The principles of bribery law are not complicated, the lawyers say. The difficult part is the interpretation. Gray areas of definition abound, and these will need clarifying by the judiciary and by courts.

The key definition required by corporates and their advisers in the United Kingdom is that of "adequate procedures." Here the very term raises critical issues, given that the procedures will only be tested and scrutinized by the police and the courts, at the very moment when bribery is alleged. The issue then is whether the procedures were "inadequate" or whether adequate procedures were implemented, but a rogue individual slipped through the corporate net. That in turn will raise questions about the quality of the "net" that was designed to ensure compliance across the whole corporate body. It will be observed that the corporate's only defense to a charge of bribery is that the procedures were adequate and in place and implemented, but the rogue bypassed them.

As this book demonstrates repeatedly, organizations are now under great pressure to establish the nature and the scale of their exposure to bribery and corruption, for it is only through regular and penetrating analysis of this that an organization can determine what procedures are adequate to cover the risk. Given that the risk of bribery and corruption is dynamic, with country and market exposure in constant flux, such assessment needs to be factored in to corporate strategy now as a routine part of any decision-making process. The company's capacity to show a credible assessment of its risk will be a key part of the "adequate procedures" test, should it be demanded by the authorities.

Another gray area likely to require judicial clarification is the concept of "proportionality." Companies will be under pressure to determine a formal procedure to show that the value and scale of an offer to a client or customer is proportionate to the business it undertakes (or hopes to undertake) with the customer. This is of particular importance to companies in the hospitality sector.

But value is not the only criterion in determining what is fair and legal. The process in which one builds up relationships with clients is also critical. One concept used by the law revolves round exerting "influence." Competing for business is an integral part of the market system in which
all companies participate, and a key element in the process of winning or retaining business is one company’s ability to exert greater influence than another. But the new law appears to be saying that there are legal ways of exerting influence and illegal ones. Bribes are clearly viewed by the authorities as rigging the marketplace, an aspect of cartelization.

Another issue raised by the law – although admittedly it has been a factor as long as companies have exported to unstable countries – is how to conduct business in a country where buying influence through corruption is a higher than average risk. Three routes present themselves.

The first involves the corporate closing its eyes to the risk, believing either that a government official or private client will not behave according to form, or that the local sales executive will do whatever they have to do to win the business, even if it contravenes the law.

The second has the corporate responding to a request for a bribe by saying that its national law has changed, and it can no longer agree to it.

Finally, the company might examine the risks, using its own history or the research of others, decide that the risk is too great, and simply exit the market.

The assessment of each route will involve the cost to the business of the loss of a client or market, and the possible cost (in reputational as well as financial terms) of a successful bribery prosecution. The law enforcement authorities would clearly like to believe that companies – which have primarily their self-interest at stake – will take the message from the passing of the Bribery Act, that the odds of a bribery prosecution are stacking up in the authorities’ favor. The interpretation by law enforcement and police of the Bribery Act will demonstrate how far those odds have moved. Some concerns about the resources allocated to the Serious Fraud Office (SFO) to police the Act have led to questions about the commitment of the UK government. This contrasts with a push by the US Department of Justice to toughen up implementation of the Foreign Corrupt Practices Act.

Given tight resources, the authorities can be expected to pay greatest attention to companies operating in countries at greatest risk of exposure to corruption, namely those with unstable or politically insecure regimes. Companies seeking to introduce the necessary procedures will need considerable insight into the range of behaviors and customs applying in countries where they operate.

These include aspects around political stability. So in countries with unpredictable factors (like the whim of a dictator or an incipient civil war) public servants are more likely to make demands for a payment, as they will view the tenure of their power base as temporary, and will want to maximize the fruits so long as they have it. Countries in Central Asia, like Kazakhstan and Kyrgyzstan, in Africa, Angola for instance, and Asia, such as Indonesia, pose these sorts of problem. Corruptibility is vulnerable to the shifting sands of political flux. So events in the Middle East can be