provision of hospitality to physicians has been a key element of marketing strategy for many years, in developed western markets as well as emerging markets. As one of our respondents explained,

“In Western Europe and in the US, it’s the sales representatives going out to see doctors to detail the products to them – in other words, not to sell products to them, generally, but to persuade them that, when they have a patient coming in with this disease, ours is the best drug. Now, what is permissible there and what is not? [...] It’s up to us to educate the medical profession about our products. So, you know, if you go off to, I don’t know, a doctor in the UK, and offer to send him to a conference in Sydney, where it’s going to be on this particular anti-cancer drug, he’ll be your friend for life, and it may well be a first rate conference, he will learn all about this, in his area of medicine, and it will advance his career enormously, but he may also feel very beholden to you, because... you’d fly him out there, you would put him up in a good hotel, you’d give him meals and everything.”

The hospitality provided was often excessive, as one senior compliance executive who had worked in the pharmaceutical industry for many years recounted,

“I blush to think, in the early ‘90s, of some of the [drug] launch parties we had... We had a very flamboyant general manager, and he rounded up all the doctors he could lay his hands on, 250, and they were flown to some incredible resort and they had a weekend there of the high life.”

Other respondents told similar stories, and some took the view that such treatment might well have served to buy the loyalty of physicians:

“if you go off to, I don’t know, a doctor in the UK, and offer to send him to a conference in Sydney, where it’s going to be on this particular anti-cancer drug, he’ll

be your friend for life, and it may well be a first rate conference [...] but he may also feel very beholden to you.”

Most compliance professionals that we interviewed also claimed that practices had changed in recent years, largely as a result of public and legal scrutiny,

“There have been a lot of stories in the press...golf was a big one...paying for doctors to play golf. I remember trying to overcome that one in Canada at one stage. It was just... this poor little GP [General Practitioner] out in the Midwest, he... he used to go out golfing with his friendly rep every week, you know, and we had to stop that.”

However, our findings and cases outside of our research that such practices have not ceased, and may in particular be prevalent in emerging markets. The gradual phasing out of such practices in western markets has been driven largely by the introduction of anti-bribery laws, which have increased the risk that such practices will be regarded as bribes intended to obtain a business advantage.

The spread of anti-bribery laws and the more active levels of enforcement have caused companies to take corruption risk more seriously, as evidenced by reduced investment by OECD companies in the most corrupt countries (Cuervo-Cazurra, 2008). The corporate response to anti-bribery laws has often been to introduce an anti-bribery and corruption program, usually involving a risk assessment, the introduction of stricter due diligence procedures on partners and third parties, and the introduction of internal policies to ban or regulate gift-giving, entertainment and hospitality. However, our research suggests that it is very difficult for companies to translate policy into practice in this area.

Our research has some practice-based outcomes for organizational actors striving to overcome the tensions that exist between global laws and local norms and between compliance and commercial departments. In terms of the tension between global laws and local norms, our research conveys that organizations operating in environments with strong traditions of gift-giving may find it difficult to win or maintain business if they cease to

engage in gift-giving. Under these circumstances, organizations operating in environments characterised with strong traditions of gift-giving are likely to find it easier to implement a no gifts policy if they cease to rely on local agents embedded in local norms. Regarding the tension between compliance and commercial departments, one of our most striking findings was that anti-bribery compliance programs will be ineffective in changing the behaviours of sales and marketing teams where the latter's pay and promotion prospects depend on meeting targets. Therefore, we suggest that as a means of overcoming the tension between compliance and commercial departments, there needs to be strong evidence of Board-level commitment to anti-bribery programs and innovative ways of incentivising compliant behaviour. Also, achieving compliance in such situations requires a more fundamental re-thinking of organizations' business model and remuneration practices – one that places equal weight on anti-bribery compliance and sales revenue and aims to align not only the long-term goals of these two departments but also the short-term ones.

### **Conclusion**

Our research argues for the need to situate the study of organizational corruption within social, political and legal context, and to draw on concepts of corruption that have been elaborated in political science. The amalgamation of research on organizational corruption with research carried out in other theoretical fields helps us to move away from 'corruption' as a monolithic conceptual construct and instead recognise its many forms and the extent to which different institutional contexts vary in their vulnerability to different types of corruption. In particular, and at the macro level, we suggest that the concept of institutional corruption can help frame the new wave of interest in business practices that appear to undermine the broader purpose of corporate activity.

At the organizational level, we advocate further research to understand why organizations encounter difficulties in translating anti-bribery policies into changes in business practice on the ground. Multinational companies have thus far responded to changing laws and norms concerning bribery in international business largely by introducing centralised anti-bribery and corruption policies and seeking to improve compliance with them among employees and third parties. However, such initiatives often fail to recognise two important tensions: one between global and local standards, and another between the objectives of internal compliance and commercial teams. Without addressing these tensions, change is likely to remain superficial and companies will find that they are not adequately protected against the legal and reputational risks associated with corruption. Deeper reforms of corporate governance may be needed to cope with the challenges that face the sector and to instigate a process of cultural change.

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<sup>i</sup> The TRACE International Compendium is a searchable database of international anti-bribery enforcement actions, available here: <https://www.traceinternational.org/compendium>.

<sup>ii</sup> <http://www.mps.gov.cn/n16/n1237/n1342/n803715/3841211.html>

<sup>iii</sup> <http://www.telegraph.co.uk/finance/newsbysector/pharmaceuticalandchemicals/10181334/GlaxoSmithKline-spent-323m-on-kickbacks-says-China.html>

<sup>iv</sup> <http://www.fin24.com/Companies/TravelAndLeisure/China-shuts-firm-in-GSK-bribe-case-20130719>

<sup>v</sup> <http://edition.cnn.com/2013/07/25/business/china-glaxosmithkline-bribery-corruption-scandal/>

<sup>vi</sup> See FCPA Compliance and Ethics Blog, 6 August 2013. <https://tfoxlaw.wordpress.com/2013/08/page/3/>

<sup>vii</sup> Corruption in the sector is by no means restricted to the unethical marketing practices described here. For analyses of other ways in which the sector is ‘institutionally corrupt’, see the special issue on institutional corruption and the pharmaceutical industry, *Journal of Law, Medicine and Ethics*, Fall 2013. The concept of ‘institutional corruption’ is elaborated in Lessig (2011).