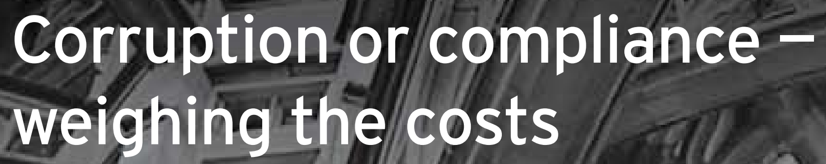

10th global fraud survey

Ernst & Young

Quality In Everything We Do

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Foreword

Investigations of corrupt business practices have been among the headlines in recent months. Companies have seen their reputations diminished as fines were imposed, profits disgorged. In some instances, executives have been sent to prison.

Whether this reflects an increase in the underlying levels of bribery and corruption is difficult to tell. What is certain, however, is that enforcement efforts in many countries are intensifying.

Executives in some companies today may still believe that paying bribes is good business; it "works." But the risk of such action has certainly increased markedly in recent years. International organizations, like the United Nations and the Organization for Economic Cooperation and Development, have adopted numerous conventions. Many countries have enacted anti-corruption legislation — regulating corporate behavior in their home and international markets. Non-governmental organizations, such as Transparency International, have kept up the pressure by measuring both the demand and supply side of bribery.

Companies, therefore, have to abide by anti-corruption laws in their home countries and the foreign countries in which they have commercial interests. If their shares trade in yet further countries, other foreign bribery laws and regulations may also apply.

Among these many laws, it is the Foreign Corrupt Practices Act of the United States that has become the de facto international standard regarding the bribery of foreign officials. Enforcement efforts by the US Department of Justice and the Securities and Exchange Commission are much more aggressive and extraterritorial than we are currently seeing elsewhere. The FCPA is not merely relevant to SEC registrants or US-headquartered companies. US citizens are not the only ones that have been subjected to its enforcement. For the Department of Justice, the fact that corrupt payments traveled through US clearing banks may be enough of a nexus with the US to bring charges.

As a result, companies would be well served by measuring their own anti-corruption efforts against the FCPA and whatever local statutes also apply to foreign and domestic bribery, both public and commercial.

Because of the significant interest in anti-corruption, we at Ernst & Young undertook the *10th Global Fraud Survey* to understand better how companies are managing the risks associated with bribery of government officials outside their home countries. Because the propensity to bribe abroad is higher than at home, we focused on company executives' knowledge of regulations and compliance procedures relating to bribing foreign government officials.

While assessing the level of understanding of our respondents with each of the applicable anti-corruption laws was beyond the scope of this survey, we chose to use the FCPA as a proxy for these other laws. Given that the FCPA is the most heavily enforced foreign bribery statute, companies benefit from a more complete understanding of the law. Taking into account its provisions when performing internal audits or due diligence is undoubtedly beneficial. Establishing an anti-corruption compliance program consistent with its requirements, along with those of other applicable laws, is prudent and increasingly necessary.

Aberrational behavior is inevitable in organizations, large and small. When incidents require investigation, companies need help securing the relevant evidence and establishing the facts. A thorough and independent investigation is often critical to reducing the reputational damage and to reassuring regulators and law enforcement of a company's commitment to transparency and good governance. We explore these and other issues in the report to follow.

This survey was conducted in 2007 and 2008 on behalf of Ernst & Young's Fraud Investigation & Dispute Services practice. We would like to acknowledge and thank all respondents for their time and insights.

David L. Stulb

Global Leader
Fraud Investigation & Dispute Services

Executive summary

Corruption is a growing problem for businesses and executives. Despite the multitude of new anti-corruption legislation and increased enforcement efforts around the world, corruption is still prevalent.

- One in four of our respondents said their company had experienced an incident of bribery and corruption in the past two years
- 23% of respondents knew that someone in their company had been solicited to pay a bribe to win or retain business
- 18% of respondents said that they knew that their company had lost business to a competitor who had paid a bribe
- Over a third of all our respondents felt that corrupt business practices were getting worse

Regulatory enforcement is significantly stronger than in the past. Foreign bribery investigations by prosecutors in OECD countries have increased fivefold from 51 cases in 2005 to 270 cases in 2007. Individuals are increasingly being targeted for prosecution as well.

- Over two-thirds of our respondents said laws and regulations against bribery and corruption were being enforced at least fairly strongly
- Almost 70% of our respondents noted that enforcement has become stronger in their locality during the past five years

Companies are recognizing the risks and claim to be doing more to implement anti-corruption policies and procedures into their compliance programs.

- More than half our respondents cited increased training and awareness assisted in reducing the risks
- More than 45% of our respondents claim to routinely conduct anti-corruption due diligence prior to an acquisition
- Over two-thirds of our respondents believed that their internal audit teams had sufficient knowledge to detect bribery and corrupt practices and half thought compliance-focused audits were successful in mitigating these risks

In contrast, knowledge of the FCPA and its requirements was found to be lacking. Companies could benefit considerably from both increasing their knowledge and awareness of the FCPA and improving their capabilities to mitigate the risk of bribery and corruption.

- Only one-third of our respondents claimed to have some level of knowledge about FCPA
- 58% of senior in-house counsel were not familiar with the FCPA

Basic anti-corruption compliance is lacking when companies' standard processes are questioned.

- 43% of our respondents indicated that their company did not have specific procedures in place for dealing with government officials
- 44% of our respondents indicated that their company did not have specific procedures in place for identifying parties related to government officials

Establishing a robust anti-corruption compliance program so that measures are in place and utilized to actively seek out instances of bribery and corruption are essential in today's regulatory environment. The anti-corruption compliance program needs to be integrated into the company's overall compliance regime. Companies that fail to address their compliance weaknesses continue to take unnecessary risks given increasingly determined and globally active regulators.

A compliance program of this kind is not simply about avoiding penalties, or even about avoiding internal problems. It is about balancing the need to improve the business — achieving its potential — while keeping the company and its executives out of trouble.

"Graft, bribery, and other forms of financial corruption by governments and political figures is an unfortunate fact of life throughout the world — as the Commission's enforcement responsibilities under the Foreign Corrupt Practices Act remind us on a daily basis."

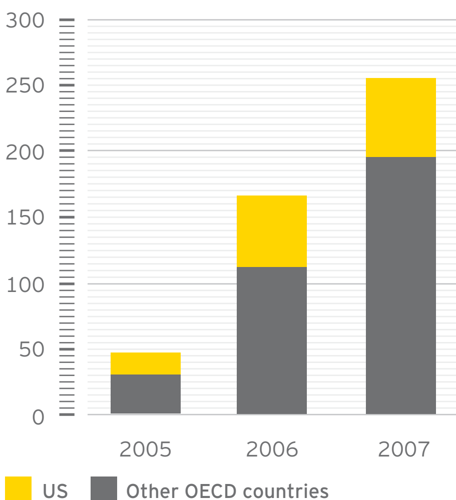
Christopher Cox, Chairman of the Securities and Exchange Commission

Our findings

Corruption remains pervasive around the world and across industry sectors. The fight against it is increasingly a key focus for the world's law enforcement and regulatory agencies, as governments recognize that corruption makes markets unfair, erodes public trust and places a drag on long-term economic development. Indeed, domestic and extraterritorial enforcement actions by regulators, particularly in the US, have accelerated markedly — ensnaring more companies and individual executives than ever before.

While the FCPA is more than 30 years old, enforcing its provisions has recently become an even bigger priority of the US Department of Justice (DoJ) and Securities and Exchange Commission (SEC). With corporations headquartered around the world coming under US scrutiny, other national regulators have joined the campaign to reduce bribery and corruption. In addition to the US, 36 other nations have expressed their commitment by ratifying the OECD Anti-Bribery Convention. Regulatory and law enforcement agencies in these countries are not only launching more investigations themselves (Figure 1), but are actively sharing information with US authorities to aid in their cases.

Figure 1
OECD foreign bribery investigations[1]



The FCPA has become the de facto international standard regarding international bribery. The US Congress has amended the FCPA over its legislative life to broaden its scope, including making key changes to the law following the signing of the OECD Anti-Bribery Convention. Any company that is registered with the SEC is subject to the FCPA, which applies to all operations and subsidiaries wherever they may be in the world. But the FCPA also covers any transaction that transits through the US banking system or takes place on US soil. Thus an illicit payment from a European company to an Asian consultant that passes through a US clearing bank could provide jurisdiction for US enforcement. A holiday for a Canadian doctor and her family in New York, improperly paid and accounted for by a Brazilian pharmaceutical company, could similarly be subject to investigation by US authorities.

As a result, any company looking to acquire businesses or conduct commerce abroad is now stepping into an increasingly active global regulatory fight against bribery and corruption.

In this edition of the Global Fraud Survey, we have interviewed nearly 1,200 major companies in 33 countries. Their collective experience comes from interacting with a wide range of national regulators and law enforcement agencies.

The executives we spoke to would appear to be well positioned to combat bribery and corruption. They are also executives with significant potential personal liability. Over half were from finance, with chief financial officers making up almost a quarter of our survey, and another 15% were senior internal audit directors. The other senior executives we talked to included chief executive officers, chief operating officers, heads of legal, compliance and strategy, as well as audit committee directors and other board members.

[1] Source: Transparency International Progress Report 2007, *Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials*

Many of our respondents showed little surprise at being asked about anti-corruption policies at their company. Their willingness to discuss these delicate matters openly confirms that the issue now has a high-profile on the corporate agenda.

While there was a general sense that bribery and corruption was a growing problem, there may have been a lack of appreciation that enforcement of existing anti-corruption statutes is fast becoming the significant issue. Only a few years ago, the focus of a survey such as this would have been on detection — now it is on compliance.

The regulatory landscape

A number of global organizations have adopted international conventions, such as:

- United Nations' Convention Against Corruption
- The Organization of American States' Inter-American Convention Against Corruption
- African Union's Convention on Preventing and Combating Corruption
- Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Officials in International Business Transactions

Signing on to these international conventions often required countries to subsequently enact enabling legislation that strengthened penalties and fines for corrupt practices. Among the more than three dozen countries adopting such legislation are:

Country	Legislation	Year passed
Australia	Criminal Code Amendment (Bribery of Foreign Public Officials) Act	1999
Canada	Corruption of Foreign Public Officials Act	1998
France	Criminal Code and the Code of Criminal Procedure	2000
Germany	Act on Combating Bribery of Foreign Officials	1999
South Korea	Act on Preventing Bribery of Foreign Public Officials in International Business Transactions	1998
United Kingdom	Anti-terrorism and Security Act	2001

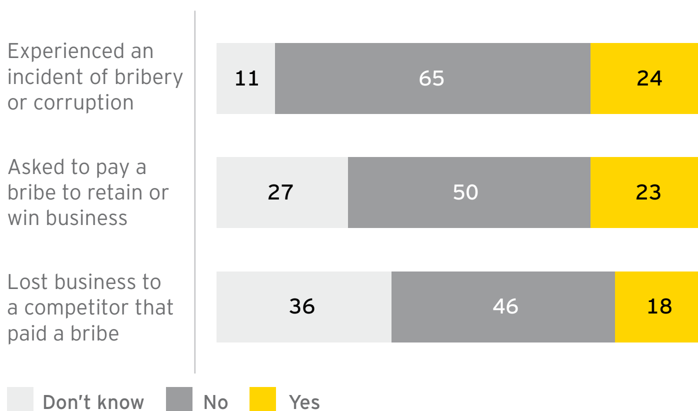
> "My hope and belief is that if our foreign law enforcement partners see our commitment to combating corruption around the world and to enforcing our own anti-corruption laws, it is more likely that they will prosecute corruption in their own countries."
>
> Alice Fisher, Assistant Attorney General, US Department of Justice

I. Curbing corrupt practices remains a significant challenge

Despite the best efforts of some governments, non-governmental organizations and law enforcement agencies, the risk of bribery and corruption remains prevalent. One in four of our respondents said that their company had experienced an incident of bribery or corruption during the last two years (Figure 2).

Among the regions of the world, the Middle East, India & Africa and the Far East indicated substantially higher amounts of corruption (48% and 56% respectively). Surprisingly, Japan led all regions with some 72% of respondents experiencing recent bribery or corruption. This is at odds with Transparency International's *Corruption Perceptions Index* which, in 2007, ranked Japan the 17th least corrupt country, a better ranking than the United States.

Figure 2
Incidence of bribery or corruption



Q Has your company had an incident of bribery or corruption in the last two years? Do you know if anyone in your company has ever been asked for a bribe to retain or win business? Has your company ever lost business to a competitor as a result of them paying a bribe?
Shown: Percentage of all respondents (1186)

Our research also found that 23% of respondents knew that someone in their company had been asked for a bribe in order to win or retain business (Figure 2). Perhaps more distressingly, 18% of respondents said that they knew that their company had lost business to a competitor who had paid a bribe.

Spotlight on Japan

Our survey respondents in Japan stood out from the pack. About 72% said that their company had experienced an incident of bribery or corruption in the last two years. Half said that business had been lost to competitors who paid bribes. However, when we asked them about local conditions, only 2% felt that corruption was prevalent in their sector. The difference between the respondents' view of local conditions compared to their overall experience with corruption may suggest that Japanese companies are encountering substantially more corruption in their overseas operations.

When we asked companies how strongly laws and regulations concerning bribery and corruption are enforced, Japanese companies topped the list of those who felt that local enforcement is very strong.

Certainly public awareness of fraud, bribery and corruption has never been greater in Japan. The regulatory environment is undergoing significant change, following a number of high-profile fraud cases. These cases undoubtedly caused great embarrassment.

In part in response to these developments, Japan adopted the Financial Instruments and Exchange Law to strengthen corporate accountability. This so-called J-SOX legislation clarified management's responsibility for internal controls over financial reporting. Japan's Financial Services Agency, the key markets regulator, has significantly strengthened enforcement in a number of areas, including accounting fraud and insider trading. Fines and penalties are on the rise.

Given its importance to the global economy, Japan is right to be keen to protect and strengthen its reputation. Criticism by the OECD regarding its anti-corruption enforcement has led to more discussion of the challenge of bribery and corruption amongst business leaders, regulators and academics. As our study shows, corporate Japan is ready to talk openly about the issue. Stronger enforcement will further reinforce changing standards of behavior.

Over a third of all our respondents felt that the problem of bribery and corrupt business practices was getting worse. We asked respondents about the prevalence of bribery and corruption in their industry sector, and overall, despite some variation across sectors, the figure was high, with two in five saying bribery was prevalent in their industry. Respondents from the mining and utilities sectors saw it as more prevalent, with those from banking and energy viewing it as relatively less prevalent. This would appear to be at odds with regulatory actions in the US, where the energy sector is currently facing widespread scrutiny for corrupt business practices from the DoJ and SEC.

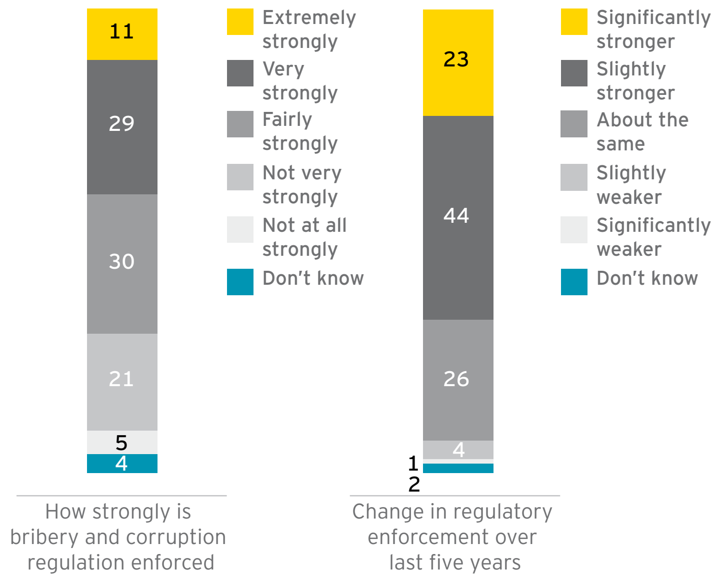
Table 1
Percentage saying corrupt practices are prevalent within their sector

Sector	%
Mining	47
Utilities	43
Insurance	41
Manufacturing	40
Telecommunications	38
Food and beverage	35
Consumer products	34
Pharmaceuticals	33
Banking and capital markets	31
Energy (oil, gas, electricity)	30

When we asked about the enforcement side of the equation, the answers were even more marked. Over two-thirds of our respondents said that laws and regulations against bribery and corruption were being enforced at least fairly strongly in their particular country (Figure 3). Some 40% of respondents chose to categorize local enforcement as very or extremely strong. This figure is surprisingly consistent across economic sectors and across different job functions. It also holds for most regions of the world, rising to over 60% for North America and Japan.

Whether a company experienced an incident of bribery or corruption over the last two years makes little difference to perceptions of enforcement. It is fair to say that close to half of our respondents now regard their local regulators as taking an aggressive posture on this issue. Indeed, local regulators in many jurisdictions are stepping up their cooperation with US authorities. Parallel, or even joint investigations, are much more common today – a fact that reinforces the perception of increased global enforcement.

Figure 3
Strength of regulatory enforcement



Q How strongly are anti-bribery and corruption laws and regulations enforced against companies headquartered in your country? Has the level of regulatory enforcement changed compared to five years ago?
Shown: Percentage of all respondents (1186)

This represents a change from the past, as almost a quarter of our respondents noted that enforcement has become significantly stronger in their country during the past five years.

> "People have to think beyond simple direct bribes. Any authorization of a payment by an employee or third party to a government official or employee of a state-owned enterprise is illegal. And the bribe doesn't even have to be successful."
>
> Mark Mendelsohn, Deputy Chief, Fraud Section, Criminal Division, US Department of Justice

Prosecutions in the last year in the US, for example, reveal that the authorities are particularly adept at following the investigative trail from one company to another. Prosecutors are encouraging companies to voluntarily disclose violations and provide cooperation in return for more lenient treatment. This has led to evidence of wrongdoing by other companies and raised the pressure on these others to self-report. In one particularly notable instance in 2007, covered widely in the media, US prosecutors followed leads generated by one case in the oil and gas industry to a service provider of that company, and then on to more than a dozen customers of that service provider.

The simultaneous pursuit of a number of companies in a given industry, as we have seen in the medical device industry in recent months, is increasingly common. Yet despite all the apparent pressure to self-report, DoJ representatives have commented publicly that just 30% of their recent investigations were the result of self-reporting. US authorities continue to prove themselves very capable of developing their cases through whistleblowers, informants or other sources.

In addition to their considerable investigative resources, the DoJ also wields important powers to negotiate deferred prosecution and non-prosecution agreements. Deferred prosecution agreements (DPAs) in FCPA matters often include the imposition of an outside monitor or compliance consultant. Last year, twelve DPAs required such monitors.

The DoJ has also encouraged companies to resolve matters with local prosecutors. In some instances, non-prosecution agreements have made settlement contingent upon the company reaching a resolution with local prosecutors within a fixed time period. There are instances where the company voluntarily disclosed the offending conduct, the DoJ imposed a financial penalty, but agreed not to prosecute the company as long as a number of remedial control and compliance measures were taken.

Whatever form the ultimate resolution takes, settling FCPA prosecutions with US authorities can be a costly affair. Focusing only on the financial penalties themselves, the largest ten FCPA prosecutions since 2007 have cost the companies involved nearly US$175 million. These sums, of course, do not include the significant costs associated with compliance monitors and remedial work on internal controls. Hardest of all to calculate is the damage to the reputation of the company itself.

II. Companies show an appreciation of the risks — but are they doing enough?

Our survey suggests that companies have developed a clear appreciation for the risks associated with corrupt payments. There is a widespread awareness of the reputational, legal and commercial impacts of allegations of corrupt behavior. Indeed 56% of respondents told us that they strongly agree that their management understands the potential exposure of their company to these risks.

In the findings outlined below, companies have expressed their confidence in their approach to corruption risks in the context of mergers and acquisitions. So too have they expressed their view that the internal audit function has the training and resources necessary to detect bribery and corrupt practices. Over two-thirds of our respondents told us that management understands which controls failed or were absent when corrupt payments occurred.

A company's approach to dealing with these risks most often reflects their specific understanding of the potential and probability of punishment or other negative impact. The two negative impacts most cited in our survey were fines and penalties and being debarred from particular markets (Figure 4). Each was mentioned by almost half the respondents. Fines and penalties were a much bigger concern for companies in the US, and for Japan and the UK as well.

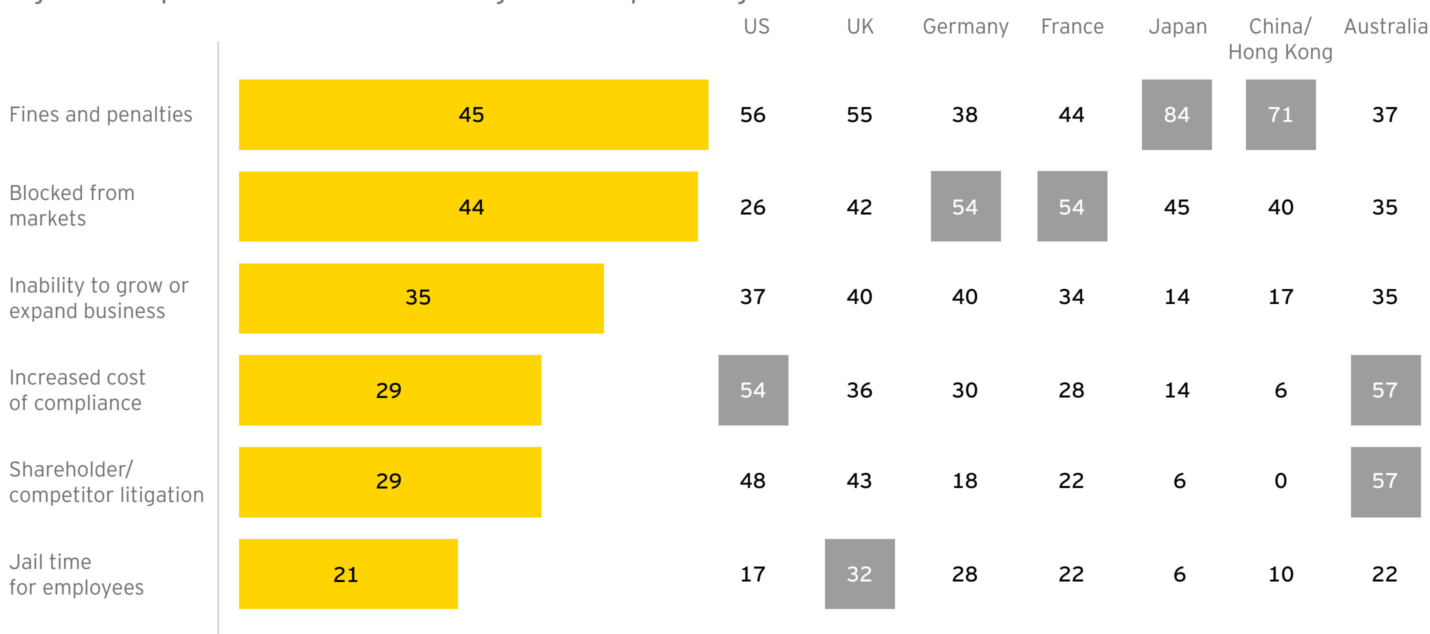
The concern expressed in Japan and the UK is of particular interest given the relative lack of enforcement by national regulators. Compared with fines imposed related to fraud and other financial crimes in the US, fines imposed in Japan and the UK appear to have been limited. In France or Germany, concerns were greatest about being barred from particular markets. This may reflect the relative importance of public sector revenues to these respondents.

Increased cost of compliance and the possibility of jail time for employees were mentioned rather less often. With respect to compliance costs, however, US and Australian respondents were nearly twice as concerned as other respondents. This undoubtedly reflects their respective regulatory environments, among the most intrusive and complex in the world.

"Employees have to be told that corruption, fraud and bribery will not be tolerated. They should also be made aware of the penalties, should they not comply."

Head of Compliance, The Netherlands

Figure 4
Significant impacts on the business resulting from corruption allegations



Q When an allegation of bribery or corrupt business practices is made against a company, what are the three most significant impacts on the business?
Shown: Percentage of all respondents (1186). Country percentages significantly different from global results are highlighted.

We would expect these numbers to rise in the near term for other countries. US regulators remain particularly keen on imposing compliance monitors in settlement agreements. Given their broad scope, fees associated with monitors – and borne by the companies – are substantial. The increasing frequency with which monitors have been required in deferred prosecution agreements led to Congressional hearings in March 2008. Concerns were voiced with regard to potential conflicts of interest in the appointment of former regulators as monitors. Just prior to the hearings, the DoJ issued new guidance with respect to the appointment process. The practical impact of these changes remains to be seen.

Given the costs of investigations, potential for fines, penalties, reputational costs and post-investigation remedial efforts, finding ways to set the proper tone and be proactive in deterring corrupt practices is a top priority for corporations. We asked our respondents which measures they thought might be most successful. The top two measures were increased training and awareness and anti-corruption compliance-focused internal audits. More stringent controls over high-risk payments came a close third. Less than a third put a whistleblower hotline or legal due diligence among the most successful measures. The results are fairly consistent across regions, sectors, and job titles, although it is interesting that North American companies proved to be much more enthusiastic about whistleblower hotlines than those in any other region (77%, Table 2, overleaf).

Table 2
Percentage saying whistleblowing is a successful measure for minimizing bribery and corruption

Region	%
North America	77
Australia/New Zealand	58
Latin America	50
Middle East, India and Africa	37
Western Europe	23
Central and Eastern Europe	20
Far East	15
Japan	6

Shown: Percentage of all respondents (1186)

From these results, it is clear that companies with global operations need to be sensitive to these regional differences. In regions such as Central Europe, the Far East and Japan, where hotlines are perceived to be less successful, it is critical for companies to find innovative ways to deploy them.

The importance of conveying a clear tone at the top of the organization — management's unwillingness to tolerate corrupt practices — is widely appreciated. Codes of conduct are meant to reflect this tone, and approximately 90% of respondents have one. Some four out of five of those that have such a code believe that it is useful in preventing and detecting bribery. Yet for a code of conduct to encourage ethical behavior, it should demonstrate how it relates to the applicable laws and should include a mechanism by which breaches of the code can be reported and monitored.

Understanding that in certain countries this may not be legally possible, a code of conduct that lacks an anonymous reporting mechanism, or has one that is not widely and constantly publicized, is missing a key element. Our survey indicates that less than half of respondents are aware of the presence of a hotline where they can report any suspicious activity.

III. Investigations and reputational risk

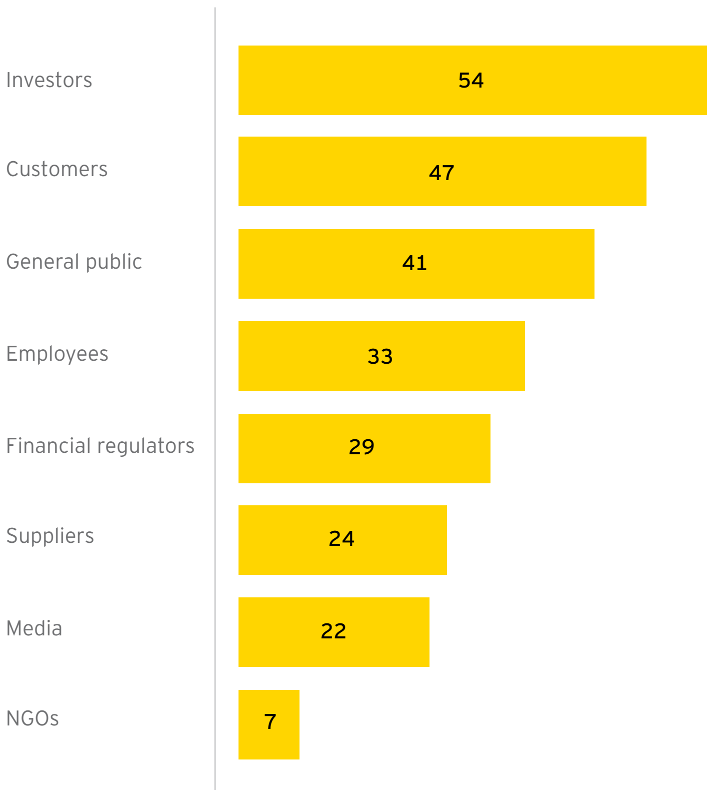
One of the keys to success in dealing with issues of fraud, bribery and corruption is the system a company has for reporting and investigating allegations of misconduct. If the subsequent investigation is perceived by stakeholders to be biased or not competently managed, negative consequences could ensue. Trust in senior management to do the right thing will be eroded and disillusioned employees will think twice about future cooperation.

Around half our respondents saw investors and customers as the two groups that were most negatively affected by failures to investigate allegations of bribery and corruption independently and thoroughly. This was ahead of the general public and a company's own employees (Figure 5).

When we look more closely at the results, we notice that there are significant regional variations in how our respondents perceive stakeholders have been affected by failure to effectively investigate incidents of bribery and corruption. For instance, in Oceania 75% of our respondents considered investors to be one of the three most affected while only 21% of Japanese respondents thought similarly. And 54% of North America respondents considered employees to be one of the three most affected in contrast to just 16% in Central and Eastern Europe.

> "In regulated industries, the scrutiny put on the companies by their shareholders, regulators and customers demands constant diligence."
>
> CFO, Australia

Figure 5
Stakeholders negatively affected by bribery or corruption allegations



Q Perceived failures to investigate allegations of bribery and corruption independently and thoroughly can impact many different stakeholders. Which three are most likely to be negatively impacted?
Shown: Percentage of all respondents (1186)

A company suddenly facing the financial and reputation risks associated with an allegation of corruption may be tempted to keep its investigation as low-key and narrow as possible. But that approach carries its own risks, because an investigation sends a strong signal about management's integrity and how management actually feels about corruption. A timely, thorough, visible and independent inquiry shows that senior management really wants to correct misconduct, not simply out of fear of penalties but because of a desire to run an honest and ethical company.

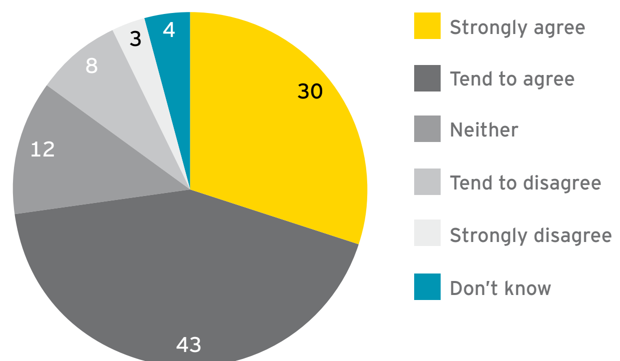
Investigations offer management the opportunity to demonstrate that, while everyone will be treated fairly, dishonest or unethical behavior will not be tolerated. Commitment from the top to do the right thing and act responsibly builds a culture in which employees with concerns will come forward, confident that they will be taken seriously and treated professionally.

A robust investigation helps safeguard a company's reputation. A key aspect is having an experienced and independent investigating team that has the ability to discover the relevant facts and secure the relevant documentary and electronic evidence. Many companies, boards and independent auditors insist on a competent and thorough investigation performed by an independent investigative team. This often includes a law firm and a professional advisory firm with experience in forensic accounting and leading investigation practices.

Internal audit — the best team for the job?

Expectations of the internal audit function have never been greater. Stakeholders expect internal audit professionals to focus on enterprise-wide risk assessments. Business and operational risk are often the top priorities. Personnel and budgets are being stretched thin to address these issues at headquarters and in far-flung international locations. And, as Ernst & Young's 2007 *Global Internal Audit Survey* reported, companies expect internal audit to play a critical role in detecting and investigating fraud.

Figure 6
Sufficient internal audit knowledge to detect bribery and corrupt practices



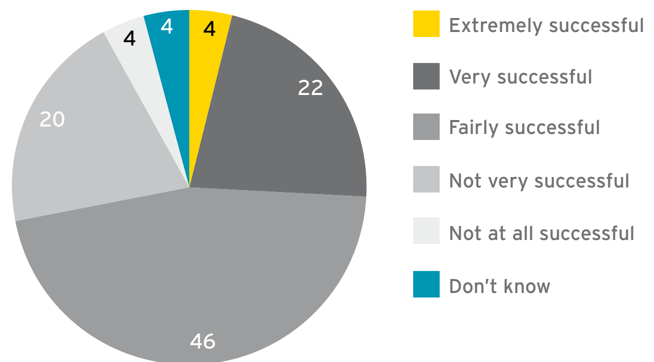
Q Do you agree or disagree that internal auditors have a sufficiently detailed understanding of the risks and indicators to detect bribery and corrupt business practices?
Shown: Percentage of all respondents (1186)

Table 3
Percentage saying internal audit are not very or not at all successful

Region	%
Central and Eastern Europe	44
Australia/New Zealand	32
Western Europe	25
North America	19
Far East	11
Middle East, India and Africa	11
Japan	8
Latin America	7

Q How successful are internal auditors in detecting bribery and corrupt practices?
Shown: Percentage of all respondents (1186)

Figure 7
Success of internal audit in detecting bribery or corrupt practices



Q How successful are internal auditors in detecting bribery and corrupt practices?
Shown: Percentage of all respondents (1186)

While some may look at bribery and corruption as a mere subset of fraud, that simplification is fraught with dangerous implications. The vast majority of anti-corruption laws, and certainly the FCPA, do not include a traditional consideration of materiality. Zero tolerance is written into the statutes. Internal auditors, often based in headquarters, under time pressure, untrained and armed with sometimes simple checklists, are expected to detect corrupt practices during quick site visits. Often, the audit team is heavily reliant on local staff and management to help interpret local language materials and area-specific business practices. Questionnaires that ask executives and mid-level managers whether they have bribed anyone in the past year are not sufficient.

Yet the respondents in our survey expressed confidence that internal auditors have sufficient knowledge to detect bribery and corrupt practices (Figure 6, previous page). Two-thirds of CEOs, CFOs and CROs agreed, and there was a similar figure across most of the industry sectors.

In the view of the majority of our respondents, the internal audit function was putting this knowledge to work effectively. Some 72% indicated that internal audit was successful in detecting bribery and corrupt practices (Figure 7).

But the percentage of respondents that view internal audit as not very, or not at all, successful should raise concern for senior management and board members. Indeed even 22% of heads of internal audit we interviewed stated that their departments were either not focused or not successful in this risk area.

The views among respondents in the various geographies ranged widely. Those interviewed in Latin America and Japan were more sanguine, with just 7% and 8% respectively stating that internal audit had not been successful. On the other hand, respondents in Central and Eastern Europe were by far the most negative. More than 40% of professionals from companies in those countries thought poorly of internal audit's effectiveness in this area.

> **"We regularly conduct surprise internal audits. If we identify an incidence of fraud, we shorten the internal audit cycles, while keeping intervals random."**
>
> Chief Risk Officer, Germany

Our experience would suggest that internal audit professionals would benefit from specific training regarding bribery and corrupt practices. This training is particularly critical given the role of internal auditors as monitors of business conduct and "first responders."

Enhancing their awareness of the obligations of the relevant anti-bribery statutes will increase their capacity to recognize "red flags," or indicators of potential corrupt activity. When serious red flags are uncovered requiring an investigation, executives from the board down to the legal/compliance department and internal audit function need to know when to turn to outside counsel and forensic accountants. Preserving electronic evidence is often one of the most urgent priorities, and one that requires sophistication given that data privacy laws can vary significantly across jurisdictions.

Improving the effectiveness of internal audit teams

Boards, senior management, and key stakeholders are increasingly relying on internal audit teams to do more to address the risk of bribery and corruption as regulatory compliance demands escalate. Teams can increase their effectiveness if given the resources to:

- Select site visits and audits based on potential anti-corruption risks
- Develop and perform specific bribery and corruption audits
- Include risks related to bribery and corruption in the wider risk assessment process when developing audit plans
- Modify current audit scope and procedures to specifically address bribery and corruption risks
- Develop specific protocols for the investigation of identified issues, including:
  - Involvement of counsel
  - Required communications (e.g., senior management, audit committee, external auditor)
- Bring the audit team together with the internal investigations/integrity team when conducting audits so that each team has a better understanding of the processes used by the other
- Achieve as much local language and cultural knowledge as possible in field teams
- Complete bribery and corruption training at least once every two years

In addition, audit teams can take some simple steps to build up their knowledge of bribery and corruption issues inside the companies. These include conducting regular reviews of incidents reported to the compliance hotline and preparing a list of red flags based on incidents that have already been investigated, including a list of internal controls that have been breached.

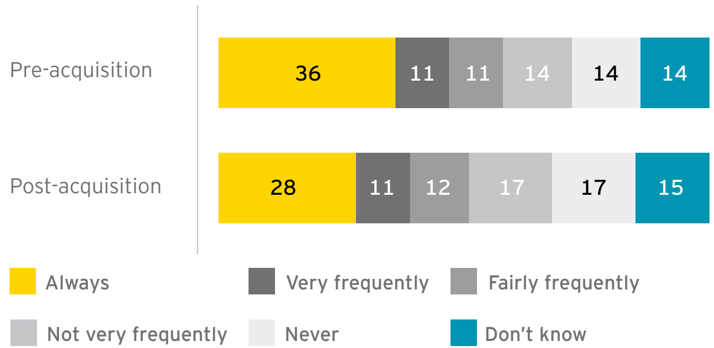
Compiling a database of all reported incidents — not simply those labeled as "significant" at the time — is vital for identifying patterns and trends. It also provides a document that can be shared with senior management and other divisions within the company to give a sense of current compliance issues.

IV. *Caveat emptor* — companies are failing to effectively weigh corruption risks during due diligence

Among US FCPA prosecutions in 2007, nearly half of them arose in the context of a merger or acquisition. Sophisticated companies, well aware of the risks of acquiring a company tainted by bribery or corruption, have found themselves having to disclose FCPA violations at recently acquired companies, potentially having inherited the company's regulatory exposure. Others have chosen to walk away from deals entirely. For these reasons we focused on anti-corruption risks in the M&A context. More than 800 of our respondents had acquired a new business in the last two years, and they shared their views on the risks with us.

Despite numerous high-profile US enforcement actions, nearly 30% of respondents had never — or infrequently — considered bribery or corruption risks in the context of a potential acquisition (Figure 8). It is interesting to note that those for whom this should be of a particular concern, i.e., the heads of legal, did not exhibit a greater degree of concern than the overall population.

Figure 8
Anti-corruption due diligence as part of the acquisition process



Q How frequently has your company considered bribery or corruption-related risks before acquiring a new business in the last two years? And how were they considered post-acquisition?
Shown: Percentage of those that have made an acquisition (836)

More than 45% of our respondents claim to routinely conduct anti-corruption due diligence. This is not consistent with our experience of corporate due diligence. It may well be the case that the respondents consider a check-list approach to these complex risks to be adequate. Procedures meant to address these risks as part of the standard financial due diligence should be met with some skepticism and probed for their sufficiency and rigor.

Representations and warranties relating to bribery and corruption are usually insufficient to protect the acquiring company and its executives from successor liabilities related to a post-deal regulatory investigation and related reputational damage. Besides the successor liabilities, the fundamental assumptions supporting the purchase price may be predicated on revenues that would not have existed but for the existence of questionable payments. These risks are, of course, greatest in deals where the target company has operations in countries or industries prone to high levels of corruption.

> "The value of a company's image is incalculable. But after corruption is identified, this value can become worthless very quickly."
>
> Finance Manager, Brazil

Companies would do well to institute a formal process to assess the bribery and corruption risk of countries of investment interest. Many different academic and other measurement tools exist. A prominent former US regulator, now in private legal practice, has suggested companies link the level of forensic due diligence to country scores in Transparency International's *Corruption Perceptions Index*. Forensic due diligence, he has said, should be conducted in countries with scores of 5 or less. When doing deals in countries with scores of, for example, 3 or less, companies should undertake exhaustive anti-corruption due diligence.

Every company now needs to seriously examine whether anti-corruption due diligence is required for every acquisition target. As we shall see in the next section, what a target company doesn't know about the actions of one of its mid-tier subsidiaries or agents can both overstate value and create significant liability for the acquirer. A thorough and conscientious process of anti-corruption due diligence is the best approach to mitigate these complex risks.

Assessing the risk that the target company may have bribery and corruption issues has a number of advantages beyond the possibility of reducing the acquisition price. Forensic due diligence can reduce the risk of future criminal and civil proceedings and limit future reputational damage. It can also help to establish the true value of an acquisition target by evaluating what portion of its revenues and profits may depend on inappropriate and unsustainable business practices.

Of course, there is enormous time pressure to conclude a merger, joint venture or acquisition. Under such pressure there may realistically only be time for an abbreviated due diligence approach. Experienced counsel and forensic specialists can help companies prioritize areas of focus.

Those responsible for M&A activity should understand that identifying corruption risk is not an automatic "deal breaker" in every context. However, it is always preferable to know as much as you can about corruption exposure prior to closing the deal. Highly effective due diligence processes identify the broad risk areas, allow management to assess their tolerance for the risk and then, if necessary, build decisive remedial action into a post-deal integration plan. The post-deal integration plan should include a detailed follow-through on any unresolved issues identified pre-acquisition and to explore any areas that were abbreviated due to time pressure or other constraints. Should issues subsequently have to be disclosed to regulators, a timely and thorough vetting of the potential risks in the due diligence process pre- and post-acquisition will strengthen the argument for leniency.

Higher-risk transactions merit additional scrutiny

Deals in which target companies have any of these characteristics are of substantially higher risk, making forensic due diligence a worthy investment:

- Subsidiaries and operations or customers in emerging markets or countries which score poorly on Transparency International's *Corruption Perceptions Index*
- Public sector contracts or business dependent on government approvals, permits, authorizations
- Consultancy services that are poorly documented
- Reliance on agents and intermediaries for sales
- Sales commissions contingent on contracts being awarded
- Significant travel, gift or entertainment expenditure
- Industries with a history of problems in this area, such as extractive industries, construction, aerospace, defense, pharmaceuticals and medical devices

V. Aggressive enforcement action demands greater corporate response

High-profile investigations into corrupt practices have continued to dominate the headlines in the past two years. Indeed, in the US, of the more than 80 FCPA investigations that were ongoing at the beginning of 2008, 30 were opened in 2007. Eleven of these new investigations targeted non-US corporations. New records for fines, penalties and disgorgement of profits have been set and broken repeatedly. Individual executives too have been the focus of prosecution efforts. In 2007, the DoJ brought FCPA-related actions against ten individuals, including, for the first time, charges against a member of Congress.

With regard to domestic bribery cases in the US, the DoJ charged 6,900 individuals with public corruption offences obtaining nearly 6,000 individual convictions during the period from 2001 to 2006, an increase of 50% over the previous eight-year period.

Prosecuting public officials — the demand side of the corruption equation — also sends a message to corporations. Emerging market countries that are keen to attract foreign direct investment or secure access to international capital markets for their leading companies have made strides in this area.

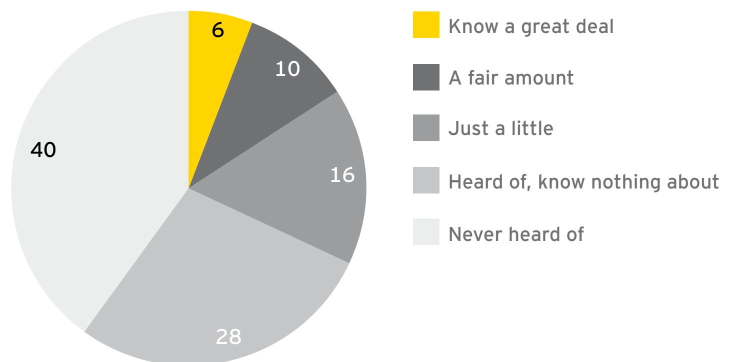
In perhaps an extreme example, given its enormous population and recent explosive economic growth, the Central Commission for Discipline Inspection of China's Communist Party indicted nearly 30,000 party and other officials for corruption in 2007. High-level officials are clearly not exempt from these enforcement efforts.

The FCPA: driving standards, demanding change — but still largely unknown

The aggressive enforcement of the FCPA by US authorities has certainly raised awareness in the world's largest companies of the importance of anti-corruption compliance. Companies with international operations would be wise to consider measuring all aspects of their anti-corruption policies against the requirements of the FCPA.

For this reason, we probed the FCPA knowledge of our respondents.

Figure 9
Knowledge of FCPA regulations



Q How much do you know about the US FCPA which prohibits bribery when dealing with government officials?
Shown: Percentage of all respondents (1186)

> "Every year, we update our client data. Identifying individuals and clients we work with that may have government connections highlights the areas where we need to exercise additional caution."
>
> Head of Internal Audit, Spain

Table 4
Respondents that have never heard of or know nothing about the FCPA

SEC registrant	56
Non-SEC registrant	74
US	31
UK	45
Germany	82
France	76
China/Hong Kong	87

Q How much do you know about the US FCPA which prohibits bribery when dealing with government officials?
Shown: Percentage of all respondents (1186)

More than two-thirds of the respondents knew nothing about the FCPA (Figure 9). When the responses are broken down by geography, awareness among US respondents is considerably higher. About half claimed a fair knowledge of the Act, while about a third knew nothing about it. Among European nations, more than 80% of German respondents and 76% of those in France were unaware of the FCPA.

Awareness among companies that are SEC registrants, and thus clearly subject to the FCPA, was surprisingly low. Some 56% of these respondents knew nothing of the Act. Senior executives did not fare much better. When the responses are broken down by job title, about 57% of CFOs and CROs, 48% of internal audit directors, and 40% of senior in-house legal counsel were not familiar with the FCPA.

Another question asked if the respondents knew whether their company was subject to FCPA rules and regulations. Of the individuals who claimed to have a little knowledge of the Act, 53% indicated that their company was subject to it. Among those who claimed to have a fair amount of knowledge, 80% indicated that their company was subject to the provisions of the FCPA.

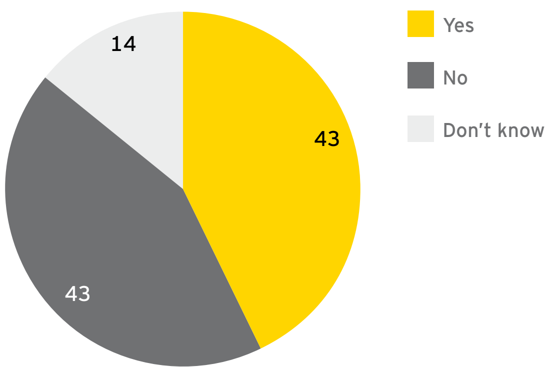
Over a third of the respondents surveyed indicated that FCPA compliance processes were very or extremely embedded into the company operations. Over a half of the respondents indicated that these compliance processes were well embedded, and 18% of the respondents were not aware whether FCPA compliance processes were embedded into the company operations.

Yet for an FCPA, or any anti-corruption, program to be effective, companies need to be able to distinguish which of its customers, supplier or agents, for example, are "government officials" under the applicable laws. If the ownership structure of one of these entities is unknown or opaque, companies cannot properly restrict or monitor its interactions with them. Given that the concept of materiality is absent in the vast majority of anti-corruption statutes, an improper payment, gift, travel reimbursement or charitable donation could be a violation.

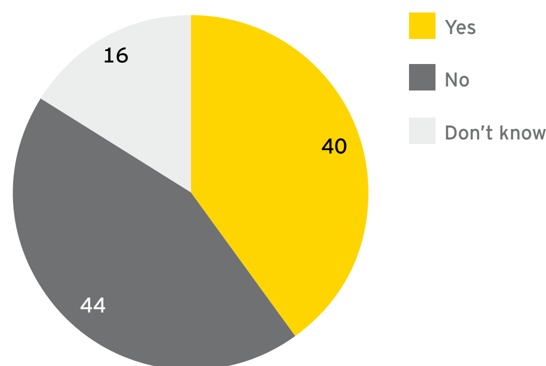
Despite this, only 43% of the respondents indicated that their company had specific procedures in place for dealing with government officials (Figure 10, overleaf). These results indicate a significant opportunity for risk mitigation.

Figure 10
Dealings with government officials

Anti-corruption policies and procedures



Systems to identify government-related parties



Q Does your company have specific procedures for dealing with government officials (in any country) to mitigate the risk of corrupt business practices? Does it have a system that identifies customers, partners or other intermediaries with government ties that would be considered as "government officials" under anti-bribery statutes?
Shown: Percentage of all respondents (1186)

A relatively high number of European companies did not have specific provisions for government officials. This result may be an indication that compliance processes at European companies are designed to combat commercial bribery on a par with public bribery to reflect their local anti-corruption laws. However, the absence of specific procedures to deal with government officials is surprising. As companies develop a broad range of trading relationships in the developing world, the necessity of interaction with government officials brings acute risks.

Companies that had experienced an instance of bribery or corruption in the last two years were more likely to use specific procedures to identify government officials. Interestingly, 29% of the SEC registrants we interviewed did not have such procedures.

Some 40% of the respondents also indicated that their company had a system in place that enabled employees to readily identify people who could be considered "government officials" under applicable anti-bribery statutes.

As companies are increasingly doing business across the world, identifying government officials is getting more difficult. Is that manufacturer in Shanghai from which a newly acquired subsidiary just won a contract still a state-owned enterprise? And does that mean that one of your people should not be taking the purchasing manager and his wife out to dinner? Is the CFO of a company partly owned by a Middle Eastern sovereign wealth fund regarded as a government official for anti-corruption purposes? In this new world where compliance is key, companies need to provide their employees with the answers to increase the likelihood that their actions are appropriate.

"We are inviting practitioners from the whole of Europe to better understand that with good cooperation and the will to share information, through bodies like Eurojust and like OLAF, their [international fraud and corruption] cases will be much more successful."

Franz-Hermann Bruner, Director General, European Anti-Fraud Office, European Commission

The fact that the majority of companies do not yet have a system for doing so means that they have not yet appreciated just how much is now being demanded of them by regulators.

Our results indicate that a misalignment exists between the knowledge of relevant bribery and corruption legislation and the confidence that the company is taking care of the compliance issues. Knowledge and understanding of the law and the regulatory environment would seem to be a prerequisite to adequately assess risk and put in place policies and procedures necessary to mitigate the risk of noncompliance.

This misplaced confidence may allow certain risks to remain unaddressed. Given the increasing regulatory scrutiny, there is considerable benefit in raising awareness and improving compliance capabilities.

VI. Achieving potential, promoting compliance

For many companies, achieving their potential means winning in new and emerging markets. With the growing local, national and international regulatory focus on anti-corruption, implementing a robust compliance program is essential to staying out of trouble. Some key elements of an effective anti-corruption compliance program are described below.

Conduct a corruption risk assessment

A robust anti-corruption program should begin with a thorough assessment of the specific risks of bribery and corruption facing the company. These risks are derived from the applicable laws and regulations governing the company's conduct, and other facts specific to the company's operations, including industry sector, international locations, and amount of business interaction with foreign government officials. Acquisitive organizations should also conduct tailored risk assessments on target companies operating in countries prone to high levels of corruption.

Additional risk assessments should be undertaken periodically to confirm that the program in place is meeting new risks and challenges as the business and regulatory environments change.

Adopt a corporate anti-corruption policy

An anti-corruption policy should be an important component of a company's overall compliance approach. The anti-corruption policy itself needs to address such issues as contracting with agents and consultants, commercial bribery, accuracy of financial reporting and audits of internal controls. It is useful to set out the processes involved in conducting effective internal investigations.

The policies on agents and consultants should include mandates that require a written contract with anti-bribery representations and warranties. Requiring periodic compliance certifications from these third-party vendors is useful. The right to audit agents and consultants is also an essential consideration when negotiating contracts, and actually exercising these rights later is just as important. Regarding gifts, a clearly stated approval process is beneficial as is a gift log that can be audited. Any travel or lodging provided to foreign public officials should undergo a heightened approval process. Charitable giving guidelines should also be included in anti-corruption policies to guard against the use of charities as conduits for bribes.

The anti-corruption policy itself should be approved by the Board of Directors. Distributing the policy to management, and posting on the company's internal website with other compliance-related policies is worthwhile. References to the anti-corruption policy should be included in the written code of conduct issued to all company employees.

Conduct anti-corruption compliance training and audits

As we have already stated, internal audit teams play a crucial role in the company's anti-corruption compliance program. Specific training is required to enhance their awareness and effectiveness in order to increase the likelihood that the company meets its obligations under the relevant anti-bribery statutes.

Every professional in a sales, marketing, or procurement function should receive anti-corruption compliance training. These professionals should clearly understand what internal resources are available to guide them in the event that they should be approached for a bribe or other illicit payment.

Companies should consider identifying local or regional in-house (or external) counsel that would be available to answer urgent questions from the field. For example, when a foreign government official arrives unexpectedly with his family for a business visit, well-meaning employees may be able to benefit from immediate legal and compliance advice that the company can offer.

Once employees have been trained on the policy, taking steps to identify and eliminate any gaps in compliance is critical. Detailed anti-corruption compliance audits should be conducted by internal audit at the various business units to identify any potential violations. These audits should occur on a rotating schedule, based on the relative likelihood of violations occurring in each of the various business units.

Employ an anti-corruption compliance certification program

Many companies have formal programs to certify and re-certify senior employees regularly on anti-corruption compliance. Certifications will not stop the deliberate wrongdoer, but the requirement will serve as a continuing reminder of the manager's compliance responsibility. Certification processes also may identify issues that otherwise might not have surfaced.

No compliance program, no matter how expensive or extensive, can provide absolute assurance of compliance. An effective anti-corruption program, if viewed as a serious program, will positively affect a company's culture and may deter wrongdoing. In the event of aberrational behavior, the existence of an effective anti-corruption program will be a benefit should it be necessary to interact with regulatory authorities. Isolated instances of corrupt conduct do not necessarily make the overall program ineffective. In the past, US regulators have shown certain leniency when the offending conduct was discovered by the company's internal processes, wrongdoers were dealt with accordingly and remedial measures were undertaken quickly.

“By taking a strong stance on promoting transparency and fighting corruption, companies not only mitigate reputational risk, but they also live up to their responsibility as corporate citizens and can take an active part in the emerging solutions to some of the greatest issues facing the world today.”

Cobus de Swardt, Managing Director, Transparency International

Risks and rewards

The risks that we have discussed in this survey are risks not for corporations alone. Executives and board members could have exposure too. As we noted earlier, US regulators remain focused on what they believe is the deterrent effect of prosecuting individuals. Civil penalties for responsible executives are common. Jail sentences too are possible.

Encouraging your organization to adopt an effective anti-corruption program is in your personal best interest. Becoming knowledgeable about the law — not just the FCPA but the applicable anti-bribery statutes in the countries in which your company has interests — is no longer just the responsibility of in-house counsel. Knowing enough to ask the powerful questions to those building compliance programs or conducting investigations will be of great value.

Promoting ethical behavior in your organization — making a difference — is not just about staying on the right side of the law. It's good business.

Survey approach

Between November 2007 and February 2008, our researchers conducted 1186 telephone interviews with senior decision-makers in large organizations. The sample was structured to include respondents from key parts of the company, including senior financial and risk managers as well as the heads of legal, compliance, and internal audit groups.

The interviews were conducted using local languages in 33 countries.

Table 5
Participant profile — job title, sector and revenue

Number of interviews	
Job title	
Chief executive officer	39
Chief operating officer	13
Chief financial officer	262
Chief risk officer	62
Head of legal	89
Head of compliance	22
Head of internal audit	120
Head of strategy	11
Financial controller	116
Treasurer	45
Senior risk manager	61
Senior internal audit manager	23
Senior finance manager	118
Tax director	4
Business unit head	50
Corporate development officer	4
Security/anti-fraud officer	17
Other business director	117
Company secretary	13

Shown: All respondents (1186)

Sector	
Banking and capital markets	209
Chemicals	23
Consumer products	156
Energy (oil, gas, electricity)	165
Health sciences	63
Insurance	67
Manufacturing	338
Mining and metals	44
Professional firms and services	6
Real estate and construction	6
Technology, communications and entertainment	55
Transportation	7
Utilities	20
Other sectors	27

Revenue (US$)	
2 billion or more	174
1-2 billion	305
500 million - 1 billion	277
100-500 million	306
10-100 million	81
Not available	43

Table 6
Participant profile — region and country

Number of interviews	
Central and Eastern Europe	**250**
Czech Republic	50
Hungary	50
Poland	50
Romania	25
Russia	50
Turkey	25
Far East	**183**
China and Hong Kong	52
Malaysia	25
Philippines	29
Singapore	27
South Korea	25
Vietnam	25
Japan	**53**
Latin America	**58**
Brazil	26
Mexico	32
Middle East, India and Africa	**75**
India	25
Middle East	25
South Africa	25
North America	**79**
Canada	25
US	54
Oceania	**59**
Australia	46
New Zealand	13
Western Europe	**429**
Austria	50
Belgium	25
France	50
Germany	50
Greece	25
Italy	25
The Netherlands	51
Spain	25
Sweden	25
Switzerland	50
UK	53

Shown: All respondents (1186)

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The Ernst & Young Fraud Investigation & Dispute Services practice has global reach. See below for a list of our country leaders. For more information, visit **www.ey.com/fids.**

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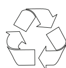

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